

## Special Report on Freedom of Expression 2009 in Venezuela<sup>1</sup>

505. The present [section] describes some of the most recent issues related to the situation of the right to freedom of expression in Venezuela and formulates viable and feasible recommendations based on the American Convention, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression (hereinafter, "Declaration of Principles").<sup>2</sup>

506. Freedom of expression is essential for the development and strengthening of democracy and for the full exercise of human rights. The recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions. The Inter-American Court has repeatedly emphasized the importance of this right by affirming that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>3</sup>

507. Freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of any kind. In this respect, this right has a two dimensions, individual as well as social. This dual nature:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.<sup>4</sup>

508. The Venezuelan State has recognized its obligation to protect, guarantee, and promote the right to freedom of expression in Article 57 of its Constitution and, in a paradigmatic example, has decided to honor its international obligations indicating in Article 23 of its constitutional text that: "Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power." Additionally, the protection of freedom of information is recognized and protected in the Constitution at the highest level, by establishing it in its Article 337 as one of the

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<sup>1</sup> The IACHR has prepared a special report on the human rights situation in Venezuela, titled "Democracy and Human Rights." The Office of the Special Rapporteur was assigned the preparation of the chapter on freedom of expression in said report; the full text of which is included below.

<sup>2</sup> The IACHR approved the Declaration of Principles on Freedom of Expression during its 108<sup>th</sup> Ordinary Period of Sessions in October of 2000. IACHR. Declaration of Principles on Freedom of Expression, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

<sup>3</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

<sup>4</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

untouchable rights that cannot be restricted even under exceptional circumstances. Additionally, as the State indicated in its observations on the present report, Article 58 of the Constitution establishes that, "Communication is free and plural, and carries with it the duties and responsibilities provided by law. Every person has the right to timely, truthful, and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and rectification when s/he is directly affected by inexact or offensive information. Children and adolescents have the right to receive information adequate for their comprehensive development."<sup>5</sup>

509. In recent years, the IACHR and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Special Rapporteurship") have followed the situation of freedom of expression in Venezuela closely.<sup>6</sup> In the *Report on the Situation of Human Rights in Venezuela* (2003), prepared based on information received during the last on-site visit to that country, the IACHR issued the following recommendations to the State in relation to the right to freedom of expression:

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.
2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the enactment of new laws and in the administrative and judicial proceedings in which it issues judgments.
5. Work for the repeal of laws that contain *desacato* provisions, since such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.
6. Effectively guarantee the right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.

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<sup>5</sup> Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 55.

<sup>6</sup> The Annual Reports of the IACHR corresponding to the period of 2002-2008 have addressed the situation of freedom of expression in Venezuela in detail. IACHR. *Annual Report 2002*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Available at: <http://www.cidh.oas.org/annualrep/2002eng/toc.htm>; IACHR. *Annual Report 2003*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.118. Doc. 5 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/annualrep/2003eng/toc.htm>; IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.124. Doc. 5. February 27, 2006. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Available at: <http://www.cidh.oas.org/annualrep/2006eng/TOC.htm>; IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

7. Adapt its domestic laws to comply with the parameters established in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.<sup>7</sup>

510. In the chapter on Follow-up of the Recommendations Formulated by the IACHR in its Reports on the Situation of Human Rights in Member States in its 2004 Annual Report, the IACHR concluded "that the recommendations contained in its report on Venezuela [...] ha[d] not been fulfilled[" and it therefore ["]call[ed] upon the State to take the necessary actions to comply with them."<sup>8</sup>

511. Recently, in its 2008 Annual Report, the IACHR affirmed that in Venezuela:

[a] climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of [...] society [is not being fostered]. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.<sup>9</sup>

512. Additionally, in its pronouncement on August 3, 2009, the IACHR stated that since 2000 it "has observed a gradual deterioration and restriction on the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression."<sup>10</sup>

513. In this chapter, the IACHR analyzes the following areas of special interest in relation to freedom of expression in Venezuela: the compatibility of the current legal framework on the subject of freedom of expression with the obligations of the State under the American Convention; the use of blanket presidential broadcasts (*cadenas*

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<sup>7</sup> In the same report, the IACHR concluded that "much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public." IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 372. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>8</sup> IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>.

<sup>9</sup> IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para 388. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>10</sup> IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

*presidenciales*); the statements by high-ranking authorities of the State against communications media and journalists based on their editorial line; the disciplinary, administrative, and criminal proceedings against communications media and journalists; the regulation of the broadcasting spectrum and the application of the provisions on broadcasting; and the violations of the rights to life and personal integrity. Finally, it formulates recommendations to the State regarding freedom of expression. It should be noted that the issue of restrictions on the right to freedom of expression in the context of social protest in Venezuela was addressed by the IACHR in Chapter II of the present report. Chapter V of the present report will address the issue of access to information in Venezuela.

514. On this chapter, in its observations on the present report, the State indicated that “[t]he Commission with its Special Rapporteurship has an obsession against Venezuela and wants the Venezuelan State to refrain from taking any legal measures against the media owners and some journalists who do not respect their Code of Ethics. According to the Commission, the communications media cannot be contradicted, nor touched with a rose petal, because it is immediately considered a violation of the sacred right to freedom of expression [...]”<sup>11</sup> (Emphasis in original). It concluded by affirming that “[f]or the previously expressed reasons, and because it considers that these have been sufficiently addressed and debated during the last [seven] years by the Venezuelan State, the occurrences indicated by the Commission, we will not respond to the Commission’s allegations contained in paragraphs three hundred thirty-two through five hundred forty-two.”<sup>12</sup> (corresponding to the chapter on Freedom of Thought and Expression in the Draft Report)

**a. The compatibility of the current legal framework in relation to freedom of expression with the obligations of the State under the American Convention**

**i. The Law on Social Responsibility in Radio and Television**

515. In December 2004, the Law on Social Responsibility in Radio and Television (hereinafter, “Law on Social Responsibility”), also known as the “*Ley Resorte*,”<sup>13</sup> entered into force. In a communication of August 13, 2009, the State declared that the objective of this norm is:

to confer upon the national production, and especially the independent national production, a leadership role in [the] new communications order, [which] previously [...] was concentrated in the large communications media, limiting the development of a participative and proactive democracy. [...] The *Ley Resorte* democratizes the radio spectrum [...] [and] has permitted citizen participation in the production of the content of communications media, democratizing and breaking down the barriers to freedom of expression that are established by the communications media themselves by concentrating the production of the content they transmit and that in some circumstances are subject to obscure economic and power interests that do not correspond to the common interest. Currently, there is a plurality of content in radio and television that guarantees and promotes freedom of expression in Venezuela. Far

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<sup>11</sup> Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 56.

<sup>12</sup> Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 56 and 57.

<sup>13</sup> Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: [http://www.conatel.gob.ve/download/marco\\_legal/Ley%20Responsabilidad%20Reforma.pdf](http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf).

from seeking to be an exclusionary law, it is a necessary legal instrument to guarantee social inclusion and promote the development of radio and television content by Venezuelans for Venezuelans.<sup>14</sup>

516. The IACHR and its Special Rapporteurship have constantly promoted the principles of pluralism and diversity in the communicative process, especially with respect to the implementation of policies of inclusion of groups traditionally excluded from public debate. On this point, it is important to recall that whatever policy is adopted to promote inclusion and diversity, it must respect the international standards on freedom of expression. For this reason, since November 2002, when the presentation of the then-draft Law on Social Responsibility to the National Assembly was announced, the IACHR and the Special Rapporteurship expressed their serious concern about the vague and imprecise drafting of various provisions, especially those that establish the types of conduct that are prohibited and the corresponding sanctions. The IACHR and the Special Rapporteurship expressed their concern about the provisions referring to offenses of incitement, the severity of the penalties prescribed for these offenses, and that their application is the responsibility of the National Telecommunications Commission (hereinafter "Conatel"), an agency that directly depends on the Executive Branch.<sup>15</sup>

517. The above-mentioned provisions of the Law on Social Responsibility remain in force and the interpretation of them by Conatel has expanded the scope of these norms, instead of limiting them. This issue will be explained in detail in the following paragraphs.

**a) Article 29 of the Law on Social Responsibility in Radio and Television**

518. According to Article 29 of the Law on Social Responsibility, providers of television and radio services that "promote, advocate, or incite to war; promote, advocate, or incite alterations of the public order; promote, advocate, or incite crime; are discriminatory; promote religious intolerance; [or] are contrary to the security of the Nation" can be sanctioned with the suspension of their qualifications for 72 hours or their revocation for a period of up to five years in the case of recidivism.<sup>16</sup>

519. In previous opportunities, the IACHR had already pronounced on the risks of "provisions like Article 29(1) [which] set very punitive sanctions for violating restrictions

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<sup>14</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 118-120.

<sup>15</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, paras. 394-405. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>. Office of the Special Rapporteur for Freedom of Expression—IACHR. October 26, 2004. Press Release No. 111/04. Available in Spanish at: <http://www.cidh.org/relatoria/showarticle.asp?artID=287&IID=2>; IACHR. November 30, 2004. Press Release 25/04. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/25.04.htm>.

<sup>16</sup> Article 29 of the Law on Social Responsibility in Radio and Television establishes: "Article 29. Television and radio service providers will be sanctioned with: (1) Suspension for up to 72 continuous hours when the messages broadcast: promote, advocate for, or incite to war; promote, advocate for, or incite to alterations of the public order; promote, advocate for, or incite to crime; are discriminatory; promote religious intolerance; are contrary to national security; are anonymous; or when the providers of radio, television, or subscription services have been sanctioned twice, within the three years following the date of the imposition of the first sanctions. (2) Revocation of the permit, for up to five years, and revocation of the concession, when there is a recurrence of the sanction in clause 1 of this article, within the five years following the occurrence of the first sanction. The sanction provided for in clause 2, when it deals with the revocation of permit or concession, will be applied by the governing organ in the area of telecommunications, in both cases the decision shall be issued within thirty business days of the reception of the file by the competent organ. In any case, it will correspond to the Legal Consultancy of the National Telecommunications Commission to substantiate the administrative file and to apply, supplementally, the procedural norms set forth in the Organic Law on Telecommunications."

that are defined in vague or generic language.”<sup>17</sup> In particular, in its 2008 Annual Report, the Special Rapporteurship recalled that vague or imprecise penal norms which, by their ambiguity, result in granting broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them.

520. On the other hand, in the area of freedom of expression, vague, ambiguous, broad, or imprecise punitive norms, by their mere existence, discourage the dissemination of information and opinions that could be bothersome or disturbing. Therefore, the State should clarify which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.<sup>18</sup>

521. The IACHR considers that Article 29 of the Law on Social Responsibility contains vague and imprecise language that increases the possibility that the norm will be applied in an arbitrary manner by the competent authorities. With respect to this, it is important to note that the State affirmed before the IACHR that the “[Venezuelan] legal order does not define [these terms], being [...] indeterminate juridical concept[s].”<sup>19</sup> On this point, the IACHR observes with concern that the ambiguity of the legal standards compromises the principle of legality, which obliges the states to define in express, precise, and clear terms each type of conduct that could be the object of sanctions.

522. The broadness of these dispositions is a special concern to the IACHR, given the constant declarations by high-ranking governmental authorities who characterize those who dissent, criticize, or offend the authorities or generate political opposition of “journalistic terrorism,” “coup mentality,” “incitement to violence,” or “instigation of crime.” On this point, on August 13, 2009, the State affirmed that in the country,

no information media is subject to prior censorship (either direct or indirect); but there are subject matters in which certain prohibitions are applied and it is precisely such propaganda, ideas, and concepts that can lead to the creation of destabilizing atmosphere[s] in the country. [...] In our country, the participation of the communications media in the events surrounding the Coup d’État of April of 2002 and the National Strike that occurred between December of 2002 and January of 2003 evidenced the free transmission of constant and permanent messages inciting the population to disobedience of authority and the government, tax evasion, as well as messages which incited authorities to alter the peace and public order; it must be noted that these messages advocated in their content the barring or blockage of streets and other passageways; in good measure, they incited disregard for authority and other public powers, messages of hate that many times stimulated violence or social unrest. [...] [T]he dissemination of messages that foment hate, racism, and discrimination is evident from the continuous and systematic attacks that are

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<sup>17</sup> IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>18</sup> IACHR. *Annual Report 2008*. Volume II. Chapter III, paras. 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

<sup>19</sup> The State referred specifically to the definition “hate speech” and “incitement to violence.” Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 116.

expressed against the public authorities, with epithets that go beyond or exceed that which can be criticism of the exercise of public functions, and contain suggestions aimed at affecting the image and personal life of persons who hold or exercise some public function, degrading their personal and family morale, honor, and reputation.<sup>20</sup>

523. In the same document, the State recalled the lamentable facts related to the 2002 *coup d'état* to justify some possible restrictions on communications media. In this respect, in its observations on the present report, the State indicated: "In light of this reality [referring to the events of the coup d'état], the communications media opted to violate the Venezuelans' right to freedom of expression, by not reporting information relating to these events and limiting themselves to broadcasting films and cartoons. As stated in its report 'the Commission learned during this period of the actions of some private communications media that impeded access to information that was vital to Venezuelan society during these tragic events.' As the journalist Andrés Izarra stated, the order from the directors of RCTV was clear: 'Zero *chavismo* (support for Chávez) on the screen.'"<sup>21</sup> With respect to these occurrences, it is important to remember that the IACHR condemned the rupture of the institutional order and the tendentious attitude of the communications media in the following terms:

In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit, the Commission stated that: "The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment." In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.<sup>22</sup>

524. Currently, Venezuela enjoys a political regime that successfully overcame the lamentable acts related to the coup d'état of 2002. As a result, having overcome this condemnable episode, the Venezuelan state, as well as the rest of the states of the Americas, must respect the totality of the rights and freedoms consecrated in the inter-American juridical framework. In this regard, and taking into account the argumentation of the State transcribed above as the interpretation that the competent authorities have made of the norms of the Law on Social Responsibility, it is essential to recall that in no case may freedom of expression be limited by invoking mere conjectures about eventual effects on order, nor hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly demonstrate an actual, certain, objective, and imminent threat of serious disturbances or anarchic violence.<sup>23</sup>

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<sup>20</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 117.

<sup>21</sup> Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 5 and 6.

<sup>22</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 373. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>23</sup> I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the*

525. The IACHR indicates, following the reiterated international doctrine and jurisprudence in the subject area, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitation to the commission of crimes, the rupture of public order, or of national security) must have as a prerequisite actual, certain, objective, and convincing proof that the person was not simply expressing an opinion (however harsh, unjust, or disturbing it may be), but rather that he or she had the clear intention to commit a crime and the actual, real, and effective possibility of achieving that objective.<sup>24</sup> If this were not the case, it would allow the possibility of sanctioning opinions and all the states would be able to suppress any thought or expression critical of the authorities that, like anarchism or radical opinions contrary to the established order, question even the very existence of current institutions. In a democracy, the legitimacy and strength of institutions take root and strengthen due to the vigor of public debate about their functioning and not by its suppression.

526. Additionally, the inter-American jurisprudence has clearly indicated that, in order to impose any sanction based on public order (understood as security, health, and public morals), it is necessary to show that the concept of “order” that is being defended is not an authoritarian or autocratic one, but rather a democratic order, understood as the existence of structural conditions that would allow all persons, without discrimination, to exercise their rights in freedom, with vigor and without fear of being sanctioned for this. In effect, for the Inter-American Court, in general terms, the “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to adulterate it, or to deprive it of real content. If this concept is invoked as a basis for limitations on human rights, it must be interpreted in a manner that is strictly tailored to the just demands of a democratic society, which takes into account the equilibrium between the different interests in play, and the necessity of preserving the object and end of the American Convention.<sup>25</sup>

527. The forgoing considerations must be taken into account by the Venezuelan state when interpreting any norm that restricts the human right to think and express oneself freely, in particular, the above-cited provisions of the Law on Social Responsibility.

**b) The authorities applying the Law on Social Responsibility: Conatel and the Social Responsibility Board**

528. In relation to this point, the State indicated that,

The law provides for different organs to be responsible for [the] application [of the Law on Social Responsibility], one of these being the National Telecommunications Commission (Conatel), regulatory body for the telecommunications sector in Venezuela, with legal capacity, its own budget independent of the National Treasury, and technical, financial, organizational, regulatory, and administrative autonomy. [...]

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*Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 63-69.

<sup>24</sup> In this respect, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94, ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, July 8, 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, July 8, 1999; *Arslan v. Turkey* [GC], no. 23462/94, July 8, 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. Additionally, I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 77.

<sup>25</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 67.

The Social Responsibility Board is the second organ charged with overseeing the correct application of the "*Ley Resorte*," in its composition it reflects the democratic and participative character of the various sectors of society, as well as the political power, and has among its functions the establishment of sanctions in accordance with this Law, as well as the issuance of recommendations regarding the revocation of permits or the non-renewal of concessions.<sup>26</sup>

529. Conatel, the governing body on telecommunications in Venezuela, is defined in Article 35 of the Organic Law on Telecommunications as "an autonomous institute, endowed with legal capacity and its own budget independent of the National Treasury, with technical, financial, organizational, and administrative autonomy in conformity with this Law and other applicable provisions."<sup>27</sup>

530. Currently, by virtue of Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009), Conatel is assigned to the Ministry of Popular Power for Public Works and Housing.<sup>28</sup>

531. According to Article 40 of the Organic Law on Telecommunications, the directorship of Conatel is made up of a director general and four members, all designated by the President of the Republic, who can also dismiss them at will.<sup>29</sup>

532. Conatel is an organ empowered to initiate administrative proceedings for violations of the provisions of the Law on Social Responsibility. It is also charged with applying the sanctions decided upon by the Social Responsibility Board. Article 19.11 of the Law on Social Responsibility provides therefore that Conatel may "[o]pen on its own motion or at the request of a party, administrative proceedings derived from this Law, as well as

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<sup>26</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 120-121.

<sup>27</sup> Conatel was created on September 5, 1991 through Decree 1.828 (Official Gazette No. 34.801 of September 18, 1991) and was originally assigned to the then-Ministry of Transportation and Communication. Available in Spanish at: <http://www.conatel.gob.ve/conatel.asp>; Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: [http://www.tsj.gov.ve/legislacion/LT\\_ley.htm](http://www.tsj.gov.ve/legislacion/LT_ley.htm).

<sup>28</sup> Article 3.24 of Decree 6.707 establishes as a new competency of the Ministry of Popular Power for Public Works and Housing, "[t]o authorize, revoke, renew, and suspend the administrative permits and concessions in relation to radio and television broadcasting and not-for-profit public service community radio and television broadcasting, according to the regulations governing this issue." Article 6 formally assigns Conatel to the Ministry of Popular Power for Public Works and Housing. National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=121&dir=DESC&order=date&Itemid=190&limit=10&limitstart=100](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=121&dir=DESC&order=date&Itemid=190&limit=10&limitstart=100).

<sup>29</sup> Article 40 of the Organic Law on Telecommunications establishes the following: "The Board of Directors will be made up of the Director General of the National Telecommunications Commission who will preside and four Directors, who will be freely appointed and removed by the President of the Republic, each of these will have an alternate, designated in the same way, who will fill in during temporary absences. The temporary absences of the President shall be covered by the Principal Director s/he designates. The Director General or whoever is acting on his or her behalf and two Directors shall constitute a quorum. Decisions will be made by majority vote of the directors present. In case of a tie, the Director General will have the deciding vote. The Director General of the National Telecommunications Commission, as well as the members of the Board of Directors and their substitutes, may be removed at the will of the President of the Republic. The members of the Board of Directors, unlike the Director General, shall not have the status of officials of the National Telecommunications Commission." Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: [http://www.tsj.gov.ve/legislacion/LT\\_ley.htm](http://www.tsj.gov.ve/legislacion/LT_ley.htm).

apply sanctions and prescribe other actions that are in conformity with that provided in this Law.”<sup>30</sup>

533. On the other hand, Article 20 of the Law on Social Responsibility created the Social Responsibility Board, which has the competence to “establish and impose sanctions that are in conformity with this Law.” Article 35 of the same law provides that the Social Responsibility Board will “carry out the actions that will bring to a conclusion the punitive administrative proceedings” initiated by Conatel. The Social Responsibility Board is headed by the director general of Conatel and includes six functionaries elected by the ministers and state institutions, two representatives of groups of users organized by Conatel, a representative of the university, and *one representative of the church*.<sup>31</sup>

534. In the 2005 Annual Report, the IACHR expressed its concern “over the establishment of the Social Responsibility Board [...] (Directorio [...] de Responsabilidad Social), which ha[s] broad powers to issue sanctions, without the limits that any organization of this type needs. It is worrisome, among other things, that the Board can meet with the presence of only those members who represent the State, and that they can adopt decisions by simple majority. [...] The Commission and the Office of the Special Rapporteur are of the view that the operation of [this agency], as provided for in the Law, facilitates the practice of prior and subsequent censorship by the State.”<sup>32</sup>

535. In the present report, the IACHR reiterates its concern over this matter. The IACHR recalls that the search for a significant degree of impartiality, autonomy, and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communication processes, and the exchange and publication of information and ideas of all kinds.<sup>33</sup> The guarantees of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.

536. The IACHR observes that the members of the board of Conatel can be freely appointed and dismissed by the President of the Republic without the existence of any safeguards aimed at ensuring their independence and impartiality. Additionally, is important to note that seven of the eleven members of the Social Responsibility Board are selected by the Executive Power, and that the Law on Social Responsibility does not establish any criteria for the designation of the members of the Social Responsibility Board, nor does it

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<sup>30</sup> Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: [http://www.conatel.gob.ve/download/marco\\_legal/Ley%20Responsabilidad%20Reforma.pdf](http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf).

<sup>31</sup> Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: [http://www.conatel.gob.ve/download/marco\\_legal/Ley%20Responsabilidad%20Reforma.pdf](http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf). Emphasis added.

<sup>32</sup> IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 356. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>.

<sup>33</sup> IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 200. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

define a fixed term for the exercise of their duties or establish precise reasons for their removal. Therefore, there are no institutional, organic, or functional guarantees of the independence of these organs.

537. In the context of the problems that have been outlined, the IACHR and its Special Rapporteurship take note of the various pronouncements by the highest authorities of the State making reference to the possible sanctions that could be adopted against those who have followed an editorial line that is opposed to or critical of the policies of the government. As will be seen subsequently, the initiations of various administrative proceedings described in this chapter were preceded by declarations by the highest public authorities which exhorted Conatel and the Social Responsibility Board to impose exemplary sanctions against communications media labeled as “*golpistas*” (favoring the overthrow of the government). For example, in the program *Aló Presidente* on May 10, 2009, in which the transfer of Conatel to the Ministry of Public Works and Housing was announced, President Hugo Chavez, in referring to a [media outlet], stated:

We all know who I am talking about. [...] In a dictatorship it would already have been shut down, but in Venezuela there is democracy because of which the corresponding organs will act on this case. [...] We will do what is necessary, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only say to them, and to the Venezuelan people, that this will not continue like this. [...] There is your responsibility, Diosdado, to carry on the battle with dignity [...], [we cannot] tolerate more journalistic terrorism from the private channels.<sup>34</sup>

538. Therefore, taking into account the standards described in this section, the IACHR exhorts the State to modify the text of Article 29 of the Law on Social Responsibility, to subject the interpretation of the provisions on sanctions to the mentioned regional standards, and to establish institutional, organic, and functional guarantees to ensure the independence of the authorities applying the laws on broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch.

