

## CHAPTER II

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

#### A. Introduction and methodology

1. The right to freedom of expression is a universal right of all individuals, without which the most important of liberties—the right to think for oneself and shares one’s views with others—is denied. The full exercise of the right to express one’s own ideas and opinions, to share information that is available, and to deliberate openly and without restrictions regarding the issues that concern us all is an indispensable condition for the consolidation, functioning and preservation of democratic regimes.<sup>1</sup>

2. This chapter describes some of the most important aspects of freedom of expression in the hemisphere during 2010. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report the most serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

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

4. The selected information is ordered and systematized in a manner so as to present the advances, setbacks, and challenges in various aspects of the exercise of the right to freedom of expression, including progress made in legal or legislative matters, as well as the most serious problems that arose throughout the year, such as murders, threats and attacks against journalists related to the exercise of their profession; the application of disproportionate subsequent imposition of liability; threats against the right to keep sources confidential; the progress and challenges in the right to access to information; and the problems detected in the allocation of government advertising, among others.

5. The cases selected in each topic seek to serve as paradigmatic examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. It is pertinent to clarify that the omission of analysis of the situation

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<sup>1</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, paras. 7-8. Available at <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf>

<sup>2</sup> Towards the end of this chapter, the methodology used by the Office of the Special Rapporteur to collect, classify and assess the information gathered on official visits is presented as an annex.

of some cases or States is due to the fact that the Office of the Special Rapporteur has not received sufficient information. As such, these omissions should be interpreted only in this sense. In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through requests for precautionary measures, which has not yet been made public.

6. In preparing this chapter of its 2010 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 1, 2010. However, the report includes some particularly serious incidents that occurred during the month of December as well as events that began before but concluded in December. Information regarding incidents that occurred after December 1 is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

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

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

### **1. Argentina**

8. The Office of the Special Rapporteur observes with satisfaction that on July 5, the Argentine State carried out a public ceremony to recognize its responsibility for the violation of the human rights of journalist Eduardo Kimel.<sup>3</sup> Kimel had been sentenced in March of 1999 to one year in prison, suspended, and the payment of damages for criticizing the actions of a judge in his book *The San Patricio Massacre*. The book was the result of an investigation that was published in November 1989 on the murder of five followers of the Pallotine Society of Apostolic Life. In complying with the judgment, in 2009 the Argentine State eliminated the application of defamation laws to expression that is in the public interest.

9. The Office of the Special Rapporteur values the May 19, 2010, judgment of the Supreme Court of Justice of the Nation in the case of Miguel Ángel Di Salvo versus newspaper *El Diario La Mañana*. The judgment struck down a ruling from the National Chamber of Civil Appeals against the newspaper. The Supreme Court's civil judgment reiterated the doctrine of actual malice, according to which, "With regard to information referring to public figures, when the news item contains false or inaccurate expressions, those who consider themselves affected must demonstrate that those who made said expression or accusation knew the news item was false and acted with the knowledge that it was false or with evident recklessness with regard to its veracity."<sup>4</sup>

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<sup>3</sup> Página 12. July 5, 2010. *CFK leads tribute to Eduardo Kimel*. Available at: <http://www.pagina12.com.ar/diario/ultimas/20-148895-2010-07-05.html>; La Nación. July 5, 2010. *President blames courts for holdup in Media Law*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1281836](http://www.lanacion.com.ar/nota.asp?nota_id=1281836)

<sup>4</sup> The case began in March 2003 with a publication that gave inaccurate information on the size of properties owned by Di Salvo, a provincial senator, former mayor, and former council member. Although the newspaper corrected the information several days later, Di Salvo insisted that it had intentionally offended him. A lower court judge rejected the lawsuit; however, Chamber A of the National Civil Appeals Chamber overturned the lower court's ruling and sentenced the newspaper *La Mañana* to pay \$20,000 and publish the operative part of the sentence on the front page of its Sunday edition. Supreme Court of Justice of the Nation. Republic of Argentina. May 19, 2010. *Di Salvo, Miguel Ángel v. Diario La Mañana*

10. Likewise, the Office of the Special Rapporteur hails the June 8, 2010, judgment of the Supreme Court of Justice of the Nation in the case of Canavesi versus the newspaper *El Día*. That ruling overturned a conviction against the newspaper for publishing false information on a private individual based on information provided by a government source.<sup>5</sup>

11. The Office of the Special Rapporteur was informed of a June 15, 2010, ruling by the Supreme Court of Justice of the Nation approving the system for placement of government advertising in the Neuquén Province government, in compliance with a paradigmatic judgment handed down by the Supreme Court in September 2007 in favor of the newspaper *Río Negro*. The case originated in a writ of constitutional appeal filed by the newspaper over the suspension of official advertising by the provincial government following the newspaper's publication of articles raising questions about the Neuquén governor in December 2002.<sup>6</sup>

12. The Office of the Special Rapporteur recognizes the importance of the fact that the Congress of the Nation of Argentina took up once again in 2010 discussion of the Access to Information Act. The bill was passed by the Senate on September 30 and continues to be processed through the Chamber of Deputies.<sup>7</sup> However, it is crucial that the project move forward and the State put in place a legal framework for accessing information that hews to international standards on the subject.

13. Although Argentina does not yet have a general access law, it has seen several important judicial rulings that it is relevant to highlight. The Office of the Special Rapporteur learned that on November 2, the Adversarial Administrative Federal Chamber<sup>8</sup> upheld a ruling by the

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on damages. Case File D 281. XLIII. Available through: <http://www.csjn.gov.ar/jurisprudencia.html>. Association of Argentine Journalism Entities. May 27, 2010. *Sebastián Borda. Ruling of the Supreme Court strengthens freedom of press.* Available at: <http://www.adepa.org.ar/secciones/reportajes/nota.php?id=426>. Judicial Information Center. May 20, 2010. Supreme Court upholds protection of freedom of expression. Available at: <http://www.cij.gov.ar/imprimir.html?nid=4126>

<sup>5</sup> The majority ruling of the Supreme Court appropriates an opinion of the Office of the State's Attorney which states that, "The simple reproduction of news provided for distribution by public authorities does not, even when false, cross beyond what is the regular exercise of the right to report, as the status of the source excuses the press from having to confirm the truth of the facts, and because prior confirmation of the news under these circumstances would limit this right, establishing a true restriction on the freedom of information." Supreme Court of Justice of the Nation. June 8, 2010. *Canavesi, Eduardo Joaquín et al. v. Newspaper 'El Día' Soc. Impr. Platense SACI on damages.* Case File C. 3548. XLII. Available at: <http://www.mpf.gov.ar/biblioteca/newsletter/n223/canvesi.pdf>. Argentine Journalism Forum (FOPEA in its Spanish acronym). June 8, 2010. *Supreme Court overturns conviction against La Plata newspaper.* Available at: [http://www.fopea.org/Libertad\\_de\\_Expresion/Casos\\_registrados/Junio\\_2010/La\\_Corte\\_Suprema\\_revoco\\_una\\_condena\\_a\\_diario\\_platense](http://www.fopea.org/Libertad_de_Expresion/Casos_registrados/Junio_2010/La_Corte_Suprema_revoco_una_condena_a_diario_platense)

<sup>6</sup> In its ruling issued on June 15, 2010, the Supreme Court found that the provincial government's system for placing official advertising had "sufficient basis to satisfy the order of the final judgment." Supreme Court of Justice of the Nation. June 15, 2010. *Editorial Río Negro S.A. v. Neuquén Province on writ of constitutional protection (amparo).* Case File E. 1. XXXIX. Available through: <http://www.csjn.gov.ar/jurisprudencia.html>. Boletín Oficial. Neuquén Province. Republic of Argentina. October 29, 2010. Edition No. 3217. Decree No. 2034 dated October 22, 2010. Available at: [http://www.censuraindirecta.org/web\\_files/download/publicaciones/archivo/Decreto-2034-pdf-1627.pdf](http://www.censuraindirecta.org/web_files/download/publicaciones/archivo/Decreto-2034-pdf-1627.pdf)

<sup>7</sup> *Diario Judicial.* November 3, 2010. *Access to information will be more public (at a cost).* Available at: [http://www.diariojudicial.com/contenidos/2010/11/03/noticia\\_0002.html](http://www.diariojudicial.com/contenidos/2010/11/03/noticia_0002.html); *Clarín.* October 1, 2010. *Deputies look to fast-track law on access to public information.* Available at: [http://www.clarin.com/sociedad/Diputados-apurar-acceso-informacion-publica\\_0\\_345565569.html](http://www.clarin.com/sociedad/Diputados-apurar-acceso-informacion-publica_0_345565569.html); *Diario Judicial.* September 30, 2010. *Senate passes Access to Public Information Act.* Available at: [http://www.diariojudicial.com/contenidos/2010/09/30/noticia\\_0007.html](http://www.diariojudicial.com/contenidos/2010/09/30/noticia_0007.html)

<sup>8</sup> According to the ruling upholding the lower court judgment, "It was not argued that the requested information was personal or sensitive, for which reason making its disclosure contingent upon the prior consent of contractors is manifestly arbitrary." Adversarial Administrative Federal Chamber. November 2, 2010. *Association for Human Rights et al. v. En-SMC - on Writ of constitutional protection (Amparo) Law 16.986.* Available at: <http://www.censuraindirecta.org.ar/images/fck/file/Sentencia%20de%20C%C3%A1mara%20Secretar%C3%ADa%20de%20>

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adversarial administrative federal court ordering the Media Secretary of the Nation to turn over information requested on official advertising spending in 2009 to the organization Association for Civil Rights.<sup>9</sup>

14. Likewise, the National Institute of Social Services for Pensioners and the Retired (PAMI in its Spanish acronym) refused to hand over public information on the budget for government advertising, requested by the Association for Civil Rights in July of 2009. The agency had denied the information on the grounds that because it is a public non-state entity, it was not covered by the obligation to turn over the requested information. A ruling by the National First Instance Adversarial Administrative Federal Court on December 14, 2009, ordered the information be turned over, and an August 2010 judgment from the Federal Adversarial Administrative Chamber upheld the ruling.<sup>10</sup>

15. The Office of the Special Rapporteur observes with satisfaction that on December 3, 2009, the legislature of the Autonomous City of Buenos Aires passed Law 3391, regulating the production, content, expenditure, contracting, and distribution of government advertising for the city's entire public administration. However, Chief of City Government Mauricio Macri partially vetoed said law on January 25, 2010.<sup>11</sup>

16. The Office of the Special Rapporteur takes note of a resolution of the Office of the Public Prosecutor for Administrative Investigations of La Pampa to the effect that state television channel *Canal 3* of the La Pampa province should guarantee pluralism, ordering the station to follow international human rights standards, supervise the news area, set rules for the operations of the news management, and establish a mission, principles, and objectives for the organization. The resolution was the result of action taken by the broadcaster's employees to denounce alleged practices of manipulation, censorship, and labor persecution, as well as actions that allegedly made opposition to the sitting government invisible on the channel.<sup>12</sup>

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[OMedios%20\(511-2010\).pdf](#). Association for Civil Rights. November 8, 2010. *Ruling against the Media Secretary over official advertising upheld*. Available at: [http://www.adc.org.ar/sw\\_contenido.php?id=791](http://www.adc.org.ar/sw_contenido.php?id=791)

<sup>9</sup> Said information was requested by non-governmental organizations "Poder Ciudadano" and "Asociación por los Derechos Civiles". Argentina Actual. March 23, 2010. *National government refuses to disclose spending on official advertising*. Available at: <http://argentina-actual.com.ar/actualidad/el-gobierno-nacional-niega-la-difusion-del-gasto-publicitario-oficial/>; Clarín. September 7, 2010. *Government advertising: Up to 780 times more advertising given to friendly media*. Available at: [http://www.clarin.com/politica/gobierno/Publicidad-oficial-veces-medios-amigos\\_0\\_331166934.html](http://www.clarin.com/politica/gobierno/Publicidad-oficial-veces-medios-amigos_0_331166934.html)

<sup>10</sup> Association for Civil Rights. August 31, 2010. *Courts order PAMI and Media Secretary to turn over information on government advertising*. Available at: [http://www.censuraindirecta.org.ar/sw\\_contenido.php?id=578](http://www.censuraindirecta.org.ar/sw_contenido.php?id=578). Judicial Branch of the Nation. December 14, 2009. Case File 18.078/2009. Civil Rights Association v. EN-PAMI-(Dto 1172/03) on Writ of constitutional protection (Amparo) Law 16986. Available at: [http://www.censuraindirecta.org/web\\_files/download/publicaciones/archivo/Asociacion-por-los-Derechos-Civiles-c-1624.pdf](http://www.censuraindirecta.org/web_files/download/publicaciones/archivo/Asociacion-por-los-Derechos-Civiles-c-1624.pdf)

<sup>11</sup> The law establishes the following principles for matters related to government advertising: General interest and public utility; transparency in the contracting process; equality of distribution and plurality of media outlets; reasonable expenditures; clear, effective and efficient message. Legislature of the Autonomous City of Buenos Aires. Law 3391. December 3, 2009. Available at: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/ley3391.html> The partial veto questions, among other points, the assertion that the prohibition against "including the name, voice, image or any other element that is identifiable with public employees of the Autonomous City of Buenos Aires" limits the accountability of public servants to the people, and that specifying the purposes that should be served by government advertising unreasonably restricts "information relating to policies, programs and services that are at preliminary stages [prior to the execution phase]." Government of the Autonomous City of Buenos Aires. Veto of Act 3.391. Decree No. 122/010. BOCBA No. 3353 of February 2, 2010. Available at: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/anexos/dvi3391.html>

<sup>12</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). August 26, 2010. *Fopea hails resolution to make state television channel guarantee true and pluralist content in its news programs*. Available at: [http://www.fopea.org/Inicio/Fopea\\_saluda\\_resolucion\\_que\\_intima\\_a\\_canal\\_estatal\\_a\\_garantizar\\_el\\_contenido\\_veridico\\_y\\_pluralista\\_de\\_sus\\_noticieros](http://www.fopea.org/Inicio/Fopea_saluda_resolucion_que_intima_a_canal_estatal_a_garantizar_el_contenido_veridico_y_pluralista_de_sus_noticieros); Argentine Press Workers' Association. September 6, 2010. *La Pampa: Canal 3 required to*

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17. The Office of the Special Rapporteur highlights the progress made by the Office of the Public Prosecutor in its investigation into anonymous threats and intimidation received during the month of April by journalist Ricardo Montacuto, director of news portal *MDZ Online*. According to the information received, the Office of the Public Prosecutor has charged the mayor of Mendoza with the crime of “aggravated threats” after a court investigation found proof that the calls had originated from a telephone line assigned to him.<sup>13</sup>

18. Despite the progress reported, the Office of the Special Rapporteur has received information on serious attacks and threats against journalists. In particular, the Office of the Special Rapporteur expresses its profound concern over the murder of journalist and community leader Adams Ledesma Valenzuela, who was killed on September 4 in a lower-class neighborhood of Buenos Aires. Ledesma was a correspondent with the newspaper *Mundo Villa* and was working on the launch of television channel *Mundo TV Villa*, which was going to be carried into community homes via cable. In statements given to an Argentine newspaper in June of 2010, Ledesma announced the launch of the television channel and said he intended to do investigative journalism to “film the famous people” who came to the neighborhood to buy drugs. The Office of the Rapporteur has learned that the community work Ledesma did was closely linked to his journalism work. The Office of the Rapporteur was informed that Ledesma had received a call in the early morning hours to help a neighbor repair an electrical problem, but upon leaving his house he was murdered. Family members of the journalist were threatened by unknown individuals when they tried to help him. At the funeral, they were also warned to abandon the neighborhood.<sup>14</sup> The Office of the Special Rapporteur was informed that the State has granted police protection to the journalist’s family and ordered the arrest of a suspect.<sup>15</sup>

19. The Office of the Special Rapporteur also expresses its concern over other violent incidents against journalists that should be investigated and whose perpetrators must be punished. According to the information received, on February 9, 2010, journalist Dante Gustavo Fernández was attacked by individuals allegedly aligned with the local mayor’s office in Leonesa, Chaco province. According to the information received, Fernández, who is the director of radio station *FM*

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*democratize content*. Available at: <http://www.fatpren.org.ar/noticias/la-pampa-intiman-a-democratizar-contenidos-de-canal-3.html>

<sup>13</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). September 14, 2010. *FOPEA hails court ruling that defends freedom of expression*. Available at: [http://www.fopea.org/Inicio/Fopea\\_saluda\\_decision\\_judicial\\_que\\_defiende\\_la\\_libertad\\_de\\_expresion](http://www.fopea.org/Inicio/Fopea_saluda_decision_judicial_que_defiende_la_libertad_de_expresion); Perfil.com. September 14, 2010. *Mendoza mayor accused of threatening journalist*. Available at: [http://www.perfil.com/contenidos/2010/09/14/noticia\\_0019.html](http://www.perfil.com/contenidos/2010/09/14/noticia_0019.html)

<sup>14</sup> Office of the Special Rapporteur for Freedom of Expression. September 10, 2010. Press Release No. R91/10. *The Office of the Special Rapporteur Condemns Murder of Journalist in Argentina*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=817&IID=1>. Committee to Protect Journalists. September 10, 2010. *Argentina: Journalist stabbed to death in Buenos Aires*. Available at: <http://cpj.org/es/2010/09/argentina-periodista-muere-apunalado-en-buenos-air.php#more>; Argentine Journalism Forum (FOPEA in its Spanish acronym). September 6, 2010. *Fopea condemns murder of Villa 31 journalist and social leader and calls for urgent security measures, as his family is still being threatened*. Available at: [http://www.fopea.org/Comunicados/2010/Fopea\\_condena\\_el\\_asesinato\\_del\\_periodista\\_y\\_dirigente\\_social\\_de\\_la\\_Villa\\_31\\_y\\_pi\\_de\\_urgentes\\_medidas\\_de\\_seguridad\\_ya\\_que\\_la\\_familia\\_sigue\\_siendo\\_amenazada](http://www.fopea.org/Comunicados/2010/Fopea_condena_el_asesinato_del_periodista_y_dirigente_social_de_la_Villa_31_y_pi_de_urgentes_medidas_de_seguridad_ya_que_la_familia_sigue_siendo_amenazada); Página 12. September 5, 2010. *Death in the early morning hours*. Available at: <http://www.pagina12.com.ar/diario/elpais/1-152635-2010-09-05.html>

<sup>15</sup> Perfil.com. September 12, 2010. *IACHR calls for crime against journalist from 31 to be investigated*. Available at: <http://www.diarioperfil.com.ar/edimp/0503/articulo.php?art=24240&ed=0503>; Online-911. October 4, 2010. *Demands made to Cristina and Macri one month after the crime against Ledesma*. Available at: <http://911-online.com.ar/leer.php?s=1&id=10750&t=A-un-mes-del-crimen-de-Ledesma-reclaman-ante-Cristina-y-Macri>. NP Agencia de Noticias Paraguayas. October 12, 2010. *Paraguayan ordered arrested for crime against Bolivian journalist*. Available at: <http://www.noticiasparaguayas.com/uninot.php?esc=2691>

*Frontera* where he hosts the program “La Mañana de Todos,” was beaten while he tried to cover a neighborhood protest demanding that aerial fumigation of rice plantations using agricultural chemicals be halted.<sup>16</sup>

20. According to the information received, on August 24, a fire set intentionally destroyed the vehicle of journalist Carlos Villanueva, giving his son burns and causing damage to his home and to FM radio station *Cerrillos 90.9*, which operated from the same property in San José de los Cerrillos, Salta province. The perpetrators also stole broadcasting equipment, which left the broadcaster off the air.<sup>17</sup> The Office of the Special Rapporteur was informed that on November 26, Carlos Villanueva was attacked again when four unidentified individuals fired three times at his house.<sup>18</sup>

21. The Office of the Special Rapporteur received information on an arson attack suffered by journalist Adela Gómez, in Caleta Olivia, Santa Cruz, on March 28. Unknown individuals sprayed her automobile with flammable liquid and set it on fire. Gómez is a reporter with broadcaster *Radio 21* in that area. Prior to the attack she had reported on alleged corruption among local authorities.<sup>19</sup>

22. The Office of the Special Rapporteur was also informed of several attacks against journalists by environmental demonstrators in the Catamarca province. According to the information received, on December 19, 2009, a group of individuals verbally attacked cameraman Carlos Romero and reporter Nicolás Ziggio, with TV Cable Andalgalá and the newspaper *El Ancasti*, forcing them to leave and preventing them from doing their jobs. On February 15, participants in an anti-mining protest struck Ziggio and the journalist Lucas Olaz, throwing them to the floor and taking the video camera that had recorded the incident. The Office of the Public Prosecutor investigated the facts and in August put an individual suspected of participating in the attack and committing the theft on trial. Also, on April 7, demonstrators once again attacked cameraman Carlos Romero with blows. The attack took place in Andalgalá, in the north of Catamarca province.<sup>20</sup>

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<sup>16</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). February 17, 2010. *Fopea repudiates aggression against Journalist in La Leonesa, Chaco*. Available at: [http://www.fopea.org/Inicio/Fopea\\_repudia\\_agresion\\_a\\_periodista\\_en\\_la\\_Leonesa\\_Chaco](http://www.fopea.org/Inicio/Fopea_repudia_agresion_a_periodista_en_la_Leonesa_Chaco). Reporters without Borders. February 25, 2010. *Attacks against press in regions under the yoke of industrial toxins*. Available at: <http://www.rsfor.org/Ataques-a-la-prensa-en-regiones.html>

<sup>17</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). August 25, 2010. *Argentina: Press worker wounded and Salta broadcaster silenced in attack*. Available at: <http://www.periodistas-es.org/correo-al-editor/argentina-trabajador-de-prensa-herido-y-emisora-de-salta-silenciada-en-un-atentado>. La Hora de Salta. August 24, 2010. *Attack against Cerrillos radio station repudiated, safeguards sought*. Available at: [http://www.lahoradesalta.com.ar/index.php?option=com\\_content&view=article&id=12988:repudian-atentado-contra-una-radio-de-cerrillos-y-exigen-garantias&catid=44:cerrillos&Itemid=62](http://www.lahoradesalta.com.ar/index.php?option=com_content&view=article&id=12988:repudian-atentado-contra-una-radio-de-cerrillos-y-exigen-garantias&catid=44:cerrillos&Itemid=62)

<sup>18</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). November 29, 2010. *Shots fired at Radio FM Cerrillos in Salta*. Available at: [http://www.ifex.org/argentina/2010/11/29/fm\\_cerrillos\\_attack/](http://www.ifex.org/argentina/2010/11/29/fm_cerrillos_attack/)

<sup>19</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). April 1, 2010. *Journalist's car set on fire*. Available at: [http://www.ifex.org/argentina/2010/04/01/gomez\\_car\\_fire/](http://www.ifex.org/argentina/2010/04/01/gomez_car_fire/); Perfil.com. April 6, 2010. *Adela Gómez: "In Santa Cruz, you can't do journalism that offers criticism."* Available at: [http://www.perfil.com/contenidos/2010/04/05/noticia\\_0021.html](http://www.perfil.com/contenidos/2010/04/05/noticia_0021.html); Online-911. March 29, 2010. *Santa Cruz: Journalist's car burned in Caleta Olivia*. Available at: <http://www.online-911.com/leer.php?s=1&id=5823>

<sup>20</sup> Latin American Federation of Social Communication Workers (FELATRACS in its Spanish acronym). April 20, 2010. *Report 1047. Environmentalists attack journalists*. Available at: [http://www.felatrac.net/portal/index.php?option=com\\_content&view=article&id=264:reporte-1047&catid=15:ola&Itemid=46](http://www.felatrac.net/portal/index.php?option=com_content&view=article&id=264:reporte-1047&catid=15:ola&Itemid=46); F.M. Platinum 96.5 Andalgalá. May 27, 2010. *Local Police reports: The escalation of environmental group protests*. Available at: <http://fmplatinum965andalgala.blogspot.com/2010/05/locales-policiales-la-escalada-en-la.html>; El Ancasti. August 25, 2010. *Case against environmentalist brought to trial*. Available at:

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23. According to the information received, on April 28, a member of the City Council of the city of Rosario de Lerma, in the province of Salta, physically attacked Jaime Barrera, a reporter with the newspaper *El Tribuno*. The attack was a reaction to one of the journalist's articles that was critical of the council members' work.<sup>21</sup>

24. Also, the Office of the Special Rapporteur was informed that on July 2, Daniel Villamea, a journalist with Canal 8, and cameraman Aníbal Romero were attacked by a farmer and his son in Oberá, Misiones province, as they were doing research into alleged mistreatment of individuals who were living on the farmer's property. The communicators suffered blows and various abrasions.<sup>22</sup>

25. The Office of the Special Rapporteur received information on a series of attacks against different radio stations. The Office of the Special Rapporteur was informed that on January 9, 2010, the antenna of radio station *Radio Arco Iris* in the Loncupué area of the Neuquén province was damaged by unknown individuals.<sup>23</sup> On July 2, unknown individuals knocked down the antenna of radio station *Amplitud 770*, in the Buenos Aires province, by cutting the cables that held it up.<sup>24</sup> On July 27, an intentional fire damaged the facilities of radio station *FM Belgrano*, in Junín, Buenos Aires province.<sup>25</sup> In another incident, on November 18, the broadcasting equipment of community radio station *FM Nueva Generación* in San Martín, Buenos Aires, was stolen, taking the broadcaster off the air. The perpetrators did not take any other electronic equipment.<sup>26</sup> Finally, in the early morning hours of November 30, unknown individuals broke into the broadcasting facilities of *Radio Nacional San Martín de los Andes*, in Neuquén, and destroyed equipment necessary for broadcasting

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<http://www.elancasti.com.ar/nota.php?id=78543>; El Esquíú. September 8, 2010. *Five environmentalists brought to trial*. Available at: <http://www.elesquiú.com/notas/2010/9/8/policiales-175322.asp>

<sup>21</sup> El Tribuno. April 29, 2010. *Cowardly attack on journalist of daily El Tribuno*. Available at: <http://webcache.googleusercontent.com/search?q=cache:-Oy8Gini-FcJ:www.tribuno.info/salta/diario/2010/04/29/salta/cobarde-agresion-contra-un-periodista-del-diario-el-tribuno+sajama+barrera+salta+golpe&cd=1&hl=en&ct=clnk&gl=us>. Noticias Iruya.com. April 29, 2010. *President of Rosario de Lerma City Council attacks journalist*. Available at: <http://noticias.iruya.com/sociedad/sucesos/2593-concejal-agrede-periodista-salta.html>

<sup>22</sup> Misiones Líder. July 4, 2010. *Journalist and cameraman from Oberá media outlet denounce attacks by farmers*. Available at: <http://www.misioneslider.com.ar/?modulo=extendido&id=8048>; InforMate Digital. July 4, 2010. *FoPreMi (Misiones Press and Communication Workers Forum) and InforMate Digital reject attacks against Oberá journalists*. Available at: <http://informatodigital.com.ar/ampliar3.php?id=38438&PHPESSID=a99ddaa36387d1af55b0f713d0eedaa6>

<sup>23</sup> The attack took place in the context of a dispute between mining companies and environmental groups back by the broadcaster. Argentine Journalism Forum (FOPEA in its Spanish acronym). January 9, 2010. *Neuquén radio station FM Arco Iris attacked again*. Available at: [http://www.fopea.org/Inicio/Atacan\\_nuevamente\\_a\\_la\\_radio\\_neuquina\\_FM\\_Arco\\_Iris](http://www.fopea.org/Inicio/Atacan_nuevamente_a_la_radio_neuquina_FM_Arco_Iris). Reporters without Borders. February 25, 2010. *Attacks against press in regions under the yoke of industrial toxins*. Available at: <http://www.rsf.org/Ataques-a-la-prensa-en-regiones.html>

<sup>24</sup> Radio Continental. July 5, 2010. *Accusations that radio station AM 770 stopped broadcasting due to an attack*. Available at: <http://www.continental.com.ar/nota.aspx?id=1322783>; La Noticia 1.com. July 7, 2010. *Media law: Fight with Radio Cooperativa over AM 770 frequency*. Available at: <http://www.lanoticia1.com/noticia/ley-de-medios-polemica-por-la-frecuencia-de-radio-am-770-307106550.html>