## **ii. The Organic Law on Education and the limitations on freedom of expression**

539. On August 13, 2009, the National Assembly approved the Organic Law on Education (Official Gazette No. 5.929 of August 15, 2009). The IACHR calls the State’s attention to the provisions contained in Articles 9, 10, and 11 of this law.<sup>35</sup>

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<sup>34</sup> *Aló Presidente*. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (The transmission of messages of hate and conspiracy in Venezuela will end). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>.

<sup>35</sup> Article 9 provides the following: “Education and communications media. Social communications media, as public services, are essential instruments of the development of the educational process and, as such, they must carry out informative, educational, and recreational functions that contribute to the values and principles established in the Constitution of the Republic and the present Law, with knowledge, development of critical thought and attitudes to strengthen the collective life of the citizenry, territoriality, and nationality. [...] In the subsystems of the Educational System educational units have been created to contribute to the knowledge, understanding, use, and critical analysis of the content of social communications media. Additionally, the law and the regulations will regulate propaganda in defense of the mental and physical health of the population.”

For its part, Article 10 states: “Prohibition of incitement to hatred. It is prohibited in all the educational institutions and centers in the country to publish and divulge programs, messages, publicity, propaganda, and promotions of any type, through print, audiovisual, or other media, that incite hatred, violence, insecurity,

540. The IACHR observes that the cited provisions establish that communications media (including private media) are “public services.” Additionally, they consecrate a series of limitations that not only exceed the legitimate limitations derived from Article 13 of the American Convention, but also are described with enormous broadness, imprecision, and vagueness. Finally, the norms in question provide for the future establishment of regulations to implement the system of sanctions for the violation of the above-mentioned precepts.

541. In light of these dispositions, the IACHR is concerned that the classification or use of the category of “public services” for private communications media in Venezuela could be used to restrict the right to freedom of expression in a manner incompatible with Article 13 of the American Convention. The IACHR reminds the State that any restriction on freedom of expression must necessarily arise from causes clearly and expressly defined by the law and not from regulatory or administrative decisions; and that in all cases, the restrictions imposed on freedom of expression must be necessary to preserve the conditions that characterize a democratic society, consecrated in the American Convention. In this regard, it is essential to modify the above-mentioned provisions in those aspects that threaten the inter-American standards.

542. The IACHR takes into account that Article 13.5 of the American Convention expressly provides that: “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

543. The norms cited from the Organic Law on Education establish grounds for the restriction of freedom of expression that are different from those established in Article 13 of the American Convention, such as that which prohibits, for example, revealing information that promotes the “deformation of the language” or that commits outrage against “values.” Additionally, these dispositions contain ambiguous and imprecise descriptions that make it difficult to distinguish between prohibited conduct and conduct that is not prohibited. To summarize, these constitute norms that, on the one hand, go against the principle of strict legality applicable to restrictions on freedom of expression and, on the other hand, establish restrictions that hypothetically are not authorized by the American Convention.

544. Additionally, with respect to the norms that prohibit incitement to violence, as previously explained, these must have as a prerequisite strong, objective evidence that the person was not simply expressing an opinion, but also had the clear intention to commit an unlawful act and the real, present, and effective possibility of achieving his or her objectives. As a result, any regulation must not consider it sufficient to invoke as a reason to limit freedom of expression mere conjectures about eventual effects on the public order, or hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly present a present, certain, objective, and imminent risk of violence.

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intolerance, deformation of the language; that attack values, peace, morals, ethics, customs, health, human coexistence, human rights, and respect for the rights of indigenous and afro-descendent peoples and communities; and that promote terror, discrimination of any type, the deterioration of the environment, and harm to democratic principles, national sovereignty, and national, regional, and local identity.”

Finally, Article 11 establishes the following: “Prohibition of messages contrary to the national sovereignty. It is prohibited for educational institutions and centers to disseminate ideas and doctrines that are contrary to the national sovereignty and the principles and values consecrated in the Constitution of the Republic.”

545. For the forgoing reasons, the IACHR exhorts the State to adapt its legislation to the standards described herein.

iii. **The classification of crimes against honor**

a) **The Penal Code**

546. In March of 2005, the Penal Code was reformed to broaden the scope of the norms protecting the honor and reputation of state officials from the broadcasting of critical expressions that may be considered offensive.<sup>36</sup> Before the 2005 reform, the President of the Republic, the Executive Vice President, the ministers of the government, the governors, the Mayor of the Metropolitan District of Caracas, the judges of the Supreme Court, the presidents of the Legislative Councils, and the superior judges could initiate penal proceedings for the crime of *desacato* (disrespect). The modification added to this list members of the National Assembly, functionaries of the National Electoral Council, the Attorney General, the Solicitor General, the Human Rights Ombudsman, the Comptroller General, and members of the High Military Command.

547. The text of Articles 147 and 148 of the Penal Code currently in force establishes the following:

Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half of that if it was minor.

The penalty will be increased by one-third if the offense was committed publicly.

Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a rector of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the High Military Command, the penalty indicated in that article will be reduced to one half, and to one third when it relate[s] to mayors of municipalities.<sup>37</sup>

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<sup>36</sup> In the 2005 Annual Report, the IACHR stated: "The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. In [sic] also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws." IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 353. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>. See also IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, para. 227. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur—IACHR. March 28, 2005. *Press Release* 118/05. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=402&IID=1>; IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 451-467. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>37</sup> Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

548. It should be noted that the reform of March of 2005 maintained the article related to the penal offense known as “*vilipendio*” (contempt), which consecrates a kind of *desacato* against the institutions of the State. The text of Article 149 of the Penal Code currently in force states:

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

Half of this penalty will be applied against those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions.”<sup>38</sup>

549. In a communication of August 13, 2009, the State indicated that these norms, “seek to require personal responsibility on the part of those who incite illegal actions against the subjects of these norms, who affect the respect that they deserve as persons (human beings), which in turn agrees with respect for institutions, to avoid affecting public morale; because some institutions are headed by individuals against whom hate is encouraged, without factual basis to sustain it, which socially impedes the work of the institutions they direct or to which they belong. For example, Articles [147] and [148] of the Penal Code deal with a double protection, of the human being and of the position, with the aim of not weakening the State.” It added that “publicly denigrating institutions (*vilipendio*) can seek to weaken them by discrediting them, to arrive at a collective contempt of that which they –according to the law– must carry out or accomplish.” Finally, it indicated that this type of speech, “as part of a plan or movement towards public disobedience, chaos, disturbing the public order or morale, cannot be tolerated by the State, since, with such tolerance it could be playing with its [survival].”<sup>39</sup>

550. In this respect, the justifications expressed by the State not only contribute to justify the existence and legitimacy of such provisions in a democratic order, but also, on the contrary, they provide reasons to impugn their compatibility with the American Convention. In effect, in contrast to what the State asserts, the organs of the inter-American system for the protection of human rights have been emphatic in maintaining that the vigor of a democracy is strengthened, among other things, due to the intensity of its debates over public issues and not due to the suppression of such debates. As a result, the States must commit themselves to a regulatory framework that promotes free, open, pluralistic, and uninhibited debate about all issues of public relevance, which requires designing institutions that permit discussion, rather than inhibiting it or making it difficult. As maintained by the Inter-American Court, this defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing, or unpleasant for the State, since this is the requirement of a democratic order founded on diversity and pluralism. Additionally, the doctrine and jurisprudence have been coherent, consistent, and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater – not lesser– protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression.

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<sup>38</sup> Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

<sup>39</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 114-115.

The arguments presented by the State for applying the norms of the criminal law to criticism or dissidence clearly deviate from the considerations expressed here.

551. The application to the institutions themselves of the criminal law to limit or inhibit public discussions of great relevance is of particular concern. This is the case with the figures of *desacato* and *vilipendio* as they are consecrated in the above-cited norms of the Venezuelan Penal Code.

552. The IACHR and its Special Rapporteurship have repeatedly expressed their objections to the existence of criminal *desacato* laws like those that have just been discussed. In their estimation, *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy.’”<sup>40</sup> In this respect, *desacato* laws are an illegitimate restriction on freedom of expression, because: (a) they do not respond to a legitimate objective under the American Convention, and (b) they are not necessary in a democratic society. The IACHR has established that:

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.<sup>41</sup>

553. For the IACHR, the application of the criminal standards on *desacato* against those who divulge expressions that are critical of public functionaries is *per se* contrary to the American Convention, given that it constitutes the application of subsequent penalties for the exercise of freedom of expression that are not necessary in a democratic society, and are disproportionate because of the serious effects on the broadcaster and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and they dissuade criticism by generating fear of judicial actions, criminal sanctions, and monetary sanctions. The legislation on *desacato* is disproportionate because of the sanctions it establishes for criticism of state institutions and their members, by which it suppresses the debate that is essential for the functioning of a democratic society, restricting freedom of expression unnecessarily.

554. On the other hand, the IACHR has explained its objections to the norms of defamation, insult, and slander particularly when these are used to prosecute those who have made critical statements about issues of public interest, about public persons, or about the functioning of institutions.

555. Additionally, the IACHR and its Special Rapporteurship have questioned the use of criminal law to protect the “honor” or “reputation” of ideas or institutions. In their opinion,

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<sup>40</sup> IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title I: Introduction. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February, 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

<sup>41</sup> IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title IV: *Desacato* Laws are incompatible with Article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Section B. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

public institutions do not have a right to honor; rather, they have the duty to maintain their legitimacy. This is achieved not through the suppression of public debate, but through the triumph of arguments in favor of institutions that respect the rule of law.

556. Contrary to what the State has asserted, critical expressions, information, and opinions about issues of public interest, about the functioning of the state and its institutions, or about public functionaries enjoy a greater level of protection under the American Convention, which means that the state must abstain more strictly from establishing limitations to these forms of expression.<sup>42</sup> In effect, as has already been indicated, the legitimacy and strength of institutions is built as a result of public debate and not as a result of its suppression.

557. As the IACHR has repeatedly stated, the free circulation of ideas or expressions that are critical of public functionaries merits a special protection for the reasons that are summarized here: in the first place, because expressions or information that could offend public authorities are subject to a higher risk of censorship; in the second place, because deliberation about public issues or public functionaries is one of the essential conditions for society to be able to obtain information or hear points of view that are relevant to make collective decisions that are conscientious and well-informed; thirdly, because the functionaries that act in the name of the State, by virtue of the public nature of the functions they carry out and the resources they employ, must be subject to a greater degree of scrutiny and, for this reason, to a higher threshold of tolerance for criticism; and finally, because public functionaries have more and better possibilities to defend themselves in a public debate than persons who do not have official positions or functions.

558. On the other hand, the cited norms on *desacato* and *vilipendio* seriously compromise the principle of strict legality. In effect, the wording of these norms is so vague that it is simply impossible to distinguish between protected criticism and sanctionable conduct.

559. On this point, it is not superfluous to recall that there currently exists a valuable process in the entire region, through which the legislative powers and, in their case, the highest tribunals of justice, have been repealing or ordering the non-application of *desacato* laws, norms on *vilipendio*, and dispositions on insult and slander when they have been applied to sanction those who have referred to the behavior of public functionaries.<sup>43</sup>

560. In the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR has already stated that “a penalty that obstructs or restricts the dialogue necessary between a country’s inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society’s.”<sup>44</sup>

561. During recent years, the IACHR has received information that indicates that various journalists that worked for opposition communications media in Venezuela were

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<sup>42</sup> I/A Court H.R., *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paras. 83-84; I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paras. 125 and 128.

<sup>43</sup> Office of the Special Rapporteur—IACHR. June 22, 2009. *Press Release R38/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>.

<sup>44</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 462. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

subjected to criminal proceedings under the provisions on *desacato* and defamation. The IACHR recognizes that in Venezuela there is no systematic application of these provisions, however, it expresses its concern because in many of these cases, the proceedings remain open in the courts for many years, which produces an effect of intimidation and self-censorship among journalists and communications media.<sup>45</sup> On the other hand, for reasons that have already been explained, the mere existence of these norms produces an intimidating effect that disproportionately affects the right to freedom of expression.

562. Therefore, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR again concludes that the criminal legislation in Venezuela contains norms that are incompatible with Article 13 of the American Convention.<sup>46</sup> In consequence, the IACHR exhorts the Venezuelan State to act urgently to bring its criminal legislation into conformity with the standards described here with reference to the norms that regulate *desacato* and *vilipendio*.

#### **b) The Organic Code of Military Justice**

563. Article 505 of the Organic Code of Military Justice establishes that: "One who in some way injures, offends, or shows contempt for the National Armed Forces or one of its units will incur a sentence of three to eight years in prison."<sup>47</sup>

564. As has already been explained, criminal sanctions against someone who expresses opinions that could "offend" or "show contempt for" institutions is contrary to the international standards on freedom of expression, given that it does not constitute a necessary restriction in a democratic society.

565. On the other hand, as in the cases of the criminal norms on *desacato*, *vilipendio*, defamation, insult, and slander, the wording of [article] 505 is so imprecise that it is impossible to foresee with certainty what conduct could give rise to criminal sanctions. In the opinion of the IACHR, the text of the norm blurs the line between the permissible exercise of freedom of expression with respect to the military institution and the realm of application of the legal prohibition. Given that there is no certainty about which behavior is considered illicit, any expression that could be interpreted by any person as a criticism of the Armed Forces could subsumed in the description of the offense in the article in question.

566. On this point, the Inter-American Court has stated clearly that any limitation consecrated in the criminal legal order must respond to the principle of strict legality or precision. In other words, any penal restriction must be expressly, precisely, and previously

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<sup>45</sup>IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region, para. 252. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2006*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 211-213. Available at: <http://www.cidh.oas.org/annualrep/2006eng/Rapporteurship%20for%20Freedom%20of%20Expression.pdf>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 363. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 228-232. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>.

<sup>46</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>47</sup> It should be recalled that this is the norm under which Francisco Usón Ramírez was sentenced to six years and five months in prison. IACHR. *Application to the Inter-American Court of Human Rights in the case of Francisco Usón Ramírez (Case 12.554) versus the Bolivarian Republic of Venezuela*. Available at: <http://www.cidh.org/demandas/12.554%20Francisco%20Uson%20Ramirez%20Venezuela%2025%20julio%202008%20ENG.pdf>.

formulated, so that all persons know clearly what are the precise types of conduct that, if committed, would give rise to a penal sanction. Therefore,

crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty.<sup>48</sup>

567. The IACHR considers that this criminal law norm, as well as the referenced articles of the Penal Code, due to their vague and imprecise structure, go against the principle of strict legality (*nullum crimen sine lege*) that has been required by the Inter-American Court as a condition to accept a restriction on freedom of expression, and therefore, they are incompatible with Article 13 of the American Convention. As a result, the IACHR exhorts the State to bring its ordinary and military criminal legislation into conformity with the standards described here.

**b. The use of blanket presidential broadcasts (cadenas presidenciales)**

568. Article 192 of the Organic Law on Telecommunications provides the following:

Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of open-to-air radio television broadcasters, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts. Publicity by public entities is not subject to the obligation established in this article.<sup>49</sup>

569. For its part, Article 10 of the Law on Social Responsibility provides that the State:

[...] may broadcast its messages through radio and television services. To this end it may order providers of such services to provide free transmission of: [...] Messages contemplated in the Organic Law on Telecommunications. The order for free and obligatory transmission of official messages or addresses may be validly issued, among other ways, through the broadcasting of the message or address through the radio and television services administrated by the National Executive. [...] The providers of radio and television services and broadcasting by subscription may not interfere, in any manner, with the messages and addresses of the State

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<sup>48</sup> I/A Court H.R., *Case of Lori Berenson-Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 125. Additionally, the Inter-American Court emphasized that the laws that provide for restrictions “must utilize precise criteria and not confer unlimited discretion upon the authorities responsible for their application.” See also: I/A Court H.R., *Case of Tristán-Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 116-117; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 124.

<sup>49</sup> Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: [http://www.tsj.gov.ve/legislacion/LT\\_ley.htm](http://www.tsj.gov.ve/legislacion/LT_ley.htm).

that are broadcast within the terms of this article, and must conserve the same quality and aspect of the image and sound of the original format or broadcast.<sup>50</sup>

570. In virtue of the interpretation that the authorities have made of these dispositions, the President of the Republic is authorized to transmit all his speeches and presentations simultaneously, through all the communications media mentioned in the preceding norms, without any time limit. In this phenomenon, known as “blanket presidential broadcasts” (*cadena presidenciales*), public and private broadcast media in Venezuela are obligated to connect to the frequency of the principal state channel, *Venezolana de Televisión* (VTV), and transmit the declarations of the President whenever he deems it necessary or expedient.

571. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR [verified]:

the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest.<sup>51</sup>

572. The IACHR received information from civil society organizations and the academic sector that indicates that between February 1999 and July 2009, the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and 41 minutes, or in other words 52 days of uninterrupted broadcasting of presidential messages. Additionally, the information received indicates that in 2008, communications media had transmitted 186 blanket broadcasts (172 hours and 55 minutes), while in July of 2009, there were 75 messages broadcast (88 hours and 19 minutes). The information also shows that on January 13, 2009, the longest blanket broadcast of the period of 1999-2009 was aired, equivalent to 7 hours and 34 minutes. Such figures do not include the transmission of the program *Aló Presidente*, the ten minutes daily for governmental messages imposed by the Law on Social Responsibility in Radio and Television, or the official publicity that is typical in television or radio.<sup>52</sup>

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<sup>50</sup> Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: [http://www.conatel.gob.ve/download/marco\\_legal/Ley%20Responsabilidad%20Reforma.pdf](http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf).

<sup>51</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 487. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>52</sup> Communication of August 14, 2009 from the Center for Communications Studies of the Andrés Bello Catholic University to the Special Rapporteurship on Freedom of Expression. It also indicated, in relation to the referendum that took place in February of 2009, that: “The ‘blanket presidential broadcasts,’ sometimes dedicated to commemorations, with greater frequency to propaganda, and almost always to invective against the enemies of the Bolivarian Revolution were produced, on the average, every two days at the end of 2008. During this period the campaign was started by the Head of State for popular ratification of unlimited reelection. And it was also in this quarter that Hugo Chávez responded to the criticisms of the ‘blanket broadcasts.’ ‘Whoever wants to make ‘blanket broadcasts,’ let him become president! Why am I to blame for the fact that the presidents of the Fourth Republic did not make ‘blanket broadcasts?’ he said in a speech at the Teatro Teresa Carreño in Caracas. Between February 2, 1999, the date of his inauguration, and December 19, 2008, the Venezuelan Head of State spoke on the air 1,816 times with a total duration of 1,179 hours; that is to say, the equivalent of 49 days without interruption. Evidently, the extremely personal nature of the challenge posed by the referendum explains the great disequilibrium of the treatment he has given to communications media, public or private. As shown by the results of the study, presented on February 6, 2009 in the National Journalists’ Association (CNP, by its Spanish acronym) of Caracas, by the Media Monitoring Group (GMM, by its Spanish acronym), which includes investigators from the Andrés Bello Catholic University (UCAB, by its Spanish acronym) and the University of Gothenburg (Sweden). The analysis by GMM was based on 803 pieces of information from seven television channels and 477 from four radio stations in the period between January 22 and February 4, 2009. The part of the study referring to television is

573. Currently, international satellite and cable television are not linked to the obligation to transmit blanket broadcasts. However, on July 9, 2009, the Minister of Popular Power for Public Works, Diosdado Cabello, announced that a new administrative provision would be issued with the result that any cable broadcast that is more than 30 per cent “Venezuelan programming” (understood as any program that includes professional, financial, or technical participation of Venezuelan origin, including publicity) must have the same obligations that the laws impose on broadcast television. In this manner, some cable channels that are currently classified as foreign channels (given the narrowest interpretation possible of “Venezuelan programming”), must adapt to the new framework and comply not only with the obligation to transmit blanket broadcasts but also with the totality of the dispositions of the Law on Social Responsibility in Radio and Television.<sup>53</sup>

574. The IACHR recognizes the power of the President of the Republic and the high authorities of the State to use the communications media with the aim of informing the population about economic, social, or political issues of national relevance, that is to say, about those questions of preponderant public interest that they must be urgently informed of through independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”<sup>54</sup>

575. The exercise of this power, however, is not absolute. The fact that the President of the Republic can, by virtue of the powers conferred by Venezuelan laws, interrupt the regular programming of the public and private communications media in the country does not authorize him to exercise this power without limits: the information that the president transmits to the public through blanket broadcasts should be that which is strictly necessary to serve urgent informational needs on subjects of clear and genuine public interest and during the time that is strictly necessary to transmit such information. In effect, as previously mentioned, freedom of expression protects not only the right of the media to disseminate information and their own and others’ opinions freely, but also the right to be free from having content imposed upon them. Principle 5 of the Declaration of Principles on Freedom of Expression explicitly establishes that: “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

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particularly enlightening.” Reporters without Borders. February 13, 2009. *Constitutional vote held in climate of polarised media and surfeit of presidential speeches*. Available at: <http://www.rsf.org/Constitutional-vote-held-in.html>.

<sup>53</sup> National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 12-15. Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=41&Itemid=124](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124); Conatel. Draft Administrative Provision. Technical Norm on National Audiovisual Production Services. Available in Spanish at: <http://www.conatel.gob.ve/download/consulta/Proyecto%20PNA%20Cp.pdf>.

<sup>54</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

576. In this sense, both the IACHR and its Special Rapporteurship,<sup>55</sup> and some national organs of States party to the American Convention, applying international standards, have indicated that “it is not just any information that legitimizes the President of the Republic to interrupt regular programming; rather, it is that which deals with a collective interest in the knowledge of facts of importance to the public that are truly necessary for the real participation of citizens in the collective life. [...] [A]n intervention, even by the President of the Republic, without any type of limitation, restricts the right of citizens to inform themselves about other issues that interest them.”<sup>56</sup>

577. On the other hand, the IACHR considers that the lack of precision with respect to the establishment of limits for the use of blanket broadcasts in the Law on Social Responsibility and the Organic Law on Telecommunications could affect the informational equilibrium that the high-ranking state authorities are obligated to preserve, precisely by their position as guarantors of the fundamental rights of those under their jurisdiction.

578. The lack of control in the exercise of this power could degrade the legitimate purpose of this mechanism, converting it into a tool for propaganda. Already in the Joint Declaration of 2003 of the Special Rapporteurs for Freedom of Expression, it was clearly established that “[m]edia outlets should not be required by law to carry messages from specified political figures, such as the president.”<sup>57</sup>

579. In summary, any intervention by the president using this mechanism must be strictly necessary to satisfy urgent requirements in matters of evident public interest. Permitting governments the unlimited use of independent communications media, under the justification of informing citizens about every issue related to the functioning of the state or about different issues that are not urgent or necessary and that the citizenry can obtain information about from other sources, leads to, in practice, the acceptance of the right of governments to impose upon the communications media the content that they must broadcast. Any obligation to broadcast content not chosen by the media itself must conform strictly to the requirements imposed by Article 13 of the American Convention to be considered as an acceptable limitation on the right to freedom of expression.