<sup>25</sup> Diario Democracia. July 28, 2010. *Fire at FM Belgrano considered attack*. Available at: <http://www.diariodemocracia.com/diario/articulo.php?idNoticia=21492>; Hoy en Día Chacabuco. July 28, 2010. *Attack on FM Belgrano in Junín*. Available at: <http://www.hoyendiachacabuco.com.ar/?p=7913>

<sup>26</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym). November 23, 2010. *UTPBA rejects attack on FM Nueva Generación*. Available at: <http://legislaciones.item.org.uy/index?q=node/1966>. Argentine Journalism Forum (FOPEA in its Spanish acronym). December 3, 2010. *Attacks take Radio Nacional San Martín de los Andes and urban zone community station off the air*. Available at: [http://www.fopea.org/Inicio/Atentados\\_dejan\\_fuera\\_del\\_aire\\_a\\_Radio\\_Nacional\\_San\\_Martin\\_de\\_los\\_Andes\\_y\\_a\\_una\\_emisora\\_comunitaria\\_del\\_conurbano](http://www.fopea.org/Inicio/Atentados_dejan_fuera_del_aire_a_Radio_Nacional_San_Martin_de_los_Andes_y_a_una_emisora_comunitaria_del_conurbano)

the signal. The individuals did not steal anything else. According to the information received, the attack took place several days after the broadcaster had put a new transmitter in place that amplified the signal's strength.<sup>27</sup>

26. The Office of the Special Rapporteur was informed of the April 20 police detention of Gustavo Torres, a photographer with newspaper *El Diario de la Región* in the El Chaco province. Torres was arrested as he was covering a story related to the police. According to the information received, the authorities also ordered him to erase the images he had captured. Union leaders had also intimidated Alcides Quiroga, a photographer with newspaper *La Prensa* in Santa Cruz, forcing him to erase images of a protest being held on April 16 in Caleta Olivia.<sup>28</sup>

27. The Office of the Special Rapporteur also received information on alleged police harassment of José Piedra, a journalist with radio station *FM Chaco*, in the city of Tartagal, Salta province. Piedra was harassed over information that he distributed on a crime committed in that area involving the local police. Piedra denounced that on May 12, a group of men - including a police officer - broke down the door of his house and terrified his family. Afterwards he was followed and intimidated by police vehicles and officers.<sup>29</sup>

28. The Office of the Special Rapporteur was informed of telephoned threats and intimidation received on April 6 by Juan Federico, a journalist with newspaper *La Voz del Interior*; Tomás Méndez, host of the program ADN, on *Canal 10*, in Córdoba; and Méndez' producer, Guillermo Bahr, after they publicized investigations related to drug dealing in the province of Córdoba.<sup>30</sup>

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

30. The Office of the Special Rapporteur received information on statements and incidents indicating the intense polarization between government officials and their supporters on one hand and a media group and its journalists on the other. According to the information received,

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<sup>27</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). December 3, 2010. *Attacks take Radio Nacional San Martín de los Andes and urban zone community station off the air*. Available at: [http://www.fopea.org/Inicio/Atentados\\_dejan\\_fuera\\_del\\_aire\\_a\\_Radio\\_Nacional\\_San\\_Martin\\_de\\_los\\_Andes\\_y\\_a\\_una\\_emisora\\_comunitaria\\_del\\_conurbano](http://www.fopea.org/Inicio/Atentados_dejan_fuera_del_aire_a_Radio_Nacional_San_Martin_de_los_Andes_y_a_una_emisora_comunitaria_del_conurbano); Telam. December 2, 2010. *Neuquén: Radio Nacional equipment destroyed; director says it "was an attack."* Available at: <http://www.telam.com.ar/vernota.php?tipo=N&idPub=205226&id=389595&dis=1&sec=1>

<sup>28</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). April 29, 2010. *Photographers threatened, harassed in Chaco and Santa Cruz*. Available at: [http://www.ifex.org/argentina/2010/04/29/photographers\\_harassed/](http://www.ifex.org/argentina/2010/04/29/photographers_harassed/); Diario Chaco. April 21, 2010. *Vallejos concerned over episode with photographer*. Available at: <http://www.diariochaco.com/noticia.php?numero=55283>; Organization of Independent Journalists Santa Cruz. April 16, 2010. *Photographer forced by unemployed UOCRA members to erase photographs of protest*. Available at: <http://www.opisantacruz.com.ar/home/2010/04/16/un-fotografo-fue-obligado-por-los-desocupados-de-la-uocra-a-borrar-las-fotos-del-piquete/8783>

<sup>29</sup> Nuevo Diario de Salta. May 13, 2010. *José Piedra: "They're trying to intimidate me"*. Available at: [http://www.nuevodiariodesalta.com.ar/diario/archivo/noticias\\_v.asp?32193](http://www.nuevodiariodesalta.com.ar/diario/archivo/noticias_v.asp?32193); Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). May 14, 2010. *Journalist harassed, threatened in Tartagal*. Available at: [http://www.ifex.org/argentina/2010/05/14/piedra\\_threatened/](http://www.ifex.org/argentina/2010/05/14/piedra_threatened/)

<sup>30</sup> International Freedom of Expression Exchange (IFEX). April 12, 2010. *FOPEA condemns threats made towards journalists in Córdoba*. Available at: [http://www.ifex.org/argentina/2010/04/12/journalists\\_threatened/](http://www.ifex.org/argentina/2010/04/12/journalists_threatened/); La Nación.com. April 9, 2010. *Three journalists from Córdoba threatened for researching drug dealing*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1252414](http://www.lanacion.com.ar/nota.asp?nota_id=1252414)

in the city of Buenos Aires and other Argentine cities, anonymous posters appeared with messages insulting and stigmatizing journalists who work for the Clarín Group for the fact that they work there.<sup>31</sup> Also, in the context of the public conflict between the government and this media group, on October 8, Amado Boudou, the Economy Minister, said during an interview in Washington, D.C., that two journalists with the newspapers La Nación and Clarín were “like the ones who helped the Nazis clean out the gas chambers.” According to the information received, Boudou apologized to the Argentinean Delegation of Israeli Associations (DAIA in its Spanish acronym) four days later for having used an “inappropriate metaphor,” however he said he would not apologize to the journalists because they maintain “anti-Argentine attitudes” by “constantly publishing lies” in the newspapers where they work.<sup>32</sup> These statements took place within an environment of marked tension between certain government authorities and the aforementioned media group.

31. Likewise, according to the information received, the President of the El Soberbio City Council, Juan Carlos Pereira, used particularly harsh terms to refer to the magazine *Apta Para Todo Público* and admitted he would try to charge the publication with tax violations due to its editorial stance.<sup>33</sup>

32. The existence of a context of extreme confrontation in which defamatory and stigmatizing remarks are constant generates a climate that prevents reasonable and plural deliberation, especially with regard to political matters. Although it is true that the existence of tension between the press and governments is a normal phenomenon that derives from the natural function of the press and is seen in many States, it is also true that acute polarization closes down space for debate and helps neither the authorities nor the press to better carry out the role that corresponds to each in a vigorous, deliberative and open democracy. In these cases, given its national and international responsibilities, it is the State’s job to contribute to generating a climate of greater tolerance and respect for outside ideas, including when those ideas are offensive or upsetting. As the IACHR has reiterated, the State must in all cases abstain from using any of its competences to reward friendly media and punish those who dissent or criticize its actions. In this sense, the authorities must respond to criticism that it finds without justification and information that it considers incorrect generating the conditions for more and better debate and information rather than with measures that could inhibit and affect the vigor of the deliberation. As established in Principle 6 of the Declaration of Principles passed by the IACHR, journalistic activities must be guided by ethical conduct, which should in no case be imposed by the States.

33. During 2010, the Office of the Special Rapporteur received information on two measures taken by the Argentine government with regard to companies whose shareholders include

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<sup>31</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). April 16, 2010. *FOPEA repudiates the appearance of posters against journalists.* Available at: [http://www.fopea.org/Comunicados/2010/Fopea\\_repudia\\_la\\_aparicion\\_de\\_afiches\\_contra\\_periodistas](http://www.fopea.org/Comunicados/2010/Fopea_repudia_la_aparicion_de_afiches_contra_periodistas). Clarin.com. April 23, 2010. *Government tries to distance itself from anonymous posters attacking the press.* Available at: <http://edant.clarin.com/diario/2010/04/23/um/m-02186373.htm>

<sup>32</sup> Argentine Journalism Forum (FOPEA in its Spanish acronym). October 11, 2010. *Fopea repudiates statements of minister Boudou.* Available at: [http://www.fopea.org/Comunicados/2010/Fopea\\_repudia\\_las\\_declaraciones\\_del\\_Ministro\\_Boudou](http://www.fopea.org/Comunicados/2010/Fopea_repudia_las_declaraciones_del_Ministro_Boudou); Association of Argentine Journalism Entities (ADEPA in its Spanish acronym). October 18, 2010. *“Insults dynamite dialogue bridges” ADEPA warned.* Available at: <http://www.adepa.org.ar/secciones/ldp/nota.php?id=534>. Clarín.com. October 13, 2010. *Boudou apologizes before the DAIA, but attacks press again.* Available at: [http://www.clarin.com/politica/gobierno/Boudou-DAIA-volvio-atacar-prensa\\_0\\_352764731.html](http://www.clarin.com/politica/gobierno/Boudou-DAIA-volvio-atacar-prensa_0_352764731.html)

<sup>33</sup> When Fopea sought comment with regard to Valentina Lovell’s complaints, the president of the El Soberbio City Council, Juan Carlos Pereira, said, “I don’t give a damn what the newspapers say. We’re the ones in charge around here because that’s what the people who voted for us with 70% said.” Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). October 8, 2010. *Officials threaten, harass, and take advertising away from journalists.* Available at: [http://www.ifex.org/argentina/2010/10/14/funcionarios\\_quiton\\_pauta/es/](http://www.ifex.org/argentina/2010/10/14/funcionarios_quiton_pauta/es/)

Clarín Media group. Specifically, the Office of the Special Rapporteur has closely followed the lawsuits filed by the national government against the boards of directors of newspapers *Clarín* and *La Nación* in connection with the purchase of the newspaper production company *Papel Prensa*.<sup>34</sup> The Office of the Special Rapporteur has also closely followed the administrative proceeding started against the Internet service provider company *Fibertel*<sup>35</sup> property of Grupo Clarín. The first measure mentioned - that is, with regard to *Papel Prensa* - is related to the distribution of newsprint. The second - with regard to *Fibertel* - refers to the offering of Internet services to a significant number of users in Argentina. For these reasons and because of the context explained above, the aforementioned governmental measures merit special attention from the Office of the Rapporteur. The two matters referred to are currently being examined by the courts<sup>36</sup> and the regulation of newsprint is being debated in the legislature.<sup>37</sup> The Office of the Special Rapporteur hopes that given their notable importance for the exercise of freedom of expression, the matters mentioned herein are resolved in keeping with international standards on the subject.

34. In particular, as far as the regulation of newsprint, the matter is of such significance for the inter-American system that Article 13 of the American Convention itself 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

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<sup>34</sup> Cf. Decree 1210/2010 dated August 30, 2010. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/170000-174999/171211/norma.htm>. On September 13, 2010, the Office of the Special Rapporteur requested information from the Argentine State on the content of a report prepared by the government on the process of acquiring *Papel Prensa*; the authorities to whom the report would be submitted; and the measures that the administration would adopt with regard to *Papel Prensa* S.A. On October 12, 2010, the State responded to the Office of the Special Rapporteur through sending the Special Report of the Human Rights Secretariat in response to the communication from the IACHR’s Office of the Special Rapporteur for Freedom of Expression. Received on October 12, 2010, on file at the Office of the Special Rapporteur.

<sup>35</sup> Communications Secretariat. Resolution 100/2010 dated August 19, 2010. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/170000-174999/170737/norma.htm>. On September 13, 2010, the Office of the Special Rapporteur requested information from the Argentine State on current legislation, the proceeding carried out to make the decision, the proportionality of the decision made, and, especially, the existence of studies that ensure that the significant number of users who connect to the Internet through the company *Fibertel* would have an opportunity to access the service under adequate conditions. On October 12, 2010, the State responded to the Office of the Special Rapporteur through sending the Special Report of the Human Rights Secretariat in response to the communication from the IACHR’s Office of the Special Rapporteur for Freedom of Expression. Received on October 12, 2010, on file at the Office of the Special Rapporteur.

<sup>36</sup> As far as the decision to order the liquidation of *Fibertel*, the Office of the Special Rapporteur was informed that both the company and a number of users have turned to the courts to challenge it. As of the publication date of this report, several precautionary measures have been ordered by different judges in different jurisdictions in the country - for example, provincial tribunals in Buenos Aires and Salta - issued injunctions and suspended the implementation of Resolution 100/2010 of the Communications Secretariat. However, other courts - for example, in the City of Buenos Aires and in Córdoba - rejected similar requests. See: *La Nación*. November 20, 2010. *Fibertel: Two more conflicting court rulings*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1326389](http://www.lanacion.com.ar/nota.asp?nota_id=1326389); *La Nación*. November 13, 2010. *Court suspends closure of Fibertel in Salta*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1324213](http://www.lanacion.com.ar/nota.asp?nota_id=1324213); *La Mañana de Córdoba*. December 2, 2010. *Court reversal for Fibertel*. Available at: <http://www.lmcordoba.com.ar/nota.php?ni=39432>; *Télam*. November 13, 2010. *Córdoba courts reject amparo presented by Fibertel user*. Available at: <http://www.telam.com.ar/vernota.php?tipo=N&idPub=203399&id=386352&dis=1&sec=2>

<sup>37</sup> This bill was submitted to the legislature on September 14, 2010 and was passed by the Chamber of Deputies’ Commerce Commission (Bill 0024-PE-2010. Declares the production, sale and distribution of cellulose paste and paper for newspapers in the public interest. Available at: [http://www1.hcdn.gov.ar/cb/proyectosd.asp?condictytram=true&whichpage=1&fromForm=1&id\\_proy=119376](http://www1.hcdn.gov.ar/cb/proyectosd.asp?condictytram=true&whichpage=1&fromForm=1&id_proy=119376)). According to the bill passed by commission, the production of paper for newspapers would be considered “in the public interest,” an “equitative final price” is established for all domestic newspapers, and a regulatory body is created under the Executive Branch. Also, the bill mandates that no company that holds more than a 10% share in a print or audio-visual media company can own a company that produces newsprint. As of the publication deadline of this report, the recommendation by the Commission has not been addressed by the Chamber of Deputies.

circulation of ideas and opinions.” In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its uninhibited production. This regime must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. As of the publication deadline of this report, the Assembly had still not made a decision on the matter. For the aforementioned reasons, the Office of the Special Rapporteur is following the issue closely.

35. Finally, the Office of the Special Rapporteur notes that after the Communications Secretariat issued Resolution 100/2010 ordering the liquidation of Fibertel and moving its users to other Internet service providers, the National Communications Commission began broadcasting an official advertising spot of a little more than two and a half minutes informing people of the State’s position on the case and informing users that they had “every right to demand what they [paid] while the company was operating illegally.” This announcement was shown mainly during broadcasts of first division football matches, whose broadcast rights have been in the hands of the State since August 2009. On November 30, 2010, a judge ruled to grant a precautionary measure ordering various television channels broadcasting the first division football matches to refrain from showing the above mentioned government advertisement.<sup>38</sup>

## 2. Bahamas

36. The Office of the Special Rapporteur observes that in January of 2010, the Utilities Regulation & Competition Authority<sup>39</sup> (URCA) of the Bahamas issued the Interim Code of Practice for Political Broadcast<sup>40</sup> which regulates the content of political advertising, the time the advertising can be aired, and the people who can air it, referring in particular to general elections. According to the regulation, each political party will have the right to acquire only six slots of 15 minutes each on the radio and another six slots of 15 minutes each on television channels for announcements and political advertising. The laws regulating expression during elections can establish rules designed to ensure greater equality in the public debate. However, this law appears to go further than strictly necessary to comply with the legitimate ends it seeks. In this sense, it is important that the law be interpreted in a way that is compatible with inter-American standards and guarantees the public debate.

37. The information received indicates that in April 2010, URCA issued an Interim Code of Practice for Broadcasting Content<sup>41</sup> that regulates the duration and content of radio and television programs under the editorial responsibility of the broadcaster. Some of the provisions of this law prohibit the broadcasting of: “[...] any malicious, scandalous or defamatory matter; any obscene,

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<sup>38</sup> Enciclomedios. December 1, 2010. *Courts prohibit State from using the Fibretel brand in television announcements intended to discredit the company*. Available at: <http://www.enciclomedios.com/node/12573>; El Cronista Comercial. December 1, 2010. *TV channels ordered to abstain from broadcasting Fibertel*. In file at the Special Rapporteur office; Clarín.com. August 29, 2010. *Announcement on government channel during football match*. Available at: [http://www.clarin.com/politica/aviso-canal-oficial-hora-futbol\\_0\\_325767547.html](http://www.clarin.com/politica/aviso-canal-oficial-hora-futbol_0_325767547.html).; <http://www.youtube.com/watch?v=qQNIYkRUOYE> Cfr.

<sup>39</sup> Utilities Regulation & Competition Authority

<sup>40</sup> Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. January 19, 2010. Available at: <http://www.urcabahamas.bs/download/016347400.pdf>

<sup>41</sup> Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. April 9, 2010. Available at: <http://www.urcabahamas.bs/download/028415700.pdf>

indecent or profane matter; [...] any description of violence which offends against good taste, decency, or public feeling [...].”<sup>42</sup>

38. The Office of the Rapporteur understands that it is the State’s duty to regulate the electromagnetic spectrum and protect society’s valid interests. However, vague or imprecise restrictions can be problematic and lead to interpretations that unduly affect freedom of expression. In this respect, the Office has indicated that, “It is crucial that the legal framework provide citizens with legal certainty and set forth in the clearest and most precise terms possible the conditions for exercising the right and the limitations to which radio broadcasting is subject.”<sup>43</sup> Consequently, and in keeping with the Bahamas’ common law legal system, the Office of the Rapporteur invites the State in the application of these provisions to determine the content of the clauses cited in such a way that it is clarified to be in conformity with inter-American standards on the subject of freedom of expression.

### 3. Belize

39. The Office of the Special Rapporteur received information that on December 7, 2010, the Government of Belize had temporarily “suspended normal relations” with the news station “Channel 5” after an accusation by the Government that invoked a violation of the terms and conditions of its television broadcasting license. The accusation argued that Channel 5 was the only local television station that refused to broadcast the state television program “Belmopan Weekly,” in violation of Clause 19 of the Belize Broadcasting and Television Act. This clause ordered license holders to “provide to the government one hour per week of broadcasting time, free of charge, for broadcasting public service messages and programs produced by or channeled through the Ministry of Information.”<sup>44</sup>

40. According to the information received, the Government of Belize banned all representatives of its ministries and departments from granting individual official interviews or making any appearance on the television station until it was prepared to abide by State rules.<sup>45</sup>

41. The Office of the Special Rapporteur recognizes that States have the authority to regulate telecommunications and impose sanctions for failure to comply with its regulations. Likewise, the media is obliged to comply with legal regulations established by the State over its licenses. However, both the regulations and the sanctions stipulated by the State must hew to standards of proportionality and reasonableness. Sanctions cannot be imposed that are disproportionate or not established by law. States must at all times seek to ensure that their regulations meet the inter-American standards that apply to the subject.

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<sup>42</sup> Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. April 9, 2010. Available at: <http://www.urcabahamas.bs/download/028415700.pdf>

<sup>43</sup> IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Broadcasting, p. 417, para. 18. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

<sup>44</sup> The Guardian. December 9, 2010. *Government suspends normal relations with Channel 5 and Great Belize Productions*. Available at: <http://www.guardian.bz/all-politics/2655-government-suspends-normal-relations-with-channel-5-and-great-belize-productions->

<sup>45</sup> The Guardian. December 9, 2010. *Government suspends normal relations with Channel 5 and Great Belize Productions*. Available at: <http://www.guardian.bz/all-politics/2655-government-suspends-normal-relations-with-channel-5-and-great-belize-productions->; Amandala Online. December 10, 2010. *GOB boycotts Channel 5!*. Available at: <http://www.amandala.com.bz/index.php?id=10651>; Jamaica Observer. December 10, 2010. *Belize gov’t muzzles TV station*. Available at: [http://www.jamaicaobserver.com/news/Belize-gov-t-muzzles-TV-station\\_8223513](http://www.jamaicaobserver.com/news/Belize-gov-t-muzzles-TV-station_8223513)

#### 4. Bolivia

42. The Office of the Special Rapporteur was informed of a ruling by the Supreme Court of Justice, Supreme Ruling No. 125/2010, dated April 1. The ruling ordered the declassification of all existing archives in the Second Department of the Chiefs of Staff dating between June 1979 and December 1980, as well as entry and exit logs of the Army Chief of Staff from June 10-20, 1980.<sup>46</sup> The order of the Supreme Court was issued in the framework of an investigation to learn the whereabouts of individuals who were forcibly disappeared during the military dictatorship. The Office of the Rapporteur also received information indicating Defense Minister Rubén Saavedra has announced that the Armed Forces are willing to comply with the court order.<sup>47</sup> The Office of the Special Rapporteur recognizes the crucial importance of these decisions for the protection of the right to access to information and, in turn, for the satisfaction of the rights of victims of human rights violations. For this reason, it urges the Armed Forces to comply with the court ruling, as Armed Forces Commander in Chief General Ramiro de La Fuente said it would on July 17.<sup>48</sup>

43. As far as challenges, the Office of the Special Rapporteur was informed of several incidents in which state officials had assaulted media workers. On March 29, presidential bodyguards allegedly rebuked Gabriela Flores, a photographer with the newspaper *Opinión*, and forced her to erase a photo she had taken of security officials.<sup>49</sup> On April 4, uniformed and plainclothes police officers allegedly beat Hilton Coca, a cameraman with *Red Uno*, and Mauricio Egüez, a cameraman with the *PAT* network, when they attempted to cover the arrest of a former candidate in the Santa Cruz de la Sierra municipal elections.<sup>50</sup> The Office of the Special Rapporteur was also informed that on June 18, the Police had attacked journalists trying to report on a session of the Sucre Municipal Council in which it was decided to suspend the local mayor.<sup>51</sup> Also, according to information received by the Office of the Rapporteur, on July 9 a group of individuals who were being evicted beat a group of journalists and damaged the equipment and journalistic materials of television stations *Univalle* and *ATB*. The media workers have filed a complaint on the incident with the Police.<sup>52</sup>

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<sup>46</sup> First Criminal Court. Supreme Court of Justice of Bolivia. Supreme Ruling No. 125, April 1, 2010. Available at: <http://suprema.poderjudicial.gob.bo/>

<sup>47</sup> Reporters without Borders. May 31, 2010. *Access to information to get boost from declassification of dictatorship's files* Available at: <http://en.rsf.org/bolivia-army-should-allow-access-to-18-02-2010,36489.html>; Agencia Francesa de Prensa (AFP). May 31, 2010. *Bolivian armed forces agree to turn over files on those disappeared during dictatorship*. Available at: [http://noticias.latam.msn.com/xl/latinoamerica/articulo\\_afp.aspx?cp-documentid=24429404](http://noticias.latam.msn.com/xl/latinoamerica/articulo_afp.aspx?cp-documentid=24429404)

<sup>48</sup> La Patria. July 17, 2010. *Armed Forces will declassify files from the dictatorship*. Available at: <http://www.lapatriaenlinea.com/?nota=34655>

<sup>49</sup> Instituto Prensa y Sociedad (IPYS). March 31, 2010. *Presidential security guards block coverage of photojournalist* Available at: <http://www.ipys.org/alertas/atentado.php?id=2245>; Asociación Nacional de Prensa. No date. *Bolivia: Evo Morales' security guards assault a photojournalist from the newspaper Opinión*. Available at: [http://red.anpbolivia.com/index.php?option=com\\_content&task=view&id=91&Itemid=1](http://red.anpbolivia.com/index.php?option=com_content&task=view&id=91&Itemid=1)

<sup>50</sup> Instituto Prensa y Sociedad (IPYS). April 6, 2010. *Police attack journalists*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2248>; Asociación Nacional de Prensa. No date. *Police attack journalists again*. Available at: [http://red.anpbolivia.com/index.php?option=com\\_content&task=view&id=92&Itemid=2](http://red.anpbolivia.com/index.php?option=com_content&task=view&id=92&Itemid=2)

<sup>51</sup> Correo del Sur. June 19, 2010. *Clashes result in arrests and some 50 victims in Sucre*. Available at: <http://www.correodelsur.com/2010/0619/z.php?nota=29>; Asociación Nacional de Prensa. No date. *Police attack journalists and keep them from doing their jobs in Sucre*. Available at: [http://red.anpbolivia.com/index.php?option=com\\_content&task=view&id=111&Itemid=28](http://red.anpbolivia.com/index.php?option=com_content&task=view&id=111&Itemid=28)

<sup>52</sup> Asociación Nacional de la Prensa. July 9, 2010. *Bolivia: A mob beats, wounds a journalist and steals two cameras in Cochabamba*. Available at: [http://red.anpbolivia.com/index.php?option=com\\_content&task=view&id=113&Itemid=2](http://red.anpbolivia.com/index.php?option=com_content&task=view&id=113&Itemid=2); International Freedom of Expression Exchange (IFEX). July 20, 2010. *Journalists assaulted by mob during police operation* Available at: [http://www.ifex.org/bolivia/2010/07/20/journalists\\_assaulted/](http://www.ifex.org/bolivia/2010/07/20/journalists_assaulted/)

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

45. On October 8, 2010, the Bolivian Congress passed the Law against Racism and All Forms of Discrimination. The law contains several provisions related to communicators and media outlets. Article 16 of the law provides that media outlets that “authorize and publish racist and discriminatory ideas shall be subject to monetary sanctions and suspension of their operating licenses, in accordance with regulations.”<sup>53</sup> For its part, Article 23 of the law proposes changes to the Penal Code according to which those who “distribute” racist or discriminatory ideas will be subject to a punishment of one to five years in prison.<sup>54</sup>

46. As the Office of the Rapporteur has indicated in a letter to the State of Bolivia, “racism and discrimination are a cultural phenomenon and the product of long historical processes of exclusion and domination. A report compiled by the United Nations on racial discrimination concluded that ‘the principle causes of racism and racial discrimination and apartheid are profoundly rooted in the historical past and determined by a variety of economic, political, social and cultural factors.’<sup>55</sup> In effect, and as this office has expressed in a letter to the State, “The role of the media as channelers of information, ideas, and opinions is fundamental for developing narratives that value diversity and reject racism and arbitrary discrimination.”<sup>56</sup>

47. The Office of the Special Rapporteur has expressed its concern over the spread of racist speech through media outlets. In this sense, in its 2009 Annual Report, the Office of the Special Rapporteur recalled that the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people concluded that expression with racist content is “frequent in some mass media outlets” in Bolivia.<sup>57</sup> In this sense, the Office of the Special Rapporteur condemned messages with “racist content that could incite discrimination or violence, particularly when they come from social communicators or journalists, since they help form public opinion.”<sup>58</sup> The Office of the Special Rapporteur examined different communication and training measures taken by Bolivian authorities toward refuting prejudicial speech that stigmatized

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<sup>53</sup> Law 45, October 8, 2010. *Against Racism and All Forms of Discrimination*. Available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/138670>

<sup>54</sup> Law 45, October 8, 2010. *Against Racism and All Forms of Discrimination*. Available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/138670>. See “Article 23 (...), Article 281 *quarter*. (...) An individual who for any reason distributes ideas based in racial superiority or racial hatred, or who promotes and/or justifies racism or any kind of discrimination for the reasons described in Articles 281 bis and 281 ter, or who incites violence toward or persecution of individuals or groups based on racist or discriminatory motives will be punished with a prison term of between one and five years.”

<sup>55</sup> United Nations, report on the seminar, “*Political, Historical, Economic, Social and Cultural Factors Contributing to Racism, Racial Discrimination and Apartheid*,” Geneva, December 1990.

<sup>56</sup> Letter sent by the Office of the Special Rapporteur to the Plurinational State of Bolivia on November 11, 2010 (on file at the Office of the Special Rapporteur).

<sup>57</sup> IACHR Monitoring Report - *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, para. 138. Available at: <http://www.cidh.oas.org/annualrep/2009sp/Cap.V.Indice.htm>; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Rodolfo Stavenhagen. Preliminary note on the mission to Bolivia, November 25 - December 7, 2007. A/HRC/6/15/Add.2. December 11, 2007, pp. 2-3.

<sup>58</sup> IACHR Annual Report 2009. *Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 60.

indigenous communities and their systems for administering justice, as recognized in the Constitution of the Plurinational State of Bolivia.<sup>59</sup>

48. The Office of the Special Rapporteur notes that the Law against Racism and All Forms of Discrimination includes mechanisms for prevention and education as valuable instruments for refuting racist speech and for encouraging the development of a society based on the principles of diversity, pluralism, and tolerance. These measures, which the law promotes principally in Article 6, appear to be more effective than the purely coercive ones that seek to punish those who express certain speech. The educational measures strike at the cultural root of the problem: in the struggle against discrimination, it is more effective for fair words to be heard promoting equal respect for all persons without distinction of race, sex, or religion, as opposed to silencing the iniquitous words that promote racism and discrimination. Likewise, it has been demonstrated that the criminal prosecution of those who express themselves in that way can cause those individuals to be seen as victims rather than victimizers, which could end up radicalizing the groups to which they belong.<sup>60</sup>

49. Article 13.5 of the American Convention establishes the limits for prohibiting racist and discriminatory speech. In effect, in order to avoid using the right to punish to silence uncomfortable or simply offensive ideas, it is necessary that they constitute “advocacy of hatred” intended not simply to express an idea, but to incite violence. In this way, the Convention prohibits the so-called “crime of opinion.”

50. In light of this provision, the offensiveness of speech in and of itself is not sufficient reason to restrict it. Speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less. This is the logic of the American Convention, as expressed by the Inter-American Court in the case of *The Last Temptation of Christ*, where it held that freedom of expression protects not just “the information or ideas that are favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no ‘democratic society’ can exist.”<sup>61</sup> In order to enable a vigorous debate it is necessary to guarantee greater diversity and pluralism in access to the media.<sup>62</sup>

51. It is worth recalling that any limit to freedom of expression, especially those that could include serious sanctions such as prison sentences or the closure of a media outlet, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must include sanctions that are proportional. Also, several reports issued by this office, as well as judgments of the IACHR and the Inter-American Court of Human Rights, have held that every limitation on freedom of expression must be established

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<sup>59</sup> IACHR. Annual Report 2009. *Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 60.

<sup>60</sup> In this respect, see Agnès Callamard, *Striking the Right Balance*, available at: [www.article19.org/pdfs/publications/hate-speech-reflections.pdf](http://www.article19.org/pdfs/publications/hate-speech-reflections.pdf)

<sup>61</sup> Inter-American Court, *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment dated February 5, 2001. Series C No. 73, para. 69, citing the European Court of Human Rights.

<sup>62</sup> See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, para 24-37. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

beforehand in a law and established explicitly, strictly, precisely and clearly<sup>63</sup>, both formally and in practice.<sup>64</sup> This means that the law's text should clearly establish the grounds for subsequent liability to which the exercise of freedom of expression could be subjected. Vague or ambiguous legal norms may affect protected speech insofar as they allow their interpreters discretion to determine the scope of the rights which may be affected by the norm.

52. From this point of view, the aforementioned provisions of the Law against Racism and All Forms of Discrimination are worrying to the Office of the Special Rapporteur, for which reason the Office requested precise information from the State. Specifically, articles 16 and 23 of the Law seem to punish the mere dissemination of messages with racist content without requiring these messages to be linked to the "inciting of violence," as Article 13.5 of the American Convention requires, and without complying with the requirements mentioned in the above paragraphs regarding the balance and proportionality of sanctions, among others.

53. In its response to the Office of the Special Rapporteur's request for information, the Plurinational State of Bolivia said that the "criminal categorization takes into account aspects of concurrence regarding apologies for racial hatred and incitement to violence or persecution based on racist motives," and that in this sense, the "Law against Racism and All Forms of Discrimination joins the directives provided for in the International Convention on the Elimination of All Forms of Racial Discrimination [...] as well as the provisions expressly established in Section 5 of Article 13 of the American Convention on Human Rights."<sup>65</sup> The State also expressed that "as far as speech that contains expressions that 'shock,' 'upset' or 'offend' the State or a part of society [...] Bolivian law has given expression to institutions designed for effective participation and social control of public administration at all levels of the State, including public sector or mixed companies, as well as private sector companies that manage State resources."<sup>66</sup> The State recognized that "Bolivian law does not establish general safeguards for live broadcasting or reporting on news events that require reporting on issues of discrimination."<sup>67</sup> However, it indicated that the law was in the process of having its specific regulations established to clarify these matters and that "in the hypothetical case that basic freedoms and guarantees are infringed upon or harmed [due to the application of the Law], the individual affected - whether through the processing of an administrative or criminal order - has at his or her disposition the defense remedies provided for by

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<sup>63</sup> Inter-American Court, *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, November 13, 1985. Series A No. 5, paras. 39-40; Inter-American Court, *Case of Palamara Iribarne v. Chile*. Judgment dated November 22, 2005. Series C No. 135. para. 79; Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. para. 120; Inter-American Court, *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 117; IACHR. *Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" laws with the American Convention on Human Rights*. Title IV. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the case of *Ricardo Canese v. Paraguay*. Transcripts available at: Inter-American Court, *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. a).

<sup>64</sup> In this respect, the definition of the Inter-American Court in its Advisory Opinion OC-6/86 is applicable. It states that the term "laws" does not mean any legal provision, but rather general legal provisions established by the legislative body that is constitutionally provided for and democratically elected, according to the procedures established in the Constitution, hewing to the common good.

<sup>65</sup> Plurinational State of Bolivia, Communication OEA-CIDH-228-10, "*State Statement on the Reach of the Law Against Racism and All Forms of Discrimination*", December 28, 2010, ps. 3-4.

<sup>66</sup> Plurinational State of Bolivia, Communication OEA-CIDH-228-10, "*State Statement on the Reach of the Law Against Racism and All Forms of Discrimination*", December 28, 2010, p. 6.

<sup>67</sup> Plurinational State of Bolivia, Communication OEA-CIDH-228-10, "*State Statement on the Reach of the Law Against Racism and All Forms of Discrimination*", December 28, 2010, p. 10.

the Political Constitution of the State, including the writ of constitutional protection (*amparo*).<sup>68</sup> Finally, the State noted that “the Bolivian Government is establishing the regulations of the [...] Law against Racism and All Forms of Discrimination” and that “it has consulted broadly with various social sectors, professionals, academics, representatives of public universities and social organizations, civil society organizations, human rights organizations, the People’s Ombudsman’s Office, and others in meetings held throughout the country for the preparation of the regulations.”<sup>69</sup> As of this report’s publication deadline, the regulations have not yet been published.

54. On July 6, 2010, the Plurinational Constitutional Tribunal Law was promulgated. Among other things, the law establishes that the members of this judicial body will be chosen by popular election. In Article 19, the law establishes that the Plurinational Legislative Assembly will, by a vote of two thirds of members present, carry out the “pre-selection of twenty-eight candidates, of which half will be women, and submit their nominations to the Plurinational Electoral Body.<sup>70</sup>” Article 20 provides that the Plurinational Electoral Body will proceed to organize a “national” election and establishes that, “The candidates will not be allowed to campaign directly or through third parties in favor of their own candidacy, under penalty of disqualification. The Electoral Body will be the only entity responsible for advertising the merits of the candidates.<sup>71</sup>”

55. As the Office of the Special Rapporteur expressed during the public hearing held on October 25, 2010, this provision is concerning.<sup>72</sup> Effectively, although it is true that the State has good reasons to try to establish rules to ensure electoral equality, it is also true that the right to freedom of thought and expression plays a fundamental role in electoral processes, since it is through their exercise that citizens can access the information vital for learning the different proposals of the candidates seeking public office. As the Inter-American Court has explained, the right to freedom of expression has a special function in this context: (i) as an essential tool for forming the public opinion of the electorate that adds to the contest between the two participants and provides instruments for analyzing the proposals of each, thus providing greater transparency and supervision of the future officials and their administration; and (ii) fostering the formation of a clear collective will in the vote.<sup>73</sup>

56. Effectively, in the context of an election, freedom of expression is linked directly to political rights and their exercise, with both kinds of rights reciprocally strengthening each other.<sup>74</sup> Healthy democratic debate requires the existence of a greater degree of circulation of ideas, opinions, and information with regard to the candidates, their aptitudes, and abilities during the period preceding an election, mainly via the media. It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, disputing and confronting

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<sup>68</sup> Plurinational State of Bolivia, Communication OEA-CIDH-228-10, “*State Statement on the Reach of the Law Against Racism and All Forms of Discrimination*”, December 28, 2010, p. 12.

<sup>69</sup> Plurinational State of Bolivia, Communication OEA-CIDH-228-10, “*State Statement on the Reach of the Law Against Racism and All Forms of Discrimination*”, December 28, 2010, ps. 10-11.

<sup>70</sup> Plurinational Constitutional Tribunal Law. Article 19. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=1918>

<sup>71</sup> Plurinational Constitutional Tribunal Law. Article 20. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=1918>

<sup>72</sup> Cf. Hearing on the situation of freedom of expression in Bolivia, held at the IACHR on October 25, 2010, during the 140th Period of Sessions.

<sup>73</sup> Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. paras. 88-90.

<sup>74</sup> Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 90.

their proposals, ideas and opinions so that the electorate can form an opinion on how to vote.<sup>75</sup> As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of imperative social importance.<sup>76</sup>

57. For these reasons, the permissible justifications for the State to restrict expression during an election, such as the need to guarantee fairness and pluralism, must be weighed with the assets and values stated above in a way that none of the rights involved is disproportionately sacrificed.

58. The UN, OSCE, OAS, and ACHPR (African Commission on Human and Peoples' Rights) rapporteurs for freedom of expression stated as much in their 2009 Joint Declaration. On May 15, 2009, the four rapporteurs issued the "Joint Declaration on Media and Elections." In the Joint Declaration, the rapporteurs highlighted the importance of open and vigorous debate and of access to information and electoral processes. Among its other points, the Joint Declaration urges States to: (i) implement measures for creating an environment that guarantees the plurality of the media; (ii) strike down laws that unduly restrict freedom of expression and rules that place blame on the media for distributing illicit statements made directly by political parties or candidates and that the media outlets could not have prevented; and (iii) establish clear obligations for public media outlets, including obligations to: provide sufficient information to the electorate on all aspects indispensable for participating in the election; respect strict rules ensuring impartiality and informational balance; and ensure equal access to all candidates.<sup>77</sup>

59. It has not escaped the notice of the Office of the Special Rapporteur that the role of the magistrates of the Constitutional Tribunal is significantly different from that of elected officials in other branches of power, and that the law being commented on here is a profound institutional innovation, not only within the Plurinational State of Bolivia but in comparison to the vast majority of countries in the hemisphere. Effectively, and given the guarantees of independence which judges must enjoy, it is possible to establish restrictions on their capacity to "campaign," for example by banning them from receiving monetary contributions of any kind. However, by concentrating the distribution of information in the hands of the Electoral Body, the law seems to be going further than strictly necessary to comply with the legitimate ends it seeks. From this point of view, should the law not be modified, it is important that in the process of defining its regulations and implementing the law, it be interpreted in a way that is compatible with the American Convention; that is, in a way that guarantees public debate on the merits and conditions of the candidates for the Constitutional Tribunal.

## 5. Brazil

60. The Office of the Special Rapporteur takes note of the progress made in the investigation of the attack on the newspaper *Correio Popular*, which took place on January 21, 2009, in Campinas, São Paulo. According to the information received, on February 1, 2010, Waderson Nilto de Paula Lima, also known as "Andinho," stated to law officials that he organized

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<sup>75</sup> Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 90.

<sup>76</sup> IACHR. Arguments before the Inter-American Court in the case of *Ricardo Canese v. Paraguay*. Transcripts available at: Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. B).

<sup>77</sup> Joint Statement on Media and Elections of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information. May 15, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=745&IID=2>

the attack on the Brazilian newspaper from prison. In the attack, a group of individuals threw two grenades at the newspaper headquarters. Fortunately, the grenades did not explode. According to the information received, Wanderson Nilton de Paula Lima stated that the attack was retaliation against the newspaper for having published a report on his crimes and a story about his marriage in prison.<sup>78</sup>

61. The Office of the Special Rapporteur was also informed that on March 27, 2010, three military police officers and a businessman were convicted of the murder of journalist Luiz Carlos Barbon Filho, a murder which took place in May 2007 in Porto Ferreira, São Paulo. The information adds that another of the accused, a police officer indicated as the one who fired the shots that killed the journalist, has not yet been brought to trial. Barbon was 37 when he was murdered and had reported on cases related to police corruption and child prostitution.<sup>79</sup>

62. The Office of the Special Rapporteur expresses its satisfaction over the April 13, 2010, passage of a bill on the right to access to information by the Lower Chamber of the Brazilian Congress. In order for the bill to become law, it must be passed by both chambers of the Brazilian Congress and signed by the President. According to the information received, on June 16, 2010, the Senate's Constitution, Justice and Citizenry Committee passed the bill, but its passage by two other Senate commissions is still pending.<sup>80</sup> The Office of the Special Rapporteur urges Brazilian State authorities to support this important legislative reform.

63. On May 12, 2010, President Luiz Inácio Lula da Silva issued Decree 7.177, which modifies several provisions of the National Human Rights Plan that included regulation of the media. Among other things, the changes would eliminate the part of the aforementioned plan that proposed penalties like warnings, fines, programming suspensions, and closure for radio and television broadcasters that violate basic human rights and conditioned the renewal of public concessions based on compliance with these guarantees.<sup>81</sup>

64. According to information received, on July 16, 2010, a regional federal court convicted a federal governor and condemned him to pay an independent journalist from Editora Abril R\$50,000 (about US\$28,000) for moral damages. In 1999, the journalist was physically attacked by soldiers with the Military Police in Rio de Janeiro. The information received indicates that the

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<sup>78</sup> Instituto Prensa y Sociedad (IPYS)/IFEX. February 12, 2010. *Suspect confesses to involvement in attempted grenade attack on newspaper*. Available at: [http://www.ifex.org/brazil/2010/02/12/andinho\\_confesses/](http://www.ifex.org/brazil/2010/02/12/andinho_confesses/); Folha de São Paulo. February 2, 2010. *Andinho confessa ser o mandante de ataque a jornal de Campinas (SP)*. Available at: <http://www1.folha.uol.com.br/folha/brazil/ult96u688456.shtml>

<sup>79</sup> Committee to Protect Journalists (CPJ). March 30, 2010. *CPJ hails convictions in 2007 murder of Brazilian journalist*. Available at: <http://cpj.org/2010/03/cpj-hails-convictions-in-2007-murder-of-brazilian.php>; Reporters without Borders. March 29, 2010. *Three military policemen get long jail terms for killing journalist in 2007*. Available at: <http://en.rsf.org/brazil-three-military-policemen-get-along-29-03-2010,36852.html>; Knight Center for Journalism. March 29, 2010. *Four given prison terms for the murder of journalist in Brazil*. Available at: <http://knightcenter.utexas.edu/archive/blog/?q=en/node/6796>

<sup>80</sup> Article 19/ International Freedom of Expression Exchange (IFEX). June 23, 2010. *Access to information bill passed by Senate Commission*. Available at: [http://www.ifex.org/brazil/2010/06/28/senate\\_commission\\_passes\\_bill/](http://www.ifex.org/brazil/2010/06/28/senate_commission_passes_bill/). Article 19/IFEX. April 14, 2010. *Congress passes right to information bill*. Available at: [http://www.ifex.org/brazil/2010/04/14/congress\\_passes\\_bill/](http://www.ifex.org/brazil/2010/04/14/congress_passes_bill/)

<sup>81</sup> Decree No. 7.177, May 12, 2010. Available at: <http://www.jusbrasil.com.br/noticias/2186875/decreto-7177-altera-anexo-do-decreto-que-aprovou-o-programa-nacional-de-direitos-humanos>. Knight Center for Journalism in the Americas. May 14, 2010. *President of Brazil eliminates controversial articles on the media in human rights program*. Available at: <http://knightcenter.utexas.edu/es/blog/presidente-de-brasil-suprime-articulos-polemicos-sobre-medios-en-programa-de-derechos-humanos>

attack on the journalist took place after she took photos of an attack by those same police officers on another journalist.<sup>82</sup>

65. According to the information received, on August 4, 2010, the Second Chamber of Private Law of the Court of São Paulo ordered the newspaper *Debate*, located in Santa Cruz do Rio Pardo, São Paulo state, to suspend the payment of damages worth R\$593,000 (approximately US\$335,000). A judge had sued the newspaper in 1995 in response to an article saying that his house and phone line were being paid for by the local mayor's office.<sup>83</sup>

66. On August 23, 2010, the Office of the Federal Public Prosecutor issued a communique recognizing media outlets' right to keep their sources confidential. According to the information received, the Office of the Federal Public Prosecutor opened an investigation to determine how the media in the state of Mato Grosso do Sul had access to documents demonstrating the use of a system for recording video during criminal interrogations in the Campo Grande federal maximum-security prison. In the communique, the Office of the Federal Public Prosecutor defended the legitimacy of the investigation but indicated that it would not force the media to reveal sources considered confidential.<sup>84</sup>

67. According to information received, on August 26, 2010, a justice with the Supreme Federal Tribunal of Brazil suspended the application of a provision of Law 9.504/97 prohibiting at election time "the use of altered photos, photomontages, or other audio or video resources to in any way degrade or ridicule a candidate, party or coalition."<sup>85</sup> Justice Ayres Britto found that the rule "seeks to inhibit a peculiar style of journalism", which utilizes these resources as "methods of critical journalism."<sup>86</sup> The rule had generated protests from journalists and humorists, and the Associação Brasileira de Emissoras de Rádio e Televisão (ABERT) filed a writ of unconstitutionality against the rule that ended in its suspension.<sup>87</sup>

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<sup>82</sup> Knight Center for Journalism in the Americas. July 16, 2010. *Brazilian courts convict governor and award damages to journalist attacked 10 years ago*. Available at: <http://knightcenter.utexas.edu/blog/?q=pt-br/node/1433>. Estadão. July 16, 2010. *União terá de indenizar repórter agredida há dez anos*. Available at: <http://www.estadao.com.br/noticias/geral,uniao-tera-de-indenizar-reporter-agredida-ha-dez-anos,581875,0.htm>

<sup>83</sup> Knight Center for Journalism in the Americas. August 5, 2010. *Court suspends payment of damages that threatened to close the newspaper Debate in Brazil*. Available at: <http://knightcenter.utexas.edu/es/blog/tribunal-suspende-indemnizacion-que-amenazaba-cierre-de-diario-debate-en-brasil>. Estadão. August 4, 2010. *TJ suspende dívida que fecharia jornal no interior de SP*. Available at: <http://www.estadao.com.br/noticias/geral,tj-suspende-divida-que-fecharia-jornal-no-interior-de-sp,590468,0.htm>

<sup>84</sup> Federal Public Ministry of the State of Mato Grosso do Sul. August 23, 2010. *Nota sobre garantias do segredo de justiça e da liberdade de imprensa*. Available at: <http://www.prms.mpf.gov.br/servicos/sala-de-imprensa/noticias/2010/08/mpf-divulga-nota-sobre-garantias-do-segredo-de>. Knight Center for Journalism in the Americas. August 24, 2010. *District attorney in Brazil won't force press to reveal source of leaks about eavesdropping at prison*. Available at: <http://knightcenter.utexas.edu/blog/district-attorney-brazil-wont-force-press-reveal-source-leaks-about-eavesdropping-prison>

<sup>85</sup> Supreme Federal Tribunal. Judgment dated August 26, 2010. Justice Ayres Britto. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=159758>. Reporters without Borders. August 27, 2010. *O Supremo Tribunal Federal suspende a proibição do direito à caricatura durante a campanha eleitoral*. Available at: <http://es.rsf.org/brasil-o-direito-a-caricatura-durante-a-25-08-2010,38205.html>

<sup>86</sup> Supreme Federal Tribunal. Judgment dated August 26, 2010. Justice Ayres Britto. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=159758>

<sup>87</sup> BBC World. August 23, 2010. *Brazilian humorists against electoral campaign with no jokes*. Available at: [http://www.bbc.co.uk/mundo/america\\_latina/2010/08/100822\\_brasil\\_elecciones\\_protesta\\_lav.shtml](http://www.bbc.co.uk/mundo/america_latina/2010/08/100822_brasil_elecciones_protesta_lav.shtml). ABERT. August 27, 2010. *Britto deruba censura a humor político*. Available at: <http://www.abert.org.br/site/index.php?Clipping-2010/1o-edicao-britto-derruba-censura-a-humor-politico.html>

68. The Office of the Special Rapporteur received information indicating that on December 14, 2009, José Givondaldo Viera, owner and director of radio station *Bezerros FM*, was murdered in the city of Bezerros in the State of Pernambuco on leaving the broadcaster's offices. According to the information received, an individual approached Viera's car and fired several times, wounding him in the head and chest. The information adds that Viera died shortly thereafter in a nearby hospital. Several local media reported that the journalist had been having problems with some local politicians.<sup>88</sup>

69. On October 18, 2010, radio journalist Francisco Gomes de Medeiros was murdered in the city of Caicó. The Office of the Rapporteur was informed that an individual fired on him several times in front of his house. The journalist survived and was taken to a local hospital, where he died. A day after the crime the Police arrested an individual who admitted to committing the murder in retaliation for news items published by Gomes that were used by a court to send him to prison in 2007. The Office of the Special Rapporteur was informed that Gomes had worked as news director for *Rádio Caicó*, contributed to the newspaper *Tribuna do Norte*, and kept a personal blog where he published his own research and reports. Gomes had recently denounced a case of vote buying in exchange for drugs, allegedly carried out by Caicó politicians during Brazil's first round of general elections. As a result of this publication, Gomes received death threats.<sup>89</sup>

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

71. The Office of the Special Rapporteur received information indicating that on February 8, 2010, the studio of radio station *Nova Coari*, in Coari in the state of Amazonas, was completely destroyed by a fire set intentionally, according to reports from local police and in the media. The information adds that no one was injured. Aguinaldo Medes, the radio station's owner and director, said he did not have any evidence pointing to the perpetrators, but said that every time they do a report critical of the local mayor's office, the radio station is attacked. The radio station was subject to similar attacks in August and September of 2009.<sup>90</sup>

72. On April 14, 2010, television host and radio producer Handson Laércio was shot while in Bacabal, Maranhão state. The report indicates that the attack took place outside his house. The journalist was wounded in the hand when he tried to protect himself from the shot. According

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<sup>88</sup> Committee to Protect Journalists (CPJ). December 15, 2009. *Media owner shot to death in northeastern Brazil*. Available at: <http://cpj.org/2009/12/media-owner-shot-to-death-in-northeastern-brazil.php#more>. Reporters without Borders. December 17, 2009. *O dono de rádio e jornal e diretor de um programa morre baleado em Pernambuco*. Available at: <http://www.rsf.org/O-dono-de-radio-e-jornal-e.html>

<sup>89</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2010. Press Release R108/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=824&IID=1>; Inter American Press Association (IAPA). October 20, 2010. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4463&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4463&idioma=sp); *Tribuna do Norte*. October 21, 2010. *Promotor oferece delação premiada*. Available at: <http://tribunadonorte.com.br/noticia/promotor-oferece-delacao-premiada/163039>

<sup>90</sup> Associação Brasileira de Jornalismo Investigativo (ABRAJI). February 12, 2010. *Radio station set on fire*. Available at: [http://www.abraji.org.br/?id=90&id\\_noticia=1108](http://www.abraji.org.br/?id=90&id_noticia=1108). Article 19. February 12, 2010. *Brazil: Arson Attack Destroys Radio's Broadcasting Studio*. Available at: <http://www.article19.org/pdfs/press/brazil-arson-attack-destroys-radio-s-broadcasting-studio.pdf>

to the information received, Laércio hosts a program broadcast by TV Mearim, as well as a police program on a local radio station. He had received daily threats.<sup>91</sup>

73. On May 20, 2010, journalist Gilvan Luiz Pereira, founder and editor of the newspaper *Sem Nome* in Juazeiro do Norte, Ceará, was kidnapped and tortured by four men. According to the information received, he was held for about 20 minutes until the car in which they were holding him was intercepted by police. The kidnappers escaped, leaving the journalist tied, injured and unconscious. The information indicates that Pereira had published articles accusing the local mayor of irregularities and fraud. According to the information received, in June 2010, three individuals were accused of committing the crime, two of them local police officers who worked as the mayor's bodyguards.<sup>92</sup>

74. In May 2010, Renato Santana, a journalist with the newspaper *Tribuna de Santos*, was threatened and intimidated by public prosecutors in the state of São Paulo. According to the information received, the journalist had published a series of articles on death squads in the municipality of Santos, São Paulo.<sup>93</sup>

75. On July 10, 2010, journalist Rodrigo Santos, with Radio Cidade in Brusque, Santa Catarina state, was attacked by Delfim Peixoto Neto - an advisor with the Catarina Football Federation - and the son of the president of the federation. According to the information received, Santos had published information on his blog stating that Peixoto Neto was improperly interfering with the selection of referees. The information received indicates Santos lost consciousness as a consequence of the attack and was taken to the hospital.<sup>94</sup>

76. On July 20, 2010, a homemade bomb was thrown at the headquarters of RPC TV, in Curitiba, Paraná state. According to the information received, a masked individual threw a PVC pipe filled with gunpowder onto the company's lawn. The bomb hit a wall and caused a fire, but according to the information received, no one was injured.<sup>95</sup>

77. On August 8, 2010, journalist Bruno de Lima was attacked and threatened with death in the city of Cajazeiras, Paraíba. According to the journalist's complaint, the perpetrator of the incident was a Military Police officer. The attack and threat took place in a mall in the

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<sup>91</sup> Associação Brasileira de Jornalismo Investigativo (ABRAJI). April 22, 2010. *Journalist is assaulted in the Northeast of Brazil*. Available at: [http://www.abraji.org.br/?id=90&id\\_noticia=1153](http://www.abraji.org.br/?id=90&id_noticia=1153). Reporters without Borders/ International Freedom of Expression Exchange (IFEX). April 22, 2010. *Television presenter is targeted in gunfire attack*. Available at: [http://www.ifex.org/brazil/2010/04/22/tv\\_presenter\\_attacked/](http://www.ifex.org/brazil/2010/04/22/tv_presenter_attacked/)

<sup>92</sup> Associação Brasileira de Jornalismo Investigativo (ABRAJI)/IFEX. May 28, 2010. *Kidnapped journalist accuses politicians of being behind attack*. Available at: [http://www.ifex.org/brazil/2010/05/28/pereira\\_kidnap\\_torture/](http://www.ifex.org/brazil/2010/05/28/pereira_kidnap_torture/). Knight Center for Journalism in the Americas. June 10, 2010. *Police accuse three men of torturing editor in northeast Brazil*. Available at: <http://knightcenter.utexas.edu/archive/blog/?q=en/node/7449>

<sup>93</sup> Knight Center for Journalism in the Americas. May 25, 2010. *Reporter who exposed death squad in Brazil receives threats*. Available at: <http://knightcenter.utexas.edu/blog/reporter-who-exposed-death-squad-brazil-receives-threats>. Jornalistas de São Paulo. May 21, 2010. *Jornalista que denunciou grupos de extermínio na Baixada Santista sofre ameaças*. Available at: [http://www.sjsp.org.br/index.php?option=com\\_content&task=view&id=2809&Itemid=1](http://www.sjsp.org.br/index.php?option=com_content&task=view&id=2809&Itemid=1)