580. As has been indicated by the Inter-American Court, “in a democratic society [it is necessary to] guarantee [...] the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”<sup>58</sup> The Venezuelan State itself, in a communication of August 13, 2009, emphasized

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<sup>55</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*. OEA/Ser.L/V/II.118. Doc. 4 rev. 2., para. 487. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>56</sup> Constitutional Court of Colombia. November 8, 2001. Judgment C-1172/01. Presiding Judge: Alfredo Beltrán Sierra. See also Constitutional Court of Colombia. November 11, 2005. Judgment C-1153/05. Presiding Judge: Marco Gerardo Monroy Cabra.

<sup>57</sup> Joint Declaration of 2003 by the Special Rapporteur on Freedom of Opinion and Expression of the UN, the Representative on the Freedom of the Press of the OSCE, and the Special Rapporteur for Freedom of Expression of the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>.

<sup>58</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 69.

that it “has an interest in the development of pluralistic, diverse, and independent communications media.”<sup>59</sup>

581. Due to the foregoing considerations, the IACHR exhorts the State to bring its legislation regarding blanket presidential broadcasts into agreement with the standards described.

**c. Statements by high-ranking state authorities against communications media and journalists based on their editorial line**

582. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR warned that “President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, [...] was able to note that on occasions, President Chávez’s speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitements to violence.”<sup>60</sup>

583. In a particular manner, during 2008 and 2009 high-ranking authorities of the State discredited the work of journalists and the role of some independent communications media, accusing them of practicing “journalistic terrorism” and of fomenting a “discourse of hate” that affects the “mental health” of the Venezuelan population.<sup>61</sup> As will be analyzed below, in some cases, these declarations have been followed by the opening of punitive administrative proceedings by Conatel, an entity that is dependent on the Executive Branch.

584. This type of statements led the Rapporteur of the United Nations for Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR to issue a joint press release on May 22, 2009, in which they stated that the declarations of high-ranking state authorities against *Globovisión* and other private communications media in Venezuela contributed to generating “an atmosphere of intimidation” that seriously limited the right to freedom of expression in Venezuela. The special rapporteurs emphasized that “in a democracy, criticism, opposition, and contradiction must be tolerated as a condition of the principle of pluralism protected by the right to freedom of expression” and that, as a result, “[t]he job of authorities is to create a climate in which anyone can express his or her ideas without fear of being persecuted, punished, or stigmatized.”<sup>62</sup> Below, there will be a summary of some of these pronouncements, with a brief reference to the facts that gave rise to them.

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<sup>59</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 107.

<sup>60</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 392. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>61</sup> As will be seen later, after some of these declarations, there were increases in acts of violence against several of these communications media by groups of private individuals aligned with the government.

<sup>62</sup> Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>; Ministry of Popular Power for Communication and Information of the Bolivarian Republic of Venezuela. May 22, 2009. *Venezuela considera inadmisible uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: [http://www.minci.gob.ve/noticias/1/189268/venezuela\\_considera\\_inadmisible.html](http://www.minci.gob.ve/noticias/1/189268/venezuela_considera_inadmisible.html); Venezolana de Televisión. May 22, 2009. *Venezuela considera inadmisible uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish

585. On October 13, 2008, the journalist Rafael Poleo, editor of the newspaper *El Nuevo País*, was invited to the program *Aló Ciudadano*, directed by Leopoldo Castillo and transmitted live on *Globovisión*. During the program Rafael Poleo stated the following: "One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and therefore I say with concern that Hugo is going to end up like Mussolini, hanging with his head down." Immediately, Leopoldo Castillo warned the interviewee that "this cannot be said," since his words could be interpreted as "advocacy of crime" or as "instigation," and urged him to be prudent.<sup>63</sup>

586. On October 15, 2008, Andres Izarra, then-Minister of Popular Power for Communication and Information, declared that Rafael Poleo had carried out "a call to assassination," "advocacy of crime" that aimed to continue "driving the matrix of fear" in the Venezuelan population. Minister Izarra also stated the following: "We call on the Social Responsibility Board on Radio and Television: please, do something, take a hand in this affair. This is a body of professional colleagues; there are various agents that must be able to pronounce against this type of attacks on freedom of expression."<sup>64</sup>

587. On October 16, 2008, Conatel ordered on its own motion the opening of punitive administrative proceedings against [the] channel for the supposed violation of Article 29.1 of the Law on Social Responsibility for "broadcasting messages in its programming that [...] could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, [...] contrary to the security of the nation."<sup>65</sup>

588. On October 20, 2008, Minister Andrés Izarra declared during an interview that in Venezuela there was an "excess of freedom of expression." Minister Izarra stated that opposition communications media were "active factors in [a] conspiracy [against the government that] belong[ed] to a political class that dominate[d] and continue[d] dominating [the] country." He added that they were "tools for destabilization" and that therefore "he did not have sympathy for them."<sup>66</sup>

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at: <http://www.vtv.gob.ve/noticias-internacionales/18411>; Globovisión. May 22, 2009. *Jorge Valero: Es inadmisable uso de instancias de la ONU y OEA para atacar a Venezuela* (Jorge Valero: It is inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://globovision.com/news.php?nid=117513>; Venezolana de Televisión. May 23, 2009. *Comunicado de OEA y ONU responde a los intereses de los medios privados* (Press Release by the OAS and UN responds to the interests of private media). Available in Spanish at: <http://www.vtv.gob.ve/noticias-nacionales/18430>.

<sup>63</sup> Communication of December 18, [2008] from the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression.

<sup>64</sup> El Universal. October 15, 2009. *Solicitan a CONATEL y Fiscalía actuar en caso de Rafael Poleo* (Conatel and the Attorney General's Office requested to act in the case of Rafael Poleo). Available in Spanish at: [http://www.eluniversal.com/2008/10/15/pol\\_art\\_solicitan-a-conatel\\_1093233.shtml](http://www.eluniversal.com/2008/10/15/pol_art_solicitan-a-conatel_1093233.shtml).

<sup>65</sup> As will be explained in detail later, on the morning of this same day, unidentified individuals threw a teargas bomb at the building where Leopoldo Castillo, host of *Aló Ciudadano*, resides. Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, p.4. Additionally, in its 2008 Annual Report, the IACHR stated that "the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel." IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>66</sup> Hoy. October 20, 2008. *En Venezuela hay "exceso de libertad de expresión" según gobierno* (In Venezuela there is "an excess of freedom of expression" according to the government). Available in Spanish at: <http://www.hoy.com.ec/noticias-ecuador/en-venezuela-hay-exceso-de-libertad-de-expresion-segun-gobierno->

589. Another of the events that motivated declarations by high-ranking public authorities against private independent channels took place after the broadcasting, on May, 4, 2009, of news about an earthquake that had affected some Venezuelan localities. That morning, the producers of the television channel *Globovisión* tried without success to communicate with Francisco Garcés, president of the Venezuelan Foundation for Seismic Investigations (Funvisis), so he could explain the range of the seismic activity. Around 5:20 am, the general director of *Globovisión*, Alberto Federico Ravell, went on the air to inform about what had happened and stated that according to the United States Geological Survey, the earthquake had registered 5.4 on the Richter scale. He also indicated that the population should remain calm since no serious damages had been reported. Around 5:45 am, the Minister of Popular Power for Internal Relations and Justice, Tarek El Aissami, called Ravell's presentation "inadequate" and "irresponsible" and stated that information of this type should only be broadcast following "a pronouncement by official authorities."<sup>67</sup>

590. On May 5, 2009, [congresswoman] Cilia Flores, President of the National Assembly, asserted that Alberto Federico Ravell sought to "create anxiety to accuse the government." At the conclusion of her presentation, the National Assembly voted to solicit [that] Conatel "[apply] the Law on Social Responsibility in Radio and Television to the channel *Globovisión* for the irresponsible declarations made by its owner [...], for having usurped functions inherent to national bodies."<sup>68</sup>

591. On May 7, 2009, Conatel notified *Globovisión* of the opening, on its own motion, of punitive administrative proceedings "for the transmission, since the early morning [...] in a continuous and repetitious manner, [...], of messages alluding to the earthquake registered in Venezuela [...], given that those messages could have generated a sensation of

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313168.html; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008* (Situation of the right to freedom of expression and information in Venezuela), pp. 165-166. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>.

<sup>67</sup> Communication of May 12, 2009, sent by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; YVKE Mundial. *Fuerte temblor sacudió región central del país esta madrugada sin causar daños* (Strong earthquake shook the central region of the country early this morning without causing damages). Available in Spanish at: <http://www.radiomundial.com.ve/yvke/noticia.php?23910>; Agencia Bolivariana de Noticias. May 4, 2009. *Venezolanos retoman sus actividades con normalidad* (Venezuelans return to their normal activities). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180371&lee=10>; Tal cual. May 4, 2009. *El sismo de Globovisión* (The earthquake of Globovisión). Available in Spanish at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=20106&secid=29>; Agencia Bolivariana de Noticias. May 7, 2009. *Conatel abre procedimiento administrativo contra Globovisión* (Conatel opens administrative proceedings against Globovisión). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180950&lee=1>; Globovisión. May 7, 2009. *Conatel abre procedimiento sancionatorio contra Globovisión por divulgación del sismo* (Conatel opens punitive proceeding against Globovisión for reporting on the earthquake). Available in Spanish at: <http://www.globovision.com/news.php?nid=116427>; CONATEL. May 7, 2009. *La Comisión Nacional de Telecomunicaciones inicia procedimiento administrativo sancionatorio al prestador de servicio de televisión abierta Corpomedios GV Inversiones, C.A., "GLOBOVISIÓN"* (The National Telecommunications Commission initiates punitive administrative against broadcast television provider Corpomedios GV Inversiones, C.A., "GLOBOVISIÓN"). Available in Spanish at: [http://www.conatel.gov.ve/noticia\\_comp.asp?numn=2625](http://www.conatel.gov.ve/noticia_comp.asp?numn=2625).

<sup>68</sup> El Universal. May 6, 2009. *AN solicita castigar a Globovisión por palabras de Ravell* (AN [National Assembly] requests sanctions against Globovisión for Ravell's words). Available in Spanish at: [http://www.eluniversal.com/2009/05/06/pol\\_art\\_an-solicita-castigar\\_1375632.shtml](http://www.eluniversal.com/2009/05/06/pol_art_an-solicita-castigar_1375632.shtml); Venezolana Televisión. May 6, 2009. *AN exhorta a Conatel para que sancione a Globovisión* (AN [National Assembly] exhorts Conatel to sanction Globovisión). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17707>; National Assembly of the Bolivarian Republic of Venezuela. May 5, 2009. *Exhortan a Conatel a aplicar la Ley Resorte a Globovisión* (Conatel urged to apply the *Ley Resorte* to Globovisión). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=21859&Itemid=63](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=21859&Itemid=63).

anxiety and fear in the population, in an unjustifiable manner, unleashing a possible incitation to alterations of the public order.”<sup>69</sup>

592. Later, during the transmission of *Aló Presidente* on May 10, 2009, President Hugo Chavez announced that “the transmission of messages of hate and conspiracy by private communications media in Venezuela” would come to an end. In the program the Venezuelan President addressed “the enemies of the Fatherland” and warned them of the following:

Bourgeois and *pitiyanquis*, make yourselves believe the road stories, believe that I wouldn’t dare: You could soon get a surprise, you are playing with fire, you are manipulating, inciting to hatred [...], and much more, every day; do not be mistaken, I am only telling you that things will not continue in this way. [...] First, I have confidence in the organs of the State responsible for initiating all the steps. I have confidence that the other corresponding powers will carry out all measures that they can. [...] I only want to remind you that those who are transmitting messages of hate, inciting the military to speak out, stating that the President must die—in a direct or subliminal manner—, that criticism is one thing and that conspiracy is another. [...] This country requires responsibility and transparency, these airwaves that the private companies use are public property, they are social property, do not believe you are the owners of the broadcasting spectrum, nobody is. [...] Not long ago there was a strong earthquake. I immediately called the Vice President, he was awake; I called Funvisis, they informed me and I gave instructions; I called the mayor of Los Teques, the governor of Aragua; and then comes one of those crazies with a gun, he is a crazy with a gun, this is going to stop, [...] or I will no longer call myself Hugo Rafael Chávez Frías. If a strike comes, we will be waiting for it, but this is a country that must respect itself, here we all have to respect each other.”<sup>70</sup>

593. On May 11, 2009, the Minister of Popular Power for Foreign Affairs, Nicolás Maduro, accused *Globovisión* of “terrorism,” and its director Alberto Ravell of practicing “journalistic terrorism” and generating “anxiety and terror” in the Venezuelan population through the transmission of information about the earthquake. Minister Maduro maintained that the “broadcasting spectrum must not be used to generate terrorism,” and that one “thing [was] to inform about the seismic activity or about the rains and another thing [was] to use a natural occurrence to try to generate anxiety or terror in the population in order to try to gain political advantage for purposes inconsistent with the Constitution and public peace.”<sup>71</sup>

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<sup>69</sup> Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

<sup>70</sup> *Aló Presidente*. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (“The transmission of messages of hate and conspiracy will end in Venezuela”). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>; Noticiero Digital. May 10, 2009. *Ese loco con un cañón se va a acabar o me dejo de llamar Hugo Chávez* (This crazy with a gun will stop or I will stop calling myself Hugo Chávez). Available in Spanish at: <http://www.noticierodigital.com/?p=30397>. Venezolana de Televisión. May 10, 2009. *Presidente advierte a televisoras y emisoras radiales que violan las leyes y retan al Estado* (President warns television and radio stations that violate the laws and challenge the State). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17883>.

<sup>71</sup> La Verdad. May 11, 2009. *PSUV acusa a Globovisión y Ravell de “terrorismo mediático”* (PSUV accuses Globovisión and Ravell of “media terrorism”). Available in Spanish at: <http://www.laverdad.com/detnotic.php?CodNotic=12412>; ADN. May 11, 2009. *Nicolás Maduro acusa de “terrorismo” al canal privado Globovisión* (Nicolás [Maduro] accuses the private channel Globovisión of “terrorism”). Available in Spanish at: <http://www.adn.es/sociedad/20090511/NWS-3054-Globovision-Nicolas-Maduro-terrorismo-privado.html>.

594. In the blanket presidential broadcast of May 14, 2009, the President Hugo Chávez affirmed:

We are in the presence of a terrorist attack from within: we must tell them, the white-collar terrorists, bourgeois terrorists wearing ties that do not wear hoods nor are they in the mountains. They have radio stations, television stations, and newspapers. [...] We cannot allow four bourgeois going crazy with hate to continue to fire the shrapnel that they fire every day against the public morale. This cannot be permitted. [...] Daily terrorism, daily violation of the Constitution, daily violation of the laws, aggression against persons, the national collective, in many cases with name and surname. [...] We all know who I am talking about. [...] In a dictatorship they would already have been shut down, but there is democracy in Venezuela so the corresponding organs will act on this case. [...] We will do what we have to do, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only tell them, and the Venezuelan people, that this will not continue.<sup>72</sup>

595. In the same broadcast, President Hugo Chávez announced the transfer of Conatel to the Ministry of Popular Power for Public Works and Housing and, as previously stated, ordered the head of this department, Diosdado Cabello, to be in charge of investigations in the case of the complaints against *Globovisión*. "Here is your responsibility Diosdado, to continue the battle with dignity," to tolerate no more "journalistic terrorism by private channels," added the Venezuelan president.<sup>73</sup>

596. On May 15, 2009, while making a protocolary visit to Argentina, President Hugo Chávez stated in a press conference that no one should be surprised when the State makes "decisions about some communications media" that "practice terrorism." The leader added that in Venezuela, "some communications media, [...] continue[d] to practice terrorism, not criticism, [but] terrorism."<sup>74</sup>

597. On May 17, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, assured that he would not allow himself to be "blackmailed" by the communications media, and that "at the moment of making decisions they would make them conscientiously" and it would not "affect their pulse." Additionally, the Minister emphasized that in Venezuela there "existe[d] social communications media that represent a

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<sup>72</sup> Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Communication of May 15, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; Telesur. May 14, 2009. *Chávez: Globovisión está jugando con fuego* (Chávez: Globovisión is playing with fire). Available in Spanish at: <http://www.telesurtv.net/noticias/secciones/nota/49925-NN/chavez-globovision-esta-jugando-con-fuego/>; Globovisión. May 14, 2009. *Presidente Chávez: "No me sigan retando"* (President Chávez: Do not continue to challenge me). Available in Spanish at: <http://www.globovision.com/news.php?nid=116922>.

<sup>73</sup> Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Noticias 24. May 15, 2009. *Diosdado Cabello será el encargado de investigar a Globovisión* (Diosdado Cabello will be in charge of investigating Globovisión). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/46944/diosdado-cabello-sera-el-encargado-de-investigar-a-globovision/comment-page-6/>; National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 de 14 de mayo de 2009). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&Itemid=190](http://www.asambleanacional.gob.ve/index.php?option=com_docman&Itemid=190).

<sup>74</sup> Globovisión. May 15, 2009. *Presidente Chávez: "No se extrañe nadie" cuando se tomen decisiones sobre algunos medios de comunicación* (President Chávez: "No one is surprised" when decisions are made about some communications media). Available in Spanish at: <http://www.globovision.com/news.php?nid=116931>.

public health problem,” and that “they were going to work to put an end to the broadcasting oligopoly.”<sup>75</sup>

598. On May 19, 2009, the Agent of the State for cases before the IACHR, Germán Saltrón, stated that if *Globovisión*’s concession were revoked “they themselves [would be] to blame for the situation.” Germán Saltrón emphasized that:

Media owners [had to] understand that freedom of expression [had] [...] limitations and [that] if *Globovisión* continue[d] with this attitude that threaten[ed] human rights it would simply be necessary to revoke its concession for violating the law. [...] We will wait to see what will be the sanction. Wait until Conatel indicates what is the sanction and based on that they can go to the Court and we will defend ourselves and demonstrate that they are the ones who have violated freedom of expression. [...] *Globovisión* alone has this attitude and it is necessary to apply the Law to it.<sup>76</sup>

599. In the June 25, 2009 edition of *Aló Presidente*, the Venezuelan Head of State indicated the following:

[T]he conspiracy continues, and above all, they are playing at something that has to do with a communications media and the possibility that exists, because it exists, it is in the laws and it is part of the daily evaluation, the possibility that exists that the concession they have will end, this is a possibility and I will say that it could be ended early, because this [concession] has an end, it has a term. But it is possible that it could be earlier, that it could be before the stipulated time period ends, this is possible for violation of laws, challenging the government, spreading rumors, inciting to assassination, civil war, hatred, etc. Therefore, they are preparing themselves for this, they believe that if this occurs the government will fall and they are going to try

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<sup>75</sup> Globovisión. May 18, 2009. *Diosdado Cabello: Nosotros no vamos a caer en chantajes* (Diosdado Cabello: We will not be blackmailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>; Diario La Verdad. May 17, 2009. *Cabello asegura que “no le temblará el pulso” para actuar contra los medios* (Cabello assures that “his pulse will not waver” in acting against the media). Available in Spanish at: <http://laverdad.com/detnotic.php?CodNotic=12673>; Globovisión. May 17, 2009. *Diosdado Cabello: “Nosotros no vamos a caer en chantaje”* (Diosdado Cabello: “We will not be blackmailed”). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>; El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: [http://politica.eluniversal.com/2009/05/18/pol\\_art\\_cabello-actuara-cont\\_1392627.shtml](http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml). On the same day, the deputy Cilia Flores assured that the closure of *Globovisión* “was due to public clamoring because they were continuing their policy of journalistic terrorism, they do not reflect and here there are laws and institutions that have to carry out procedures and, in accordance with the law, apply sanctions.” The parliamentarian added the following: “The fish dies by its mouth. They continue acting with this terrorism, with these calls to destabilization, to overthrow of the government, to violence. This is why we have denounced *Globovisión*, which maintains this conduct of disrespect, of violation of the Constitution, of abuse of the people and this is good that the people see it, what they are and that they do not reflect and do not rectify their conduct.” El Universal. May 17, 2009. *Cilia Flores aseguró que cierre de Globovisión es un clamor del Pueblo* (Cilia Flores assures that the closure of *Globovisión* is a cry from the People). Available in Spanish at: [http://www.eluniversal.com/2009/05/17/pol\\_ava\\_cilia-flores-aseguro\\_17A2333325.shtml](http://www.eluniversal.com/2009/05/17/pol_ava_cilia-flores-aseguro_17A2333325.shtml); Globovisión. May 17, 2009. *Cilia Flores: “Instancias internacionales” de oposición no tienen credibilidad* (Cilia Flores: “International instances” of opposition do not have credibility). Available in Spanish at: <http://www.globovision.com/news.php?nid=117081>; El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: [http://politica.eluniversal.com/2009/05/18/pol\\_art\\_cabello-actuara-cont\\_1392627.shtml](http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml).

<sup>76</sup> Globovisión. May 19, 2009. *German Saltrón: “Los dueños de medios deben comprender que la libertad de expresión tiene sus limitaciones”* (German Saltrón: “Media owners must understand that freedom of expression has its limitations”). Available in Spanish at: <http://globovision.com/news.php?nid=117241>; Agencia Bolivariana de Noticias. May 19, 2009. *La CIDH está parcializada en contra del Gobierno venezolano* (The IACHR is biased against the Venezuelan Government). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182539&lee=16>; Agencia Bolivariana de Noticias. May 19, 2009. *En Venezuela existe un monopolio del espectro radioeléctrico* (In Venezuela there is a monopoly of the radio broadcasting spectrum). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182550&lee=16>.

to do it. Fine, we will prepare ourselves because it is probable that this will happen, and if this happens and the opposition takes to the streets [and] calls for a coup [d'état], [...], fine, we will also go into the streets and we will sweep them away. We will be disciplined in this, we will do what they want, what they order, if they go into the streets, we will be in the streets waiting, the street belongs to the people, not to the bourgeoisie, therefore it is necessary to be always in the streets, mobilized, if they take their guns we will [fight] with our guns too, they will see.<sup>77</sup>

600. On July 9, 2009, Minister Diosdado Cabello stated, in a presentation to the National Assembly, the following:

And we sought and received the Commander's instruction: Democratize the use of the broadcasting spectrum, and we are going to do that, to end the broadcasting oligopoly, media oligopoly, and we are going to do that. We are not going to succumb to blackmail, they are not going to provoke us, we are not going to give in on anything because we owe absolutely nothing to the oligarchy in this country. [...] And as the father Camilo Torres said: If the dominant class, the oligarchy, does not give up its privileges willingly, the people will obligate them by force. And in this case in Venezuela, the people are the Government and we are going to do it. [...] What we cannot permit to occur in Venezuela is that which is occurring in Honduras, in spite of and 7 years after what happened here in 2002, to follow the same format as in Honduras and have success. How sad that is, how sad! Are we going to wait for this to happen? We must not, colleagues, I believe we must make a reflection, we will truly give the power to the people so they will be able to communicate, to broadcast what they are doing, and one who is not guilty does not have to fear it. The truth will set us free. The truth that is in the streets, not *Globovisión's* truth, not the insurrectionist media's truth.<sup>78</sup>

601. The IACHR considers that pronouncements like those made by the Venezuelan president and other high-ranking state officials could have the effect of polarizing society and influencing through arbitrary pressures the content that journalists and communications media transmit, which according to Article 13.2 of the American Convention, can only be the object, when necessary, of subsequent penalties imposed following a due legal process.

602. In this context, the IACHR reminds the State that, in the framework of the American Convention, the right to freedom of expression must be guaranteed not only with respect to the ideas and information received favorably or considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or some sector of the population. These are precisely the exigencies of the pluralism, tolerance, and spirit of openness without which there is no truly democratic society.<sup>79</sup> As the Special Rapporteurship stated in its pronouncement of May 22, 2009, "public officials, especially those in the highest positions of the State, have a duty to

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<sup>77</sup> The speech is part of the series called *Aló Presidente Teórico*. Communication of July 3, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

<sup>78</sup> National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), pp. 9 and 17. Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=41&Itemid=124](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124).

<sup>79</sup> I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

respect the circulation of information and opinions, even when these are contrary to its interests and positions.”<sup>80</sup>

603. Additionally, as the Inter-American Court stated, the Venezuelan authorities must take into account that “the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises that freedom of expression.”<sup>81</sup>

604. It is fundamental to remind the State that public functionaries who exercise their right to freedom of expression are also “submitted to certain limitations since they must verify in a reasonable, but not necessarily exhaustive, manner the facts on which they base their opinions, and they should do so with a diligence even greater to the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts.”<sup>82</sup>

605. The IACHR recognizes that the Venezuelan authorities have the duty to enforce the law and the right to respond to criticism they consider unjust or misleading. However, it is essential to take into account, as the Inter-American Court has indicated, with respect to public functionaries, that “they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”<sup>83</sup> Additionally, the Inter-American Court has indicated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not [...] induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”<sup>84</sup>

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<sup>80</sup> Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>.

<sup>81</sup> I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 143. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_194\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf); I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 155. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_195\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf).

<sup>82</sup> I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_194\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf); I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_195\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf).

<sup>83</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

<sup>84</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

606. In light of the declarations cited above, the IACHR urges the authorities of the State to provide the most simple and effective of protections: the public and categorical recognition of the legitimacy of criticism and dissidence in a constitutional democracy like the Venezuelan democracy. As a result, it exhorts the authorities to abstain from formulating stigmatizing declarations that could lead to acts of violence or arbitrary decisions by public officials.

**d. Disciplinary, administrative and criminal proceedings against communications media and journalists**

607. The IACHR observes that in recent months, there has been an increase in punitive administrative proceedings against communications media critical of the government. In particular, it concerns the IACHR that in a number of these cases, investigations and administrative proceedings were initiated after the highest-ranking state authorities called upon public entities, especially Conatel, "to act" against *Globovisión* and other independent media that are critical of the government.

608. Previously, in its 2008 Annual Report, the IACHR warned that "the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel."<sup>85</sup>

**i. The case of *Globovisión***

609. In the past twelve months, the IACHR has become aware of the opening by Conatel, on its own motion, of at least six administrative proceedings against *Globovisión* for the presumed violation of Article 29.1 of the Law on Social Responsibility in Radio and Television, and Articles 171.6 and 172 of the Organic Law on Telecommunications.<sup>86</sup>

610. As has already been mentioned, the first administrative proceeding was opened on October 16, 2008. On October 13, 2008, Rafael Poleo, a guest on a television program that the channel transmits live, stated the following: "One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and for this reason I

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<sup>85</sup> IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>86</sup> Article 171.6 of the Organic Law on Telecommunications provides: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, [one] will be sanctioned with revocation of the administrative permit or the concession, according to the case: [...] (6) One who utilizes or allows the use of telecommunications services for those who are qualified, as a means of assisting in the commission of crimes."

Article 172 of the Organic Law on Telecommunications states: "Article 172. The revocation of the administrative permit or concession of natural or legal persons will cause them to be unable to obtain another one, either directly or indirectly, for a period of five years. This period will be counted starting at the moment the administrative decision becomes final. In the case of legal persons, the disqualification will extend to administrators or other organs responsible for the management and direction of the sanctioned operator that were carrying out these functions during the time of the infraction, if they had knowledge of the situation that led to the revocation and did not notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the disqualifications and incompatibilities established in this Law will cause natural persons responsible for such a transgression to receive a special disqualification from participating in the financing, or being administrators or managers, of telecommunications companies, either directly or indirectly, for a period of five years."

say with concern that Hugo is going to end up like Mussolini, hanging with his head down.” The journalist who was interviewing him immediately called on him to be prudent.

611. According to the State, Conatel ordered the opening of an administrative file against the channel “considering that this television company disseminated in its programming messages that, presumably, could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, and could be contrary to national security.”<sup>87</sup> According to the State, “[i]n the analysis of the facts that gave rise to the initiation of these punitive administrative proceedings, it impossible not to recall that Benito Mussolini was an Italian dictator, who, after he was overthrown, was executed by partisan militants and later his body was exhibited, in humiliating conditions, hanging by the feet in an Italian gas station.”<sup>88</sup>

612. In relation to this occurrence, the representatives of *Globovisión* have also stated that the Attorney General’s Office has initiated two criminal investigations “identified by the codes ‘01-F20-0678-08’ and ‘01-F20-0362-09.’” The representatives of the communications media emphasized that they were “now getting into criminal territory with this issue in which there is already an open administrative investigation, aiming with this at criminalizing journalistic work and making press workers responsible for the political opinions of a guest who, in addition, expressed himself live and was interrupted by the moderator of the program.”<sup>89</sup>

613. The second administrative proceeding was initiated on November 27, 2008. On November 24, 2008, after the close of an electoral event, the channel transmitted live the declarations of the then-candidate for the governorship of the state of Carabobo, Henrique Salas Feo, in which he stated that “From here in Carabobo we want to demand immediate results from the National Electoral Council, but as they continue delaying the process, I want to ask all the people of Carabobo to accompany me, we will go to the Electoral Council to reclaim the triumph of Carabobo.”

614. Conatel considered that the transmission of the transcribed declarations could “promote, make apology for, or incite alterations of the public order.” In this respect, the State indicated: “the referenced citizen issued a call in front of a concentration of persons—transmitted by *Globovisión*—to accompany him to the Regional Electoral Council, with the aim of ‘reclaiming the triumph of Carabobo.’ It should be emphasized that the declarations referred to were disseminated while the state of Carabobo was experiencing a moment of great political and social tension, because the small difference in the number of votes for the two principal candidates for the governorship of the state prevented the National Electoral Council from issuing official results about the development of the electoral process in this region. In this context, the declarations made by the citizen Henrique Salas Feo could unleash highly conflictive acts in this entity.”<sup>90</sup>

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<sup>87</sup> Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

<sup>88</sup> Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

<sup>89</sup> Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

<sup>90</sup> Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-7.

615. It is important to remember that in its 2008 Annual Report, the IACHR stated that it viewed with concern that the application of Article 29 of the Law on Social Responsibility “could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.”<sup>91</sup>

616. The third administrative proceeding was initiated on May 7, 2009. As was already stated, in the early morning of May 4, 2009, the channel reported on the occurrence of an earthquake in the state of Miranda. At 5:20 am, the channel broadcast live a telephone call from its general director Alberto Federico Ravell, which informed about the earthquake and called for calm and tranquility. As of that moment, the state media had not reported on the tellurian movement. Messages about the earthquake were transmitted all that day. Conatel considered that the news coverage of the earthquake could “generate a sensation of anxiety and fear in the population, in an unjustified manner, unleashing a possible incitation to alterations of the public order.”<sup>92</sup>

617. On December 2, 2008 and May 15, 2009, the Special Rapporteurship sent communications to the State requesting information about the three punitive administrative proceedings mentioned. The State responded to the requests for information in communications dated December 18, 2008 and May 20, 2009. In the letters, the State explained the reasons for which the proceedings had been opened and indicated that the first two administrative proceedings were almost complete and that the files were “in the hands of the Social Responsibility Board, which is the professional body in charge, in accordance with the Law on Social Responsibility in Radio and Television, of pronouncing the judgment that would put an end to the punitive administrative proceedings.” With respect to the third proceeding, the State specified that this was “in the Phase of Substantiation by the Juridical Consultancy of the National Telecommunications Commission, and [that] once the Phase of Substantiation is complete, it would be remitted to the Social Responsibility Board so that they can decide what is appropriate.” It is important to note that as of the date of this report, the IACHR has not received additional information indicating that these proceedings have been concluded.

618. On June 16, 2009, Conatel initiated a fourth punitive administrative proceeding against *Globovisión*, this time for the presumed violation of Article 171.6 of the Organic Law on Telecommunications. Conatel considered that *Globovisión* had “transmitted messages that could have been linked to acts which could be classified in the Venezuelan Penal Code as crimes, among them those transmitted on these dates: (i) October 13, 2008, on the program *Aló Ciudadano*; (ii) March 22, 2009, on *Globovisión* programs and segments such as: *Noticias Globovisión* and *Aló Ciudadano*, among others; (iii) April 3 to April 6, 2009, in programs and segments such as: *Usted Lo Vio*, *Tres para las Nueve*, *Entretelones del Jucio*, *Noticias Globovisión*, among others; (iv) May 19, 2009, during the program *Buenas Noches*; and (v) May 10, 2009, on the program *Aló Venezuela*.” According to Conatel, “*Globovisión*, as a provider of broadcast television services, could have contributed to the commission of crimes, making or permitting use of its service for this [...], [which] [could] lead to the determination of criminal responsibility for *Globovisión*.”<sup>93</sup>

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<sup>91</sup> IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>92</sup> Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

<sup>93</sup> Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. In the opinion of the representatives of the communications media, the actions of the Attorney General's Office “show the coordination of actions by the Venezuelan state through the penal system with the

619. The Special Rapporteurship received information that indicates that the fourth administrative proceeding has been suspended until the Attorney General's Office can determine the criminal responsibility *Globovisión* could have incurred. According to Conatel: "for the sake of guaranteeing the constitutional rights that may correspond to [...] *Globovisión*, [it is] necessary to suspend the present proceeding until the corresponding criminal responsibilities can be determined within the framework of the investigations being carried out by the Attorney General's Office. In this manner, once the existence or non-existence of criminal responsibilities has been determined, and in consequence, the commission or non-commission of crimes, the present proceeding will be restarted, initiating its substantiation in order to determine the propriety of the cause of action for revocation invoked, for which the corresponding notification will be made to the presumed transgressor."<sup>94</sup>

620. On July 3, 2009, Conatel initiated, upon its own motion, a fifth punitive administrative proceeding against *Globovisión*. The proceeding, which also involves three other television channels and two radio stations, was started because of a publicity campaign prepared by two civil society organizations that criticized the "Proposed law on social property." Through a precautionary measure, Conatel also ordered the immediate cancellation of the publicity notices arguing that they contained "messages that presumably cause[d] distress, fear, and anxiety in the population that could foment collective conduct having a tendency to alter the public order and that could be contrary to national security," and also prohibited the dissemination of similar messages. (See below).

621. It should be noted that on July 3, 2009, the Attorney General's Office also placed a precautionary measure before a criminal court against one of the organizations that prepared the campaign and against the newspaper *Últimas Noticias*, after it published two graphic notices showing nude women, covering their breasts, with the message: "The law on social property will take away what it is yours; no to the Cuban law." The public prosecutors requested the suspension of the publication of these notices, arguing that it dealt with a case of violence against women. According to the information received, the request by the Attorney General's Office was granted and the publicity notices were removed, by judicial order, from the pages of the newspaper.

622. Lastly, on September 7, [2009], Conatel initiated a sixth punitive administrative proceeding against *Globovisión* and an independent producer, with the aim of determining "if the conduct carried out by the same incurred in the actions described in Articles [sic] 28 number 4 literal 'x' and in number 1 of Article 29 of the Law on Social Responsibility."<sup>95</sup>

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object of now supporting the 'revocation' of the license that *Globovisión* uses to transmit information to the public every day, creating an additional risk of penalties including the deprivation of liberty for the managers, journalists, and other workers of *Globovisión*."

<sup>94</sup> Communication of October 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

<sup>95</sup> Article 28 of the Law on Social Responsibility provides: "Article 28. Sanctions. Without prejudice to the civil and criminal penalties, it is possible to impose sanctions of cession of airtime for the dissemination of cultural and educational messages, fines, suspension of the administrative permit, and revocation of the administrative permit or of the concession. [...] 4. A provider of radio, television, or subscription services will be sanctioned, in cases it which it is applicable, with a fine of one per cent to two percent of the gross income earned in the fiscal year immediately prior to the one in which the infraction was committed, as well as the cession of airtime for the dissemination of cultural and educational messages when: [...] x) S/he disseminates messages that incite to noncompliance with the current legal norms."

623. According to Conatel, without stating precisely the content of the messages, “on September 3, 2009, in the program called *Buenas Noches* produced by KIKO COMUNICACIONES AL REVES, C.A. [...], which is transmitted by *Globovisión* [...], in its character as a provider of broadcast television services, disseminated messages that appeared through a character generator as messages supposedly sent by users via text message. [...] [By] disseminating messages like those referred to [...], one can observe that they could violate that which is provided under the Law on Social Responsibility [...], given that the mentioned messages could be inciting to disregard for institutions, to the realization of a coup d’état, and to the generation of alterations of the public order, presumably attacking the national security. It should be emphasized that the messages were transmitted in a context in which they promoted public demonstrations, with which a climate of tension and anxiety could be generated in the population, through implicit and explicit messages that presumably allude to acts of violence and the realization of a *coup d’état* in the country.”<sup>96</sup>

624. On the same day, Minister Diosdado Cabello affirmed that he had also requested the Office of the Attorney General of the Republic to open a criminal investigation against *Globovisión* for the transmission of this content. According to the state official, the messages incited to “coup d’état and assassination.”<sup>97</sup> However, the content of each of these messages was not concretely clarified or specified.

625. In relation to the opening of these investigations, the IACHR reaffirms, as does the Special Rapporteurship in its pronouncement of June 26, 2009, that the states have the authority to regulate the broadcasting spectrum and carry out punitive administrative proceedings to ensure compliance with the legal dispositions.<sup>98</sup> Nevertheless, the IACHR reminds the Venezuelan state that in the exercise of that power, it must promote pluralism and diversity, as well as guarantee access to the broadcasting spectrum under conditions of equality and non-discrimination.<sup>99</sup>

626. The forgoing implies that any administrative investigation that could lead to the application of sanctions against communications media must comply with, at a minimum, the following requirements: (1) it must be completely subject to the most favorable law in force; (2) the applicable law must not contain vague and imprecise terms that could lead to the arbitrary application of sanctions that limit freedom of expression; (3) any legal restriction on freedom of expression must pursue ends that are compatible with the American Convention; (4) any sanction must be proportionate and strictly necessary for

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<sup>96</sup> Communication of October 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

<sup>97</sup> Conatel. September 7, 2009. *Diosdado Cabello: Procedimiento administrativo sancionatorio contra Globovisión no intenta regular la libertad de expresión sino hacer cumplir la ley* (Diosdado Cabello: Punitive administrative proceedings against Globovisión do not seek to regulate freedom of expression but rather to enforce the law). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2678](http://www.conatel.gob.ve/noticia_comp.asp?numn=2678); Globovisión. September 9, 2009. *Fiscalía investiga denuncia de Diosdado Cabello contra Globovisión* (Attorney General’s Office investigates denunciation by Diosdado Cabello against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126903>; Globovisión. September 7, 2009. *Conatel notifica nuevo procedimiento sancionatorio a Globovisión* (Conatel announces new punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126696>; Globovisión. September 5, 2009. *Ministro Cabello anuncia apertura de procedimiento sancionatorio contra Globovisión* (Minister Cabello announces the opening of punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126535>.

<sup>98</sup> Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

<sup>99</sup> IACHR. *Annual Report 2002*. Volume III, Chapter IV: Freedom of Expression and Poverty. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

the satisfaction of the legitimate goals that the law establishes; (5) in any case due process of the law must be fully guaranteed; and (6) the organ of application of the law must offer guarantees of autonomy, independence, and impartiality.

627. In summary, the decision to sanction a communications media, and especially to revoke its license or permit, must be strictly legal, reasonable, and proportionate to the offense committed and be governed by the universal principal of good faith. Therefore, it will not be acceptable and it will corrupt the entire proceeding if the functionaries responsible for applying the law had in consideration discriminatory reasons, such as the editorial line of a communications media, to adopt the mentioned decisions.

628. The affirmations of the highest-ranking authorities against the investigated media, the facts which gave rise to the opening of the administrative proceedings, the broadness with which the Law on Social Responsibility seems to be interpreted by the competent authorities in the cited cases, the lack of autonomy that Conatel appears to have with respect to the interests of the Executive Branch, among other factors, suggests that the editorial line of the investigated media was the motivation to initiate the punitive proceedings that have just been described.

629. For the reasons that have been expressed, the IACHR expresses its profound concern about these acts and urges the State, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), to respect scrupulously the standards of the inter-American system for the protection of human rights in the administrative or judicial proceedings that they decide.

**ii. Prohibition of broadcasting publicity contrary to a proposed law of interest to the government: The case of Cedice and Asoesfuerzo**

630. As was stated in the previous section, on July 3, 2009 Conatel initiated a punitive administrative proceeding against *Venevisión*, *Meridiano TV*, *Televen*, *Globovisión*, *Onda 107.9 FM*, and *Fiesta 106.5 FM*, for the transmission of notices of a publicity campaign of the Centro de Divulgación del Conocimiento Económico para la Libertad (hereinafter, "Cedice") and the Asociación Civil para el Fomento y Promoción del Esfuerzo (hereinafter, "Asoesfuerzo") called "In Defense of the Right to Property." In the same resolution, Conatel issued a precautionary measure against *Venevisión*, *Meridiano TV*, *Televen*, *Globovisión*, *Onda 107.9 FM*, and *Fiesta 106.5 FM*, so that they would abstain "immediately from disseminating any propaganda that is part of the campaign 'In Defense of Property' offered by the advertisers CEDICE and ASOESFUERZO, in their various versions, both on radio and on television."<sup>100</sup>

631. The pieces that that were prohibited from dissemination were advertisements contracted by Cedice and Asoesfuerzo as part of a campaign against the so-called "Proposed law on social property" under consideration by the National Assembly. In these pieces, various characters (such as one representing the granddaughter of a baker, the son of a driver, a farmer, a housewife, among others) affirmed that they and their parents "had worked very hard for what they had" and closed saying: "If they try to take it from me, I will defend it." At the end of the ads the off-camera announcer indicated: "Property is your pride, defend private property. [...]. For a country of property owners."<sup>101</sup>

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<sup>100</sup> It should be noted that the opening of the administrative proceedings also affects Cedice and Asoesfuerzo. Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009.

<sup>101</sup> Specifically, Conatel indicated that the publicity spots suspended that were part of the mentioned campaign are the following: Asoesfuerzo: (1) What does private property mean to you?; (2) Why is it important to

632. According to Conatel, “these advertisements contained messages that presumably cause anguish, fear, and anxiety in the population that could foment conduct by the collective that tends to alter the public order and could be contrary to the national security [...]. [G]iven that the advertisements urge the defense of private property, the intended receivers of the message could adopt various types of conduct, including aggressive ones, with the aim of defending themselves from a supposed threat, which could lead to alterations of the public order, especially taking into consideration that it does not appear in ‘the advertisements’ that they express the idea of resorting to legal means to exercise that defense.”<sup>102</sup>

633. On the other hand, on the same date, the Attorney General’s Office presented a request for precautionary measures before the Second Tribunal on Violence against Women in the Metropolitan Area of Caracas to ask that the newspaper *Últimas Noticias* suspend the publication of two notices by Cedice that showed the image of a nude pregnant woman, and a nude woman in a defenseless state, covering their breasts, with the message: “The law on social property will take away what is yours; no to the Cuban law.”

634. The Attorney General’s Office requested the suspension of the publications because it considered that they could go against Articles 15.15 and 53 of the Organic Law on the Right of Women to a Life Free of Violence. According to Article 15.15 of that law, “media violence” is “the exposition, through any communications media, of a woman, girl, or adolescent that, directly or indirectly exploits, discriminates, dishonors, humiliates, or attacks her dignity for economic, social, or power reasons. It is also understood as media violence the use and abuse by communications media of women’s, girls’, or adolescents’ bodies.” For its part, Article 53 of this instrument defines “public offense for reason of gender” with the following text: “The communications professional, or a non-professional

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defend private property?; (3) Do you feel that your private property is threatened in today’s Venezuela? Available in Spanish at: <http://www.asoesfuerzo.com>; Cedice: (4) Don’t mess with my parents. Shop version; (5) Don’t mess with my parents. Bakery version; and (6) Don’t mess with my parents. Driver version. Available in Spanish at: <http://www.cedice.org.ve>. Conatel also affirmed the creation of “versions of ‘the propaganda’ to be transmitted by radio, including the version ‘No to the Cuban law’ [...] announced by CEDICE.” Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009. See also: Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2653](http://www.conatel.gob.ve/noticia_comp.asp?numn=2653); Globovisión. July 6, 2009. *Gobierno venezolano dicta medida de censura previa, prohibiendo la difusión en radio y TV de una campaña a favor de la propiedad privada y abre un nuevo procedimiento contra Globovisión* (Venezuelan government issues a measure of prior censorship, prohibiting the transmission by radio and television of a campaign in favor of private property and opens a new proceeding against Globovisión). Communication of July 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. Available in Spanish at: <http://www.globovision.com/news.php?nid=121136&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 3, 2009. *Conatel abrió quinto procedimiento contra Globovisión en seis meses* (Conatel opens fifth proceeding against Globovisión in six months). Available in Spanish at: <http://www.globovision.com/news.php?nid=120854&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; CEDICE. August 6, 2009. *Video censurado por procedimiento administrativo de Conatel* (Video censored by administrative proceedings of Conatel). Available in Spanish at: <http://www.cedice.org.ve/detalle.asp?id=2993>.