<sup>94</sup> Knight Center for Journalism in the Americas. July 13, 2010. *Radialista é agredido por assessor da Federação Catarinense de Futebol*. Available at: <http://knightcenter.utexas.edu/pt-br/blog/radialista-e-agredido-por-assessor-da-federacao-catarinense-de-futebol>. Inter-American Press Association (IAPA). November 5-9, 2010. *Information by country: Brazil*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=26&inford=772&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&inford=772&idioma=us)

<sup>95</sup> Knight Center for Journalism in the Americas. July 21, 2010. *Homemade bomb thrown at regional television station in Brazil*. Available at: <http://knightcenter.utexas.edu/es/blog/arrojan-bomba-casera-televisora-regional-en-brasil>. Gazeta do Povo. July 21, 2010. *Sede da RPCTV em Curitiba é alvo de bomba casera*. Available at: <http://www.gazetadopovo.com.br/vidaecidadania/conteudo.phtml?tl=1&id=1027246&tit=Sede-da-RPCTV-em-Curitiba-e-alvo-de-bomba-casera>

aforementioned city and were allegedly carried out in retaliation for reports by the journalist on a pedophilia case.<sup>96</sup>

78. In August of 2010, journalist Stuart Junior, author of the blog *Jornal Regional MA*, was attacked during an event commemorating the reelection of the mayor of São Mateus, Maranhão. According to the information received, the mayor's security guards beat the journalist. He was aided by members of the public attending the ceremony.<sup>97</sup>

79. On November 1, 2010, the printing press of the newspaper *Correio Mariliense*, located inland in the State of São Paulo, was attacked by unknown individuals. According to the information received, the attackers took the main computer, disabling the newspaper's printing press and causing a short circuit in the electrical system. This caused fires in several parts of the building, causing an estimated US\$30,000 in damages. No one was injured in the attack. The information received indicates that the newspaper suspects that the attack was intended to disrupt its work, as it later had to be printed on an external press.<sup>98</sup>

80. Principle 9 states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

81. According to information received, in May of 2010, a computer technician confessed to having sent fake e-mails under the name of the journalist Chico Otavio - with the newspaper *O Globo* - at the request of former judge Roberto Wider. According to the information received, Octavio had revealed in his articles that Wider was involved in a system for selling judgments. The revelations caused Wider to resign. The information received indicates that the technician said that the purpose of the e-mails was to hurt the journalist's credibility.<sup>99</sup>

82. In July 2010, Vania Costa, a journalist with the newspaper *O Mato Grosso*, denounced that she was being followed ever since she started investigating an alleged misappropriation of funds in the city of Sinop, Mato Grosso state. According to the journalist, she was approached three times by supposed police officers who demanded access to the documents

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<sup>96</sup> Portal Imprensa. August 9, 2010. *Jornalista da PB diz ter sofrido ameaças de morte por matéria sobre pedofilia*. Available at: [http://portalimprensa.uol.com.br/portal/ultimas\\_noticias/2010/08/09/imprensa37382.shtml](http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/08/09/imprensa37382.shtml); Knight Center for Journalism in the Americas. August 11, 2010. *Brazilian reporters denounce aggression during election period*. Available at: <http://knightcenter.utexas.edu/blog/brazilian-reporters-denounce-aggression-during-election-period>; Paraiba Urgente. August 9, 2010. *Em Cajazeiras, Secretário desmente ameaça de morte a Bruno e vai acionar Justiça*. Available at: [http://www.paraibaurgente.com.br/detalhe\\_noticia.php?id=1170](http://www.paraibaurgente.com.br/detalhe_noticia.php?id=1170)

<sup>97</sup> Portal Imprensa. August 9, 2010. *Jornalista teria sido agredido por prefeito da cidade de São Mateus (MA)*. Available at: [http://portalimprensa.uol.com.br/portal/ultimas\\_noticias/2010/08/09/imprensa37367.shtml](http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/08/09/imprensa37367.shtml). Knight Center for Journalism in the Americas. August 11, 2010. *Brazilian reporters denounce aggression during election period*. Available at: <http://knightcenter.utexas.edu/blog/brazilian-reporters-denounce-aggression-during-election-period>

<sup>98</sup> Instituto Prensa y Sociedad (IPYS)/IFEX. November 15, 2010. *Attack against newspaper printing press*. Available at: [http://www.ifex.org/brazil/2010/11/15/correio\\_mariliensil/es/](http://www.ifex.org/brazil/2010/11/15/correio_mariliensil/es/); Knight Center for Journalism in the Americas. November 4, 2010. *Jornal Correio Mariliense é vítima de ataque no interior de São Paulo*. Available at: <http://knightcenter.utexas.edu/pt-br/blog/jornal-correio-mariliense-e-vitima-de-ataque-no-interior-de-sao-paulo>

<sup>99</sup> Knight Center for Journalism in the Americas. May 21, 2010. *Journalists denounce campaign of defamation against Brazilian reporter*. Available at: <http://knightcenter.utexas.edu/blog/?q=pt-br/node/549>. Associação Brasileira de Jornalismo Investigativo (ABRAJI) May 10, 2010. *Abraji acompanha com apreensão investigações sobre envio de e-mails falsos em nome de jornalista de "O Globo"*. Available at: [http://www.abraji.org.br/?id=90&id\\_noticia=1186](http://www.abraji.org.br/?id=90&id_noticia=1186)

that were part of her investigation. After being chased in her car by three subjects on motorcycles, one of them pulled a gun in order to force her to stop.<sup>100</sup>

83. In August of 2010, Márcia Pache, a reporter with *TV Centro Oeste* in the state of Mato Grosso, denounced intimidation by city council member Lourivaldo Rodrigues de Moraes, in the city Pontes e Lacerda, Mato Grosso. On June 28, 2010, the council member physically attacked the reporter as she tried to interview him about a legal proceeding against him. The attack was recorded and later disseminated.<sup>101</sup>

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

85. According to the information received in May of 2010, a civil court banned *Diário do Grande ABC* from publishing articles related to the controversial decision of the mayor of São Bernardo do Campo, São Paulo state, to throw away student desks that were supposedly in good condition. According to the information received, after an article was published in the newspaper on the issue in February of 2010, the mayor turned to the courts to demand his right of reply, reparations for moral damages, and the aforementioned measure of censorship.<sup>102</sup>

86. According to information received in September of 2010, a judge's order in Mato Grosso state banned Grupo Gazeta de Comunicação - the largest media group in the state - from circulating news items saying that Carlos Abicali, a candidate for senate, was in favor of making abortion legal. The candidate had complained to the electoral tribunals that he felt he had been harmed by news items that revealed that, when he was a federal deputy, he had requested an analysis of a bill to legalize abortion.<sup>103</sup> The Office of the Special Rapporteur requested information regarding these incidents from the Brazilian state. In its response, the State provided information that the lawsuit had been archived on September 27, 2010.<sup>104</sup>

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<sup>100</sup> Knight Center for Journalism in the Americas. July 29, 2010. *Journalist investigating corruption in Brazil denounces harassment*. Available at: <http://knightcenter.utexas.edu/es/blog/periodista-que-investiga-corrupcion-en-brasil-denuncia-persecucion>. Folha de São Paulo. July 23, 2010. *Jornalista de MT diz que é perseguida e registra boletim de ocorrência*. Available at: <http://www1.folha.uol.com.br/poder/771905-jornalista-de-mt-diz-que-e-perseguida-e-registra-boletim-de-ocorrencia.shtml>

<sup>101</sup> Knight Center for Journalism in the Americas. August 7, 2008. *Brazilian reporter denounces council member for new incidents of intimidation*. Available at: <http://knightcenter.utexas.edu/es/blog/reportera-brasilena-denuncia-concejal-por-nuevas-intimidaciones-0>. UNESCO. June 29, 2010. *UNESCO condemns violence against journalist from Mato Grosso*. Available at: <http://www.unesco.org/en/brasilia/single-view/news/unesco-condemns-violence-against-journalist-from-mato-grosso/back/9679/cHash/Oec636a3dc/>

<sup>102</sup> Knight Center for Journalism in the Americas. May 14, 2010. *Brazilian newspapers denounce prior censorship of São Paulo newspaper*. Available at: <http://knightcenter.utexas.edu/es/node/476>. Associação Brasileira de Jornalismo Investigativo (ABRAJI)/ International Freedom of Expression Exchange (IFEX). May 20, 2010. *Diário do Grande ABC forbidden from reporting on case implicating town mayor*. Available at: [http://www.ifex.org/brazil/2010/05/20/daily\\_censored/](http://www.ifex.org/brazil/2010/05/20/daily_censored/)

<sup>103</sup> Knight Center for Journalism in the Americas. September 18, 2010. *Court order bans newspaper from publishing negative news items on a Brazilian senate candidate*. Available at: <http://knightcenter.utexas.edu/es/blog/orden-judicial-prohibe-periodico-publicar-notas-negativas-sobre-candidato-senador-en-brasil>. Mato Grosso Circuit. September 17, 2010. *Deu no A Gazeta: ANJ condena censura prévia*. Available at: <http://www.circuitomt.com.br/home/materia/45887>

<sup>104</sup> Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, paras. 14-15 and Annex 9.

87. According to information received by the Office of the Special Rapporteur, on September 12, 2010, the Mato Grosso do Sul State Police seized 850 copies of the weekly magazine *Impacto Campo Grande* in Mato Grosso do Sul. The magazine contained articles that were critical of Governor André Puccinelli, who was seeking reelection. Also, the Office of the Rapporteur was informed that the police detained Mario Pinto, the magazine's director, and held him for several hours in the Campo Grande Immediate Citizen Attention Station (DEPAC in its Portuguese acronym).<sup>105</sup> The Office of the Special Rapporteur requested information from the State regarding these incidents. In its response on December 9, 2010, the State replied that on April 8, 2010, judge Aldo Ferreira da Silva Junior issued a court order in favor of André Puccinelli banning the magazine *Impacto Campo Grande* from publishing articles with content or images on him that were offensive. The State reported that the magazine had submitted its reply to this action, which was challenged by Puccinelli on July 23, 2010. As of the publication deadline of this report, the process has yet to reach a conclusion.<sup>106</sup>

88. According to the information received, timely action by the Attorney General of the Republic blocked Tocantins state authorities from preventing the distribution of the magazine *Veja* on September 26, 2010. According to the information received, on September 24, 2010, a magistrate with the Regional Elections Tribunal of the State of Tocantins had banned the distribution of news about an investigation by the São Paulo Public Ministry that involved the Tocantins state governor, Carlos Gaguim. The Office of the Special Rapporteur was informed that dozens of media outlets had been informed of the court ruling and ordered to refrain from publishing, directly or indirectly, information on the investigation being carried out by the São Paulo Public Ministry. This court ruling had been used to try to block the circulation in Tocantins of the September 26, 2010, edition of the magazine *Veja*, which included a report on the Public Ministry's investigation. With this goal, on September 25 state authorities tried to confiscate the copies of *Veja* in Tocantins. According to the information received, it was necessary for the Attorney General of the Republic, Álvaro Lotufo Manzano, to request the help of the Federal Police in halting the state authorities and allowing the copies of the magazine to arrive to the distribution center.<sup>107</sup> The Office of the Special Rapporteur requested information from the State regarding these incidents. In its reply, the State said that on September 27, 2010, the Regional Electoral Tribunal of Tocantins struck down the precautionary measure of September 24 in a special session, on the grounds that it constituted prior censorship.<sup>108</sup>

89. According to information received, a court order prohibiting the newspaper *O Estado de São Paulo* from publishing information on a federal police investigation into businessman

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<sup>105</sup> Associação Brasileira de Jornalismo Investigativo (ABRAJI)/ International Freedom of Expression Exchange (IFEX). September 21, 2010. *Police seize newspapers, detain journalist in Mato Grosso do Sul*. Available at: [http://www.ifex.org/brazil/2010/09/21/newspapers\\_seized/](http://www.ifex.org/brazil/2010/09/21/newspapers_seized/). Knight Center for Journalism in the Americas. September 14, 2010. *Brazilian police seize hundreds of newspapers for criticizing governor*. Available at: <http://knightcenter.utexas.edu/blog/brazilian-police-seize-hundreds-newspapers-criticizing-governor>

<sup>106</sup> Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, paras. 7-13 and Annex 5-8.

<sup>107</sup> Knight Center for Journalism in the Americas. September 27, 2010. *Court bars publication of allegations against Brazilian governor*. Available at: <http://knightcenter.utexas.edu/blog/brazilian-court-bars-publication-allegations-against-governor>. Portal Imprensa. September 27, 2010. *Justiça de TO proíbe 84 veículos de comunicação de citar investigação contra governador*. Available at: [http://portalimprensa.uol.com.br/portal/ultimas\\_noticias/2010/09/27/imprensa38322.shtml](http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/09/27/imprensa38322.shtml). Portal Imprensa. September 27, 2010. *Veja é distribuída em TO após intervenção da Polícia Federal, diz blogueiro*. Available at: [http://portalimprensa.uol.com.br/portal/ultimas\\_noticias/2010/09/27/imprensa38333.shtml](http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/09/27/imprensa38333.shtml)

<sup>108</sup> Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, para. 5 and Annex 3.

Fernando Sarney, son of the current president of the Brazilian senate, was in effect until at least November 2010. The order has been in effect since July 31, 2009.<sup>109</sup>

90. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's Declaration of Principles indicates that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." The Office of the Rapporteur also reiterates its Annual Report 2009, which stated that, "the possibility that judges may adopt provisional measures during the course of trials related to the exercise of freedom of expression raises the possibility that those measures may be a form of prior censorship."

91. According to information received, on June 10, 2010, Anatel closed down Santa Cruz Community Radio, in the state of Rio Grande do Sul, and confiscated its equipment. The information received indicates that the radio station was operating legally; however the government argued that the radio station was operating outside the technical specifications established. The radio station's representative was also arrested.<sup>110</sup>

92. On July 21, 2010, President Luiz Inácio Lula da Silva published a decree creating an inter-ministerial commission in charge of proposing changes to the country's telecommunications and radio broadcasting regulatory framework. The commission is made up of government officials and includes the participation of federal, state, and municipal authorities, as well as representatives of the private sector.<sup>111</sup>

93. Principle 12 states that, "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

94. On August 19, 2010, the National Association of Brazilian Newspapers (ANJ in its Portuguese acronym) announced its decision to create a self regulation council. According to the information received, the council should begin to function before the end of 2010. It will have seven

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<sup>109</sup> Inter-American Press Association. November 5-9, 2010. *Resolutions: Brazil*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_resolucion&asamblea=26&resid=654&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=26&resid=654&idioma=us). O Estado de São Paulo July 31, 2010. *Um ano sob censura*. Available at: [http://www.estadao.com.br/estadaodehoje/20100731/not\\_imp588457\\_0.php](http://www.estadao.com.br/estadaodehoje/20100731/not_imp588457_0.php)

<sup>110</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym) / El Mundo de La Radio. June 17, 2010. *Anatel closes community radio station with legal license and confiscates equipment*. Available at: <http://legislaciones.item.org.uy/index?q=node/1404>. Centro de Mídia Independente. June 18, 2010. *Fechada de forma truculenta a rádio comunitária de Santa Cruz do Sul*. Available at: <http://www.midiaindependente.org/pt/blue/2010/06/473528.shtml>

<sup>111</sup> Decree that "Cria Comissão Interministerial para elaborar estudos e apresentar propostas de revisão do marco regulatório da organização e exploração dos serviços de telecomunicações e de radiodifusão." July 21, 2010. Available at: [http://www.planalto.gov.br/ccivil\\_03/ Ato2007-2010/2010/Dnn/Dnn12700.htm](http://www.planalto.gov.br/ccivil_03/ Ato2007-2010/2010/Dnn/Dnn12700.htm). World Association of Community Broadcasters (AMARC in its Spanish acronym) / Knight Center for Journalism in the Americas. July 26, 2010. *Brazilian government will revise telecommunications and radio broadcasting laws*. Available at: <http://legislaciones.item.org.uy/index?q=node/1522>

members and will examine matters related to the professionals and media outlets affiliated with the ANJ.<sup>112</sup>

## 6. Canada

95. The Office of the Special Rapporteur takes note of the rulings of the Supreme Court of Canada in the cases of *Peter Grant et al v. Torstar Corp et al*<sup>113</sup>, and *Douglas Quan et al v. Danno Cusson*.<sup>114</sup> On December 22, 2009. According to the information received, both rulings ordered new trials and accepted the possibility of invoking the “responsible communication on matters of public interest” defense. According to this defense, communicators cannot be found guilty if they demonstrate they acted responsibly to confirm the information contained in their reports, even if they cannot demonstrate during a trial that the published information is true. The rulings held that Canada’s in-force libel laws did not protect statements on matters in the public interest if they could not be proven to be true. However, the Supreme Court found that insisting that the truth of information concerning matters in the public interest be proven before a court could prevent the communication of facts that an individual might consider reasonable and relevant to the public debate, inhibit the public discourse and debate on matters of public import, and impede the process of debate necessary for reaching the truth. The Supreme Court took into account the case law of other democracies with common law legal systems to argue for the necessity of replacing current Canadian law with the doctrine of responsible communication in matters in the public interest, which in its view provides better coverage for freedom of expression while at the same time offering sufficient protection of reputations. As of this report’s publication deadline, the rulings in the new trials for both cases were still pending.

96. Also, the Office of the Special Rapporteur was informed of the ruling of the Supreme Court of Canada in the case of *R v. National Post*, dated May 7, 2010. The ruling recognized journalists’ right to keep their sources confidential but established some exceptional limitations. According to the court: “In appropriate circumstances, accordingly, the courts will respect a promise of confidentiality given to a secret source by a journalist or an editor. The public’s interest in being informed about matters that might only be revealed by secret sources, however, is not absolute. It

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<sup>112</sup> Knight Center for Journalism in the Americas. August 20, 2010. *Brazilian Newspaper Association creates self regulation council*. Available at: <http://knightcenter.utexas.edu/es/blog/asociacion-de-periodicos-de-brasil-crea-consejo-de-autorregulacion>. O Estado de São Paulo. August 20, 2010. *Jornais terão órgão de autorregulação*. Available at: [http://www.estadao.com.br/estadaodehoje/20100820/not\\_imp597668\\_0.php](http://www.estadao.com.br/estadaodehoje/20100820/not_imp597668_0.php)

<sup>113</sup> Supreme Court of Canada. December 22, 2009. *Peter Grant et al v. Torstar Corp et al*. Available at: <http://scc.lexum.umontreal.ca/en/2009/2009scc61/2009scc61.html> Grant v. Torstar refers to an article in the Toronto Star newspaper, dated June 23, 2001, which revealed the process for Grant to acquire a piece of public property (crown land) to widen an adjacent golf course. The article said that the residents in the area feared that the project would effect the area’s environmental balance and that the close relationship between Grant and federal government officials would mean that the competent federal authorities would not hear their complaints. The author of the article, who is an experienced journalist, tried to confirm the information with Grant, but Grant declined to respond. Grant sued the Toronto Star and the author for libel. The lower court found the journalist and the newspaper guilty, but in 2008, the Court of Appeals for Ontario ordered a new trial. Both the newspaper and Grant filed appeals before the Supreme Court.

<sup>114</sup> Supreme Court of Canada. December 22, 2009. *Douglas Quan et al. v. Danno Cusson*. Available at: <http://scc.lexum.umontreal.ca/en/2009/2009scc62/2009scc62.html>. This case arose when Cusson, an officer with the Ontario Provincial Police, brought a civil suit for libel against the Ottawa Citizen and three of its journalists for publishing articles in September and October 2001 on his participation in the rescue operations following the attacks in the World Trade Center in the United States. According to the information received, the articles indicated that Cusson had lied to New York Police Department officials with regard to his credentials, which put several rescue operations at risk. As a result of his conduct, disciplinary action would be initiated against him. The trial judge ruled that while three of the articles address issues in the public interest, two of them did so “not to the extent that they needed to be heard”. The jury found that several of the facts in the articles were true, but condemned the newspaper to pay damages. In 2007, the Court of Appeals for Ontario found that in these cases, it was possible to invoke the “responsible journalism” defense, but held that the defendants did not resort sufficiently to that defense. Both the newspaper and the journalists filed appeals before the Supreme Court.

must be balanced against other important public interests, including the investigation of crime. In some situations, the public's interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence."<sup>115</sup> Applying this standard of proportionality to the specific case, the Supreme Court ruled to order the *National Post* newspaper to turn over the information that it had argued was protected due to the confidentiality of its sources.<sup>116</sup> The Supreme Court found that, "The alleged offences are of sufficient seriousness to justify the decision of the police to investigate the criminal allegations. The physical evidence is essential to the police investigation and likely essential as well to any future prosecution."<sup>117</sup>

97. In its ruling in the case *Globe and Mail v. Canada (Attorney General)*, handed down on October 22, 2010, the Supreme Court of Canada applied a similar standard in the context of a civil trial.<sup>118</sup> The Supreme Court repeated its statement in the case of *R v. National Post*, in the sense that the Constitution of Canada protects journalists' right to keep their sources confidential with some exceptions that should be considered in the specific case when certain standards are met.<sup>119</sup> Specifically, in a civil case, the court should weigh the importance of having information for the purpose of meting out justice, versus the public interest in keeping journalists' sources confidential.<sup>120</sup> The Supreme Court highlighted that to require a journalist answer questions in a judicial proceeding that may disclose the identity of a confidential source, the party requesting the information must demonstrate its relevance, and later the court must apply the standards set by the Supreme Court, among them the standard of proportionality.<sup>121</sup> In this case, the Supreme Court struck down an order from the Superior Court that forced the journalist in question to testify. The Supreme Court ordered the tribunal to take up the matter again, taking into account the standards established by the Supreme Court.<sup>122</sup> In addition, the Supreme Court struck down an order issued by the Superior Court banning the journalist from continuing to write about the negotiations toward reaching a friendly settlement in the case. The Supreme Court held that: "The Superior Court's order

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<sup>115</sup> Supreme Court of Canada. May 7, 2010. *R. v. National Post et al.* Available at: <http://scc.lexum.com/en/2010/2010scc16/2010scc16.html>. The case refers to a bank document received by a journalist under the condition that the source be kept secret. If it is authentic, the document demonstrates a conflict of interest involving a senior public official. The person in question alleged that the document was a counterfeit and Canadian police officials ordered the newspaper to turn over the original document and the envelope in which it was delivered in order to carry out a forensic examination. The newspaper asked for the decision to be reviewed, and a court revoked the order. The Appeals Court reversed the ruling and the issue was brought before the Supreme Court of Canada; The Reporters Committee for Freedom of the Press. May 10, 2010. *Canadian High Court Refuses to Recognize Privilege for Journalists*. Available at: <http://www.rcfp.org/newsitems/index.php?i=11424>; International Freedom of Expression Exchange (IFEX)/CJFE. May 10, 2010. *Mixed result in Supreme Court source protection case holds some good news, says CJFE*. Available at: [http://www.ifex.org/canada/2010/05/10/source\\_protection/](http://www.ifex.org/canada/2010/05/10/source_protection/); The Canadian Association of Journalists. May 7, 2010. *Supreme Court ruling a blow for source protection: CAJ*. Available at: <http://www.caj.ca/?p=564>

<sup>116</sup> Supreme Court of Canada. May 7, 2010. *R. v. National Post et al.* Available at: <http://scc.lexum.com/en/2010/2010scc16/2010scc16.html>

<sup>117</sup> Supreme Court of Canada. May 7, 2010. *R. v. National Post et al.* Available at: <http://scc.lexum.com/en/2010/2010scc16/2010scc16.html>

<sup>118</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

<sup>119</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

<sup>120</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

<sup>121</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

<sup>122</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

must be assessed for what it is: a court-ordered publication ban which had the effect of limiting [the journalist's] freedom of expression."<sup>123</sup>

98. The Office of the Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Likewise, Principle 5 establishes that: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

99. The Office of the Special Rapporteur received information on the excessive use of force by police authorities against peaceful demonstrators and the imposition of significant limits to the exercise of freedom of expression during the G20 summit in Toronto, on June 26 and 27. According to the information received, hundreds of people were arrested during that weekend, and the police allegedly used excessive force in making arrests and controlling the public, including against peaceful demonstrators in areas that were protected and set aside for the exercise of freedom of expression.<sup>124</sup> At least nine journalists and media workers were beaten and/or detained, while others were blocked from covering the protests.<sup>125</sup> According to the information received, hundreds of people were detained for as long as 24 hours in a temporary detention center consisting of cages of various sizes.<sup>126</sup> According to civil society organizations, the detention conditions were inadequate with regard to space, sanitation, food and medical attention, and the individuals detained did not have access to legal counsel, nor could they use a telephone.<sup>127</sup> The

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<sup>123</sup> Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General)*. Available at: <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

<sup>124</sup> International Freedom of Expression Exchange (IFEX). June 30, 2010. *Journalists and protesters assaulted and detained during massive police clampdown at G20*. Available at: [http://www.ifex.org/canada/2010/06/30/g20\\_crackdown/](http://www.ifex.org/canada/2010/06/30/g20_crackdown/). The Globe and Mail June 27, 2010. *Security or liberty? Toronto comes to grips with a historic crackdown*. Available at: <http://www.theglobeandmail.com/news/world/g8-g20/toronto/security-or-liberty-toronto-comes-to-grips-with-a-historic-crackdown/article1621020/>. Canadian Civil Liberties Union. July 7, 2010. *G-20 mass arrests by the numbers*. Available at: <http://ccla.org/2010/07/07/g-20-mass-arrests-by-the-numbers/>

<sup>125</sup> International Freedom of Expression Exchange (IFEX). June 30, 2010. *Journalists and protesters assaulted and detained during massive police clampdown at G20*. Available at: [http://www.ifex.org/canada/2010/06/30/g20\\_crackdown/es/](http://www.ifex.org/canada/2010/06/30/g20_crackdown/es/); Amnesty International. June 27, 2010. *Toronto and the G8/G20: Peaceful protest suffers amidst heavy security measures and acts of vandalism*. Available at: [http://www.amnesty.ca/resource\\_centre/news/view.php?article=5453&c=Resource+Centre+News&load=arcview](http://www.amnesty.ca/resource_centre/news/view.php?article=5453&c=Resource+Centre+News&load=arcview;); Canadian Journalists for Free Expression/ International Freedom of Expression Exchange (IFEX). June 28, 2010. *CJFE Dismayed at Reports of Free Expression Violations at G20 Summit Protests*. Available at: [http://www.ifex.org/canada/2010/06/29/g20\\_protests/](http://www.ifex.org/canada/2010/06/29/g20_protests/)

<sup>126</sup> Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme. October 25, 2010. *Document in support of the general hearing on the status of freedom of expression, assembly and association in Canada and the right to liberty, security and the integrity of the person*. Available at: [http://www.cidh.uqam.ca/documents/rapport\\_G20\\_anglais.pdf](http://www.cidh.uqam.ca/documents/rapport_G20_anglais.pdf); Canadian Civil Liberties Union (CCLA). June 29, 2010. *A breach of the peace: A preliminary report of observations during the 2010 G20 Summit*. Available at: <http://ccla.org/wordpress/wp-content/uploads/2010/06/CCLA-Report-A-Breach-of-the-Peace-Preliminary-report-updated-July-8.pdf>

<sup>127</sup> Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme. October 25, 2010. *Document in support of the general hearing on the status of freedom of expression, assembly and association in Canada and the right to liberty, security and the integrity of the person*. Available at: [http://www.cidh.uqam.ca/documents/rapport\\_G20\\_anglais.pdf](http://www.cidh.uqam.ca/documents/rapport_G20_anglais.pdf). Canadian Civil Liberties Union (CCLA). June 29, 2010. *A breach of the peace: A preliminary report of observations during the 2010 G20 Summit*. Available at: <http://ccla.org/wordpress/wp-content/uploads/2010/06/CCLA-Report-A-Breach-of-the-Peace-Preliminary-report-updated-July-8.pdf>

information received by the Office of the Special Rapporteur indicates that the majority of the individuals arrested were freed unconditionally, with charges being brought against at least 270 of them.<sup>128</sup> In a public hearing held on October 25, 2010, in the framework of the IACHR's 140th ordinary period of sessions, the petitioners informed the Commission of these events, the deficiencies in the legal system that permit them, and the serious consequences with regard to freedom of expression. Specifically, they indicated that Article 63 of the Criminal Code of Canada, which prohibits unlawful assembly, is vague and imprecise and has been used to repress political activity in Canada.<sup>129</sup> During the same hearing, the State of Canada reported that there were various domestic processes in progress intended to examine the conduct of the police during the G20 summit.<sup>130</sup>

100. In a follow-up to the hearing, the IACHR requested information from the State of Canada in order to clarify the incidents that took place in Toronto on June 26 and 27. In its response, dated December 13, 2010, the State repeated that several domestic proceedings were in progress and that it was requesting the relevant information from the different levels of the government. For this reason, the State said it would send its final response to the IACHR on January 31, 2011 at the latest. Likewise, the IACHR was informed of the publication of a report by the Ombudsman of Ontario on these incidents in December 2010. In that report, the Ombudsman denounced the fact that Regulation 233/10 had been passed in preparation for the summit. The regulation activates the Public Works Protection Act, a little-known piece of legislation from the time of World War II. According to the Ombudsman, "the regulation triggered the extravagant police authority found in the Public Works Protection Act, including the power to arbitrarily arrest and detain people."<sup>131</sup> The Ombudsman concluded that, "The effect of Regulation 233/10, now expired, was to infringe on freedom of expression in ways that do not seem justifiable in a free and democratic society."<sup>132</sup>

101. The Office of the Special Rapporteur expresses its concern over these incidents and recalls Principle 2 of the IACHR's Declaration of Principles, which states that, "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition." As the Office of the Special Rapporteur has indicated, this principle applies not only to journalistic activity but also to other forms of exercising the right to freedom of expression, such as public demonstrations and social protest.