<sup>102</sup> Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2653](http://www.conatel.gob.ve/noticia_comp.asp?numn=2653).

who carries out work related to this discipline, and in the exercise of this occupation offends, injures, or denigrates a woman for reasons of gender through a media of communication, must indemnify the woman who is the victim of violence with the payment of a sum not less than two hundred (200 U.T.) nor greater than five hundred tributary units (500 U.T.) and make a public apology by the same media used to commit the offense and with same extension of time and space.” On July 6, 2009, the Second Tribunal on Violence against Women of the Metropolitan Area of Caracas rejected the request from the Attorney General’s Office.<sup>103</sup>

635. On July 10, 2009, the Attorney General’s Office appealed the measure and on August 14, 2009, the Court of Appeals on Violence Against Women of the Metropolitan Area of Caracas resolved to order the newspaper *Últimas Noticias* and Cedice to suspend publication of the publicity notices, with the aim of preventing “new acts of violence, allowing for the safeguarding of the physical and psychological integrity and the environment of women expeditiously and effectively.” The decision of the Court of Appeals also established the prohibition of the mentioned advertisement “in all the social communications media in the country.”<sup>104</sup>

636. It should be stated that on July 9, 2009, the Minister Diosdado Cabello made a presentation before the National Assembly in which he suggested that these decisions had been adopted to protect the “mental health” of the Venezuelan population, and that investigations would be launched into the source of the funding for these campaigns.<sup>105</sup>

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<sup>103</sup> Second Tribunal on Violence against Women in function of Control, Hearing, and Measures of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas. Judicial resolution of July 6, 2009. Issue APO1-S-2009-013642; Globovisión. July 6, 2009. *Ministerio Público solicitó a Tribunal suspender dos avisos publicitarios de Cedice* (Attorney General’s Office requests Tribunal to suspend two publicity notices by Cedice). Available in Spanish at: <http://www.globovision.com/news.php?nid=121142&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 12, 2009. *Ministerio Público apeló decisión de tribunal que negó suspensión de avisos publicitarios de Cedice* (Attorney General’s Office appealed decision of tribunal that denied suspension of Cedice publicity notices). Available in Spanish at: <http://www.globovision.com/news.php?nid=121641&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>.

<sup>104</sup> Court of Appeals of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on Violence against Women. Judicial Resolution No. 135-09 of August 14, 2009. Issue No. CA-803-09-VCM; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 15, 2009. *Prohíben difusión en medios de comunicación de publicidad de Cedice que denigra a la mujer* (Dissemination by communications media of Cedice publicity denigrating women prohibited). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1508.htm>; El Universal. August 15, 2009. *Tribunal vuelve a prohibir la difusión de los avisos de Cedice* (Tribunal prohibits dissemination of Cedice notices). Available in Spanish at: [http://deportes.eluniversal.com/2009/08/16/pol\\_art\\_tribunal-vuelve-a-pr\\_1526642.shtml](http://deportes.eluniversal.com/2009/08/16/pol_art_tribunal-vuelve-a-pr_1526642.shtml); El Nacional. August 15, 2009. *Prohíben difusión de publicidad de Cedice* (Dissemination of Cedice publicity prohibited). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/94573/Honduras/Proh%C3%ADben-difusi%C3%B3n-de-publicidad-de-Cedice](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94573/Honduras/Proh%C3%ADben-difusi%C3%B3n-de-publicidad-de-Cedice); Globovisión. August 15, 2009. *Prohíben difusión de publicidad de Cedice por considerar que “denigra” a la mujer* (Dissemination of Cedice publicity considered to “denigrate” women prohibited). Available in Spanish at: <http://www.globovision.com/news.php?nid=124518>.

<sup>105</sup> In the speech, Minister Diosdado Cabello stated: “Last week we made the decision to suspend the publicity notices of Asoesfuerzo and Cedice, on television and radio. And I want to say it here, in the National Assembly. I said something there that is the root of the issue, where do the resources to finance this campaign come from? They made themselves crazy; they spoke about freedom of expression. No, I am speaking about the legitimization of capital, I am speaking of money laundering, and we have asked the Attorney General’s Office to investigate the facts to determine how an association that was created in May by a gentleman who had never paid one bolívar in taxes to the country could contract with a television station for 3 million strong bolívares in the month of June. Where did these riches come from? I am talking about a television station. No, no. I am taking the case of a television station and I have the contract. Of a television station! This is occurring all over the country. And they went for the side of freedom of expression. No, it is not freedom of expression, it deals with the mental health of the Venezuelans.” National Assembly of the Republic of Venezuela. July 9, 2009. *Punto de información*

637. Subsequently, the IACHR received information indicating that on October 6, 2009, the National Office for Intelligence and Prevention Services (DISIP, by its Spanish acronym) of the Ministry of Popular Power for Interior Relations and Justice cited directors and personnel of Cedice as witnesses in the framework of the penal investigation FN20NN-038-2009, which is being carried out by the 20<sup>th</sup> Public Prosecutor of the Attorney General's Office of the Metropolitan Area of Caracas.

638. The IACHR also learned that on September 17, 2009, the DISIP, through the Superintendency of Banks and Other Financial Institutions, requested all the banks and financial institutions in the country to inform it, in the context of case No. F66-NN-0027-09 assigned to the Sixty-Sixth Public Prosecutor of the Attorney General's Office of the Metropolitan Area of Caracas, if Cedice had accounts in those entities. Additionally, on September 29, 2009, the Office for Investigations against Terrorism of the Corps on Scientific Penal and Criminal Investigations, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.026, from all the banks and financial institutions in the country about the accounts and other financial instruments in the name of Cedice and Asoesfuerzo. Finally, on September 30, 2009, the Division of Investigations and Protection in the Matter of Children, Adolescents, Women, and Families of the Corps on Scientific Penal and Criminal Investigations of the Ministry of Popular Power for Interior Relations and Justice, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.036, from all the banks and financial institutions about the accounts, movements, and operations carried out by Cedice in the last six months.

639. On July 13, 2009, the Special Rapporteurship requested information from the State in relation to these facts. This request was reiterated in a communication of October 8, 2009. As of the date of this report, however, no response to these requests for information has been received.

640. The IACHR expresses its deep concern to the State about these measures and reminds it that Article 13.2 of the American Convention provides explicitly that the exercise of freedom of expression cannot be subject to prior censorship. The Constitution of the Bolivarian Republic of Venezuela itself establishes the same principle in its Article 57, which states that "every person has the right to express his or her thoughts, ideas, or opinions freely [...] and to make use of any medium of communication for this purpose [...] without the establishment of prior censorship."<sup>106</sup> In the same sense, Article 2 of the Law on Social Responsibility indicates that "the interpretation and application of [this norm] shall be subject, without prejudice to all of the other constitutional provisions" to the principle of "prohibition of prior censorship."<sup>107</sup>

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*del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), p. 17. Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=41&Itemid=124](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124).

<sup>106</sup> Constitution of the Bolivarian Republic of Venezuela. Official Gazette No. 36.860 of December 30, 1999. Available in Spanish at: <http://www.constitucion.ve/constitucion.pdf>.

<sup>107</sup> Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: [http://www.conatel.gob.ve/download/marco\\_legal/Ley%20Responsabilidad%20Reforma.pdf](http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf).

641. The IACHR has repeatedly stated that prior censorship is the prototypical extreme and radical violation of freedom of expression, precisely because “through the public power, means are established to impede the free circulation of information, ideas, opinions, or news prior [to their dissemination] by any type of proceeding that subjects the expression or dissemination of information to the control of State.”<sup>108</sup>

642. On the other hand, it should be reiterated that which has already been expressed to the State, in that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or are considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or to a sector of the population.<sup>109</sup>

643. Additionally, the IACHR considers it important to remind the State that the application of extreme measures that limit the exercise of freedom of expression based on that which is provided in Article 13.4 of the American Convention, especially in the context of elections or the consideration of legislative reforms, as in the present case, cannot be imposed based on mere conjectures about eventual, hypothetical effects on the public order. In each case, it is necessary to show that there is a certain, real, and objective risk of a severe effect on public order that can only be addressed through proportionate and reasonable restrictions on the exercise of freedom of expression in the terms established by Article 13 of the American Convention.

644. The IACHR considers that the measures of control that the State has been adopting could constitute acts of censorship incompatible with the parameters provided in the American Convention. In this sense, it urges the State to ensure that the competent authorities take into account the standards described here and adopt the measures necessary to guarantee the exercise the right to freedom of expression in relation to the facts summarized in this section.

645. Finally, the IACHR exhorts the State to take into account that, in accordance with Principle 5 of the Declaration of Principles: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information, violate the right to freedom of expression.”

### iii. The case of theatrical associations

646. The IACHR received information that indicates that in Venezuela there is no legal framework ensuring that the assignation of subsidies for the arts and culture is carried out in an objective manner, respecting the State’s obligation of neutrality. In this context, it was informed that the *Asociación Cultural Skena*, the *Asociación Civil Teatro del Duende*, which received subsidies from the Ministry of Popular Power for Culture, were excluded from the Agreements on Cultural Cooperation through which they were assigned resources

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<sup>108</sup> IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 123. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

<sup>109</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

for carrying out their activities in the state of Miranda. According to information provided to the IACHR, the Ministry of Popular Power for Culture had justified its decision based on the criteria applicable in so-called “exceptional cases,” according to which they “do not finance groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.”<sup>110</sup>

647. The *Asociación Teatral Grupo Actoral 80* found itself in a similar situation. According to the information received by the IACHR, in August of 2009 the entity that studies the assignation of subsidies (*Mesa Técnica de Teatro y Circo de los Convenios de Cooperación Cultural para la Plataforma del Instituto de las Artes Escénicas y Musicales*, PIAEM) proposed to exclude the *Asociación Teatral Grupo Actoral 80* from the list of groups that received economic assistance from the State in the Capital District. According to the information reported, the cancellation of the subsidy was a consequence of the critical opinions of the director of the *Asociación Teatral Grupo Actoral 80* with respect to some decisions of the government about cultural policies. For the cancellation of the subsidy, the clause of the Agreements on Cultural Cooperation was applied that prohibits financing of “groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.” It should be noted that due to the lack of agreement among the members of the *Mesa Técnica* to determine the exclusion of the *Asociación Teatral Grupo Actoral 80*, it was requested that the case be “elevated to higher instances of the Ministry of Popular Power for Culture for its resolution.”<sup>111</sup>

648. Additionally, on January 21, 2009, the *Fundación El Ateneo de Caracas* was notified with an eviction order by the Ministry of Popular Power for Economics and Finance. According to the information received, the measure was justified based on the upcoming expiration of the contract for a loan on the building, owned by the State, and on the necessity of using these installations for the University of the Arts. The day before, a group of armed individuals, led by Lina Ron, had entered the building to attack leaders of the Bandera Roja political party who were meeting there. During this incident, Lina Ron stated that “the installations of Ateneo [were] being taken by the extreme right” and that “by her instructions, they would be taken for the revolution.” After learning of the decision by the Ministry of Popular Power for Economics and Finance, the general director of *Ateneo de Caracas*, Carmen Ramia, indicated that the eviction order was based on the organization’s pluralism. In her opinion, this was a consequence of the fact that *El Ateneo de Caracas* accepted “what comes from the opposition as well as that which comes from the

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<sup>110</sup> Ministry of Popular Power for Culture. State Office of Miranda. Document No. 24-08. In the document, “Criteria for the execution of the Agreements on Cultural Cooperation in Performing Arts and Musicals 2009” are also detailed. Information provided on November 2, 2009 by Sinergia to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

<sup>111</sup> Minutes of the Results of the Technical Committees of the Agreements on Cultural Cooperation 2009. Program for Performing Arts and Musicals. Technical Committee for Theater and Circus. Agreement 7. September 1, 2009. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009, in the context of the 137th Ordinary Period of Sessions of the IACHR. See also: Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprehensivo de seguimiento. Octubre 2009* (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), p. 18; El Universal. March 2, 2009. *No debe permitirse la censura. Entrevista a Héctor Manrique* (Censorship must not be permitted. Interview with Héctor Manrique). Available in Spanish at: [http://www.eluniversal.com/2009/03/02/til\\_art\\_no-debe-permitirse\\_1286893.shtml](http://www.eluniversal.com/2009/03/02/til_art_no-debe-permitirse_1286893.shtml); El Nacional. October 6, 2009. *Las conciencias de los teatreros no están en venta* (The consciences of theater workers are not for sale). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/102601/Entretenimiento/Las-conciencias-de-los-teatreros-no-est%C3%A1n-en-venta](http://el-nacional.com/www/site/p_contenido.php?q=nodo/102601/Entretenimiento/Las-conciencias-de-los-teatreros-no-est%C3%A1n-en-venta).

government” and emphasized that this was “an institution that [had] its doors open to everyone.”<sup>112</sup> The IACHR expressed its concern about this occurrence, since other theater groups have indicated that the eviction of *Ateneo de Caracas* is one more manifestation of the intentions of governmental officials to stifle “free cultural creation” in Venezuela.<sup>113</sup>

**iv. Restrictions of the right to personal liberty: The case of Gustavo Azócar**

649. On December 28, 2000, journalist Gustavo Azócar, known for having made important denunciations of corruption in the state of Táchira, was denounced before the Attorney General’s Office under the argument that the station that he worked for had neglected to broadcast some publicity notices about the state lottery. The oral phase of these penal proceedings began on May 11, 2009.

650. According to the information received, the trial was postponed for more than nine years, during which the journalist was prohibited from leaving the country, giving statements, or referring to the proceedings in any way. This has prevented him, in practice, from carrying out his profession freely. Various journalistic guilds and organizations have requested that this trial be resolved soon given that, in their understanding, it has fundamentally political motives since it constitutes retaliation for the denunciations of corruption made by the journalist. These organizations indicate that there is sufficient evidence to disprove the accusation and for that reason, they request a prompt decision. Nevertheless, the process has been postponed indefinitely with the aggravating factor that the journalist has recently been deprived of his liberty for having divulged on his Web public information related to the penal proceedings that was already in the public domain.

651. [In effect], on July 29, 2009, Azócar was taken by members of the National Guard to the Penitentiary of Western Santa Ana in the state of Táchira, because the communicator “obstructed justice” by publishing information about the penal proceedings against him. According to the information received, the information published by the

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<sup>112</sup> El Nacional. January 21, 2009. *Ordenan desalojo del Ateneo de Caracas* (Eviction of *Ateneo de Caracas* ordered). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/64766/Pol%C3%ADtica/Ordenan-desalojo-del-Ateneo-de-Caracas](http://el-nacional.com/www/site/p_contenido.php?q=nodo/64766/Pol%C3%ADtica/Ordenan-desalojo-del-Ateneo-de-Caracas); Noticias 24. January 21, 2009. *Ordenan desalojar El Ateneo de Caracas el 6 de mayo* (Eviction of *Ateneo de Caracas* ordered on May 6). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/23174/presidente-%C2%BFque-le-pasa-con-el-ateneo-de-caracas/comment-page-1/>; El Nacional. May 20, 2009. *Chavistas arremeten contra instalaciones del Ateneo* (Chávez supporters attack installations of *Ateneo*). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/64506/Pol%C3%ADtica/Chavistas-arremeten-contra-instalaciones-del-Ateneo](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/64506/Pol%C3%ADtica/Chavistas-arremeten-contra-instalaciones-del-Ateneo); El Universal. January 20, 2009. *Cuarenta personas estuvieron a resguardo de la PM por hechos violentos en El Ateneo* (Forty people protected by PM [Metropolitan Police] from violent acts in *El Ateneo*). Available in Spanish at: [http://politica.eluniversal.com/2009/01/20/pol\\_ava\\_cuarenta-personas-es-20A2199399.shtml](http://politica.eluniversal.com/2009/01/20/pol_ava_cuarenta-personas-es-20A2199399.shtml); El Universal. May 6, 2009. *Ministro Soto: Desalojo del Ateneo responde a culminación del comodato* (Minister Soto: Eviction of *Ateneo* is result of expiration of loan contract). Available in Spanish at: [http://www.eluniversal.com/2009/05/06/cul\\_ava\\_ministro-soto:-desal-06A2318385.shtml](http://www.eluniversal.com/2009/05/06/cul_ava_ministro-soto:-desal-06A2318385.shtml); Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprensivo de seguimiento. Octubre 2009* (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), pp. 19-20. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009 in the context of the 137th Ordinary Period of Sessions of the IACHR.

<sup>113</sup> Frente Cultural José Ignacio Cabrujas. July 1, 2009. *Manifiesto contra el cierre del Ateneo de Caracas* (Declaration against the closing of *Ateneo de Caracas*). Available in Spanish at: <http://www.youtube.com/watch?v=JLeiibNHGkg>.

journalist was the faithful reproduction of two reports published in two newspapers of broad circulation several days before.<sup>114</sup>

652. Recently, the Special Rapporteurship was informed that on September 1, 2009, the judge in charge of the penal proceedings was dismissed, “a week before the trial was to end,” and that on October 5, 2009, the new judge in charge resolved to “nullify the entire previous trial,” except the decision to imprison the journalist in a public prison for the faithful reproduction of information published in two newspapers.<sup>115</sup>

**e. Regulation of the broadcasting spectrum and the application of dispositions on broadcasting**

**i. The announcement of the revocation or cancellation of 240 broadcasting concessions and the decision to order the suspension of the transmission of 32 radio stations**

653. On July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, after indicating that they were in a process of democratization of the broadcasting spectrum, announced that Conatel would open a process to establish the possible revocation of the concessions granted to 240 radio stations. This surprising announcement was followed by the decision to order the suspension of the transmission of 32 radio stations. In the present section, some of the most important antecedents of this process and some of the effects of these decisions on the right to freedom of expression are explained.

654. Article 73 of the Organic Law on Telecommunications provides that: “The rights of use and exploitation of the broadcasting spectrum derived from a concession cannot be transferred or given away, nevertheless, the concession holder may request [Conatel] his or her substitution as owner with the person s/he indicates for this purpose, as long as s/he complies with the conditions and principles established in this Law.”<sup>116</sup>

655. On the other hand, Article 210 of the Organic Law on Telecommunications confers upon Conatel the obligation to establish “through resolution, special transformation schedules for [...] concessions and permits granted in conformity with the foregoing legislation.”<sup>117</sup> The process of transformation of the legal titles granted under the previous regulatory framework must be carried out in the two years following the publication of the

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<sup>114</sup> Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; El Universal. July 29, 2009. *Periodista Gustavo Azocar es enviado al Centro Penitenciario de Santa Ana* (Journalist Gustavo Azocar sent to Santa Ana Penitentiary). Available in Spanish at: [http://internacional.eluniversal.com/2009/07/29/pol\\_ava\\_periodista-gustavo-a\\_29A2560563.shtml](http://internacional.eluniversal.com/2009/07/29/pol_ava_periodista-gustavo-a_29A2560563.shtml); El Nacional. July 29, 2009. *Privado de libertad en audiencia periodista Gustavo Azocar* (Journalist Gustavo Azocar deprived of liberty at hearing). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/92138/Regiones/Privado-de-libertad-en-audiencia-periodista-Gustavo-Az%C3%B3car](http://el-nacional.com/www/site/p_contenido.php?q=nodo/92138/Regiones/Privado-de-libertad-en-audiencia-periodista-Gustavo-Az%C3%B3car).

<sup>115</sup> Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; Reporters without Borders. October 8, 2009. *Journalist still held in custody despite quashing of suspect case against him*. Available at: <http://www.rsf.org/Journalist-still-held-in-custody.html>.

<sup>116</sup> Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: [http://www.tsj.gov.ve/legislacion/LT\\_ley.htm](http://www.tsj.gov.ve/legislacion/LT_ley.htm).

<sup>117</sup> Article 210 makes reference to the Law on Telecommunications of July 29, 1940 (Published in Official Gazette No. 20.248 of August 1, 1940), now repealed.

Organic Law on Telecommunications in the Official Gazette, that is to say, it expired on June 12, 2002.

656. Article 210 of the Organic Law on Telecommunications adds that the transformation of titles must be solicited by the interested party within the time period established by Conatel, which cannot be less than 60 business days. When this time period is expired, Conatel is to publish a list of those who have not responded to the request for transformation, authorizing them an additional period of five business days to address the situation. If this is not done, "the omission [would be] understood as a renunciation of the concessions or permits [...] obtained prior to the publication of the [Organic] Law [on Telecommunications] in the Official Gazette."

657. Under this framework, on December 4, 2001, Conatel issued Resolution No. 93 (Official Gazette No. 37.342 of December 10, 2001), which established a schedule so that "the persons who unlawfully retain[ed] titles" authorized prior to the Organic Law on Telecommunications could present their requests for transformation. Resolution No. 93 established a period of 60 business days for the presentation of the requests, starting from March 11, 2002.

658. On January 26, 2004, Conatel issued Resolution 357 (Official Gazette No. 37.894 of March 9, 2004), that granted an extension of five working days "starting with and including March 22, 2004," for the presentation of requests for transformation. Previously, on March 19, 2004, Conatel had published in a newspaper of national circulation the list of natural and legal persons that had not presented their requests for transformation within the time period established in Resolution No. 93.

659. Five years later, on May 29, 2009, Conatel issued Administrative Provision No. 1.419 (Official Gazette No. 39.189 of May 29, 2009), which resolved, "to require natural or legal persons who provide radio or television broadcasting services, as well as not-for-profit community public service radio and television broadcasting, in the entire national territory, to submit to [that body] the information contained in the schedule called 'Update of Information' that is available on the official Internet portal of Conatel." Administrative Provision No. 1.419 granted "a maximum period of fifteen (15) business days to fill out the Update of Information schedule [...] and to submit it with its respective annexes, to [that body], counting from the publication in the press [of that provision], under penalty of the application of the sanctions established in the Organic Law on Telecommunications."<sup>118</sup> The information must be personally submitted to Conatel by the title holder of the license.

660. As previously mentioned, on July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, announced that Conatel would open a process for establishing the possible closure of 240 concessions granted to radio broadcasters that had not updated their information before that organ in conformity with that provided by Administrative Provision No. 1.419. In his speech, Minister Diosdado Cabello declared the following: "Of the private concessionaries of AM radio, [...] 86 have not responded, while in the FM signals, 154 stations have not complied with the stipulated procedure. [...] for those who have not passed through Conatel, administrative proceedings will immediately be opened against them for the restitution of all of their concessions to the State. They were not, are not interested, they want to keep themselves at the margin of the Law. We are acting in this case in strict accordance with the Law. Whoever is not updated and has not passed through Conatel must now assume responsibility." The official added that the

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<sup>118</sup> Conatel. May 25, 2009. Administrative Provision No. 1.419. Available in Spanish at: <http://www.conatel.gob.ve/download/providencias/PROVIDENCIA%20ACTUALIZACI%D3N%20DATOS2.pdf>.

Venezuelan government was “pledged to democratizing the broadcasting spectrum” and to eliminating the “media oligopoly.”<sup>119</sup>

661. On July 9, 2009, the Minister Diosdado Cabello ratified the adoption of these measures before the National Assembly. According to the Minister, the process of updating information showed that in various cases: (a) the original concessionaries had died and the concessions were being utilized by their relatives, or (b) the original concessionaries had given their concessions to third parties who were utilizing them without authorization. In his presentation to the National Assembly, Minister Diosdado Cabello emphasized the following:

The broadcasting space has been one of the few areas in which the [Bolivarian] Revolution has not been felt. [...] Here in Venezuela 27 families have more than 32% of the radioelectric spectrum for themselves, and still the brazen ones of the Venezuelan Chamber of the Broadcasting Industry claim that this is not oligopoly [...]. They attack us and they will attack us, alleging that this is an abuse against freedom of expression. Here there is no abuse against freedom of expression [...]. And as the Father Camilo Torres said: If the dominant class, the oligarchy does not willingly cede its privileges, the people must oblige them to do so by force. And in this case in Venezuela the people means the Government and we are going to do it. We are going to do it because, on the contrary, here they are preparing for us a coup similar to that of Honduras and they are going to start transmitting cartoon television stations and extinguish the radio stations. [...] If the issue of the business of radio and television stations is so painful, fine, do not exploit it, do not make use of it, return it to the State; if it causes you losses, return it to the State, the State will receive it with no problem. We are not going to sit down to negotiate to see what they are going to do to earn more or how they are going to have more stations. We are not going to do it, we have reasons of principle and, moreover, ethical reasons not to do it: they are the same from the year 2002, they are the same who would have been happy if many of us had committed treason against the President, we [would] almost surely have a program on *Globovisión*, almost surely we [would] have a program on one of those stations that play at the destabilization of Venezuela.<sup>120</sup>

662. The IACHR expresses its concern about the declarations of Minister Cabello, which could lead to the conclusion that, in spite of the technical reasons set forth to justify

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<sup>119</sup> The State has indicated that, currently, the radio broadcasting spectrum is occupied by 794 FM radio stations, 210 AM radio stations, and 108 television stations. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by Conatel against 86 AM and 154 FM radio stations, after they failed to update information before the institution). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2654](http://www.conatel.gob.ve/noticia_comp.asp?numn=2654); Reporters without Borders. July 21, 2009. *Government steps up hounding of private media through new laws and regulations*. Available at: [http://www.rsf.org/Government-steps-up-hounding-of\\_33926.html](http://www.rsf.org/Government-steps-up-hounding-of_33926.html); El Mundo. July 3, 2009. *Conatel prohíbe propagandas opositoras y revoca 284 permisos de transmisión* (Conatel prohibits opposition propaganda and revokes 284 transmission permits). Available in Spanish at: <http://www.elmundo.es/elmundo/2009/07/03/comunicacion/1246645749.html>; El Tiempo. July 4, 2009. *Cabello anunció revocatoria de concesión a 240 radioemisoras* (Cabello announced the revocation of the concessions of 240 radio stations). Available in Spanish at: <http://www.eltiempo.com.ve/noticias/imprimir.asp?id=195283>.

<sup>120</sup> National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 2, 8-11. Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=41&Itemid=124](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124).

the massive closures, the measures could have been motivated by the editorial lines of the affected stations and by the aim of creating a state communications monopoly.

663. On July 14, 2009, the National Assembly agreed to back the government's measures for the regulation of radio and television concessions. The president of the Permanent Commission on Science, Technology, and Social Communication of the National Assembly, [Congressman] Manuel Villalba, stated that the measures announced by Minister Cabello had received criticism and questions "only from those broadcasting sectors that are at the margin of the law and that did not respond to the National Telecommunications Commission when it convoked them." The deputy added the following: "Minister Cabello, what he is doing is complying with the law. Article 73 of the Organic Law on Telecommunications supports every one of his announcements."<sup>121</sup>

664. On July 31, 2009, Minister Diosdado Cabello announced the names of 34 communications media, including 32 of the 240 radio stations previously referred to, that Conatel had ordered to cease their transmissions immediately. The Minister stated that in some of these cases, the closure was due to the fact that family members or associates of the deceased original concessionaries were the ones who contacted Conatel for the transformation of the titles authorized under the prior legislation, and that, in accordance with Article 73 of the Organic Law on Telecommunications and Resolution No. 93, only the title holder of the concession is legitimately authorized to make such a request. According to the Minister, in circumstances like those outlined, it is appropriate that the concession be returned to the State and not that the relatives and associates of the deceased title holder continue operating "illegally."<sup>122</sup>

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<sup>121</sup> National Assembly of Venezuela. July 14, 2009. *Medidas para acabar con el latifundio mediático están contempladas en las leyes venezolanas* (Measures to end the media oligopoly are contemplated in the Venezuelan laws). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=22562&Itemid=27](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=22562&Itemid=27).

<sup>122</sup> However, the State clarified that the closure affected only the transmissions through the radio broadcasting spectrum, meaning that the affected communications media could continue transmitting over the Internet. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at [http://www.embavenez-us.org/factsheet/Recent-Media-Events\\_FS-US.pdf](http://www.embavenez-us.org/factsheet/Recent-Media-Events_FS-US.pdf). See also: Agencia Bolivariana de Noticias. July 31, 2009. *Conatel anula concesiones a 34 estaciones radioeléctricas del país* (Conatel nullifies concessions of 34 broadcasting stations in the country). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193093&lee=4>; Reporters without Borders. August 2, 2009. *34 broadcast media shut down at government's behest*. Available at: <http://www.rsf.org/34-broadcast-media-shut-down-at.html>; Agencia Bolivariana de Noticias. August 7, 2009. *Operadores que salieron del aire sabían de su situación ilegal desde 2002* (Operators that went off the air knew about their illegal situation since 2002). Available in Spanish at: [http://www.abn.info.ve/go\\_news5.php?articulo=193895&lee=15](http://www.abn.info.ve/go_news5.php?articulo=193895&lee=15); Conatel. August 3, 2009. *Apoyo popular a las decisiones del Gobierno Nacional para democratizar el espectro radioeléctrico* (Popular support for the decisions of the National Government to democratize the radio broadcasting spectrum). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2661](http://www.conatel.gob.ve/noticia_comp.asp?numn=2661); Globovisión. August 1, 2009. *Líderes políticos y sociedad civil protestaron por cierre de emisoras* (Political leaders and civil society protest closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123404>; Globovisión. August 1, 2009. *Presidente Chávez pidió un aplauso para Diosdado Cabello por el cierre de las emisoras* (President Chávez requested applause for Diosdado Cabello for the closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123427>; Conatel. August 1, 2009. *Notificadas estaciones de radiodifusión* (Broadcasting stations notified). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2660](http://www.conatel.gob.ve/noticia_comp.asp?numn=2660); Globovisión. August 1, 2009. *Salieron del aire 34 emisoras de radio por orden del Gobierno Nacional* (34 radio stations went off the air by order of the National Government). Available in Spanish at: <http://www.globovision.com/news.php?nid=123401>; Globovisión. July 31, 2009. *Cabello anuncia salida del aire de 34 emisoras* (Cabello announces that 34 broadcasting stations are going off the air). Available in Spanish at: <http://www.globovision.com/news.php?nid=123396>; Agencia Bolivariana de Noticias. August 15, 2009. *Democratización del espectro radioeléctrico permitirá diversificar contenidos* (Democratization of the radio broadcasting spectrum permits the diversification of content). Available in Spanish at: [http://www.abn.info.ve/go\\_news5.php?articulo=195071&lee=4](http://www.abn.info.ve/go_news5.php?articulo=195071&lee=4). In the same sense, on September 15, 2009, the deputy Manuel Villalba affirmed that it was "necessary to clarify that [these] broadcasting stations were outside the law as it is expressed in the Organic Law on Telecommunications," and that what they "[were] currently trying to

665. On the other hand, on September 5, 2009, the Minister Diosdado Cabello announced the closure of another 29 radio stations. The measures, however, have not been carried out. It is worth mentioning that as of the date of this report, the State has not made public the names of the 208 remaining radio stations that, according to Minister Diosdado Cabello,<sup>123</sup> could find themselves affected with closure resolutions.<sup>124</sup> The IACHR expresses its concern about the intimidating effect that these general declarations about the closure of stations may produce, given the way in which such proceedings have been moving forward.

666. In relation to this point, the IACHR recognizes, as the Special Rapporteurship indicated in its pronouncement of June 26, 2009, that the states have the power to regulate the radio waves and to establish procedures to ensure compliance with the legal dispositions. In any case, this state power must be exercised with strict adherence to the laws and to due process, good faith, and respect for the inter-American standards that guarantee every person's right to freedom of expression.<sup>125</sup> In an issue of such sensitivity for freedom of expression as regulation, assignment, or oversight of the use of broadcasting frequencies, the State must ensure that none of its actions is motivated or aimed at rewarding media that agree with the government's policies or at punishing those who are critical or independent.

667. According to information received, some of the radio stations affected by the decision to revoke the licenses had opportunely informed the State about relevant developments (such as the death of one of the title holders of the concession), had opportunely requested the transformation of the titles, had operated publicly, and had maintained relations with the State through the payment of taxes, the certification of technical requirements or adequations, etc. In some cases, the death of one of the partners of one of the concessionary stations had given rise to the corresponding transformation of the title; however, in other cases, the State had not opportunely replied to the corresponding request for transformation. According to the data, the way in which the State had been relating to these stations generated in their administrators the confidence that their requests would be resolved following the legal norms in force according to established practice and without relevance being attached to the media's editorial line. Article 210 of the Organic Law on Telecommunications provides that any transformation of titles must be carried out

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set up [was] a matrix of national and international opinion to make believe that the stations were closed by the Government." The parliamentarian added that "[these] media do not say that the concessions were revoked because the stations were operating outside the current legal framework." Agencia Bolivariana de Noticias. September 15, 2009. *Emisoras a las que se les revocó la concesión estaban fuera de la legalidad* (Broadcasting stations with revoked concessions were outside the law). Available in Spanish at: [http://www.abn.info.ve/go\\_news5.php?articulo=198854&lee=1](http://www.abn.info.ve/go_news5.php?articulo=198854&lee=1).

<sup>123</sup> Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by CONATEL against 86 AM and 154 FM stations, after they did not update their information with that body). Available in Spanish at: [http://www.conatel.gob.ve/noticia\\_comp.asp?numn=2654](http://www.conatel.gob.ve/noticia_comp.asp?numn=2654).

<sup>124</sup> El Universal. September 7, 2009. *Gobierno está dando la espalda al país al silenciar más medios*. (Government is turning its back on the country by silencing more media). Available in Spanish at: [http://politica.eluniversal.com/2009/09/07/pol\\_art\\_gobierno-esta-dando\\_1559313.shtml](http://politica.eluniversal.com/2009/09/07/pol_art_gobierno-esta-dando_1559313.shtml); Miami Herald. September 7, 2009. *Gobierno prepara el cierre de otras 29 emisoras de radio* (Government prepares the closure of another 29 radio stations). Available in Spanish at: <http://www.miamiherald.com/news/americas/venezuela/story/1222213.html>.

<sup>125</sup> Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

based on principles of “transparency, good faith, equality, and promptness.”<sup>126</sup> Nevertheless, as has been explained, the decisions were adopted without considering any of these conditions, without permitting prior challenges to the decision, and alleging reasons that have a close relationship with the independence and the editorial line of the private communications media.

668. On this point, the IACHR reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision. Additionally, the assignment of new frequencies must be subject to transparent, pre-established, and non-discriminatory rules that allow for a fair competition under conditions of equality.

669. In no case is it acceptable in light of the American Convention, and it would corrupt any proceeding, for the public functionaries in charge of applying the legal norms in this subject area to take into consideration discriminatory criteria, such as the editorial line, to adopt their decisions.<sup>127</sup>

670. The Inter-American Court has established that “[i]t is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.”<sup>128</sup>

671. In the present case, it concerns the IACHR that, after several years of complete inaction, the authorities announced, in a context of tension between private media and the government, mass media closures, in a speech in which made constant reference to the editorial content of the private media that could be affected. In effect, as has already been indicated, the affirmations of the Minister of Popular Power for Public Works and Housing suggest that the editorial line of these media would be one of the motivations for

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<sup>126</sup> Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: [http://www.tsj.gov.ve/legislacion/LT\\_ley.htm](http://www.tsj.gov.ve/legislacion/LT_ley.htm).

<sup>127</sup> In the same sense, in Press Release No. 55/09, the IACHR stated that: “By a July 31, 2009 decision of the National Council of Telecommunications (CONATEL), 34 radio stations operating in AM and FM were forced to cease broadcasting immediately. The decisions that revoked the permits or licenses were allegedly based on technical reasons related to the massive lack of compliance with some of the regulations of the telecommunications law. According to the information received, the competent authorities announced that one of their reasons to proceed with these closures of radio and television stations was that these stations “play at destabilizing Venezuela.” The IACHR is concerned by the existence of elements that suggest that the editorial stance of these media outlets have been one of the reasons for their closure. The Commission recognizes the Government’s competency to regulate radio frequencies, but emphasizes that this competency has to be used with strict observance of due process and with respect to the Inter-American standards that guarantee freedom of expression of all persons. In particular, the limitations imposed to freedom of expression must not incite intolerance, nor be discriminatory or have discriminatory effects or be based on the editorial line of the media.” IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

<sup>128</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 34.

the adoption of the revocation or closure measures, independently of the technical reasons that are being used in the corresponding administrative actions.

672. The IACHR expresses its deep concern over these declarations and exhorts the State to respect the standards described above when adopting decisions of this nature.<sup>129</sup> The forgoing becomes more important if it is taken into account that on August 3, 2009, the IACHR stated clearly that since 2000 “the IACHR has observed a gradual deterioration [...] [of] the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression.”<sup>130</sup>

673. Article 13.3 of the American Convention establishes that: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In the same sense, Principle 13 of the Declaration of Principles establishes that “the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

674. Finally, the IACHR reiterates that the power to assign concessions, licenses, or permits for the use of the broadcasting spectrum must not be turned into a mechanism for indirect censorship or discrimination based on the editorial line, nor a disproportionate obstacle to the exercise of freedom of expression protected by Article 13 of the American Convention. Additionally, all assignments or restrictions must be made according to rules that are clear, pre-established, and non-discriminatory, that ensure the existence of broadcasting that is independent of the government, free of illegitimate pressures, plural, and diverse. The IACHR emphasizes that the creation of public or private monopolies or oligopolies, open or veiled, compromises the right to freedom of expression. As previously stated, “the states, in administering the frequencies of the radio spectrum, must assign them in accordance with democratic guidelines that guarantee equal opportunity of access to all individuals.”<sup>131</sup> This is the sense of Principle 12 of the Declaration of Principles, which provides that “[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

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<sup>129</sup> On the relevance of the context for the study of this type of cases, the Inter-American Court has stated that: “When evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case as a whole, including the circumstances and context in which they occurred. Taking this into consideration, the Court will examine whether, in the context of the instant case, there was a violation of Mr. Ivcher Bronstein’s right to freedom of expression.” I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para.154.

<sup>130</sup> IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

<sup>131</sup> IACHR. *Annual Report 2002*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Poverty, para. 45. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

**ii. The possible intervention in broadcasting content through the regulation of the legal concept of “Independent National Producers”**

675. Article 14 of the Law on Social Responsibility in Radio and Television establishes the obligation of the communications media to broadcast daily a total of five hours and 30 minutes of audiovisual material from Independent National Producers. In this regard, the cited norm indicates that: “[t]he providers of radio and television services must broadcast daily, during the hours of general viewership, a minimum of seven hours of programs of national production, of which a minimum of four hours must be of independent national production. Also, they must disseminate daily, during the hours of supervised viewership, a minimum of three hours of programs of national production, of which a minimum of an hour and a half must be of independent national production. [...] In the hours reserved for the broadcasting of programs of independent national production, the providers of radio services will give priority to cultural, educational, and informative programs.”

676. Article 13 of the Law on Social Responsibility in Radio and Television considers that a national audiovisual or audio production is independent “when [it is] made by independent national producers that are included in the registry maintained by the regulating entity in the area of communication and information of the National Executive.”<sup>132</sup> The so-called “Register of Independent National Producers” is under the authority of the Ministry of Popular Power for Communication and Information, which also issues and revokes the certifications that accredit this condition.<sup>133</sup>

677. On the other hand, Article 15 of the Law on Social Responsibility in Radio and Television creates the National Commission on Television Programming and the Commission on Radio Programming, which have as their function “to establish the mechanisms and conditions of the assignation of airtime to independent national producers.” Both commissions are made up of “one representative of the regulating body in the area of

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<sup>132</sup> Ministry of Popular Power for Communication and Information. Independent National Production. Available in Spanish at: [http://www.leyresorte.gob.ve/pni/99/191474/produccion\\_nacional\\_independiente.html](http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html).

On the other hand, Article 13 of the Law on Social Responsibility in Radio and Television adds the following:

A natural or legal person who meets the following requirements shall be considered an independent national producer:

1. A natural person: (a) Resides and is domiciled in the territory of the Bolivarian Republic of Venezuela, in conformity with the law; (b) Is not a shareholder, either personally or through a third party, of any provider of radio or television services; [(c) Is not a shareholder of a legal persons that are themselves shareholders, partners or associates of any radio or television service provider;] (d) Does not occupy a management position or position of confidence, in accordance with the Organic Law on Employment, in any provider of radio or television services; (d) Declares whether s/he maintains a subordinate position with any provider of radio or television services; (f) Is not a functionary of one of the organs and public entities that regulate the activities that are the object of the present Law, in accordance with the respective Regulations.

2. A legal person: (a) Is not a State company, autonomous institute, or other national, state, or municipal public entity; (b) Is domiciled in the Bolivarian Republic of Venezuela, in conformity with the law; (c) Is under the control and management of natural persons of Venezuelan nationality or residency who comply with the requisites set forth in the previous numbered section; (d) Does not have shareholder participation in any provider of radio or television services; and (e) Declares whether it has contractual links separate from the independent national production or a subordinate relationship with any provider of radio or television services.

In any case, whether dealing with a natural person or a legal person, it is required that they possess the experience to or demonstrate capability of making quality national productions.”

<sup>133</sup> Ministry of Popular Power for Communication and Information. Resolution No. 037 of August 18, 2009 (Official Gazette No. 39.259 of September 8, 2009). Available in Spanish at: [http://www.leyresorte.gob.ve/pni/99/191474/produccion\\_nacional\\_independiente.html](http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html).

communication and information of the National Executive, who will preside over it, a representative of providers of radio services, a representative of the independent national producers, and a representative of the organizations of users. The decisions of this commission are binding and must be made by majority vote, in the case of a tie, the President of the commission will have a double vote.”

678. According to the information received, in support of the legal framework described in the previous paragraphs, each communications media negotiated separately with the Independent National Producers, without state intervention, in order to decide which programs to transmit during the schedule established in the Law on Social Responsibility in Radio and Television for this purpose.<sup>134</sup>

679. Nevertheless, the IACHR learned that on September 16, 2009, the Commission on Radio Programming of the Ministry of Popular Power for Communication and Information approved Resolution No. 047, Norms Regarding the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers in Providers of Radio Services (Official Gazette No. 36.269 of September 22, 2009).<sup>135</sup>

680. The IACHR observes that Resolution No. 047 proposes the creation of a “Catalogue of Independent National Production” which contains the “ordered list of pilot programs of Independent National Production that comply with the dispositions of the Law on Social Responsibility in Radio and Television and other norms that regulate the subject matter of this law, developed by the Ministry of Popular Power for Communication and Information, which constitute the offerings of programs that will be the objects of assignation.”

681. In the same sense, the IACHR observes with concern that Articles 8 and 9 of that resolution confer upon the Ministry of Popular Power for Communication and Information a mechanism for direct assignation for the transmission of programs that form part of the Catalogue of Independent National Production. By virtue of this power, the Ministry for Communication and Information can impose “upon the providers of radio services,” for three and a half hours a day, the programs that it considers necessary to “guarantee the democratization of the radio broadcasting spectrum, plurality, and creative freedom.” Therefore, in practice, this resolution confers upon the Executive Branch the power to impose content directly for three and a half hours of programming daily on all the broadcasters in the country.

682. In relation to the two remaining hours of obligatory transmission of programs of Independent National Producers, Article 10 of Resolution No. 47 provides that “once the Mechanism for Assignment of Airtime by Direct Assignment is established, the Ministry of Popular Power for Communication and Information, with the aim of covering the two remaining hours of Independent National Production during general viewership hours, will hold the Table of Agreements where independent national producers will offer their priority programs from the Catalogue that have not been assigned through the Direct Assignment to

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<sup>134</sup> Reporters without Borders. Information received in the e-mailbox of the Office of the Special Rapporteur for Freedom of Expression on September 24, 2009.

<sup>135</sup> Ministry of Popular Power for Communication and Information. September 24, 2009. *Normas sobre los Mecanismos y las Condiciones de Asignación de los Espacios a los Productores Nacionales Independientes en los Prestadores de Servicios de Radio* (Norms on the Mechanisms and the Conditions of Assignment of Airtime to National Independent Producers in Providers of Radio Services). Available in Spanish at: [http://www.leyresorte.gob.ve/notas\\_de\\_prensa/104/192253/normas\\_sobre\\_los.html](http://www.leyresorte.gob.ve/notas_de_prensa/104/192253/normas_sobre_los.html). [http://www.minci.gob.ve/doc/normasmecanismos\\_y\\_condicionesradio.pdf](http://www.minci.gob.ve/doc/normasmecanismos_y_condicionesradio.pdf).

the different providers of radio services, setting conditions for negotiation in the framework established in the Law on Social Responsibility in Radio and Television, and the present Norms.”

683. It should also be stated that Article 22 of Resolution No. 047 establishes that failure to comply with these dispositions on the part of providers of radio services “will give rise to the sanctions established in [Article 28 of] the Law on Social Responsibility in Radio and Television.” Under this scheme, the communications media can be sanctioned with “a fine of from one percent to two percent of the gross income earned in the fiscal year immediately preceding that in which the offense was committed, as well as the [ceding] of airtime for the broadcasting of cultural and educational messages.”

684. All of these measures must be applied by the Ministry of Popular Power for Communication and Information “in a period of no more than four months, counting from their publication in the Official Gazette,” that is to say, by January 22, 2010.

685. The mentioned norms have a double effect on the right to freedom of expression. In the first place, the right to certify what type of material can be included within the category of independent national production taking into account the content of such material is clearly a mechanism that can lead to prior censorship of national production. In effect, it will be the State that previously defines which independent national producers can broadcast their productions in the schedules established for this and which will not have this privilege. This mechanism compromises the State’s duty of neutrality with respect to content, affects the right of all independent national producers not to be censored for the content of their works and the right of the public to obtain plural and diverse information, distinct from that which state functionaries consider must be disseminated.

686. Secondly, these dispositions authorize the State to impose on communications media the specific content of the programming that must be broadcast. In relation to this point, the IACHR reminds the State that any obligation to transmit content that is not decided upon by a communications media must meet the strict conditions described in Article 13 of the American Convention to constitute an acceptable limitation on the right to freedom of expression. Additionally, the exercise of this power must be strictly necessary to satisfy urgent requirements in matters of evident public interest.

687. Article 13.2 of the American Convention expressly provides that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” This prohibition of censorship has its only exception in that provided under Article 13.4 of the American Convention, according to which, “[n]otwithstanding the provisions of paragraph 2 [...], public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

688. Interpreting the norms of the Convention, the Declaration of Principles provides in Principle 5 that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and in Principle 7 that “[p]rior conditioning of expressions, such

as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.”

689. Bearing in mind these considerations, the IACHR exhorts the State to bring its legislation relating to independent national production into conformity with the described standards.

**f. Grave violations of the rights to life and personal integrity based on the victims’ exercise of freedom of expression**

690. During 2008 and 2009, there were two reported homicides of journalists carried out by unidentified individuals as well as serious acts of physical aggression and threats against journalists and media owners of all different editorial lines in Venezuela. The foregoing is particularly troubling given that, in some of these cases, as will be subsequently explained in detail, the parties affected by the acts of violence were the beneficiaries of active provisional measures granted by the Inter-American Court.