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<sup>128</sup> Canadian Civil Liberties Association (CCLA) July 7, 2010. *G-20 mass arrests by the numbers*. Available at: <http://ccla.org/2010/07/07/g-20-mass-arrests-by-the-numbers/>. The Globe and Mail June 28, 2010. *G20-related mass arrests unique in Canadian history*. Available at: <http://www.theglobeandmail.com/news/world/g8-g20/news/g20-related-mass-arrests-unique-in-canadian-history/article1621198/>

<sup>129</sup> Observations of petitioners Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme, Public Hearing, "Right to freedom of expression, assembly, association and movement in Canada," 140th Period of Sessions of the IACHR, October 25, 2010.

<sup>130</sup> Observations of the State of Canada, Public Hearing, "Right to freedom of expression, assembly, association and movement in Canada," 140th Period of Sessions of the IACHR, October 25, 2010.

<sup>131</sup> André Marin, Ombudsman of Ontario. December 2010. *"Caught in the Act": Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act*. Available at: <http://www.ombudsman.on.ca/media/157555/g2Ofinal1-en.pdf>

<sup>132</sup> André Marin, Ombudsman of Ontario. December 2010. *"Caught in the Act": Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act*. Available at: <http://www.ombudsman.on.ca/media/157555/g2Ofinal1-en.pdf>

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

103. In addition, with respect to the legal framework, the Office of the Special Rapporteur has indicated that, "vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities are incompatible with the American Convention because they can support potentially arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech. Vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment and can lead to broad judicial interpretations that unduly restrict freedom of expression. As such, the State must specify the conduct that may be subject to subsequent liability in order to prevent adverse impacts upon the free expression of protest and disagreement with the actions of the authorities."<sup>133</sup>

104. The Office of the Special Rapporteur received information indicating that at the beginning of February 2010, Canadian authorities prevented two US journalists who were going to cover the Winter Olympic Games 2010 in the city of Vancouver from entering the country. According to the information received, John Weston Osburn, a freelance journalist associated with the organization *Indymedia*, was blocked from entering Canada after being interrogated by immigration officials. Also, the journalist Martin Macias Jr., working for *Vocalo*, an online news site affiliated with Chicago Public Radio, was also prevented by immigration officials from entering Canada. According to the available information, both journalists intended to cover the protests against the Olympic Games.<sup>134</sup>

105. The Office of the Special Rapporteur recalls the provisions of Principle 5 of the IACHR Declaration of Principles mentioned above.

## 7. Chile

106. The Office of the Special Rapporteur recognizes the important progress made by Chile's Transparency Council on the issue of the right to access to information. This year the Council reached its one year anniversary of beginning operations, and the results of its work include significant accomplishments that will be examined in detail in a separate chapter of this report.<sup>135</sup>

107. The Office of the Special Rapporteur also highlights the passage of Law 20.453, which "enshrines the principle of net neutrality for all of the Internet's users and consumers." This law, published on August 26, 2010, establishes that Internet service providers "[s]hall not be allowed to arbitrarily block, interfere with, discriminate against, slow or restrict the right of any Internet user to use, send, receive or offer any legal content, application, or service over the Internet, as well as any other type of legal activity or use carried out over the Internet. In this sense,

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<sup>133</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, paras. 70-71.

<sup>134</sup> Committee to Protect Journalists (CPJ). February 12, 2010. *On way to Olympic protests, reporters stopped at border*. Available at: <http://cpj.org/2010/02/on-way-to-olympic-protests-reporters-stopped-at-ca.php>. Notimex. February 10, 2010. *Work of activist against Winter Olympics blocked in Canada*. Available at: <http://espanol.sports.yahoo.com/noticias/deportes-impiden-canada-labor-activista-olimpicos-10022010-7.html>

<sup>135</sup> For more information on the activities of the Transparency Council, see: <http://www.consejotransparencia.cl/>

they must offer to each user a service for accessing the Internet - or connectivity to the provider of Internet access, as the case may be - that does not arbitrarily distinguish between content, applications, or services based on their source or owner, taking into account the different Internet connection configurations according to the in-force contract with the users.<sup>136</sup>

108. With regard to challenges, according to the information received, documentary film maker Jaime Díaz Lavanchy was allegedly verbally assaulted by Pedro Sabat, mayor of the Ñuñoa municipality in the province of Santiago, on May 5, 2010, while several of the mayor's security guards and associates allegedly beat him and damaged his equipment. The information received indicates that Díaz Lavanchy had asked Sabat about the lack of attention provided to the victims of the earthquake.<sup>137</sup>

109. According to the information received, on February 10, 2010, Richard Curinao, a media worker of the Mapuche People, was arrested by police officers at his place of employment. According to the journalist's complaint, the officers confiscated his hard drive and took him by force to his home, where they also confiscated the hard drive from his personal computer, along with several accessories used in his communications work. According to the information received, Richard Curinao works as editor of the news source Werken Kvruf, is part of the Wixage Anai Radio Program, is a member of the Mapuche Communications Network, and collaborates with several news web sites.<sup>138</sup>

110. On May 13, 2010, the communicator, poet, singer and photographer Alejandro Stuart was arrested. According to the information received, the arrest took place after his house was searched by Chilean police officers. The information received indicates that the day before the search and arrest, Stuart was photographing a march by the Mapuche indigenous people in Temuco.<sup>139</sup>

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

112. On November 9, the community radio stations *Radio Felicidad*, *Tentación*, and *Radio 24*, located in the municipality of Paine, were shut down. According to the information received, members of the Intellectual Property Crimes Squad of the Investigative Police confiscated the

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<sup>136</sup> Law 20.453. Published on August 26, 2010. Available at: <http://www.doe.cl/fsumarios/2010-08-26/z2601001.pdf>

<sup>137</sup> Observatorio Latinoamericano para la Libertad de Expresión. (OLA)/ International Freedom of Expression Exchange (IFEX). May 17, 2010. *Documentary maker assaulted by mayor's security guards*. Available at: [http://www.ifex.org/chile/2010/05/17/diaz\\_lavanchy\\_assaulted/](http://www.ifex.org/chile/2010/05/17/diaz_lavanchy_assaulted/). El Ciudadano. *Pedro Sabat, mayor of Ñuñoa, is accused of assault and intimidation*. Available at: <http://www.elciudadano.cl/2010/05/09/pedro-sabat-alcalde-de-nuñoa-es-acusado-de-agresion-y-amedrentamiento/>

<sup>138</sup> Futawillimapu. 11 de febrero de 2010. *Press release of the Mapuche media worker Richard Curinao on the confiscation of his equipments*. Available at: <http://www.futawillimapu.org/Llitu/Comunicado-Publico-del-Comunicador-Mapuche-Richard-Curinao-sobre-la-incautacion-de-sus-equipos.html>; El Ciudadano. 10 de febrero de 2010. *Persecution and equipment confiscation against a Mapuche communicator*. Disponible en: <http://www.elciudadano.cl/2010/02/10/persecucion-y-requisamiento-de-equipos-a-comunicador-mapuche/>

<sup>139</sup> La Otra Voz. May 14, 2010. *Alejandro Stuart Arrested in La Araucanía*. Available at: <http://laotravez.wordpress.com/2010/05/15/detienen-a-alejandro-stuart-en-la-araucania-equipo-mapuche-noticias/>. Sur y Sur. *Chile: Photographer arrested after Mapuche march in Temuco*. Available at: <http://www.surysur.net/?q=node/13651>

equipment of *Tentación* and *Radio 24* in the framework of a criminal proceeding against the members of the radio stations. The information received also indicates that five individuals, including the directors of *Tentación* and *Radio 24*, were arrested. According to the information received, the complaint from which the criminal proceeding arose was filed by the Subsecretary of Telecommunications in response to the demands of a commercial radio station in the area.<sup>140</sup>

113. The Office of the Rapporteur recalls that a restriction imposed for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.<sup>141</sup>

114. On May 4, 2010, Law 20.433 was published in the Official Newspaper, a law that establishes Citizen Community Radio Broadcasting Services.<sup>142</sup> This legislation recognizes community radio broadcasting and establishes that community broadcasters shall have minimum signal strength of 1 watt and a maximum of 25 watts, with a maximum antenna height of 18 meters. In exceptional circumstances, they may have maximum signal strength of 40 watts, for frontier or far-flung, rural areas with a population that is widely dispersed. According to the legislation, to set up a community radio station, an organization must be non-profit and have among its essential purposes the promotion of the general welfare through the pursuit of specific civic, social, cultural, or spiritual objectives. They must be formed and domiciled in Chile, as are, for example, neighborhood councils, unions and other labor organizations, as well as indigenous and community associations. The concessions shall be granted in a special segment of the FM frequency spectrum for both analogue and digital signals. A concession lasts 10 years and the concessioner shall be given preference for renewal.<sup>143</sup>

115. The Office of the Rapporteur recognizes the importance of the progress made in the passage of a law that explicitly recognizes community radio broadcasting, as it responds to the call made to States repeatedly by the Office of the Rapporteur to pass legislation on community radio broadcasting. Likewise, the Office of the Rapporteur notes with satisfaction the purpose of protecting community radio broadcasting and private commercial radio broadcasting from other forms of radio broadcasting that do not respond to community interests and development and that present private radio broadcasting with unfair competition. However, the Office of the Rapporteur observes that Law 20.433 establishes a series of limitations for community radio stations, with regard, for example, to signal strength,<sup>144</sup> financing,<sup>145</sup> and the possibility of broadcasting as a

<sup>140</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). November 11, 2010. *Authorities shut down three community radio stations*. Available at: [http://www.ifex.org/chile/2010/11/15/radio\\_stations\\_closed/](http://www.ifex.org/chile/2010/11/15/radio_stations_closed/). Resumen. 10 de noviembre de 2010. *PDI shuts down another community radio*. Available at: [http://www.rsumen.cl/index.php?option=com\\_content&view=article&id=2932:la-pdi-clausura-otra-radio-comunitaria&catid=8:nacional&Itemid=52](http://www.rsumen.cl/index.php?option=com_content&view=article&id=2932:la-pdi-clausura-otra-radio-comunitaria&catid=8:nacional&Itemid=52); FUCATEL Media Observatory. November 15, 2010. *Three community radio stations closed*. Available at: <http://www.observatoriofucatel.cl/cierre-de-tres-radios-comunitarias/>

<sup>141</sup> IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 40 y 41. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

<sup>142</sup> Law 20.433. May 4, 2010. Available at: <http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04>

<sup>143</sup> Law 20.433. May 4, 2010. Available at: <http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04>

<sup>144</sup> Law 20.433. May 4, 2010. Art. 4. Available at: <http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04>

<sup>145</sup> Law 20.433. May 4, 2010. Art. 13. Available at: <http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04>

chain,<sup>146</sup> that don't apply to commercial radio stations. The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions. Discriminatory limitations include, for example, those that could be provided for in legislation or that are implemented in practice establishing certain kinds of restrictive measures as far as content, territorial coverage, or access to sources of funding without an adequate, objective, and reasonable argument that they pursue a legitimate purpose in keeping with the American Convention.<sup>147</sup> So for example, although it is true that many communities subject to protection are located in certain well-defined municipalities or areas, others could be spread throughout the country. In these cases, there does not seem to be any reason to prevent the community radio station in question from having nationwide coverage.

116. Principle 12 states that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals." For this reason, from its very beginning the Office of the Special Rapporteur has requested that States recognize on equal terms all forms of radio broadcasting and establish reasonable and non-discriminatory legislation.

117. On September 27, 2010, Transportation and Telecommunications Ministry Decree No. 264 was published.<sup>148</sup> The Decree "sets rules complementary to Decree No. 136, dated September 14, 2009." Specifically, it extends "permission to carry out broadcasts to demonstrate over-the-air digital television technology" for a period of up to five years.<sup>149</sup> According to the information received, on November 6, a group of congressional deputies presented a motion of unconstitutionality to nullify Decree No. 264, a motion that was admitted to be heard by the Chilean Constitutional Court.<sup>150</sup>

118. The Office of the Special Rapporteur recalls that the goal of technological transformation in radio broadcasting should be to ensure that the new digital medium makes optimal use of the spectrum in order to ensure the greatest amount of plurality and diversity possible. For this, States must establish specific legal mechanisms for carrying out the transition to digital radio broadcasting services. This regulation must include a migration program that takes into account the needs and capacities of the different actors involved in this process, as well as the level to which the new technologies should be applied. In particular, States must evaluate the broadcast possibilities in the use of digital technology, considering this change in technology as an opportunity to increase the diversity of voices on the airwaves and provide new segments of the population with access to mass media. At the same time, States must take measures to prevent the cost of

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<sup>146</sup> Law 20.433. May 4, 2010, Art. 15. Available at: <http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04>

<sup>147</sup> IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 72. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

<sup>148</sup> Transportation and Telecommunications Ministry, Decree 264, dated September 27, 2010. Available at: [http://www.subtel.cl/prontus\\_subtel/site/artic/20101005/asocfile/20101005122650/decreto\\_tvd\\_subtel\\_nuevo.jpeg](http://www.subtel.cl/prontus_subtel/site/artic/20101005/asocfile/20101005122650/decreto_tvd_subtel_nuevo.jpeg)

<sup>149</sup> Transportation and Telecommunications Ministry, Decree 264, dated September 27, 2010. Available at: [http://www.subtel.cl/prontus\\_subtel/site/artic/20101005/asocfile/20101005122650/decreto\\_tvd\\_subtel\\_nuevo.jpeg](http://www.subtel.cl/prontus_subtel/site/artic/20101005/asocfile/20101005122650/decreto_tvd_subtel_nuevo.jpeg).

<sup>150</sup> Emol. November 24, 2010. *Constitutional Court admits motion of unconstitutionality on digital TV decree*. Available at: <http://www.emol.com/noticias/todas/detalle/detalenoticias.asp?idnoticia=449087>. FUCATEL Media Observatory. November 24, 2010. *Media silent before Constitutional Court decision*. Available at: <http://www.observatorioducatel.cl/acogen-recurso-de-inconstitucionalidad-por-decreto-de-tv-digital/>. Radio Universidad de Chile. November 11, 2010. *Concessions and publicity: The great fight over digital television*. Available at: <http://radio.uchile.cl/noticias/90303/>

the transition from analogue to digital from limiting the capacity of the mass media for economic reasons.<sup>151</sup>

## 8. Colombia<sup>152</sup>

### A. Killings, Violence, Harassment and Illegal Imprisonment of Journalists

119. The IACHR is gravely concerned by the murders of three journalists that have taken place since December 2009. According to the information received, on December 15, 2009, Harold Humberto Rivas Quevedo was shot in Buga, in Valle del Cauca. At the time of the murder, the journalist was leaving work at the local television channel *Bugavisión*, where he was the presenter of the political program *Comuna Libre*. According to the information, the journalist interviewed community leaders and politicians, and had a reputation for insightful commentary and for highlighting the responsibility of local authorities towards their citizens.<sup>153</sup>

120. According to the information received, on March 19, 2010, journalist Clodomiro Castilla Ospino, of the newspaper *El Pulso del Tiempo* and *La Voz de Montería* radio station, was murdered in the city of Montería, Department of Córdoba, by a hit man who shot him several times at the door of his home. According to the information received, Castilla Ospino had built a reputation for the investigation and denunciation of the paramilitary phenomenon and political corruption in the Department of Córdoba. The information adds that the State had authorized a protection regime, which was suspended at the journalist's own request in February 2009, given the mistrust for the entity in charge of providing the protection, the DAS (*Departamento Administrativo de Seguridad*). Due to an increase in risk, the journalist and non-governmental organizations in November 2009 again requested protection. However, at the time of the events, the journalist did not have State protection.<sup>154</sup> The Office of the Special Rapporteur for the Freedom of Expression acknowledges the swift repudiation of the crime by the highest authorities in Colombia but expresses grave concern regarding the absence of protection given to the journalist, despite his having requested the activation of the State of Colombia's Journalist Protection Program in good time. In its observations the State reported that Castilla Ospino was admitted to the Protection Program of the Ministry of the Interior and Justice on January 23 2007, but in 2009 the CRER recommended the suspension of some of the measures granted, including the DAS and National Police escort units "because the Ministry received constant complaints about the mistreatment of escorts by Mr. Castilla Ospino - a situation brought to his attention on various occasions."<sup>155</sup> The State also reported that the last two risk level reports of the journalist in August and September 2008 revealed "ordinary risk" level. These are the reasons provided by the State to

<sup>151</sup> IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 80. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

<sup>152</sup> This section corresponds to the section on freedom of expression in Colombia in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

<sup>153</sup> Committee for the Protection of Journalists. December 17, 2009. *Tv Presenter shot dead in the east of Colombia*. Available at: <http://cpj.org/es/2009/12/presentador-de-television-muerto-a-tiros-en-el-occ.php>. *El Tiempo*, December 17, 2009. *Journalist murdered in Buga minutes after finishing his show*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-6801632> (in Spanish). *El Espectador*. December 17, 2009. *Journalist Bugueño murdered after his show*. Available at: <http://www.elespectador.com/noticias/judicial/articulo177907-asesinado-periodista-bugueno-al-finalizar-su-programa> (in Spanish).

<sup>154</sup> Special Rapporteur for the Freedom of Expression. *Press Release R34-10*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=788&IID=2>.

<sup>155</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

explain why "Mr. Clodomiro Castilla did not have a mobile protective scheme at the moment of the attack that resulted in his death."<sup>156</sup>

121. The IACHR was informed that on October 14, the indigenous leader and journalist, Rodolfo Maya Aricape, was murdered in the López Adentro reservation, in the Department of Cauca, in Colombia. According to the information received, Aricape was at home when two armed men shot him. The leader was secretary of López Adentro's Indigenous Town Council and correspondent for Pa'yumat community radio, of the Tejido de Comunicación project. In discharging these functions, Rodolfo Maya had made a reputation for taking a firm stance against all armed groups operating in indigenous areas. Weeks before his death, a sign appeared in the community threatening the journalist.<sup>157</sup>

122. The IACHR expresses concern over the situations described and encourages the State of Colombia to maintain the protection programs and move forward in the fight against the situation of impunity that still surrounds these crimes. As such, the work of judges and prosecutors should be supported, and effective and strengthened preventative and protective measures for the freedom of thought and expression should be promoted.

123. The IACHR was also informed about physical violence, death threats and incidents obstructing journalists' work during the first half of 2010, which seriously hampers the exercise of freedom of expression. As concerns alleged acts of violence committed by State agents, the IACHR received information to the effect that on April 23, the journalist Wilfer Moreno Villamizar had been beaten by a police officer in Arauca.<sup>158</sup> The IACHR was also informed that the journalists Leonardo Sierra, of *Radio Caracol*, and Juan Pablo Murcia, of *FM Radio*, had been attacked on April 26 by officers of the Bogotá Police while they were covering a demonstration by college students.<sup>159</sup> On July 21, the journalist Juan David Betancur, a correspondent for *Teleantioquia Noticias*, was struck with a blunt object by an employee of the municipal city hall in Dabeiba Park, Antioquia.<sup>160</sup> On the other hand, the IACHR is aware of the acts of violence suffered by Luis Enrique Cárdenas, correspondent of *Noticias Uno* and independent reporter Dagoberto Ferés Molina, on August 22 in

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<sup>156</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

<sup>157</sup> Special Rapporteur for the Freedom of Expression. *Press Release R106/10*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=823&IID=2>. El Tiempo. October 15, 2010. *Native leader expert in communications, murdered in Cauca*. Available at: [http://www.eltiempo.com/colombia/cali/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-8133331.html](http://www.eltiempo.com/colombia/cali/ARTICULO-WEB-NEW_NOTA_INTERIOR-8133331.html).

<sup>158</sup> According to the information received, the incident occurred when Milfer Moreno was taking pictures in a Highway Police operation. The information shows that the Arauca Police press office recounted the event as an "unfortunate situation" and revealed that they would be investigating the events and would be fostering a joint journalist/police training program. Foundation for Press Freedom. April 27, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: [http://www.flip.org.co/alert\\_display/O/777.html](http://www.flip.org.co/alert_display/O/777.html).

<sup>159</sup> The journalists had requested an explanation from the police while witnessing the violence against the students, as a result of which the Police beat the reporters. Murcia, in addition, was detained for some minutes in an armored vehicle. According to the information, the Metropolitan Police of Bogotá explained that the incident had occurred because the journalists were not carrying visible identification in the midst of a confused situation. Foundation for Press Freedom, April 27, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: [http://www.flip.org.co/alert\\_display/O/777.html](http://www.flip.org.co/alert_display/O/777.html).

<sup>160</sup> According to the information received, the attacker had warned the journalist that he would run the risk of being murdered if he referred again to the Mayor. As a result of the attack, the journalist decided to flee the city. Colombian Federation of Journalists. August 9, 2010. *Journalist beaten and threatened in Dabeiba, Antioquia*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5133>.

Aguachica, in the El Cesar Department, at the hands of officers of the National Police while covering a protest by taxi-drivers.<sup>161</sup>

124. In addition, during the International Labor Day demonstrations on May 1, the security forces of Bogotá and Cali attacked at least seven journalists who were covering demonstrations and unrest. The Spanish journalist Oriol Segón Torra was beaten by police while he was photographing confrontations between the security forces and demonstrators in the Plaza Bolívar in Bogotá. In Cali, another six journalists from the national media and international agencies were attacked by the police. According to the information, the Cali Police have announced an investigation into the events and have explained that there had been a misunderstanding due to the fact that the journalists remained trapped in the confrontations. In addition, the IACHR was informed that the Headquarters of the National Police offered its apologies to the journalists and have issued a directive to request greater efforts in the investigation of abuses against journalists.<sup>162</sup>

125. As regards the threats, assaults and violence committed by other actors, the IACHR has received information surrounding the assault suffered by the director of the *El Norte* newspaper and of the local MTV television channel Marco Tulio Valencia Hoyos, on August 30 in Mariquita, Tolima. According to the information received, an individual riding a motorcycle shot him five times as he was entering his house. The perpetrator of the attack had turned off the motorcycle as he approached his victim and this gave the journalist time to enter the house. The IACHR has been aware that since June, Marco Tulio Valencia has received death threats and harassment, after publishing information surrounding the sale of drugs in the community. The IACHR was informed that the authorities had assigned a protection regime for the journalist.<sup>163</sup>

126. In addition, the IACHR was informed that on May 18 and 20 unknown persons assaulted the journalist Leiderman Ortiz Berrío, director of the web site *La verdad del pueblo* and correspondent for various regional media in Cauca, Department of Antioquia.<sup>164</sup> On August 20, the IACHR granted precautionary measures in favor of Leiderman Ortiz.<sup>165</sup> According to information supplied, there have been difficulties in implementing the protection regime.<sup>166</sup> In addition, in the early hours of August 12, a vehicle packed with explosives exploded in Bogotá opposite the building housing the offices of *Radio Caracol* and Spanish news agency *EFE*.<sup>167</sup> In addition, the IACHR was

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<sup>161</sup> According to the information received, a police officer had tried to snatch the camera from Luis Enrique Cárdenas, who was injured in the scuffle; whilst Dagoberto Ferés had to be admitted to hospital because a police officer fired a tear gas grenade very close to him. As the Special Rapporteur has reported, an Aguachica Police spokesman explained that the incident had occurred during "confusing events". Foundation for Press Freedom. August 24, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: [http://www.ifex.org/colombia/2010/08/27/periodistas\\_agredidos/es/](http://www.ifex.org/colombia/2010/08/27/periodistas_agredidos/es/).

<sup>162</sup> Foundation for Press Freedom. May 3, 2010. *Journalists attacked during International Labor Day Demonstrations*. Available at: [http://www.flip.org.co/alert\\_display/2/871.html](http://www.flip.org.co/alert_display/2/871.html).

<sup>163</sup> Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

<sup>164</sup> According to the information received, the perpetrators launched a grenade, first onto the patio of the house and then against the front facade of the building. As far as the IACHR knows, the journalist had complained through the media of paramilitary group's activities operating in the community. Colombian Federation of Journalists. May 21, 2010. *Attack on a journalist in Cauca and police beat a colleague in Bogotá*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4896>.

<sup>165</sup> IACHR. *Precautionary Measures granted by the IACHR during 2010*. Available at: <http://www.cidh.org/medidas/2010.sp.htm>.

<sup>166</sup> Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

<sup>167</sup> According to the information received, the blast left at least eight people injured, and caused damage to the station's entrance. The President of the Republic, Juan Manuel Santos, made assurances that the authorities would

informed that on August 28, the police authorities located and defused a bomb near the *Linda Stereo* community radio station in El Doncello, Department of Caquetá.<sup>168</sup>

127. On May 9, a group of unknown men attacked journalist Jorge Tolosa, of *Telepetróleo*, in front of his house in Barrancabermeja.<sup>169</sup> On September 7, two individuals set fire to the motorcycle belonging to journalist Alberto Caballero Parejo, owner and reporter of the *Innovación Estéreo* community radio, in Ciénaga, Magdalena.<sup>170</sup> The IACHR also received information surrounding the violence suffered by special envoys of *Caracol Noticias* in the Ipiales Municipality, Nariño, at the hands of a group of persons who were guarding a cargo of contraband<sup>171</sup>. In addition, on August 29, several unknown individuals broke into the building of the *Puerto Wilches Estéreo* community radio station, in the Puerto Wilches municipality in Santander and destroyed and stole equipment essential for operating the radio station. This had been the fourth occasion in less than three years in which *Puerto Wilches Estéreo* had suffered an attack aimed at preventing its transmissions.<sup>172</sup>

128. In addition, the IACHR has become aware of new cases of threats against journalists. The Special Rapporteur has received information according to which a leaflet was circulated on February 21, 2010, in the city of Cartago, in Valle del Cauca, signed by an alleged organization called "los doce del patíbulo" (*the gallows's dozen*) containing death threats against five local journalists who had criticized the administration of the local mayor.<sup>173</sup> On March 23, according to information received, journalist Alex Pájaro Mosquera of the *El Propio* newspaper of Montería, Córdoba, was informed by the police that an intercepted telephone call from a prison inmate revealed a plan to murder him, in retaliation for information concerning this individual that the reporter had published.<sup>174</sup> In addition, during March and April, journalist Edgar Astudillo Vásquez,

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...continuation

investigate the source of the attack and would pursue those responsible. UN Special Rapporteur for the Freedom of Expression and the Special Rapporteur for the Freedom of Expression of the IACHR. August 13, 2010. *Press Release R81/10. UN and OAS Special Rapporteurs for the Freedom of Expression condemn the attack on Radio Caracol in Colombia.* Available at: <https://www.cidh.oas.org/relatoria/showarticle.asp?artID=810&IID=2>.