691. The IACHR considers it important to note that the majority of the acts referred to in this section involved action by third parties who were not public functionaries. In some cases, the attacks were carried out by supposed supporters of President Hugo Chávez; in others, the episodes of violence involved journalists and communications media linked to the government who were attacked by supposed members of the opposition. What these facts show, nevertheless, is the serious atmosphere of polarization and intimidation in which media and journalists must carry out their work.

**i. Murders presumably linked with the exercise of journalistic activity**

692. During 2008, the vice president of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, was murdered. According to the information obtained by the IACHR and its Special Rapporteurship, on June 2, 2008, two unidentified persons riding on a motorcycle fired at least ten shots at the executive, who was at a gas station. Prior to the crime, various editors of the newspaper had been threatened in relation to the editorial line of the newspaper, which denounced acts of corruption. After the crime, the attorney who represents the *Reporte Diario de la Economía* also reported receiving threats from private criminal groups. As it did in its 2008 Annual Report, the IACHR again exhorts the State to investigate this crime so that those responsible will be duly identified, judged, and sanctioned.<sup>136</sup>

693. The IACHR and its Special Rapporteurship also reiterate their condemnation of the murder of Orel Sambrano, editor of the weekly *ABC Semana* and of *Radio América*, which occurred on January 16, 2009 in the city of Valencia in the state of Carabobo. The information received indicated that that two unidentified persons traveling on a motorcycle shot him in the nape of the neck. Sambrano was known for denouncing acts related to drug trafficking and local corruption, for which reason some local journalists have stated that he was murdered in retaliation for his work. The IACHR was informed that on February 17 and July 23, 2009, two of the presumed perpetrators and masterminds of the crime were

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<sup>136</sup> Office of the Special Rapporteur—IACHR. *Press Release No. R24/08*. June 5, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=1>; Committee to Protect Journalists. June 3, 2008. *Newspaper executive slain in Caracas*. Available at: <http://cpj.org/2008/06/newspaper-executive-slain-in-caracas.php>; Reporters without Borders. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* (Vice president of an economic newspaper shot and killed in Caracas, his brother is receiving death threats). Available in Spanish at: [http://www.rsf.org/article.php3?id\\_article=27306](http://www.rsf.org/article.php3?id_article=27306).

detained.<sup>137</sup> The IACHR values positively this advance in the clarification of the facts and urges the State to adopt all the measures at its disposal to guarantee the life and personal integrity of social communicators in Venezuela. On the other hand, it exhorts the State to continue investigating this act, and to try and punish all those responsible for this crime.

**ii. Acts of physical aggression and threats presumably linked with the exercise of journalistic activity**

694. With respect to acts of aggression by state authorities, on July 23, 2008, the journalist Dayana Fernández of the newspaper *La Verdad* and the photographer Luis Torres were attacked by municipal agents in the state of [Zulia] while they were working on a piece about environmental contamination in the area.<sup>138</sup>

695. On February 4, 2009, members of the Municipal Police of Valencia and the National Army snatched the camera of Wilmer Escalona, a photographer for the newspaper *NotiTarde*, while he was covering a story at a hospital. According to the information received, the officials erased the photographs and obliged the photojournalist to leave the hospital.<sup>139</sup>

696. On July 22, 2009, members of Detachment 88 of the National Guard seized audiovisual material from journalistic teams from *RCTV [Internacional]* and *Globovisión* in Puerto Ordaz in the state of Bolívar. The communicators were covering the assembly of workers of the company Siderúrgica del Orinoco (Sidor). According to the information received, the measure was taken because the journalists were in the company headquarters without authorization, although they had been invited by the workers. The seized material was handed over to the Office of the Military Prosecutor, which was in charge of evaluating whether the recorded images compromised the security of the State.

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<sup>137</sup> Office of the Special Rapporteur—IACHR. *Press Release No. R01/09*. January 22, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=737&IID=1>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008. Narcotráfico: censura a sangre y balas. El asesinato de Orel Sambrano* (Situation of the right to freedom of expression and information in Venezuela 2008. Drug trafficking: censorship with blood and bullets. The murder of Orel Sambrano), pp. 47-58. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>; Committee to Protect Journalists. January 20, 2009. *Reporter who covered drugs, corruption is slain*. Available at: <http://cpj.org/2009/01/reporter-who-covered-drug-trade-corruption-is-slain.php>; Inter-American Press Association. January 9, 2009. *Condena la SIP asesinato de periodista venezolano* (IAPA condemns murder of Venezuelan journalist). Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4120&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4120&idioma=sp); Reporters without Borders. February 20, 2009. *Former policeman arrested on suspicion of participating in journalist's murder*. Available at: <http://www.rsf.org/Former-policeman-arrested-on.html>; Instituto Prensa y Sociedad. February 25, 2009. *Detienen a ex policía por crimen de periodista, buscan a otros dos sospechosos* (Former policeman detained for crime against journalist, two other suspects sought). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1775>; Committee to Protect Journalists. February 13, 2009. *Former police officer arrested in Venezuelan murder*. Available at: <http://cpj.org/2009/03/former-police-officer-arrested-in-venezuelan-journ.php>; Office of the Attorney General of the Bolivarian Republic of Venezuela. July 23, 2009. *Privado de libertad presunto implicado en muerte del periodista Orel Sambrano* (Suspect in murder of journalist Orel Sambrano jailed). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2307V.htm>.

<sup>138</sup> Instituto Prensa y Sociedad. July 30, 2008. *Funcionarios municipales agreden a periodistas en [Zulia]* (Municipal functionaries attack journalists in Zulia). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1549>; Reporters without Borders. July 29, 2008. *Authorities order judicial investigation into newspaper reporter's detention*. Available at: <http://www.rsf.org/Authorities-order-judicial.html>.

<sup>139</sup> Instituto Prensa y Sociedad. February 10, 2009. *Policías y militares arrebatán cámara a reportero y borran fotos* (Police and military seize reporter's camera and erase photos). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1733>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&infoid=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us).

697. The IACHR received information indicating that on the same July 22, 2009, members of the National Guard in San Cristóbal in the state of Táchira, had detained, for a period of one hour, Zulma López, a correspondent for *RCTV Internacional* and the newspaper *El Universal*, and Thaís Jaimes, a journalist with the newspaper *El Panorama*, while they were taking photographs of a construction zone guarded by military personnel. During the incident, members of the National Guard destroyed the viewfinder of the camera belonging to photojournalist Jesús Molina. On July 28, 2009, the Special Rapporteurship sent a communication to the State requesting specific information about these occurrences. As of the date of this report, no response to this request has been received.<sup>140</sup>

698. On August 5, 2009, *Globovisión* cameraman Robmar Narváez, and his assistant Jesús Hernández, were detained by members of the 13<sup>th</sup> Infantry Brigade of the Army of the city of Barquisimeto in the state of Lara, while they were filming a mural in which the images were painted over with red spots and gag symbols. The information received indicates that the military personnel impeded the filming and approached Narváez to ask for his press credentials. The cameraman, however, showed only an identification card. Narváez and his assistant were then taken to a military base where they were detained for about three hours.<sup>141</sup>

699. With regard to acts of violence committed by private persons, on August 22, 2008 Guillermo Torín, audio operator for the *Fundación Televisora de la Asamblea Nacional* (ANTV), was hit by a group of supporters of the mayor of Chacao when he was going to register his candidacy at the headquarters of the National Electoral Council in Caracas. Torín, who suffered several broken ribs, the perforation of a lung, and the fracture of his right elbow, wore a vest that identified him as part of the journalistic team of a state media.<sup>142</sup>

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<sup>140</sup> El Universal. July 23, 2009. *Denuncian ante OEA y ONU agresiones contra periodistas* (Acts of aggression against journalists denounced before the UN and the OAS). Available in Spanish at: [http://www.eluniversal.com/2009/07/23/pol\\_art\\_denuncian-ante-oea-y\\_1483547.shtml](http://www.eluniversal.com/2009/07/23/pol_art_denuncian-ante-oea-y_1483547.shtml); Globovisión. July 22, 2009. *CNP denunció agresiones de la GN a periodistas en Táchira y Bolívar* (CNP [National Journalists' Association] denounced acts of aggression against journalists by the GN [National Guard] in Táchira and Bolívar). Available in Spanish at: <http://www.globovision.com/news.php?nid=122524>; El Universal. July 22, 2009. *GN retuvo por una hora a tres periodistas en Táchira* (GN [National Guard] detained three journalists for one hour in Táchira). Available in Spanish at: [http://www.eluniversal.com/2009/07/22/pol\\_art\\_gn-retuvo-por-una-ho\\_1482807.shtml](http://www.eluniversal.com/2009/07/22/pol_art_gn-retuvo-por-una-ho_1482807.shtml); Colegio Nacional de Periodistas de Venezuela. July 22, 2009. *CNP condena agresiones de la GN contra periodistas en Bolívar y Táchira* (CNP [National Journalists' Association] condemns acts of aggression by GN [National Guard] against journalists in Bolívar and Táchira). Available at: <http://www.cnpven.org/data.php?link=2&expediente=236>.

<sup>141</sup> Instituto Prensa y Sociedad. August 6, 2009. *Camarógrafo y asistente de Globovisión retenidos por más de tres horas en base militar* (Globovisión cameraman and assistant detained for more than three hours on military base). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1941>; Globovisión. August 5, 2009. *Efectivos militares retuvieron a camarógrafo de Globovisión en Lara* (Military personnel detained Globovisión cameraman in Lara). Available in Spanish at: <http://www.globovision.com/news.php?nid=123663>.

<sup>142</sup> Office of the Attorney General of the Bolivarian Republic of Venezuela. August 22, 2008. *Ministerio Público investiga agresiones contra trabajador de ANTV por presuntos seguidores del alcalde de Chacao* (Office of the Attorney General investigates acts of aggression against ANTV worker by presumed supporters of the mayor of Chacao). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2008/prensa2208V.htm>; Instituto Prensa y Sociedad. August 20, 2008. *Agreden a empleado de canal ANTV* (Employee of ANTV channel attacked). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1578>; National Assembly of the Bolivarian Republic of Venezuela. August 22, 2008. *Trabajadores de ANTV solicitaron ante la Fiscalía investigar agresión contra técnico de sonido* (ANTV workers request the Attorney General's Office to investigate aggression against sound technician). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=19955&Itemid=27](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=19955&Itemid=27); El Universal. August 20, 2008. *Condenan agresión a trabajador de ANTV* (Aggression against ANTV worker condemned). Available in Spanish at: [http://buscador.eluniversal.com/2008/08/20/pol\\_art\\_condenan-agresion-a\\_1000986.shtml](http://buscador.eluniversal.com/2008/08/20/pol_art_condenan-agresion-a_1000986.shtml).

700. On October 16, 2008, unidentified individuals threw a teargas bomb into the building where Leopoldo Castillo, host of the program *Aló Ciudadano*, a program that is broadcast by the television channel *Globovisión*, lives.<sup>143</sup>

701. On August 13, 2009, unidentified persons shot and wounded journalist Rafael Finol, of the newspaper *El Regional* of Acarigua, in the head. According to the information received, the newspaper's editorial line is pro-government.<sup>144</sup>

702. On January 20, 2009, Cecilia Rodríguez, a photojournalist with the newspaper *El Nuevo País* denounced that she had been hit by a group of demonstrators of the Unión Popular Venezolana (UPV) political party, aligned with the government. According to the information received, a police officer approached the photographer and escorted her to prevent her from being attacked further.<sup>145</sup>

703. On August 3, 2009, the headquarters of *Globovisión* were attacked by a group of individuals identifying themselves as members of the UPV, led by Lina Ron, a person allied with the current government. The armed attackers entered the channel's headquarters, threw tear gas bombs inside, and intimidated the workers. A member of the Metropolitan Police and a worker with the security company guarding the location were injured.<sup>146</sup> The attack was immediately condemned by the President of the Republic Hugo

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<sup>143</sup> It is worth noting that on October 16, 2008, Conatel notified Globovisión of the opening of a punitive administrative proceeding because of the declarations made live by Poleo. National Assembly of the Bolivarian Republic of Venezuela. October 15, 2008. *Fiscalía abrirá averiguación a Poleo y a Globovisión* (Attorney General's Office will open investigation of Poleo and Globovisión). Available in Spanish at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=20314&Itemid=27](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20314&Itemid=27); Globovisión. October 16, 2008. *AN investigará a Leopoldo Castillo y a Globovisión por comentario de Rafael Poleo en Aló Ciudadano* (AN [National Assembly] will investigate Leopoldo Castillo and Globovisión for commentary of Rafael Poleo on Aló Ciudadano). Available in Spanish at: <http://www.globovision.com/news.php?nid=101688>; Globovisión. October 16, 2008. *Periodista Rafael Poleo rechazó implicaciones en presunto magnicidio* (Journalist Rafael Poleo rejected implications of presumed assassination). Available in Spanish at: <http://www.globovision.com/news.php?nid=101737&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopo+castillo%22%3B%7D>; Instituto Prensa y Sociedad. October 24, 2008. *Lanzan bomba lacrimógena a edificio donde vive periodista de Globovisión* (Teargas bomb thrown at building where Globovisión journalist lives). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1631>; Globovisión. October 16, 2008. *Lanzan bomba lacrimógena contra la casa del periodista Leopoldo Castillo* (Teargas bomb thrown at house of journalist Leopoldo Castillo). Available in Spanish at: <http://www.globovision.com/news.php?nid=101699>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&inford=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us).

<sup>144</sup> Committee to Protect Journalists. January 16, 2009. *Journalist shot and injured*. Available at: <http://cpj.org/americas/venezuela/2009/?page=2>; Inter-American Press Association. January 15, 2009. *Condena la SIP atentado contra periodista en Venezuela* (IAPA condemns attack against journalist in Venezuela). Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&idioma=sp&id=4119](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4119); Reporters without Borders. January 15, 2009. *Murder attempt against pro-Chávez journalist in Portuguesa state*. Available at: <http://www.rsf.org/Murder-attempt-against-pro-Chavez.html>.

<sup>145</sup> The information also indicates that among the aggressors were members of the group known as La Piedrita. Instituto Prensa y Sociedad. January 21, 2009. *Simpatizantes oficialistas agreden a reportera* (Official sympathizers attack reporter). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1709>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&inford=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us).

<sup>146</sup> Globovisión. August 3, 2009. *Motorizados armados y comandados por Lina Ron asaltaron sede de Globovisión* (Armed motorists commanded by Lina Ron attack Globovisión headquarters). Available in Spanish at: <http://www.globovision.com/news.php?nid=123531>; Globovisión. August 3, 2009. *Dos heridos y varios afectados por el ataque a Globovisión de grupos armados* (Two injured and several affected by attack on Globovisión by armed groups). Available in Spanish at: <http://www.globovision.com/news.php?nid=123540>; El Universal. August 4, 2009. *Grupo oficialista irrumpió en la sede de Globovisión* (Group of official supporters interrupt in Globovisión headquarters). Available in Spanish at: [http://www.eluniversal.com/2009/08/04/pol\\_art\\_grupo-oficialista-ir\\_1504338.shtml](http://www.eluniversal.com/2009/08/04/pol_art_grupo-oficialista-ir_1504338.shtml); Instituto Prensa y Sociedad. August 3, 2009. *Simpatizantes del gobierno nacional atacan sede*

Chávez and the Minister of Popular Power for the Interior and Justice, Tarek El Aissami, who also announced a prompt investigation. On August 4, 2009, information was received indicating that the Attorney General's Office had ordered the detention of Lina Ron, and that on that same day, she turned herself over to authorities.<sup>147</sup> Subsequently, information was received indicating that on October 14, 2009, the 18th Tribunal of Control of the Metropolitan Area of Caracas ordered the release of Lina Ron and that on October 16, 2009, criminal proceedings were initiated against her with respect to these facts for the crime of "agavillamiento" (illegal association).<sup>148</sup>

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*de canal privado* (National government sympathizers attack headquarters of private channel). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1936>; Colegio Nacional de Periodistas. August 3, 2009. *CNP exhorta al gobierno a acabar con la impunidad y deplora ataques contra Globovisión* (CNP [National Journalists' Association] exhorts the government to end impunity and deplors attacks against Globovisión). Available in Spanish at: <http://www.cnpven.org/data.php?link=2&expediente=268>; Globovisión. July 3, 2009. *Ministerio Público designó fiscales para investigar el hecho ocurrido en los alrededores de Globovisión* (Attorney General designated prosecutors to investigate the incident that occurred near Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=123539>; IACHR. *Press Release No. 55/09*. August 3, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/55-09eng.htm>; Communication of August 12, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

<sup>147</sup> IACHR. *Press Release no. R57/09*. August 5, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=759&IID=1>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Dictan orden de detención contra Lina Ron* (Order of detention issued against Lina Ron). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408.htm>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Ministerio Público presentará en las próximas horas ante Tribunal de Control a Lina Ron* (Attorney General's Office will present Lina Ron before the Tribunal of Control in the next few hours). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408V.htm>; Agencia Bolivariana de Noticias. August 4, 2009. *Presidente Chávez informó detención de Lina Ron* (President Chávez reported the detention of Lina Ron). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193434&lee=4>; Venezolana de Televisión. August 9, 2009. *Presidente Chávez: Grupos anárquicos le hacen daño a la revolución* (President Chávez: Anarchic groups damage the revolution). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22020>; Instituto Prensa y Sociedad. August 4, 2009. *Detienen a dirigente de partido político por agresión a sede de Globovisión* (Leader of political party detained for aggression against headquarters of Globovisión). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1940>; El Universal. August 4, 2009. *El Aissami condenó "acción delictiva"* (El Aissami condemned "criminal action"). Available in Spanish at: <http://www.eluniversal.com/2009/08/04/pol art el-aissami-condeno 1504339.shtml>; El Universal. August 5, 2009. *Chávez exige "todo el peso de la santa ley" para Ron y sus seguidores* (Chávez calls for "all the weight of the sainted law" for Ron and her followers). Available in Spanish at: <http://www.eluniversal.com/2009/08/05/pol art chavez-exige-todo-e 1507451.shtml>; Globovisión. August 4, 2008. *Tribunal 18° de Control dicta privativa de libertad contra Lina Ron* (18<sup>th</sup> Control Tribunal issues order for deprivation of liberty against Lina Ron). Available in Spanish at: <http://www.globovision.com/news.php?nid=123595>; Globovisión. August 4, 2009. *Chávez dice que Lina Ron se presentó a la justicia y que se prestó para un juego "a favor del enemigo"* (Chávez says that Lina Ron presented herself to the court and that she submitted herself for a game "in favor of the enemy"). Available in Spanish at: <http://www.globovision.com/news.php?nid=123610>.

<sup>148</sup> Article 286 of the Penal Code states that "[w]hen two or more persons associate with the goal of committing crimes, each one will be punished, for the sole act of association, with imprisonment of two to five years." For its part, Article 286 provides that "[i]f the associates travel through the countryside or the roads and if at least two of them are carrying guns or have them in a determined place, the penalty will be prison for a period of eighteen months to five years." Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>. See also: Globovisión. September 19, 2009. *Ministerio Público acusó a Lina Ron por los sucesos ocurridos en Globovisión* (Attorney General's Office accused Lina Ron for the events that occurred at Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=127860&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; Globovisión. October 14, 2009. *Liberada dirigente Lina Ron* (Leader Lina Ron freed). Available in Spanish at: <http://www.globovision.com/news.php?nid=130114&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; El Nacional. October 15, 2009. *Tribunal libera a Lina Ron* (Tribunal liberates Lina Ron). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/103957/Nacional/Tribunal-libera-a-Lina-Ron-tras-m%C3%A1s-de-dos-meses-de-arresto-en-la-DIM](http://el-nacional.com/www/site/p_contenido.php?q=nodo/103957/Nacional/Tribunal-libera-a-Lina-Ron-tras-m%C3%A1s-de-dos-meses-de-arresto-en-la-DIM); Globovisión. October 16, 2009. *Ordenan enjuiciamiento de Lina Ron por ataque contra sede de Globovisión* (Trial of Lina Ron ordered for attack against headquarters of

704. On August 4, 2009, Roberto Tobar and Emiro Carrasquel, members of the press team of the state channel *Venezolana de Televisión* (VTV), and Renzo García, a journalist with *Color TV*, were attacked in the state of Aragua by a group of demonstrators presumably allied with the opposition. According to the information received, the aggressors were part of a group of persons that protested during the execution of the judicial measure of raiding the home of the *Globovisión* correspondent Carmen Elisa Pecorelli.<sup>149</sup>

705. On August 13, 2009, twelve journalists from the *Capriles* chain of publications were seriously attacked on the streets of Caracas by presumed government sympathizers who labeled them “defenders of the oligarchy.” According to the information received, Octavio Hernández, Manuel Alejandro Álvarez, Gabriela Iribarren, Jesús Hurtado, Marco Ruíz, Usbaldo Arrieta, Fernando Peñalver, Marie Rondón, Greasi Bolaños, Glexis Pastran, César Batiz, and Sergio Moreno González were handing out flyers in the streets that questioned various articles of the then-draft Organic Law on Education, when they were brutally attacked with sticks and rocks by a crowd that called themselves “defenders of the people.” On the same day, the Minister of Popular Power for Communication and Information, Blanca Eekhout, categorically condemned this act of violence.<sup>150</sup>

706. On August 14, 2009, the Attorney General of the Republic, Luisa Ortega Díaz, also condemned these acts and announced the official opening of an investigation by

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Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=130247&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>.

<sup>149</sup> Instituto Prensa y Sociedad. August 7, 2009. *Agreden a periodistas de medios estatales durante cobertura* (Journalists of state media attacked during coverage). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1949>; Agencia Bolivariana de Noticias. August 5, 2009. *Ministerio Público practicó allanamiento en Maracay ajustado a derecho* (Attorney General’s Office carried out raid in Maracay in compliance with law). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193532&lee=2>; Globovisión. August 4, 2009. *Allanaron residencia de corresponsal de Globovisión en Aragua* (Residence of Globovisión correspondent in Aragua raided). Available in Spanish at: <http://www.globovision.com/news.php?nid=123647>.