<sup>168</sup> French Press Agency. August 28, 2010. *Bomb attributed to the FARC opposite a radio station in Colombia defused.* Available at: <http://www.terra.com.mx/noticias/articulo/948598/Desactivan+bomba+atribuida+a+las+FARC+frente+a+una+radioemisora+en+Colombia.htm>.

<sup>169</sup> Jorge Tolosa is the host of the program "Other people's money" where he had denounced the behavior of common criminal gangs. International News Safety Institute. May 11, 2010. *Disabled Barrancabermeja journalist beaten by a gang.* Available at: [http://www.newssafety.org/index.php?option=com\\_content&view=article&id=18858:incapacitado-periodista-de-barrancabermeja-que-fue-golpeado-por-banda&catid=53:colombia-media-safety&Itemid=100273](http://www.newssafety.org/index.php?option=com_content&view=article&id=18858:incapacitado-periodista-de-barrancabermeja-que-fue-golpeado-por-banda&catid=53:colombia-media-safety&Itemid=100273).

<sup>170</sup> According to the information received, days prior to the attack, the journalist had made a series of complaints about the alleged acts of corruption in the community. *El Heraldito*. September 9, 2010. *Attacks on Journalist after complaints about corruption by privileged.* Available at: <http://www.elheraldo.com.co/ELHERALDO/BancoConocimiento/1/1atentan+contra+periodista+que+denuncio/1atentan+contra+periodista+que+denuncio.asp?CodSeccion=48>. *El Informador*. September 9, 2010. *Motorcycle riders attempted to burn journalist's bike.* Available: [http://www.el-informador.com/index.php?option=com\\_content&view=article&id=3814:sujetos-en-motocicleta-intentaron-quemar-moto-de-periodista&catid=82:ciénaga&Itemid=459](http://www.el-informador.com/index.php?option=com_content&view=article&id=3814:sujetos-en-motocicleta-intentaron-quemar-moto-de-periodista&catid=82:ciénaga&Itemid=459).

<sup>171</sup> *Semana*. September 14, 2010. *Contrabandistas agredieron a un equipo periodístico en Nariño.* Available at: <http://www.semana.com/noticias-nacion/contrabandistas-agredieron-equipo-periodistico-narino/144583.aspx>

<sup>172</sup> Foundation for Press Freedom. September 2, 2010. *Community radio station remains off air due to sabotage of equipment.* Available at: [http://www.flip.org.co/alert\\_display/0/1240.html](http://www.flip.org.co/alert_display/0/1240.html).

<sup>173</sup> Foundation for Press Freedom (FLIP)/IFEX. February 25, 2010. *Leaflet threatening journalists in Cartago, Valle del Cauca.* Available at: <http://ifex.org/colombia/2010/02/25/five+death+threats/es/>.

<sup>174</sup> Foundation for Press Freedom. March 27, 2010. *Plan to attack journalist in Montería, Córdoba defused.* Available at: [http://www.flip.org.co/alert\\_display/2/466.html](http://www.flip.org.co/alert_display/2/466.html).

director of the radio station *Panzenú* in Montería, received various death threats, which coincided with his publications concerning the upsurge of armed groups in the area. Astudillo had to flee the area.<sup>175</sup> On April 7, cameraman Alexis Tordecilla, of *Canal Montería*, was threatened by unknown persons riding a motorcycle. They made him stop at gunpoint and show them the images he had recorded on his camera.<sup>176</sup> In addition, the IACHR has received information of a threat made against journalist Deyanira Castro, editor-in-chief of the *Q'Hubo* newspaper in Cali, after she published information about gangs of hit men operating in the community where she lives.<sup>177</sup>

129. The IACHR was also informed that on May 30, a group of journalists from *Canal Caracol*, *Noticiero 90 Minutos*, and several foreign journalists were illegally detained for approximately one hour by men identified as guerillas of the Revolutionary Armed Forces of Colombia (FARC), in a rural area in the Caloto municipality, Cauca Department.<sup>178</sup> In addition, on October 23, the president of Colombia, Juan Manuel Santos, announced that information obtained from computers seized at the camp of the guerilla leader known as "Mono Jojoy" had revealed a FARC plan to murder journalist Olga Cecilia Vega. The journalist has publically requested that the FARC revoke the order, explaining that her coverage of this guerilla group has been performed exclusively in fulfillment of her functions as a journalist.<sup>179</sup>

130. Finally, the IACHR is particularly concerned by the new threats made by the FARC against journalist Jineth Bedoya on November 9, 2010, after the publication of her book "The Life and Death of Mono Jojoy".<sup>180</sup> Jineth Bedoya has been a beneficiary of the IACHR's precautionary measures since June 2000. The IACHR is concerned by the meager judicial advances in the case of the violence against journalist Jineth Bedoya, which occurred on May 25, 2000, when she was kidnapped, beaten and raped by her abductors as she was undertaking an investigation into paramilitary groups. Ten years after the events occurred, the proceedings are still at the investigation stage with the 6th Public Prosecutor of the Human Rights Unit, without any suspects having been identified.

131. In its observations the State indicated that since 2002 violence and attacks against journalists diminished "noticeably". It also reported that the Human Rights and IHL Unit of the General Prosecutor's Office has 49 pending cases related to persons linked to journalistic activities with 16 convictions affecting 24 persons.<sup>181</sup>

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<sup>175</sup> Colombian Federation of Journalists. April 8, 2010. *Wave of threats against journalists in Córdoba*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4788>. Colombia Federation of Journalists. July 29, 2010. *Threats against show "Zona Franca" in Montería, Córdoba*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5105>.

<sup>176</sup> Foundation for Press Freedom. April 10, 2010. *New threats against journalists in Montería*. Available at: [http://www.flip.org.co/alert\\_display/0/549.html](http://www.flip.org.co/alert_display/0/549.html). El Tiempo. April 8, 2010. *Journalist from Montería receives death threats*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7558767>.

<sup>177</sup> Foundation for Press Freedom. August 10, 2010. *Threats against the chief editor of the newspaper Q'Hubo in Cali, valle del Cauca*. Available at: [http://www.flip.org.co/alert\\_display/2/1233.html](http://www.flip.org.co/alert_display/2/1233.html).

<sup>178</sup> Latin-American Observatory for the Freedom of Expression. June 1, 2010. *The FARC keep a group of journalists hostage*. Available at: [http://www.felatracs.net/portal/index.php?option=com\\_content&view=article&id=285:reporte-1056&catid=15:ola&Itemid=46](http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=285:reporte-1056&catid=15:ola&Itemid=46).

<sup>179</sup> Foundation for Press Freedom. November 3, 2010. *President Santos announces that the FARC were planning attack on journalist*. Available at: [http://www.flip.org.co/alert\\_display/0/1729.html](http://www.flip.org.co/alert_display/0/1729.html).

<sup>180</sup> Foundation for Press Freedom, November 10, 2010. *The FARC threaten journalist and seemingly ordered assassination of the director of points-of-view program*. Available at: [http://flip.org.co/alert\\_display/0/1741.html](http://flip.org.co/alert_display/0/1741.html).

<sup>181</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

## B. Judicial Proceedings against Journalists

132. Throughout 2010, the IACHR has become aware of several cases of media journalists being criminally indicted for broadcasting information or opinions on matters of public interest. As an example, the IACHR was informed of a libel action lodged by the Governor of Casanare against eight journalists of the programs "Contacto Noticias" at the *Violeta Estéreo* community radio and "The Voice of Casanare" of *Voz de Yopal* community radio.<sup>182</sup> On the other hand, the IACHR was informed of the indictment for defamation offenses initiated on August 23 by the Office of the Attorney General against the columnist Claudia López, originating from a complaint lodged by former President Ernesto Samper.<sup>183</sup> In addition, information has been received about the complaints filed against Salud Hernández Mora by the President of the Supreme Court of Justice.<sup>184</sup> On the other hand, journalists of the *Verdad Abierta* web page, which is dedicated to news about paramilitaries, have been accused by Lieutenant Jalyl Rosember Torres Vega, director of the Guala Army Unit of the Department of Santander, for having published paramilitaries' statements, which mention the agent of the security forces.<sup>185</sup> Regarding these facts, the State indicated in its observations that "Colombian domestic legislation contemplates defamation offenses as an effort by the legislator to protect the right to honor and dignity as an essential part of the law. These criminal offenses have not been established as a tool to harass journalists. On the contrary, it constitutes a mechanism to protect the inhabitants from false and dishonorable accusations."<sup>186</sup>

133. The IACHR reiterates principle 10 of its Declaration of Principles, according to which "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social commentator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." In turn, principle 11 states that "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws', restrict freedom of expression and the right to information."

134. Finally, on September 6, 2010, the Colombian judiciary issued an arrest warrant against a Colombian journalist residing in Venezuela and former correspondent of the Telesur

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<sup>182</sup> In accordance with information received, the complaint is based on three broadcasts made between February and April of 2010, in which the journalists pointed out to the governor the failure to implement the Development Plan, questioned his competence for the task and complained of various inconsistencies in the job's performance. *Reporters sans frontières*. August 3, 2010. *Eight journalists face charges for "libel"*. Available at: [http://www.ifex.org/colombia/2010/08/03/journalists\\_sued/es/](http://www.ifex.org/colombia/2010/08/03/journalists_sued/es/).

<sup>183</sup> The case originated in an editorial column that Claudia López published in the *El Tiempo* magazine, on July 11, 2006, in which she criticized the possible nomination of Samper as ambassador to France. The complaint alleged that the journalist had made disreputable statements against the former president and had linked him to the possible commission of offences. *Foundation for Press Freedom*. August 24, 2010. *Public Prosecutor formally indicts journalist Claudia López for the crime of libel and slander*. Available at: [http://www.flip.org.co/alert\\_display/0/1266.html](http://www.flip.org.co/alert_display/0/1266.html).

<sup>184</sup> *El Espectador*. August 30, 2010. *Salud Hernández is sued by the President of the Supreme Court*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-221694-salud-hernandez-denunciada-el-presidente-e-de-corte-suprema>.

<sup>185</sup> *Verdad abierta*. May 18, 2010. *Paramilitaries smear at least ten members of the DAS, Army and Police*. Available at: [www.verdadabierta.com/.../2464-paras-salpican-a-decenas-de-miembros-del-das-ejercito-y-policia-en-meta-y-guaviare](http://www.verdadabierta.com/.../2464-paras-salpican-a-decenas-de-miembros-del-das-ejercito-y-policia-en-meta-y-guaviare).

<sup>186</sup> *Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010*, February 25, 2011, page 46.

enterprise, William Parra, for his alleged affiliation with guerilla organizations. According to the information received, the journalist denied the charges. The IACHR hopes that the present case is processed in accordance with the most rigorous due process guarantees.<sup>187</sup>

### C. Restrictions on the Freedom of Expression in the Electoral Process

135. The IACHR has received information concerning the enactment of Decree 1800 of May 24, 2010, which set out laws for the preservation of public order during the first and second rounds of the presidential elections, on May 30 and June 20. Journalist organizations questioned the fact that the decree restricted the right to freedom of expression, freedom of the press and freedom of information in a disproportionate way. Article 3 of the decree prohibited "all types of propaganda, demonstration, communications and interviews with political electoral aims" by any communications media whatsoever during the day of the elections. Article 7 established that on election day, "whilst the voting process is taking place", the communications media could only supply information concerning the number of persons who had cast their vote. Article 9 stipulated that "in matters of public order, on election day, the media communications shall only transmit information confirmed by official sources."<sup>188</sup>

136. The Office of the Special Rapporteur the Freedom of Expression sent a communication to the State of Colombia expressing concern about this issue.<sup>189</sup> In response, the Interior and Justice Minister rejected that there had been attempted censorship of media communications and denied that the decree represented a restriction on the freedom of expression, since "it did not mean that only statements from official sources could be published, but that information on public order be confirmed with the official source. The decree did not establish a prohibition but a procedure."<sup>190</sup>

137. During election periods special restrictions on freedom of expression may exist. However, they must strictly respect constitutional and international protections, particularly those enshrined in article 13.2 of the Convention. According to this provision, 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." In applying this provision, the IACHR and the Court have indicated that all restrictions must be established by law in both the formal and material sense, and that the scope of restrictions should be clear and precise. In this regard, the IACHR notes that in this case restrictions were established through administrative provisions that do not appear compatible with the aforementioned conditions.

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<sup>187</sup> *Reporters sans frontieres*. September 10, 2010. *Delayed due process against the former journalist of Telesur, William Parra*. Available at: <http://es.rsf.org/colombia-tardio-y-dudoso-procedimiento-09-09-2010,38331.html>.

<sup>188</sup> Interior and Justice Ministry. May 24, 2010. *Decree No.1800 of 2010*. Available at: <http://web.presidencia.gov.co/decretoslinea/2010/mayo/24/dec180024052010.pdf>.

<sup>189</sup> Special Rapporteur for the Freedom of Expression. IACHR. *Request for information from the State of Colombia. REF: Decrees 1740 of 2010 and 1800 of 2010*. Republic of Colombia. May 27, 2010.

<sup>190</sup> Interior and Justice Ministry. May 27, 2010. *Communication No. 492*. Available at: <http://web.presidencia.gov.co/comunicados/2010/mayo/492.html>; Communication handed over on July 30, 2010 by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

#### D. Changes to the mechanism for the protection of journalists<sup>191</sup>

138. The Interior and Justice Ministry issued Decree 1740 of May 19, 2010, which introduces important changes to the Interior and Justice Ministry's Human Rights Protection Program, which lends protection to, *inter alia*, journalists and social communicators who find themselves at risk.<sup>192</sup> The IACHR observes that Article 17 of Decree 1740 establishes changes to some of the protection measures offered to the beneficiaries; it removes, for instance, transportation aid, and substantially reduces the amount of relocation subsidies. Second, the IACHR observes that Article 29.1 of Decree 1740 of 2010 introduces grounds for suspending protective measures which could include conduct related to the work of a journalist, such as the necessity to meet in private with sources of information, in the absence of guards.

139. The Office of the Special Rapporteur for the Freedom of Expression expressed its concern to the State of Colombia with regard to the changes introduced by Decree 1740 of 2010.<sup>193</sup> In a communication received on July 30, 2010, regarding the adjustments to the measures of protection relating to land transportation aid and support for temporary relocation, the State replied that these alterations applied to all persons subject to the Protection Program and not only to journalists and social communicators. The State stresses that these changes are due to the interest in strengthening the "hard measures" approved and implemented for persons at an extraordinary and extreme level of risk. The State, with regard to the reduction in the amount of relocations subsidies, stated that this is due to the attempt to "reduce the negative effect generated by temporary relocation aid" which was highlighted by a National Procurator General's Office Evaluation and according to which relocations did not answer the needs of the beneficiaries as a measure of protection and even encouraged forced displacement. With respect to the changes in the security regime at the beneficiary's request, the State maintains that the beneficiary must notify the decision to make changes, without that implying a suspension of the measure.<sup>194</sup> At a public hearing held on October 28, 2010, at the IACHR, the State also expressed its willingness to receive suggestions and revise the alterations to the Interior and Justice Ministry's Human Rights Protection Program jointly with human rights organizations.<sup>195</sup> In its observations on the present report, the State reported that "[t]he Ministry of the Interior and Justice is currently advancing a process to modify Decree 1740 with the participation of the populations that are the object of the Protection Program. To date there are several proposals from different population groups, among them, the journalists and before the end of the first quarter of 2011, the National Government will establish the new content of the Decree."<sup>196</sup>

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<sup>191</sup> See *supra* IV. The Situation of Human Rights Defenders, Social and Trade Union Leaders.

<sup>192</sup> Interior and Justice Ministry of the Republic of Colombia. May 19, 2010. *Decree 1740 of 2010*. Available at: <http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm>.

<sup>193</sup> Special Rapporteur for the Freedom of Expression. IACHR. Request for information from the State of Colombia. REF: Decrees 1740 of 2010 and 1800 of 2010. Republic of Colombia. May 27, 2010.

<sup>194</sup> Communication handed over on July 30, 2010, by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

<sup>195</sup> Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

<sup>196</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

## E. Wiretapping and Unlawful Surveillance of Journalists

### 1. Background

140. As indicated in the 2009 Annual Report, throughout the year allegations of illegal wiretappings and unlawful surveillance were released which the State Intelligence Agency, known as the Administrative Department for Security (DAS), carried out on journalists, justices of the higher courts, opposition politicians, activists and human rights organizations.

141. During 2010, the Commission received additional information concerning unlawful activities of espionage, harassment, smear campaigns and even death threats against journalists, undertaken by the DAS between 2002 and 2008. The investigations initiated by the National Procurator General and the National Attorney General's Office, as well as the important revelations of the media indicate a sustained and systematic policy of persecution on the part of the principal intelligence agency of the State of Colombia, directed at spying on, smearing and intimidating some of the journalists criticizing the Government of President Álvaro Uribe Vélez. In some cases, the unlawful spying by the DAS was undertaken by the same agents charged with protecting those journalists within the framework of the Interior and Justice Ministry's Human Rights Protection Program.<sup>197</sup>

142. These events represent an especially serious attack on the freedom of expression in Colombia, and have had profound consequences for the personal and professional lives of the persecuted journalists and their families. As described below, despite the advances in the investigation there is no clarity on who issued the orders and performed most of the illegal activities against journalists criticizing the Government.

### 2. Spying and Harassment by the DAS against Journalists

143. Although the IACHR has received information about unlawful activities directed against at least a group of ten journalists,<sup>198</sup> the current report highlights those cases in which the investigations made to date allow more and better information to be shown to explain the phenomenon. The cases selected refer to independent journalists with respect to whom the spying and harassment activities were especially serious.

144. One of the most serious cases is that of the journalist Daniel Coronell. Journalist Coronell has a prestigious career, writes one of the most widely read editorial columns in the country and at the moment of the facts he directed *Noticias Uno*, a news program presenting an informative and editorial line pointedly independent from that of the government's. Thanks to his investigations, the journalist was able to denounce serious cases of alleged corruption.<sup>199</sup> In

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<sup>197</sup> See Constitutional Court of Colombia. Judgment T-1037 of 2008. Judge Rapporteur, Jaime Córdoba Triviño. Foundation for Press Freedom. December 3, 2010. *Spying on Journalists: the courts now speak*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*, p. 4. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: [http://www.facebook.com/note.php?note\\_id=388797002244](http://www.facebook.com/note.php?note_id=388797002244).

<sup>198</sup> See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>.

<sup>199</sup> See, for example, *Revista Semana*. April 18, 2009. "That's more than enough" (*Sobrados del lote*). Available at: <http://www.semana.com/noticias-opinion/sobrados-lote/122986.aspx>. *Revista Semana*. October 16, 2010. *One day flower*. Available at: <http://www.semana.com/noticias-opinion/flor-dia/146010.aspx>.

response to some of these investigations, former President Álvaro Uribe and high-ranking officials of his Government publically discredited him on various occasions.<sup>200</sup>

145. According to the information received, on May 25, 2010, at a public hearing before the National Public Prosecutor, former deputy director of DAS Intelligence Operations, Martha Inés Leal, stated that DAS directors ordered that Daniel Coronell be followed. According to her, there were attempts to establish who was passing him information since, according to the information received by her, President Uribe "was very annoyed" by the investigations made against him and his family. Leal added that DAS agents went beyond this and "checked up on the movements of Coronell and his wife [María Cristina Uribe, a presenter with *Noticias Uno*]. In addition, information was requested from the UIAF [Financial Analysis and Information Unit] as to his bank transactions. His address was located, and since he lived in a military zone, a car was hired to follow him."<sup>201</sup>

146. The Commission also received information about the statement of Fernando Alonso Tabares, former Director General of Intelligence at the DAS, as to the surveillance of journalist Coronell. According to press reports, at a hearing which took place on July 9, 2010, Tabares stated that in September 2007, then DAS Director María del Pilar Hurtado asked him to accompany her to a working meeting she had with Bernardo Moreno, Secretary General of the Office of the President of the Republic. According to Tabares' evidence, "Dr. Bernardo Moreno pointed out to Dr. María del Pilar Hurtado that the President of the Republic was interested in being kept informed by the DAS about four principal points or aspects: the Supreme Court of Justice, Senators Piedad Córdoba and Gustavo Petro and the journalist Daniel Coronell." Tabares added, finally, that Hurtado "left instructions for us to start to focus our best efforts on this requirement communicated by Dr. Bernardo Moreno."<sup>202</sup>

147. According to the information received, Bernardo Moreno, in a deposition before the Public Prosecutor in July 2010, remembered having met with Tabares and Hurtado in September 2007 and acknowledged having made requests for information - in his view, lawfully - from the DAS regarding members of Congress and judges, but denied requesting unlawful DAS actions against Daniel Coronell.<sup>203</sup> Hurtado also denied receiving orders from the President's Office to wiretap and track the persons mentioned by Tabares.<sup>204</sup>

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<sup>200</sup> See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>. See *Revista Semana*. October 9, 2007. *President Álvaro Uribe and journalist Daniel Coronell wage the bitterest verbal battle on the radio*. Available at: [http://www.semana.com/wf\\_InfoArticulo.aspx?idArt=106790](http://www.semana.com/wf_InfoArticulo.aspx?idArt=106790).

<sup>201</sup> *El Espectador* newspaper. September 4, 2010. Martha Leal's confession to a delegated prosecutor. Available at: <http://www.elespectador.com/impresso/judicial/articuloimpresso-222598-confesion-de-martha-leal-un-fiscal-delegado>. *Revista Semana*. September 6, 2010. DAS Wire-tapping: Martha Leal's chapter. Available at: <http://www.semana.com/noticias-nacion/chuzadas-del-das-capitulo-martha-leal/144144.aspx>

<sup>202</sup> *Revista Semana*, July 24, 2010, Article entitled: "Everything ordered by the Nariño house." Available at: <http://www.semana.com/noticias-nacion/todo-orden-casa-narino/142149.aspx>. W Radio, *July 23, 2010*. Fragments of Fernando Tabares' Testimony, key witness in the DAS wire-tapping. Available at: <http://www.wradio.com.co/oir.aspx?id=1331096>. Caracol Radio, July 24, 2010. 'Fernando Tabares' revelations implicate Bernardo Moreno." Available at: <http://www.caracol.com.co/nota.aspx?id=1331537>. *La Silla vacía*, July 23, 2010. *Tabares' statement will be the crowning evidence against Uribe in the DAS scandal*. Available at: <http://www.lasillavacia.com/historia/16849>.

<sup>203</sup> *Vanguardia*. July 27, 2010. Bernardo Moreno's Lawyer says yes he asked for information from the DAS. Available at: <http://www.vanguardia.com/historico/70161-abogado-de-bernardo-moreno-dice-este-si-le-pidio-informacion-al-das>. *El Tiempo*. July 28, 2010. Bernardo Moreno's defense says that the former head of DAS intelligence is lying. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7830392>.

<sup>204</sup> Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

148. Daniel Coronell has been the victim of numerous threats since April 2002. In August 2005, he left the country for exile due to this continuing harassment. He returned to Colombia in 2007, and despite the threats and acts of intimidation suffered, he has continued during all these years with a distinguished career in journalism.

149. Claudia Julieta Duque is an independent correspondent in Colombia with the Internet human rights broadcaster *Radio Nizkor*. The information received indicates that the harassment against the journalist was related to investigations she conducted into the murder of the journalist and broadcaster Jaime Garzón, which had shown that the DAS misled the investigation of the crime.<sup>205</sup>

150. According to the information received, a document was discovered in the investigation undertaken by the Public Prosecutor marked "For DAS use only" and headed with the journalist's telephone numbers and email addresses. This document contained detailed instructions on how to threaten the journalist, establishing the conditions as to how, when and where the threats could be made so as not to be identified as DAS agents. According to the instructions, whoever was to make the threat should say "Madam, are you María Alejandra's mother? [wait for an answer] then I tell you that you've left us no other option, you have been told and paid no attention; now neither armored cars nor little letters will be of use - we have to deal with what you love best, and this happens for meddling in things that don't concern you, you scabby old bitch."<sup>206</sup> In addition to the text included in the instructions, the person who telephoned on November 17, 2004, threatened to burn journalist Duque's ten-year old daughter alive. The threat caused her temporary exile from Colombia.<sup>207</sup>

151. According to the information available to the IACHR, the Public Prosecutor's investigation also revealed the existence of dozens of DAS intelligence reports regarding journalist Duque. These reports, which were mainly compiled during the years 2003 to 2005, include resumes, photos, telephone call transcripts and intercepted emails (including between Duque and her lawyer), and an analysis of her activities (including the journalistic investigations she was then undertaking) and family information.

152. In the last few years, Claudia Julieta Duque has received constant death threats through various channels. However, she has never abandoned her work as a reporter and investigative journalist. At present she is considered to face an extraordinary level of risk, and she

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<sup>205</sup> *Revista Semana*. December 12, 2009. Manual for Threats. *Manual para amenazar*. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. International Women's Media Foundation. *Claudia Julieta Duque has the courage to speak*. Available at: <http://www.iwmf.org/archive/articletype/articleview/articleid/1272/claudia-julieta-duque-has-the-courage-to-speak.aspx>. This fact was revealed in December 2009, after the date of closing the 2009 Annual Report.

<sup>206</sup> *Revista Semana*. December 12, 2009. Manual for Threats. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: <http://www.youtube.com/watch?v=vfnkGqy4-tE>.

<sup>207</sup> *Revista Semana*. December 12, 2009. Manual for Threats. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: <http://www.youtube.com/watch?v=vfnkGqy4-tE>.

is the beneficiary of protective measures in Colombia and she and her daughter have been beneficiaries of precautionary measures granted by the IACHR since November 2009.

153. Carlos Lozano is the director of the *Voz* weekly magazine and has been called upon by the Government at different times to undertake humanitarian work or to liaise with guerilla groups. According to information published in the press, in statements made before the Public Prosecutor on October 25, 2010, Gustavo Sierra Prieto, former deputy director of the DAS Analysis Office, stated that former director María del Pilar Hurtado constantly requested information on Carlos Lozano, director of the *Voz* weekly periodical, which in turn had been requested by the Secretary General of the President's Office. Sierra added that Hurtado also ordered smear campaigns against the social commentator, by leaking compromising information to the media. According to press reports, Sierra stated in his testimony that the former DAS director ordered that reports should be circulated through media outlets suggesting some relationship of the journalist to the FARC, to publically smear him.<sup>208</sup>

154. Lozano was in effect investigated by the National Attorney General's Office for alleged links with the FARC, but the proceedings were archived when it was determined that his contacts with the guerilla were limited to his role as a peace facilitator.<sup>209</sup>

155. Hollman Morris, director of the news program *Contravía*, is a distinguished independent journalist well-known for his reporting directed at denouncing human rights violations and as a voice for the victims of these violations.

156. According to the information received, in February 2010, Hollman Morris disclosed a document allegedly discovered by the Public Prosecutor in the course of investigations with respect to unlawful DAS activities.<sup>210</sup> In this official document - a PowerPoint presentation - they explain the actions that had to be taken against Morris. The instructions included "beginning a smear campaign at the international level through the following activities: communications; Including a video (on the) FARC / Arranging suspension of his visa / Sabotage actions (stealing his passport and national identity card, etc.), as well as "locating his home in [...] of Bogotá / Constant surveillance of his movements".<sup>211</sup>

157. One of the smear measures mentioned in the PowerPoint was the "Arranging for suspension of his Visa". In July 2010, journalist Morris was notified that his US visa had been denied, despite having been admitted and granted a scholarship for a journalism study program at

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<sup>208</sup> Newspaper *El Espectador*, November 9, 2010. Article entitled: 'The DAS suitcase for Palacio'. Available at: <http://www.elespectador.com/impreso/judicial/articuloimpreso-234123-valija-del-das-palacio>. Newspaper *El Espectador*, November 11, 2010. The reports of Gustavo Sierra Prieto. Available at: <http://www.elespectador.com/impreso/articuloimpreso-234488-los-Reports-de-gustavo-sierra-prieto>.

<sup>209</sup> Caracol Radio, July 24, 2009. 'They archive the investigation against Álvaro Leyva and Carlos Lozano'. Available at: <http://www.caracol.com.co/nota.aspx?id=850402>. Newspaper *El Espectador*, July 24, 2009. Investigation for FARC politics against Álvaro Leyva and Carlos Lozano, terminated. Available at: <http://www.elespectador.com/noticias/judicial/articulo152397-precluyen-favor-de-alvaro-leyva-y-carlos-lozano-investigacion-farc>.

<sup>210</sup> Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: <http://www.cipcol.org/?p=1467>. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

<sup>211</sup> Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: <http://www.cipcol.org/?p=1467>. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

Harvard University. After a strong international backlash, the decision was revoked.<sup>212</sup> In its observations, the State denied that the refusal to grant a visa for Mr. Morris was part of a State persecution policy given that "it has no influence in the proceedings before the US embassy in the country."<sup>213</sup>

158. Journalist Morris, after having had access to some of the DAS documents about him that were seized by the Public Prosecutor, also denounced that the DAS archives contained information about several aspects of his personal life (identification information, studies completed, professional activities, and his movements) as well as information on his immediate family, such as photographs of his parents' house, notes on his sisters, and the class times of his small children.<sup>214</sup>

159. In addition, according to information received, the former deputy director of DAS Intelligence Operations, Martha Inés Leal, related in her deposition of October 28, 2010, that the DAS compiled a video with the aim of linking various journalists to illegal armed groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). According to press reports, this video may correspond to a release of information in 2006, which attempted to link journalist Hollman Morris with the FARC and thereby smear him.<sup>215</sup> According to press reports, Leal stated in the same deposition that from the direction of DAS he ordered to have Morris followed.<sup>216</sup>

160. Hollman Morris and his family have been the target of multiple death threats and acts of harassment and smearing. He has been categorized as being in a situation of extreme risk that merit domestic protective measures for himself and his family who have also been beneficiaries of precautionary measures granted by the IACHR since June 2000. During all these years and despite undergoing periods of forced exile, the journalist has not ceased reporting on human rights and, especially, on the victims of the armed conflict in Colombia.

161. There are other very serious cases in which, however, there has been no progress in the investigations. This is the case, for example, of journalist Gonzalo Guillen, Colombia correspondent for Miami's *El Nuevo Herald*, who has had to leave the country several times due to threats on his life. In November 2009 he received notification from the Public Prosecutor that he

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<sup>212</sup> Inter-American Press Society (SIP) July 13, 2010. SIP asks US consulate to reconsider Visa denial to Colombian journalist Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&idioma=us&id=4404](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=us&id=4404). Newspaper El Nuevo Herald. July 13, 2010. Disagreement over US's Visa denial for Colombian journalist. Available at: <http://www.elnuevoherald.com/2010/07/12/764703/polemica-por-negacion-de-visado.html>. Foundation for Press Freedom (FLIP). July 14, 2010. About the travel situation of Hollman Morris. Available at: [http://www.flip.org.co/alert\\_display/0/1057.html](http://www.flip.org.co/alert_display/0/1057.html). IFEX. July 27, 2010. *Journalist Hollman Morris granted visa to join Harvard Program*. Available at: [http://www.ifex.org/united\\_states/2010/07/27/morris\\_granted\\_visa/](http://www.ifex.org/united_states/2010/07/27/morris_granted_visa/).

<sup>213</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

<sup>214</sup> Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: [http://www.facebook.com/note.php?note\\_id=388797002244](http://www.facebook.com/note.php?note_id=388797002244).

<sup>215</sup> *La Silla vacía*. November 2, 2010. *The questions that Peñate must answer before the Public Prosecutor*. Available at: <http://www.lasillavacia.com/historia/19296>. RCN. October 28, 2010. *Martha Leal revealed tactics to implicate journalist with the FARC*. Available at: [http://www.canalrcnmsn.com/noticias/martha\\_leal\\_revel%C3%B3\\_manobra\\_para\\_inculpar\\_periodista\\_con\\_las\\_farc](http://www.canalrcnmsn.com/noticias/martha_leal_revel%C3%B3_manobra_para_inculpar_periodista_con_las_farc). CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*. Available at: <http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas>.

<sup>216</sup> CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*. Available at: <http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas>. Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

was identified as having been the victim of surveillance tracking by the DAS. In June 2010, the journalist was the target of serious death threats. He brought this to the Public Prosecutor's attention but states that no measures have been adopted in this regard.<sup>217</sup>

162. With regard to the investigations, the Commission does not have precise information with respect to which of the acts committed against the journalists Daniel Coronell, Claudia Julieta Duque, Carlos Lozano and Hollman Morris — among other journalists that have been subject to illegal actions by the DAS<sup>218</sup> — are being investigated in criminal proceedings underway in relation to the unlawful intelligence activities. Nevertheless, a December 2010 report of the Foundation for Freedom of the Press indicates that Claudia Julieta Duque's case remains to date at the investigation stage.<sup>219</sup> In its observations the State reiterated that "the wire tapings carried out by the DAS are not a state policy", and indicated that the "State has not tolerated this conduct nor it has allowed for them to remain with impunity. The facts were investigated and arrest warrants were issued against the officials."<sup>220</sup> However the State fails to provide specific information on the criminal proceedings relating to illegal intelligence activities against journalists.

### 3. Access to Information

163. Several problems have been reported in relation to access to public information and the right to information about oneself or *habeas data*, in relation to the unlawful DAS activities and subsequent investigations.

164. At first, when evidence came to light that the DAS were spying on journalists and other public figures, some people requested that they be provided with the reports existing about them with this entity. With respect to the journalist Claudia Julieta Duque, even the Constitutional Court itself in a Judgment dated October 23, 2008, ordered that the DAS "allow the plaintiff access to information being kept about her in the entity, with the sole exception of information under reserve within the framework of the judicial investigation, access to which the plaintiff does not have a legal right."<sup>221</sup> However, the DAS failed to hand over all the information which, due to the investigations previously mentioned, was subsequently known to exist in its archives; the entity argued that the said information did not exist.<sup>222</sup> In its observations the State reported that the legal representative of journalist Duque had filed two motions regarding these facts. The first incident was resolved by the Fourth Contentious Administrative Chamber of the Council of State on August 13, and the second was resolved by the Third Section of the Contentious Administrative Court of Cundinamarca – Subsection A on November 25, 2010. Both decisions found that the DAS Director had complied with the orders issued by the Constitutional Court.<sup>223</sup>

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<sup>217</sup> Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

<sup>218</sup> See IACHR Annual Report 2009. Report of the Special Rapporteurship on Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>.

<sup>219</sup> Foundation for Press Freedom. December of 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

<sup>220</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 48.

<sup>221</sup> Constitutional Court of Colombia. Judgment T-1037 de 2008. Judge Rapporteur, Jaime Córdoba Triviño.

<sup>222</sup> In accordance with information received dated May 20, 2009, for example, the DAS informed the journalist that "there were no documents linked to institutional actions such as work orders, requests, requirements, recordings, nor court proceedings having a link to the journalist CLAUDIA JULIETA DUQUE."

<sup>223</sup> Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 48-50.

165. In addition, some journalists who have indications that they were being targeted for surveillance by the DAS have asked the Public Prosecutor for precise information on whether this entity was in fact listening in on their telephone conversations. For this purpose, they have provided their home, office and cell phone numbers. However, the information received shows that the Public Prosecutor has declined the request, indicating that the events are currently under investigation and are, therefore, confidential.

166. In addition, the available information shows that the DAS destroyed part of the evidence related to the events under investigation. In October 2010, William Romero, former head of the sub-department of DAS Human Resources, provided the Public Prosecutor with ample electronic and hard copy information, which he stated he had been ordered to destroy. According to information published in the press, the general prosecutor in charge acknowledged that certain evidence had been destroyed by the DAS.<sup>224</sup>

167. Finally, the judicial information gathered during the public hearings which took place before the Supreme Court of Justice is also classed as confidential without there appearing to be any law which establishes this exception to the right to access in a clear, precise and proportionate way.<sup>225</sup>

168. The IACHR acknowledges the utmost importance that these investigations may be effective; while also of protecting the life and integrity of those witnesses who have contributed to the advancement of the investigation. However, there are other means less restrictive on the right of access to information and surely much more effective in guaranteeing the outcome of the investigations and the security of witnesses. In this sense, any restriction on access to public hearings by the press must be established by law, pursue a legitimate aim and be necessary and proportionate in relation to the aims in a democratic society. The rules of access must be concrete, objective and reasonable, and their application transparent.<sup>226</sup>

## 9. Costa Rica

169. The Office of the Special Rapporteur observes with satisfaction that the Inter-American Court of Human Rights has declared the case of journalist Mauricio Herrera Ulloa versus Costa Rica concluded upon ruling that the Costa Rican State has complied with all the operative paragraphs of the judgment issued on July 2, 2004. According to the ruling of the Inter-American Court, the State was required to annul the ruling handed down on November 12, 1999, by the Criminal Court of the First Judicial Circuit of San José that convicted Herrera Ulloa on four counts of publication offenses related to defamation. Costa Rica also had to adjust its domestic law to the provisions of Article 8(2)(h) of the American Convention on Human Rights. In a resolution dated November 22, 2010, the Inter-American Court viewed positively the fact that the Legislative Assembly had passed Law No. 8.837, the Law for the Creation of a Remedy to Appeal Judgments,

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<sup>224</sup> *Revista Semana*. October 28, 2010. *Former DAS detective hands over three boxes of evidence about 'wire-tapping' that he did not destroy*. Available at: <http://www.semana.com/noticias-nacion/ex-detective-das-entrega-tres-cajas-pruebas-sobre-chuzadas-no-destruyo/146504.aspx>. Terra.com. October 28, 2010. *Prosecutor recognizes there was destruction of evidence in 'wire-tapping'*. Available at: <http://www.terra.com.co/noticias/articulo/html/acu35808-fiscal-reconoce-que-hubo-destruccion-de-pruebas-en-chuzadas.htm>. *El Espectador*. October 28, 2010. *Prosecutor confirmed destruction of evidence of the 'wire-tapping'*. Available at: <http://www.elespectador.com/articulo-232016-fiscal-confirmando-destruccion-de-pruebas-de-chuzadas>.

<sup>225</sup> Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

<sup>226</sup> IACHR, Special Rapporteur for the Freedom of Expression. *The Right of Access to Information in the Inter-American judicial context*. OEA/Ser.L/V/II IACHR/RELE/INF. 1/09. December 30, 2009, para. 65.

which creates a remedy for appealing criminal judgments and, *inter alia*: allows the ruling to be reviewed by a higher court; consists of a simple remedy, without excessive formalities, that does not include requirements or restrictions that infringe upon the essence of the right to appeal and makes possible an integral examination of all the issues debated and analyzed by the trial court.<sup>227</sup> The case began in 1995, when Herrera Ulloa published a series of articles in newspaper *La Nación* that partially reproduced information from European newspapers on a controversy involving a Costa Rican diplomat.

170. The Office of the Special Rapporteur took note of the important ruling of the Third Chamber (Criminal) of the Supreme Court of Justice, dated December 18, 2009, which struck down Article 7 of the Print Act that established a prison term as punishment for offenses against honor.<sup>228</sup> According to the information received, in ruling on a writ of cassation submitted by José Luis Jiménez Robleto - a journalist with the newspaper *Diario Extra* who was convicted by a lower court of defamation and sentenced to 50 days in prison - the court ruled that the punishment of a prison term established in the 1902 Print Act had been tacitly annulled in 1971 with the promulgation of the current Penal Code. That Code does not include a prison sentence, but does include a sanction of a "day wage fine" and registration in the criminal registry.<sup>229</sup>

171. According to the information received, on February 19 the Constitutional Chamber of the Supreme Court of Justice ruled in favor of two journalists with the newspaper *La Teja* who the Costa Rican Football Federation (Fedefutbol) had denied accreditation to cover an international game of the national football team. According to the information received, Fedefutbol had tried to block *La Teja's* access because in October 2009, the newspaper had published a photo illustration of the team's members with faces of dogs after they failed to qualify for the Football World Cup in South Africa. The Constitutional Chamber ordered Fedefutbol officials not to repeat the actions that gave grounds for the acceptance of the writ.<sup>230</sup>

172. The Office of the Special Rapporteur received information indicating that on March 5, the Constitutional Chamber of the Supreme Court of Justice dismissed a writ of constitutional protection (*amparo*) filed by *Diario Extra* over an alleged act of prior censorship. According to the information received, on May 4, 2009, police and court officials confiscated photographs taken by Elías Alvarado, a photographer with *Diario Extra*, at the site where a helicopter loaded with cocaine had crashed. The photographer said he had been subject to harassment and intimidation by State officials trying to get him to turn over a memory card in order to copy its contents. In the end, the photographer submitted to the request. Four days later, the officials returned the memory card. The Constitutional Chamber ruled that, according to the evidence received, the photographer's constitutional rights were not harmed because he agreed voluntarily to turn over the requested material, "did not demonstrate that he was a journalist," and the photographic equipment was

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<sup>227</sup> Inter-American Court of Human Rights. November 22, 2010. Case of Herrera Ulloa v. Costa Rica. Monitoring compliance with judgment. Available at: [http://www.corteidh.or.cr/docs/supervisiones/herrera\\_22\\_11\\_10.doc](http://www.corteidh.or.cr/docs/supervisiones/herrera_22_11_10.doc)

<sup>228</sup> Supreme Court of Justice of Costa Rica. Third Chamber. Judgment 01798. December 18, 2009. Available at: [http://200.91.68.20/SCIJ/busqueda/jurisprudencia/jur\\_ficha\\_sentencia.asp?nValor2=462328&nValor1=1&strTipM=T&ResUltado](http://200.91.68.20/SCIJ/busqueda/jurisprudencia/jur_ficha_sentencia.asp?nValor2=462328&nValor1=1&strTipM=T&ResUltado)

<sup>229</sup> Committee to Protect Journalists (CPJ). February 12, 2010. *Court eliminates prison terms for defamation, but criminal convictions still possible*. Available at: [http://www.ifex.org/costa\\_rica/2010/02/16/penal\\_code\\_reform/](http://www.ifex.org/costa_rica/2010/02/16/penal_code_reform/); *La Nación*. February 11, 2010. *Third Chamber eliminates prison time for journalists*. Available at: [http://www.nacion.com/ln\\_ee/2010/febrero/11/pais2260696.html](http://www.nacion.com/ln_ee/2010/febrero/11/pais2260696.html)

<sup>230</sup> Supreme Court of Justice of Costa Rica. Constitutional Chamber. Judgment 2010-03375, February 19, 2010. Available at: [http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur\\_repartidor.asp?param1=XYZ&nValor1=1&nValor2=475705&strTipM=T&strDirSel=directo](http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=475705&strTipM=T&strDirSel=directo); *La Nación*. February 23, 2010. *Fourth Chamber orders Fedefutbol to respect freedom of the press*. Available at: <http://www.poder-judicial.go.cr/observatoriojudicial/vol100/prensa/nota17.htm>

returned several days later. In the ruling, the Constitutional Chamber established that “prior censorship is prohibited, except for reasons of health, national security, morality or proper conduct.”<sup>231</sup>

173. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR’s Declaration of Principles indicates that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

174. According to information received by the Office of the Special Rapporteur, on June 9, officials with a private company contracted by the municipality of Osa blocked Efraín Sánchez, director of the newspaper *La Estrella del Sur*, from photographing construction taking place in the public park of Ciudad Cortés. According to the information received, the company called the police, who arrested the journalist minutes later after he had already left the construction site. More than a month later, the company publicly apologized to the journalist and to the Journalist Professional Association of Costa Rica, explaining that the incident happened due to confusion over acts of vandalism suffered previously at its facilities.<sup>232</sup>

## 10. Cuba<sup>233</sup>

175. In 2010, Cuba released 17 journalists who had been detained in 2003; the Inter-American Commission on Human Rights considered this a positive development. Even so, conditions persisted in Cuba that allow one to state that the conditions necessary for the exercise of the freedom of expression do not exist in Cuba.

176. The following paragraphs indicate some relevant facts related to the exercise of the freedom of expression in Cuba.

### 1. Gains

177. Up until November, Cuba had released, on condition that they travel to Spain, 17 journalists who were part of a group of prisoners arrested in 2003, during a massive detention of political dissidents and independent journalists. The IACHR encouraged the Cuban State to continue the process so as to release all the political prisoners. It also reiterated that Cuba should set aside the convictions of those persons, bring its procedural rules into line with international standards of due process, make the necessary reforms in keeping with its international human rights obligations, and implement a process of democratic normalization. The journalists released are: Léster Luis González Pentón, Omar Ruíz Hernández, Julio César Gálvez Rodríguez, José Luis García Paneque, Pablo Pacheco Ávila, Ricardo González Alfonso, Omar Rodríguez Saludes, Normando Hernández

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<sup>231</sup> Supreme Court of Justice of Costa Rica. Constitutional Chamber. Judgment 2010-4657, March 5, 2010. Available at: [http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur\\_repartidor.asp?param1=XYZ&nValor1=1&nValor2=467596&strTipM=T&strDirSel=directo](http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=467596&strTipM=T&strDirSel=directo)

<sup>232</sup> Municipality of Osa. Ordinary act No. 28-2010, July 14, 2010. Paragraph 10. Available at: [http://www.gobiernolocalosa.go.cr/pdf/actas/2010/ordinarias/Acta%20Ordinaria%20No.%2028-2010%20\(ratificada%201-07-2010\)%20Vieja.pdf](http://www.gobiernolocalosa.go.cr/pdf/actas/2010/ordinarias/Acta%20Ordinaria%20No.%2028-2010%20(ratificada%201-07-2010)%20Vieja.pdf); National Union of Journalists. August 20, 2010. *No to abuse of authority toward journalists*. Available at: <http://www.elpais.cr/articulos.php?id=30668>

<sup>233</sup> This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

González, Mijail Bázquez Lugo, Alfredo Pulido López, José Ubaldo Izquierdo Hernández, Fabio Prieto Llorente, Juan Carlos Herrera Acosta, Juan Adolfo Fernández Saínz, Víctor Rolando Arroyo Carmona, Miguel Galván Gutiérrez, and Alfredo Felipe Fuentes. According to the information received, of the group of journalists detained in the 2003 roundup, Pedro Argüelles Morán, Héctor Maseda Gutiérrez, and Iván Hernández Carrillo are still awaiting release.<sup>234</sup>

## 2. Acts of aggression, political harassment, or detentions for exercising the right of freedom of expression

178. In 2010 the State maintained an attitude of intolerance towards the exercise of independent journalism and peaceful opposition demonstrations. The IACHR received information on two detentions of *Hablemos Press* correspondent Calixto Román Martínez Arias, from April 23 to May 13 and from May 5 to June 5. According to the information received, on the first occasion he had been arrested while covering a ceremony commemorating the death of dissident Orlando Zapata Tamayo. In the second incident, Martínez was detained when covering a demonstration of political opposition figures in Havana.<sup>235</sup>

179. In addition, the IACHR was informed that journalists from the Information Center of the Consejo de Relatores de Derechos Humanos de Cuba<sup>236</sup>, Juan Carlos González Leiva, Tania Maceda Guerra, and Sara Marta Fonseca Quevedo, had been held in Havana for five hours, on April 8, 2010, in order to keep them from attending a meeting. Police agents returned to harass and detain González and Maceda for several hours on August 1.<sup>237</sup>

180. On June 2, the director of the *Agencia de Prensa Libre Avileña*, José Manuel Caraballo Bravo, who was taking photographs in a peaceful protest, and reporter Raúl Arias Márquez, were said to have been arrested for several hours in Havana. According to the information received, police agents beat Arias on detaining him and then questioned the journalists and confiscated their camera, recorder, and telephone.<sup>238</sup>

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<sup>234</sup> Committee for the Protection of Journalists, October 12, 2010. Cuba libera decimoséptimo periodista arrestado en redada de 2003. Available at: <http://cpj.org/es/2010/10/cuba-libera-decimoséptimo-periodista-arrestado-en.php>; IACHR. July 13, 2010. Press Release No. 69/10. IACHR Welcomes Release of Prisoners in Cuba.

<sup>235</sup> On that occasion, also arrested were six protesters, who were released shortly thereafter. Martínez remained in prison, and was said to have been deported to the province of Camaguey on June 5. Reporters without Borders, June 2, 2010. *Periodista detenido de nuevo, 10 días después de haber sido puesto en libertad*. Available at: [http://www.ifex.org/cuba/2010/06/02/martinez\\_rearrested/es/](http://www.ifex.org/cuba/2010/06/02/martinez_rearrested/es/); Periodistas en Español. June 11, 2010. *El periodista Moisés Leonardo Rodríguez recibe un "acta de advertencia" de las autoridades de Cuba*. Available at: <http://www.periodistas-es.org/periodistas/el-periodista-moisés-leonardo-rodríguez-recibe-un-acta-de-advertencia-de-las-autoridades-cubanas>

<sup>236</sup> The Consejo de Relatores de Derechos Humanos is a free, democratic, and plural forum that was constituted in May 2007 for the promotion and defense of human rights.

<sup>237</sup> Cubanet. April 13. *Arrestan a periodistas independientes del Consejo de Relatores*. Available at: [http://www.cubanet.org/CNews/y2010/abril2010/13\\_N\\_2.html](http://www.cubanet.org/CNews/y2010/abril2010/13_N_2.html). World Organisation Against Torture. April 16. *La OMCT reitera su llamado a liberar a todos los presos de conciencia*. Available at: <http://www.omct.org/es/urgent-campaigns/urgent-interventions/cuba/2010/04/d20649/>. International Federation for Human Rights. August 6, 2010. *Hostigamiento judicial, agresión y amenazas contra varios miembros del Consejo de Relatores de Derechos Humanos*. Available at: <http://www.fidh.org/Hostigamiento-judicial-agresion-y-amenazas-contra>.

<sup>238</sup> Misceláneas de Cuba. June 22, 2010. *Detenido y despojado de sus instrumentos de trabajo José Manuel Caraballo Bravo, director de la agencia de prensa avileña*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=28441>; The Miami Herald. June 10, 2010. *Two Independent Journalists Arrested Covering Anti-Government Protest*. Available at: <http://www.miamiherald.com/2010/06/24/1698289/two-independent-journalists-arrested.html>.

181. The IACHR also received information regarding several detentions, in 2010, of independent journalist and human rights activist Julio Beltrán Iglesias, on May 4, May 18 and September 30 by state security agents.<sup>239</sup>

182. In addition, the IACHR received information according to which on January 29 police agents arrested journalist Juan Carlos Reyes Ocaña, of the agency *Holguín Press*, accused him of “contempt,” “disobedience,” and “unlawful economic activity,” and held him for 24 hours. He was also said to have been arrested and threatened by the Police on December 4, 2009.<sup>240</sup>

183. The IACHR was also informed that journalist Oscar Sánchez Madán was released on April 11 after serving a three-year prison sentence. According to the information received, Sánchez was convicted in April 2007 of “pre-delictive social dangerousness.”<sup>241</sup>

184. Article IV of the American Declaration indicates that every person has the right to freedom of investigation, opinion, expression, and dissemination of thought, by any medium. The IACHR reiterates that principle 1 of the Declaration of Principles on Freedom of Expression says that: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

185. The IACHR also recalls principle 9 of the Declaration of Principles on Freedom of Expression, according to which: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” The IACHR understands that the detention and subsequent restrictions directed at the reporters are clear forms of restricting journalistic endeavor, and, therefore, the exercise of freedom of expression.

### 3. Restrictions on the use of the Internet

186. In 2009, the IACHR noted the restrictions and difficulties Cubans face when it comes to accessing the Internet. In 2010, the use of the Internet continued to be far from reach for most of the population, due to its high cost, the low connection speeds,<sup>242</sup> and the restrictive rules that limit or obstruct efforts to get on line.

<sup>239</sup> Cubanet, May 7, 2010. *Independent Journalist Duped and Arrested*. [http://www.cubanet.org/news\\_english\\_Jan\\_Dec\\_2010.html](http://www.cubanet.org/news_english_Jan_Dec_2010.html); Misceláneas de Cuba. May 20, 2009. *Detenido arbitrariamente el periodista independiente Julio Beltrán Iglesias*. Available at: [http://www.cubanet.org/news\\_english\\_Jan\\_Dec\\_2010.html](http://www.cubanet.org/news_english_Jan_Dec_2010.html); Misceláneas de Cuba. October 8, 2010. *Víctima de un secuestro el periodista independiente Julio Beltrán Iglesias*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=30182>.

<sup>240</sup> Reporters without Borders. February 1, 2010. *Un periodista disidente arrestado en Holguín*. Available at: <http://es.rsf.org/cuba-un-periodista-disidente-arrestado-01-02-2010,36263.html>; Cubanet. February 2. *Arrestado en Cuba el periodista Juancarlos Reyes Ocaña*. Available at: <http://www.periodistas-es.org/reporteros/arrestado-en-cuba-el-periodista-juan-carlos-reyes-ocana>; Inter-American Press Association. December 6, 2009. *Amenazan con dispararle a periodista*. Available at: <http://www.sipiapa.com/cuba/espanol/noticia120809b.htm>.

<sup>241</sup> Reporters without Borders. April 16, 2010. *Tras la liberación de Oscar Sánchez Madán, veinticuatro periodistas siguen esperados a recobrar su libertad*. available at: [http://www.ifex.org/cuba/2010/04/16/sanchez\\_madan\\_released/es/](http://www.ifex.org/cuba/2010/04/16/sanchez_madan_released/es/)

<sup>242</sup> In Cuba there are two webs, one domestic, with limited access to information resources, and the other international. The average cost of one hour of connection to the domestic web network is approximately US\$ 1.63 and to the international web US\$ 5.48, in an economy in which the average monthly salary is about US\$ 20. In January, the government was said to have announced an improvement in the satellite connections, which would allow for a 10% increase in the connection capacity. Reporters without Borders. 2010. *Internet Enemies*. Available at: <http://en.rsf.org/internet-enemie-cuba,36678.html>

187. In 2010, resolution 179/2008 continued to be part of the Cuban legal order; it establishes a “Regulation for providers of Internet services to the public, which are offered in the Internet areas, which are situated in hotels, post offices, or other institutions of the country and where national and international Internet and email services are provided to natural persons.”<sup>243</sup> Among the provisions that call the IACHR’s attention is the following obligation for providers: “to adopt the measures necessary to impede access to sites whose contents are contrary to the social interest, morality, and good customs; as well as the use of applications that affect the integrity or security of the State.” The same provision establishes, among other points, the following: “Providers shall abide by the provisions emanating from the Organs of Defense of the country in exceptional situations, as well as the performance of tasks that cannot be put off for ensuring the defense and security of the State.” When a provider fails to abide by the regulation, he or she may be sanctioned by temporary or definitive invalidation of the services and contracts he or she has signed with the provider of public services for data transmission and Internet access, according to Article 21 of the resolution.

188. In 2010, resolution 55/2009 continued in force, having come into force in June 2009; it is the basis of the same regulation mentioned in the previous paragraph for the so-called Internet Service Providers for Storage, Hosting, and Applications.<sup>244</sup> According to this resolution, the regulation includes those Cuban juridical persons who have received an operating license as a Public Services Provider for Access to Internet, which includes those who rent a physical space to a client who brings his or her own computer; those who provide the service of hosting sites, applications, and information; and those who grant applications services to third persons.

189. In this respect, the IACHR reiterates that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”<sup>245</sup>

190. The IACHR was also informed of different acts of police or judicial harassment of persons who have issued critical opinions or information on the Internet. The IACHR learned of the detention of writer and independent journalist Luis Felipe Rojas, who was arrested on August 16, 2010, after having published on his blog *Cruzar las Alambradas* a report in which he denounced arbitrary detentions and other human rights violations in Cuba.<sup>246</sup> The IACHR also received

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<sup>243</sup> Ministry of Information and Communications. Resolution No. No 179/2008. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%20179-%2008%20Reglam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf>

<sup>244</sup> Ministry of Information and Communications. Resolution 55/2009. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%2055-09%20Proveedores%20Serv%20Publicos%20Aloj%20Hosped%20y%20Aplic.pdf>

<sup>245</sup> IACHR. Annual Report 1999: Annual Report of the Special Rapporteur for Freedom of Expression 1999, Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere; D. The Internet and Freedom of Expression.