<sup>150</sup> The Organic Law on Education was approved by the National Assembly at midnight on August 13, 2009. Ministry of Communication and Information. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: [http://www.minci.gob.ve/noticias/1/191070/minci\\_rechaza\\_actos.html](http://www.minci.gob.ve/noticias/1/191070/minci_rechaza_actos.html); Agencia Bolivariana de Noticias. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=194842&lee=4>; Colegio Nacional de Periodistas. August 13, 2009. *El CNP y el SNTP se declaran en emergencia ante las agresiones a los periodistas de la cadena Capriles* (The CNP [National Journalists’ Association] and the SNTP [National Press Workers’ Union] declare an emergency due to the acts of aggression against journalists of the Capriles chain). Available in Spanish at: <http://www.cnpven.org/data.php?link=5&expediente=288>; Globovisión. August 13, 2009. *Doce periodistas de la cadena Capriles heridos tras emboscada oficialista a protesta contra Ley de Educación* (Twelve journalists of the Capriles chain injured after official supporters ambush protest against the Law on Education). Available in Spanish at: <http://www.globovision.com/news.php?nid=124366>; El Nacional. August 13, 2009. *Chavistas agredieron brutalmente a doce periodistas de la cadena Capriles* (Chávez supporters brutally attacked twelve journalists of the Capriles chain). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/94225/Nacional/Chavistas-agredieron-brutalmente-12-periodistas-de-la-Cadena-Capriles](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94225/Nacional/Chavistas-agredieron-brutalmente-12-periodistas-de-la-Cadena-Capriles); Globovisión. August 13, 2009. *Director de Últimas Noticias exigió celeridad en investigación sobre investigaciones sobre la cadena Capriles* (Editor of Últimas Noticias urged swiftness in the investigation of investigations about the Capriles chain). Available in Spanish at: <http://www.globovision.com/news.php?nid=124371>; Espacio Público. August 13, 2009. *Oficialistas agreden a 12 periodistas de Cadena Capriles* (Official supporters attack 12 journalists of the Cadena Capriles). Available in Spanish at: [http://www.espaciopublico.info/index.php?option=com\\_content&task=view&id=517&Itemid=1](http://www.espaciopublico.info/index.php?option=com_content&task=view&id=517&Itemid=1); Globovisión. August 17, 2009. *Privan de libertad a presunto implicado en agresión a periodistas de la Cadena Capriles* (Suspect in attack against Cadena Capriles jailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=124682>

the Attorney General's Office. On the same date, the Human Rights Ombudswoman, Gabriela del Mar Ramírez exhorted "the competent investigative bodies to take necessary and adequate measures to clarify the facts and determine the responsibilities, in accordance with the law." On October 15, 2009, the Attorney General's Office announced the capture of one of the presumed aggressors.<sup>151</sup> Subsequently, the IACHR was informed that the person was set free.<sup>152</sup>

707. The IACHR observes that on August 18, 2009, President Hugo Chávez affirmed in an interview that proof existed that would demonstrate that the journalists that had been attacked had, in reality, propitiated the attack by some of [his] presumed supporters. The leader stated:

They were not carrying out journalistic duties; they were in a protest, with banners, passing out flyers, proselytizing against the Law on Education. [...] And according to what I understand, and there is proof, they were provoking the people who were over here and over there.<sup>153</sup>

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<sup>151</sup> Reporters without Borders. August 17, 2009. *Activist arrested for attack on 12 journalists but polarization persists*. Available at: <http://www.rsf.org/Activist-arrested-for-attack-on-12.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 17, 2009. *Dictan órdenes de aprehensión contra dos presuntos implicados en agresiones a periodistas en el centro de Caracas* (Orders issued to apprehend two suspects in acts of aggression against journalists in the center of Caracas). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1708.htm>; Ministry of Communication and Information. August 14, 2009. *Defensoría del Pueblo hace un llamado a la tolerancia* (Office of the Human Rights Ombudsman calls for tolerance). Available in Spanish at: [http://minci.gob.ve/noticias/1/191081/defensoria\\_del\\_pueblo.html](http://minci.gob.ve/noticias/1/191081/defensoria_del_pueblo.html); Office of the Attorney General of the Bolivarian Republic of Venezuela. August 14, 2009. *Fiscal General de la República rechazó ataque contra periodistas* (Attorney General of the Republic rejected attack on journalists). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1408.htm>; Globovisión. August 14, 2009. *Luisa Ortega Díaz repudió agresiones a periodistas de la Cadena Capriles* (Luisa Ortega Díaz repudiated acts of aggression against journalists of Cadena Capriles). Available in Spanish at: <http://www.globovision.com/news.php?nid=124416>.

<sup>152</sup> El Universal. August 25, 2009. *Único detenido por agresión a periodistas queda en libertad* (Only detainee for aggression against journalists set free). Available in Spanish at: [http://www.eluniversal.com/2009/08/25/pol\\_art\\_unico-detenido-por-a-1538816.shtml](http://www.eluniversal.com/2009/08/25/pol_art_unico-detenido-por-a-1538816.shtml); El Nacional. August 26, 2009. *Único detenido por agresión a periodistas fue liberado* (Only detainee for aggression against journalists set free). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/96082/Medios%20bajo%20ataque/Gabriel-Uzc%C3%A1tegui-ha-sido-liberado](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/96082/Medios%20bajo%20ataque/Gabriel-Uzc%C3%A1tegui-ha-sido-liberado); Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

<sup>153</sup> El Nacional. August 20, 2009. *Periodistas de la Cadena Capriles niegan haber provocado a chavistas agresores* (Journalists of Cadena Capriles deny having provoked aggression by Chávez supporters). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/95358/Medios%20bajo%20ataque/Periodistas-de-la-Cadena-Capriles-niegan-haber-provocado-a-chavistas-agresores](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95358/Medios%20bajo%20ataque/Periodistas-de-la-Cadena-Capriles-niegan-haber-provocado-a-chavistas-agresores); Espacio Público. August 20, 2009. *Periodistas rechazan acusaciones de sector oficial* (Journalists reject accusations of the official sector). Available in Spanish at: [http://www.espaciopublico.info/index.php?option=com\\_content&task=view&id=542&Itemid=1](http://www.espaciopublico.info/index.php?option=com_content&task=view&id=542&Itemid=1); Venezolana de Televisión. August 19, 2009. *Últimas Noticias criminalizó a periodistas de Ávila TV* (Últimas Noticias characterizes as criminal the journalists of Ávila TV). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22527>; El Universal. August 19, 2009. *Chávez asegura que periodistas agredidos provocaron lo que les pasó* (Chávez assures that attacked journalists provoked what happened to them). Available in Spanish at: [http://www.eluniversal.com/2009/08/19/pol\\_ava\\_chavez-asegura-que-p-19A2632685.shtml](http://www.eluniversal.com/2009/08/19/pol_ava_chavez-asegura-que-p-19A2632685.shtml); El Nacional. August 19, 2009. *CNP considera "risibles" maniobras para descalificar a periodistas agredidos* (CNP [National Journalists' Association] considers "laughable" attempts to discredit attacked journalists). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/95240/Nacional/CNP-considera-risibles-maniobras-para-desqualificar-a-periodistas-agredidos](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95240/Nacional/CNP-considera-risibles-maniobras-para-desqualificar-a-periodistas-agredidos); El Universal. August 20, 2009. *Periodistas temen que palabras de Chávez generen más ataques* (Journalists fear that Chávez's words generate more attacks). Available in Spanish at: [http://politica.eluniversal.com/2009/08/20/pol\\_art\\_periodistas-temen-qu-1531697.shtml](http://politica.eluniversal.com/2009/08/20/pol_art_periodistas-temen-qu-1531697.shtml); El Nacional. August 19, 2009. *Chávez dijo que periodistas provocaron el ataque* (Chávez said that journalists provoked the attack). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/95095/Nacional/Ch%C3%A1vez-dijo-que-periodistas-provocaron-el-ataque](http://el-nacional.com/www/site/p_contenido.php?q=nodo/95095/Nacional/Ch%C3%A1vez-dijo-que-periodistas-provocaron-el-ataque); Noticias24. August 19, 2009. *Dice que periodistas de la Cadena Capriles agredidos "provocaron" lo que les pasó* (Attacked journalists of Cadena Capriles said to have "provoked" what happened to

708. The IACHR expresses its concern about this type of declarations by the President of the Republic, which could be interpreted by his followers as governmental approval of commission of crimes of [this] nature. In this respect, it is important to recall that public protest is one of the usual ways in which the right to freedom of expression is exercised and that expressions against the government's proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy. Additionally, it is important to recall that, as previously stated in this report, when public functionaries exercise their freedom of expression whether in carrying out a legal duty or as a simple exercise of their fundamental right to express themselves, "[they] are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts."<sup>154</sup>

709. On the other hand, the IACHR observes with concern the attacks that were later attributed to the criminal group known as La Piedrita. On September 23, 2008, members of La Piedrita threw teargas bombs at the outside of the *Globovisión* headquarters in Caracas. The attackers left signed pamphlets declaring *Globovisión* and its director Alberto Federico Ravell to be "military objectives." The pamphlets also blamed the television channel for any attack that could be suffered by President Hugo Chávez.<sup>155</sup> On October 10, 2008, members of La Piedrita attacked and seized the equipment of the team of *Globovisión* journalists who were covering a protest of transit workers in the 23 de Enero neighborhood.<sup>156</sup> It should be noted that days later, the then-Minister of Popular Power for Communication and Information, Andrés Izarra, condemned this action, accusing La Piedrita of carrying out acts of "political infantilism."<sup>157</sup> The IACHR expresses its particular concern about these attacks, precisely because given their special vulnerability in the current

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them). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/76376/dice-que-periodistas-de-la-cadena-capriles-agredidos-provocaron-lo-que-les-paso/>.

<sup>154</sup> I/A Court H.R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

<sup>155</sup> The allusion to an attack is referring to the possibility of an assassination. Committee to Protect Journalists. October 6, 2008. *Intimidation, accusations should stop*. Available at: <http://cpj.org/2008/10/intimidation-accusations-should-stop.php>; Instituto Prensa y Sociedad. September 26, 2008. *Lanzan panfletos y bombas lacrimógenas a sede de Globovisión* (Pamphlets and teargas bombs thrown at Globovisión headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1619>; Reporters without Borders. September 25, 2008. *Interior minister justifies attack against Globovisión claimed by pro-government militants*. Available at: <http://www.rsf.org/Interior-minister-justifies-attack.html>; Globovisión. September 23, 2008. *Director de Globovisión señaló que ataque al canal se veía venir por el lenguaje de violencia de algunos funcionarios* (Director of Globovisión states that attack on channel was predictable due to the violent language of some officials). Available in Spanish at: <http://www.globovision.com/news.php?nid=99438>; Globovisión. September 23, 2008. *Lina Ron reivindicó al grupo "La Piedrita" y ratificó declaratoria de Ravell y Globovisión como objetivos militares* (Lina Ron defended the "La Piedrita" group and ratified the declaration of Ravell and Globovisión as military objectives). Available in Spanish at: <http://www.globovision.com/news.php?nid=99439>; El Nacional. September 23, 2008. *Presunto grupo oficialista ataca fachada de Globovisión* (Group of presumed official supporters attack outside Globovisión). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/46191](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/46191).

<sup>156</sup> The information indicates that the team of journalists was made up by Mayela León, Luis Reaño, and Frank Díaz. Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]*. Asunción, Paraguay. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&infoid=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us).

<sup>157</sup> El Universal. October 14, 2008. *RSF celebra condena de Izarra a agresión contra Globovisión* (RSF applauds condemnation by Izarra of aggression against Globovisión). Available in Spanish at: [http://www.eluniversal.com/2008/10/14/pol\\_art\\_rsf-celebra-condena\\_1091410.shtml](http://www.eluniversal.com/2008/10/14/pol_art_rsf-celebra-condena_1091410.shtml).

atmosphere, the journalists, editors, and workers of *Globovisión* have been under the protection of provisional measures ordered by the Inter-American Court since 2004<sup>158</sup> and because there is still no information about the results of investigations and sanctions to prevent this type of attacks.

710. On October 14, 2008, members of La Piedrita threw teargas bombs in the interior of the headquarters of the newspaper *El Nuevo País*. The aggressors also left pamphlets signed by the criminal group that declared the editor of the newspaper, Rafael Poleo, to be a “military objective.”<sup>159</sup> As has already been stated, the declarations made by Poleo on the live program *Aló Ciudadano* of October 13, 2008 were characterized by the Venezuelan authorities as “incitation to assassination.”

711. On December 1, 2008, members of La Piedrita threw teargas bombs and signed brochures in front of the building inhabited by the journalist Marta Colomina, who, since 2003, has been under the protection of provisional measures ordered by the Inter-American Court.<sup>160</sup> According to the information received, the brochures also declared Colomina to be a military objective.<sup>161</sup>

712. On January 1, 2009, members of La Piedrita once again attacked the headquarters of *Globovisión* with teargas bombs and threw pamphlets in which they reiterated that the media and the newspaper *El Nacional* were “military objectives.”<sup>162</sup> The IACHR applauds the fact that days later, the then-Minister of Popular Power for Communication and Information, Jesse Chacón, had condemned the act, stating that “the

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<sup>158</sup> I/A Court H.R., Order of the Inter-American Court of Human Rights of January 29, 2008. Provisional Measures with regard to the Bolivarian Republic of Venezuela. Matter of “Globovisión” Television Station. Available at: [http://www.corteidh.or.cr/docs/medidas/globovision\\_se\\_04\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.pdf). Additionally, in the 2008 Annual Report, the IACHR stated that: “As observed in previous years, in 2008 the Commission continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008.” IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 370. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

<sup>159</sup> Instituto Prensa y Sociedad. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* (Editor of newspaper threatened and teargas bombs thrown at headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1632>; Inter-American Press Association. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* (IAPA condemns the acts of aggression against *El Nuevo País* newspaper in Venezuela). Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4075&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp); Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&infoid=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us).

<sup>160</sup> I/A Court H.R., Order of the Inter-American Court of Human Rights of July 4, 2006. Provisional Measures regarding Venezuela. Matter of Marta Colomina and Liliana Velásquez. Available at: [http://www.corteidh.or.cr/docs/medidas/colomina\\_se\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/colomina_se_05_ing.pdf).

<sup>161</sup> Instituto Prensa y Sociedad. December 3, 2008. *Lanzan bombas lacrimógenas en edificio de periodista y la declaran “objetivo de guerra”* (Teargas bombs thrown in journalist’s building and she is declared an “objective of war”). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1669>; *El Nacional*. December 1, 2008. *Colectivo La Piedrita lanza artefacto explosivo contra residencia de Martha Colomina* (La Piedrita group throws explosive device at residence of Martha Colomina). Available in Spanish at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/57300](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/57300).

<sup>162</sup> Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Reporters without Borders. January 2, 2009. *New Year’s Day Attack on TV station by radical pro-Chávez group*. Available at: [http://www.rsf.org/spip.php?page=article&id\\_article=29875](http://www.rsf.org/spip.php?page=article&id_article=29875); *El Universal*. January 2, 2009. *Grupo La Piedrita lanzó bomba lacrimógena en Globovisión* (La Piedrita group throws teargas bomb in Globovisión). Available in Spanish at: [http://www.eluniversal.com/2009/01/01/pol\\_ava\\_grupo-la-piedrita\\_01A2180231.shtml](http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml).

government rejecte[d] any action that goes beyond frank discussion about the way a social communications media manages its editorial line.”<sup>163</sup>

713. On January 19, 2009, members of La Piedrita threw teargas bombs at the residence of the director of *RCTV*, Marcel Granier. In later declarations, the leader of La Piedrita, Valentín Santana, declared that they proposed to “pass the arms by [Marcel] Granier.”<sup>164</sup> The leader of the La Piedrita group also recognized its responsibility for the attacks against headquarters of *Globovisión* and *El Nuevo País*, as well as the residences of Marta Colomina and Marcel Granier, in an interview published in a weekly on February 6, 2009.<sup>165</sup>

714. The IACHR applauds the fact that after this series of events and the publication of the interview mentioned previously, President Hugo Chávez condemned the actions of La Piedrita.<sup>166</sup> Nevertheless, as of the date of this report, the IACHR has not received information about his capture or about the investigations or sanctions that would prevent this type of attacks. It is important to note that on May 22, 2009, the Special Rapporteurship sent a communication to the State in which it expressed its concern about the acts of violence carried out by La Piedrita up to this date. However, no advances in the investigation, prosecution, or sanctioning of those responsible for these acts has been reported.

715. In relation to these acts of violence, the IACHR exhorts the State to investigate the existence of these violent groups and proceed to disarm and dismantle them as completely and as quickly as possible, given that, as the IACHR has indicated, “these

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<sup>163</sup> Espacio Público. January 5, 2009. *Jesse Chacón condena agresión a medios de comunicación* (Jesse Chacón condemns aggression against communications media). Available in Spanish at: [http://www.espaciopublico.info/index.php?option=com\\_content&task=view&id=269&Itemid=2](http://www.espaciopublico.info/index.php?option=com_content&task=view&id=269&Itemid=2).

<sup>164</sup> Granier also stated that his residence had been the object of a similar attack during the same month. Instituto Prensa y Sociedad. January 21, 2009. *Lanzan bombas lacrimógenas a casa de director de RCTV Internacional* (Teargas bombs thrown at home of director of RCTV International). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1706>; Colegio Nacional de Periodistas. January 19, 2009. *Grupo “La Piedrita” amenaza nuevamente* (“La Piedrita” group threatens again). Available in Spanish at: <http://cnpicaracas.org/?p=6324>; Globovisión. January 19, 2009. *Residencia de Marcel Granier también fue atacada con bombas* (Residence of Marcel Granier was also attacked with bombs). Available in Spanish at: <http://www.globovision.com/news.php?nid=108308&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopo+castillo%22%3B%7D>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2009. Asunción, Paraguay.* Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&inford=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us).

<sup>165</sup> Communication of May 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression; Noticias 24. February 6, 2009. *La Piedrita pasará por las armas a enemigos de la revolución* (La Piedrita will take up arms against enemies of the Revolution). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/24132/habla-valentin-santana-jefe-del-colectivo-la-piedrita/>; Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2009. Asunción, Paraguay.* Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=22&inford=362&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us).

<sup>166</sup> Agencia Bolivariana de Noticias. February 7, 2009. *Chávez rechaza violencia de grupo La Piedrita y pide captura de su líder* (Chávez rejects violence of La Piedrita group and calls for the capture of its leader). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=168871&lee=4>; El Nacional. February 8, 2009. *Chávez ordena detener a líder de “La Piedrita”* (Chávez orders detention of leader of “La Piedrita”). Available in Spanish at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/67463/Pol%C3%ADtica/Ch%C3%A1vez-ordena-detener-a-l%C3%ADder-de-La-Piedrita](http://el-nacional.com/www/site/p_contenido.php?q=nodo/67463/Pol%C3%ADtica/Ch%C3%A1vez-ordena-detener-a-l%C3%ADder-de-La-Piedrita); El Universal. February 9, 2009. *Chávez califica de terrorista y fascista a Colectivo La Piedrita* (Chávez characterizes the Colectivo la Piedrita as terrorist and fascist). Available in Spanish at: [http://www.eluniversal.com/2009/02/09/pol\\_art\\_chavez-califica-de-t-1261095.shtml](http://www.eluniversal.com/2009/02/09/pol_art_chavez-califica-de-t-1261095.shtml); Committee to Protect Journalists, February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>.

groups have been the driving force behind violence and direct threats made against [diverse sectors of the Venezuelan population].”<sup>167</sup>

716. As indicated by the IACHR in its *Report on the Situation of Human Rights in Venezuela* (2003), “a monopoly on force must be maintained solely by the agencies of law enforcement, under the legitimate rule of law; the most complete disarmament possible of all civilian groups must be undertaken immediately.”<sup>168</sup>

717. With respect to the existing mechanisms to protect communications media and journalists who have been threatened in relation to their editorial line, the State, in a communication of August 13, 2009, stated that: “The victim who has made a denunciation [before the Attorney General’s Office] may obtain some measure of protection in accordance with the Law on Protection of Victims, Witnesses, and Others Subject to Proceedings, which stipulates that this may be ‘informal, administrative, judicial, or of any other character in order to guarantee the rights of protected persons.’ [...] The protection of the law does not distinguish whether or not the aggrieved person is a journalist, since the law provides equal protection for all citizens. In the cases of the communications media, because they are legal persons in a strict sense they cannot enjoy the measures of protection, because they are abstract entities. In this sense the protection falls upon the personnel of the communications media or the journalists who work there, since according to the law they are the only ones that can be considered victims.”<sup>169</sup>

718. In this vein, the IACHR recommends that the State intensify the efforts aimed at investigating the acts of violence attributed to these violent groups, and that it continue adopting the urgent and necessary measures to dismantle them, energetically and publicly condemning their actions, strengthening criminal investigative capacities, and sanctioning the illegal actions of these groups to prevent the repetition of these acts in the future.

719. Finally, the IACHR urges the State to investigate promptly all the cases summarized in this section, to make its strongest effort to avoid the repetition of these crimes, and to ensure that they do not remain in impunity. As has been stated in other opportunities, the lack of sanctions for the perpetrators and the masterminds of the murders, acts of aggression, threats, and attacks related to the practice of journalism propitiates the occurrence of new crimes and generates a notorious effect of self-censorship that seriously undermines the possibility of a truly open, uninhibited, and democratic debate. Principle 9 of the Declaration of Principles states that: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

#### **g. Recommendations**

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<sup>167</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>168</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

<sup>169</sup> Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 111-112.

720. In light of the forgoing considerations, the IACHR recommends that the Venezuelan State:

1. Bring its domestic legislation into agreement with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, it should repeal the provisions on *desacato*, *vilipendio*, and insult to the National Armed Forces. Additionally, it should modify the text of Article 29.1 of the Law on Social Responsibility in Radio and Television, Articles 9, 10, and 11 of the Organic Law on Education, and Resolution No. 047 of the Ministry of Popular Power for Communication and Information, Norms on the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers on Providers of Radio Services.
2. Ensure that the use of the power to use the communications media to disseminate state messages is in accordance with inter-American standards, especially with respect to satisfying the requirement of strict necessity. In particular, it is necessary to revise Article 192 of the Organic Law on Telecommunications and Article 10 of the Law on Social Responsibility in Radio and Television.
3. Guarantee the most absolute impartiality and due process in all the administrative and judicial proceedings to enforce the legislation on broadcasting. In particular, the opening of such proceedings and the imposition of sanctions must be the duty of impartial and independent organs, regulated by legal norms that are precise and delimited, and governed by that which is provided in Article 13 of the American Convention. In no case may the media's editorial line be a relevant factor for the adoption of any decision relating to this subject matter.
4. Make all decisions relating to broadcasting subject to the laws, the Constitution, and the international treaties in force and strictly respect all the guarantees of due process, the principle of good faith, and the inter-American standards that guarantee the right to freedom of expression of all persons without discrimination. Ensure that none of its actions is motivated by or aimed at rewarding media that agree with government policies or at punishing those that are critical or independent.
5. Maintain from the highest levels of the state the public condemnation of acts of violence against journalists and communications media, with the aim of preventing actions that foment these crimes, and avoiding the continued development of a climate of stigmatization of those who hold a stance critical of government actions.
6. Ensure that public officials refrain from making declarations that generate an atmosphere of intimidation that limits the right to freedom of expression. In particular, the State must create a climate in which all persons can express their ideas and opinions without fear of being persecuted, attacked, or sanctioned for it.
7. Adopt the measures that are necessary to protect the life and personal integrity of social communicators and the infrastructure of the communications media. In particular, the State has the obligation to carry

out serious, impartial, and effective investigations of the acts of violence and harassment against journalists and communications media, identifying, judging, and sanctioning those responsible.

8. Promote the incorporation of international standards on freedom of expression through the judicial system, which constitutes an effective tool for the protection and guarantee of the current normative framework for freedom of expression.