<sup>246</sup> According to the information received, Rojas was released after being held 12 hours at a police station. Rojas was also said to have been arbitrarily detained on December 25 and 27, 2009, and on February 7, 2010. Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. p. 21. Available at:

information according to which journalism student Darío Alejandro Paulino Escobar had been suspended for two years from the School of Social Communication of the Universidad de La Habana for having criticized, in a Facebook group, acts of repudiation against opponents.<sup>247</sup> On April 17, police agents kept bloggers Yoanis Sánchez and Eugenio Leal from giving a lecture on the use of the Internet in a home in the locality of Punta Brava.<sup>248</sup>

191. Along the same lines, on April 24, state security agents were said to have detained, at his house in Holguín, the director of the digital daily publication *Candonga* and activist for Internet access Yosvani Anzardo Hernández for directing an independent publication. According to the information received, the authorities held Anzardo for six hours to question him. He had already been detained without charges in September 2009 for almost two weeks.<sup>249</sup>

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

193. In addition, the IACHR recalls that according to Principle 13 of the same declaration: "Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

#### 4. Criminalization of protest

194. The IACHR was also informed of various acts aimed at criminalizing actions of persons who, by different means, sought to exercise their right to freedom of expression. According to the information received, on May 24 seven activists from a lesbian and gay group were arrested in Havana for distributing copies of the Universal Declaration of Human Rights and four others had been deported to other provinces.<sup>250</sup> On August 16, police and state security agents are said to have arrested five opposition members from the steps of the Universidad de La Habana who were

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<http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf>; ABC. August 16, 2010. *El bloguero Luis Felipe Rojas, detenido tras un "informe del horror" en Cuba*. Available at: <http://www.abc.es/20100816/internacional/bloguero-luis-felipe-rojas-201008161749.html>

<sup>247</sup> Reporters without Borders. 2010. *Internet Enemies*. Available at: <http://en.rsf.org/internet-enemie-cuba,36678.html>; Penúltimos Días. February 6, 2010. *El estudiante de periodismo Darío Alejandro Paulino Escobar recurre su expulsión de la Universidad de La Habana por opinar en Facebook*. Available at: <http://www.penultimosdias.com/2010/02/06/el-estudiante-de-periodismo-dario-alejandro-paulino-escobar-recurre-su-expulsion-de-la-universidad-de-la-habana-por-opinar-en-facebook/>

<sup>248</sup> Misceláneas de Cuba. April 20, 2010. *Agentes del régimen cubano abortan conferencia sobre Internet*. Available at: <http://www.misclaneasdecuba.net/web/article.asp?artID=27294>; Generación Y. April 19, 2010. *Encuentro Blogger en Punta Brava*. Available at: <http://www.youtube.com/watch?v=jZrJOjjnNw>.

<sup>249</sup> Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. P 21. Available at: <http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf>; Misceláneas de Cuba. April 25, 2010. *Detienen al periodista independiente Yosvani Anzardo Hernández*. Available at: <http://www.misclaneasdecuba.net/web/article.asp?artID=27370>.

<sup>250</sup> Misceláneas de Cuba. May 26, 2010. *Arrestan a activistas por repartir ejemplares de la Declaración Universal de los Derechos Humanos*. Available at: <http://www.misclaneasdecuba.net/web/article.asp?artID=28010>; Cuba Verdad. May 27, 2010. *Detienen a lesbianas por repartir la Declaración Universal de los Derechos Humanos*. Available at: <http://cubadata.blogspot.com/2010/05/detienen-lesbianas-por-repartir-la.html>.

demonstrating there to read a communiqué in which they called for respect for human rights, shouted anti-government slogans, and displayed placards. Two women arrested were said to have been held for 24 hours, and three others for 10 days.<sup>251</sup> In addition, the IACHR was informed of the detention said to have been suffered by at least six members of the opposition who displayed placards and shouted anti-government slogans on the steps of the National Capitol building in Havana on May 12.<sup>252</sup> In addition, on May 8 police agents are said to have prevented a group of opponents from demonstrating silently, in a sit-down protest, in the municipality of Regla, in Havana. Several members of the group were detained.<sup>253</sup>

195. The IACHR recalls that Principle 1 establishes: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

196. In addition, Principle 2 of the above-cited Declaration of Principles notes: “Every person has the right to seek, receive and impart information and opinions freely under terms set forth in [Article IV of the American Declaration of the Rights and Duties of Man]. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

## 11. Ecuador

197. The Office of the Special Rapporteur takes note of the decision by the Legislative Branch of Ecuador in December of 2009 to postpone discussion of the Organic Communication Law. In this respect, the Office recognizes the fact that the members of the Legislative Branch are studying the bill in the light of international human rights treaties that have been incorporated into domestic law through the Ecuadorian constitution in an exemplary fashion.<sup>254</sup>

198. The Office of the Special Rapporteur also observes with satisfaction that on November 29, the Ecuadorian State made an apology to Rafael Cuesta Caputi, the former news director of the television channel *TC Televisión*, and accepted responsibility for not having appropriately investigated the death threats he received in January 2000, nor the attempt on his life

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<sup>251</sup> El Mundo. October 8, 2010. *Los jóvenes que gritaron “abajo Fidel” en la Universidad de La Habana no callan*. Available at: <http://www.elmundo.es/america/2010/10/08/cuba/1286545811.html>; Misceláneas de Cuba. September 10, 2010. *Liberados miembros del CID manifestantes en la escalinata universitaria*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=29748>. Noticias 41. August 18, 2010. *Protesta en la Universidad de La Habana*. Available at: <http://www.youtube.com/watch?v=-0I77NdmgUk>.

<sup>252</sup> Misceláneas de Cuba. May 18, 2010. *Detienen a activistas que se disponían a hacer manifestación frente al capitolio habanero*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27829>; Cubanet. May 21. *Protesta de opositores pacíficos en el Capitolio*. Available at: [http://www.cubanet.org/CNews/y2010/mayo2010/21\\_N\\_6.html](http://www.cubanet.org/CNews/y2010/mayo2010/21_N_6.html)

<sup>253</sup> Misceláneas de Cuba. May 11, 2010. *Protesta por acoso de la policía política es recibida con más represión*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27661>; Cuba, Democracia y Vida. May 13, 2010. *Amenazados y detenidos opositores en Regla*. Available at: <http://www.cubademocraciayvida.org/web/article.asp?artID=6779>

<sup>254</sup> Letter from the Special Rapporteur addressed to the President of the Legislative Assembly of Ecuador, published by the newspaper El Universo. December 8, 2009. Available at: <http://www.eluniverso.com/data/recursos/documentos/RelatoriaLeydemedios.pdf>. Radio Nederland Wereldomroep. December 17, 2009. *Ecuador: Media Law Postponed*. Available at: <http://www.rnw.nl/espanol/article/ecuador-postergada-ley-de-medios>. Diario Hoy. December 9, 2009. *OAS Rapporteur concerned over Communication Bill*. Available at: <http://www.hoy.com.ec/noticias-ecuador/relatora-de-la-E2%80%A6e-comunicacionrelatora-de-la-oea-preocupada-por-proyecto-de-ley-de-comunicacion-381584.html>

with explosives that he suffered in February of this year, an attack which caused several physical wounds.<sup>255</sup>

199. Once again, the Office of the Special Rapporteur wishes to express its recognition for the preparation of the Penal Guarantees Code bill, which would, among other things, eliminate the codification of offenses against public officials, *desacato*, and certain kinds of defamation as crimes. The Office encourages the State to push for its passage. This law would prevent some of the incidents that are subjects of concern to this office and that are mentioned in this report.

200. The Office of the Special Rapporteur received information on various acts of aggression against the employees of media outlets committed during the serious acts of violence that took place on September 30.<sup>256</sup> Common during the attacks were beatings, use of tear gas, arbitrary detentions, confiscation of photographic equipment, and a variety of actions intended to block media coverage. According to the information received, the acts of violence included riot police beating and firing tear gas at Eduardo Córdova, a journalist with public television channel *TV Ecuador*, and camera man Roberto Molina until they were thrown out of the National Assembly. In that same building, Ana María Cañizares, a reporter with *Teleamazonas*, was also attacked by police officers. Likewise, in the Quito Station, officers in revolt attacked Jimmy Coronado, a photographer with the Permanent Association of Human Rights, and Miguel Jiménez, the official press photographer for the presidential cabinet. Also in Quito, police officers attacked two photographers with the news agency *AFP* who were trying to cover incidents taking place nearby the Police Hospital. The journalists were beaten, relieved of their cameras, and affected by pepper gas. Their photographs were erased. Likewise, riot police officers arrested a news team from the network *Telesur*. Vinicio León, a camera assistant with *Teleamazonas*, suffered a bullet wound in his left thigh as he was providing coverage from outside the Police Hospital. In the same area, Antonio Narváez, a cameraman with *Ecuavisa*, was wounded by a rubber bullet. In Ambato, police officers beat a photojournalist with the newspaper *El Comercio*, launched tear gas at him, and confiscated his photography equipment. In Portoviejo, Gustavo Macay Cedeño, a journalist with *Radio Capital*, was beaten by police officers upon trying to help a photographer whose camera the police were trying to take to erase the images captured. Also, the Office of the Special Rapporteur was informed that police officers and civilians in political opposition to the sitting government broke the doors and windows of the public media buildings in order to enter the facilities, while riot police tried to cut off the broadcasts of public radio and television stations. Separately, members of the presidential guard beat Hernán Higuera, a reporter with the network *Ecuavisa*, when he tried to report on the police protests in Quito.<sup>257</sup>

201. The Office of the Special Rapporteur was also informed that starting in the early afternoon hours of September 30, the government declared a nation-wide state of emergency under the provisions of Article 164 and following of the Constitution of the Republic of Ecuador. After issuing the decree, radio and television broadcasters were ordered to suspend their ordinary

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<sup>255</sup> El Comercio. November 29, 2010. *State offers apology to former news director*. Available at: <http://www4.elcomercio.com/2010-11-29/Noticias/Politica/Noticias-Secundarias/Estado-Rafael-Cuesta.aspx>; El Diario. November 30, 2010. *State apologizes to Cuesta*. <http://www.eldiario.com.ec/noticias-manabi-ecuador/174066-estado-pide-disculpas-a-cuesta/>; Fundamedios. December 3, 2010. *Fundamedios sees it as positive that the State has accepted responsibility in the violation of the rights of journalist Rafael Cuesta*. Available at: [http://www.ifex.org/ecuador/2010/12/03/cuesta\\_derechos/es/](http://www.ifex.org/ecuador/2010/12/03/cuesta_derechos/es/)

<sup>256</sup> IACHR. September 30, 2010. *Press Release No. 99/10. IACHR condemns any attempt to alter democratic order in Ecuador*. Available at: <http://www.cidh.oas.org/Comunicados/English/2010/99-10eng.htm>

<sup>257</sup> Fundamedios. October 5, 2010. *Attacks on journalists and media outlets rise to 31 in the attempted coup in Ecuador*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=950>; Reporters without Borders. October 1, 2010. *Police uprising against President Correa leads to censorship and violence against media*. Available at: <http://en.rsf.org/ecuador-police-uprising-against-president-01-10-2010,38482.html>

programming and broadcast the official government programming. The measure was in effect until the crisis was resolved in the evening hours. At that time, the radio and television broadcasters were authorized to return to their regular programming. According to the information received, several private television channels were able to broadcast their news before the government suspended the order to link up to the official broadcast signal.<sup>258</sup>

202. In other incidents of violence against media outlets and workers, the Office of the Special Rapporteur received information of an attack with a low-powered explosive device against the channel *Teleamazonas* on December 3, 2009, in Quito.<sup>259</sup> On December 29, 2009, journalist Ana María Cañizares, cameraman Manuel Tumbaco, and assistant cameraman Francisco Quizno, all of *Teleamazonas*, were attacked in Quito while driving to the channel's headquarters after covering the news at the National Assembly. According to the information received, the journalists were intercepted by a sport utility vehicle that blocked their way. The SUV's occupants then beat the cameraman and his assistant. The Office of the Special Rapporteur values the fact that the government has condemned the acts of violence reported.<sup>260</sup>

203. The Office of the Special Rapporteur also received information according to which on February 10, 2010, Pavel Calahorrano, a photojournalist with the newspaper *El Comercio*, was attacked by a police officer in Quito.<sup>261</sup> In other incidents, according to information received, on February 25, 2010, unidentified individuals detonated an explosive device in the city of Macas in front of the home of William Ribadeneira, the director of *Radio Bonita*.<sup>262</sup> On March 26, Alba Aldean, a reporter with *Radio Carrusel*, was insulted and beaten by an official with the Civic Board and director of a hospice for the terminally ill. The official was annoyed by the journalist's coverage of a demonstration against Venezuelan President Hugo Chávez.<sup>263</sup> On May 16, a group of police officers beat Carlos Delgado, a photographer and journalist with *El Mercurio*, in the city of Manta, launching tear gas at him and detaining him. Their goal was to erase images of a different incident of police violence from his camera. Because of the attack, Delgado had to be hospitalized.<sup>264</sup> On

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<sup>258</sup> Fundamedios. September 30, 2010. *Private media outlets ordered by the government to only broadcast the indefinite and uninterrupted government signal.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=946>; Committee to Protect Journalists (CPJ). October 1, 2010. *Ecuador, facing police revolt, censors news coverage.* Available at: <http://cpj.org/2010/10/ecuador-facing-police-revolt-censors-news-coverage.php>

<sup>259</sup> Teleamazonas. December 3, 2009. *Bomb explodes at Teleamazonas, in Quito; Jorge Ortiz says it will not silence the channel.* Available at: <http://vodpod.com/watch/2631425-estalla-bomba-en-teleamazonas-en-quito-jorge-ortiz-dice-que-no-callarn-al-canal>; Fundamedios. December 2009. *Explosive device set off at television channel.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=799>

<sup>260</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 31, 2009. Press Release R88/09. *The Special Rapporteur for Freedom of Expression expresses its concern regarding the assault suffered by Teleamazonas' journalists in Ecuador.* Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=777&IID=2>

<sup>261</sup> Instituto Prensa y Sociedad (IPYS)/IFEX. February 25, 2010. *Police officer assaults photojournalist.* Available at: [http://ifex.org/ecuador/2010/02/25/calahorrano\\_assaulted/](http://ifex.org/ecuador/2010/02/25/calahorrano_assaulted/). Fundamedios/Alert N°139. February 11, 2010. *Police officer assaults photojournalist.* Available at: <http://es-la.facebook.com/notes/fundamedios/agente-policial-agrede-a-fotoperiodista/301483837026>

<sup>262</sup> Fundamedios/Alert N° 144. February 26, 2010. *Journalist denounces murder attempt and threat.* Available at: [http://es-la.facebook.com/note.php?note\\_id=330127217026&comments&ref=mf](http://es-la.facebook.com/note.php?note_id=330127217026&comments&ref=mf). Instituto Prensa y Sociedad IPYS/IFEX. March 4, 2010. *Attack on journalist.* Available at: [http://www.ifex.org/ecuador/2010/03/04/ribadeneira\\_explosives/es/](http://www.ifex.org/ecuador/2010/03/04/ribadeneira_explosives/es/)

<sup>263</sup> Instituto Prensa y Sociedad (IPYS). April 8, 2010. *Journalist denounces attack by member of the Civic Council.* Available at: [http://www.ifex.org/ecuador/2010/04/08/aldean\\_assaulted/es/](http://www.ifex.org/ecuador/2010/04/08/aldean_assaulted/es/); Fundamedios. March 26, 2010. *Journalist denounces attack by member of the Civic Council of Guayaquil.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=856>

<sup>264</sup> El Mercurio. May 17, 2010. *Brutal police attack on journalist Carlos Delgado puts him in the hospital.* Available at: [http://www.mercuriomanta.com/index.php?option=com\\_content&view=article&id=7854:brutal-agresion-de-policias-a](http://www.mercuriomanta.com/index.php?option=com_content&view=article&id=7854:brutal-agresion-de-policias-a)

July 19, Rodolfo León, a cameraman with *Ecuavisa*, was attacked by demonstrators opposed to a referendum proposed by the President.<sup>265</sup> On August 24, cameraman Ramón Vergara, with the *Ecuavisa* television network, was pushed and struck by guards at the state Civil Registry of Guayaquil when he tried to film a protest staged by users of the Civil Registry.<sup>266</sup> On October 18, a group sympathetic to the government intimidated and insulted a team of *Ecuavisa* journalists who were trying to capture images of a protest taking place outside the Quito Presidential Palace. The protest was staged by family members of police officers who rebelled on September 30. They were demanding amnesty for their family members.<sup>267</sup>

204. The IACHR also received information on various threats received by communicators and media outlets. On February 12, 2010, a bomb threat was received at a building occupied by public media outlets *Ecuador TV*, *Radio Pública* and the newspaper *El Telégrafo*, in Quito. Upon evacuating the building and searching it, the authorities did not find any explosive devices.<sup>268</sup> On September 29, the network *Teleamazonas* also received a call warning of the placement of an explosive in its Quito headquarters. The authorities found no explosive device there either.<sup>269</sup>

205. The IACHR was also informed that journalist Eduardo Vite Benítez, the news director for *Telecosta*, received death threats during January and February that are allegedly related to an investigation he is in charge of into alleged irregularities in municipal contracts in the coastal city of Esmeraldas. According to the information received, in February the authorities captured two individuals suspected of making the threats.<sup>270</sup> In the city of Nueva Loja, Leidi Vallejo, a journalist with *Radio Seducción* denounced that a police officer had threatened her with death over a report on the sale of overpriced gas cylinders.<sup>271</sup> Likewise, on October 29, an unknown individual

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[periodista-carlos-delgado-lo-tiene-hospitalizado&catid=4:rockstories](http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=885); Fundamedios. May 19, 2010. *Police officer assaults journalist*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=885>

<sup>265</sup> Fundamedios. July 21, 2010. *Demonstrators attack cameraman*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=909>; Ecuador inmediato. July 20, 2010. *In the Wake of Incidents, President Correa confirms support for referendum in La Concordia*. Available at: [http://www.ecuadorinmediato.com/Noticias/news\\_user\\_view/tras\\_incidentes\\_presidente\\_correa\\_ratifico\\_apoyo\\_a\\_consulta\\_en\\_la\\_concordia--130570](http://www.ecuadorinmediato.com/Noticias/news_user_view/tras_incidentes_presidente_correa_ratifico_apoyo_a_consulta_en_la_concordia--130570)

<sup>266</sup> Fundamedios. August 25, 2010. *Guards attack cameraman*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=920>; Ecuavisa. August 24, 2010. *Ecuavisa cameraman beaten by guards at the Government Civil Registry*. Available at: <http://www.ecuavisa.com/noticias-nacionales/27473.html>

<sup>267</sup> Fundamedios. October 22, 2010. *TV channel team attacked by mob*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=959>; Hoy. October 22, 2010. *TV channel team attacked*. Available at: <http://www.hoy.com.ec/noticias-ecuador/equipo-de-canal-de-television-agredido-437570.html>

<sup>268</sup> El Diario. February 24, 2010. *Public media outlets suffer bomb threat*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/144472-medios-publicos-sufrieron-amenaza-de-bomba/>; El Comercio. February 24, 2010. *Bomb threat at public media outlets*. Available at: <http://www4.elcomercio.com/Generales/Solo-Texto.aspx?gn3articleID=103929>

<sup>269</sup> Teleamazonas. September 29, 2010. *Teleamazonas suffers bomb threat*. Available at: [http://www.teleamazonas.com/index.php?option=com\\_content&view=article&id=5588:todos-tranquilos-no-hay-bomba&catid=1:nacionalestitulares&Itemid=88](http://www.teleamazonas.com/index.php?option=com_content&view=article&id=5588:todos-tranquilos-no-hay-bomba&catid=1:nacionalestitulares&Itemid=88). La Hora. September 29, 2010. *Teleamazonas in Quito evacuated on bomb threat*. Available at: [http://www.lahora.com.ec/index.php/noticias/show/1101025616-1/Evac%C3%BAan\\_Teleamazonas\\_en\\_Quito\\_por\\_amenaza\\_de\\_bomba.html](http://www.lahora.com.ec/index.php/noticias/show/1101025616-1/Evac%C3%BAan_Teleamazonas_en_Quito_por_amenaza_de_bomba.html)

<sup>270</sup> Instituto Prensa y Sociedad (IPYS). January 15, 2001. *Reporter threatened with death*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2124>. Expreso. July 31, 2010. *90% of all extortion victims are poor*. (See side story under the title: *Más casos*) Available at: <http://www.diario-expreso.com/ediciones/2010/08/01/guayaquil/guayaquil/90-de-victimas-de-extorsion-es-pobre/>

<sup>271</sup> Instituto Prensa y Sociedad (IPYS). January 15, 2010. *Journalist denounces that police officer threatened her with death*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2121>; Fundamedios. January 2010. *Journalist*

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intercepted a vehicle being driven by Hólger Guerrero, a journalist with *Canal Uno*, and threatened him with death. The incident took place after Guerrero criticized the former Police Hospital director on his program.<sup>272</sup> On November 23, the journalist Rómulo Barcos was threatened with death by an unidentified individual while he was at a march against crime.<sup>273</sup> In Guayaquil, Hugo Gavilánez, a journalist with *Canal Uno*, received death threats for several months starting in July. The threats could be related to commentaries he has made against common criminality.<sup>274</sup>

206. The Office of the Special Rapporteur reiterates the importance of building a climate of respect and tolerance toward ideas and opinions, and recalls that Principle 9 of the IACHR's Declaration of Principles states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

207. As the Office of the Rapporteur has indicated previously, diversity, pluralism, and respect for the distribution of all ideas and opinions are essential conditions for the functioning of any democratic society. Consequently, the authorities must contribute decisively to building a climate of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished or stigmatized for doing so. Likewise, it is the State's duty to create the conditions that allow for all ideas and opinions to be freely disseminated. This includes the obligation to carry out investigations and adequately punish those who use violence to silence communicators or media outlets.

208. With regard to court proceedings, the Office of the Special Rapporteur was informed that on August 10, 2010, the Penal Guarantees Court issued an order for the preventative detention of Juan Alcívar, a reporter with radio station *El Nuevo Sol* and a correspondent for the newspaper *La Hora* in the La Concordia area, for being suspected of having committed a "terrorist act." The order originated from the fact that the journalist was present during a visit by President Rafael Correa to the community of La Concordia, on July 19, 2010. During the visit, a tear gas bomb was thrown in the direction of the president, making for a confusing incident. Almost a month later, the court issued its order for the arrest of Alcívar.<sup>275</sup> However, the order of preventative detention was

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*denounces police officer's death threat.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=815>

<sup>272</sup> Fundamedios. November 8, 2010. *Reporter threatened with death.* Available at: [http://www.ifex.org/ecuador/2010/11/08/guerrero\\_death\\_threat/es/](http://www.ifex.org/ecuador/2010/11/08/guerrero_death_threat/es/); Report 21. October 31, 2010. Correa accuses a colonel of having tried to poison him during the rebellion. Available at: <http://informe21.com/cesar-carrion/correa-acusa-coronel-haber-instigado-envenenarlo-rebelion>

<sup>273</sup> Fundamedios. November 29, 2010. *Reporters receive death threats.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=973>; Diario Hoy. November 29, 2010. *Rómulo Barcos receives death threats.* Available at: <http://www.hoy.com.ec/noticias-ecuador/romulo-barcos-habria-recibido-amenazas-de-muerte-444521.html>

<sup>274</sup> Fundamedios. November 29, 2010. *Reporters receive death threats.* Available at: [http://www.ifex.org/ecuador/2010/11/30/gavilanez\\_threatened/es/](http://www.ifex.org/ecuador/2010/11/30/gavilanez_threatened/es/); La Hora. November 30, 2010. *Reporter threatened with death.* Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101056094>

<sup>275</sup> Reporters without Borders. August 30, 2010. *Controversial charge of terrorism against journalist.* Available at: <http://www.rsf-es.org/news/ecuador-polemico-cargo-de-terrorismo-contra-un-periodista/>; Fundamedios. September 1, 2010. *Journalist ordered arrested, mayor threatens to bring charges against him.* Available at: [http://www.ifex.org/ecuador/2010/09/01/alcivar\\_arrest\\_warrant/es/](http://www.ifex.org/ecuador/2010/09/01/alcivar_arrest_warrant/es/)

substituted weeks later with a requirement to appear and sign every 15 days before the court.<sup>276</sup> Several sources have argued that the journalist was part of the demonstration in order to carry out his professional duties and that the order for arrest is retaliation for reports he has done that are critical of the local public authorities.<sup>277</sup>

209. According to the information received, on September 17, the mayor of Concordia, Walter Ocampo Heras, and the Solicitor General for the municipality, Miguel Moreta, brought a new private lawsuit against Alcívar for “terrorist aggression toward public officials,” based on the same facts.<sup>278</sup> A Penal Guarantees court declared the accusation abandoned given the accuser’s absence in a hearing held on November 23.<sup>279</sup>

210. The Office of the Special Rapporteur received information according to which in July, unidentified individuals intimidated the journalist, causing damage to his vehicle with a message in paint that said: “Shut up, don’t fuck with the mayor.”<sup>280</sup> On September 30, Alcívar was attacked by the Concordia Solicitor General and his wife while carrying out journalistic work,<sup>281</sup> and on November 26, he was insulted, struck, and threatened by a family member of the mayor while in a public place in Concordia.<sup>282</sup>

211. The Office of the Special Rapporteur received information concerning a request made on September 1 by María de los Ángeles Duarte, the minister of Transportation and Public Works, to Editorial Paradiso and the journalists Juan Carlos Calderón and Christian Zurita. She asked them to take the book *Big Brother* out of circulation, correct the caption on a photograph, and abstain from publishing her image or else she would bring legal actions against the authors and the publisher. The book contains information on State contracts received by Fabricio Correa, the president’s brother.<sup>283</sup> On September 17, Minister Duarte sent a second letter to the journalists warning them that she would start legal action if the journalists did not take their book out of circulation. On September 29, in a third letter, the minister asked the reporters to appear before a District Administrative Court in order to testify on the contents of the book. The journalists have

<sup>276</sup> Fundamedios. October 15, 2010. *Public servant attacks journalist who faces criminal charges*. Disponible en: [http://www.ifex.org/ecuador/2010/10/15/alcivar\\_assaulted/es/](http://www.ifex.org/ecuador/2010/10/15/alcivar_assaulted/es/)

<sup>277</sup> Committee to Protect Journalists. August 27, 2010. *Critical Ecuadoran journalist charged with terrorism*. Available at: <http://cpj.org/2010/08/critical-ecuadoran-journalist-charged-with-terrori.php>; El Universo. September 15, 2010. *Juan Alcívar. They changed my role: I didn’t throw the bomb, I saw the gases*. Available at: <http://www.eluniverso.com/2010/09/15/1/1447/juan-alcivar-rivas-cambiaron-parte-lance-bomba-vi-gases.html?p=1354&m=1775>. El Comercio. August 29, 2010. *Journalist Juan Alcívar the focus of accusation by police*. Available at: <http://www4.elcomercio.com/2010-08-29/Noticias/Politica/Noticias-Secundarias/EC100829P3CONCORDIA.aspx>

<sup>278</sup> Fundamedios. October 4, 2010. *Mayor files new lawsuit against journalist*. Available at: [http://www.ifex.org/ecuador/2010/10/04/alcivar\\_new\\_lawsuit/](http://www.ifex.org/ecuador/2010/10/04/alcivar_new_lawsuit/)

<sup>279</sup> La Hora. November 25, 2010. *Judge declares case against correspondent abandoned*. Available at: [http://www.lahora.com.ec/index.php/noticias/show/1101053528/-1/Juez\\_declar%C3%B3\\_abandonada\\_causa\\_contra\\_corresponsal.html](http://www.lahora.com.ec/index.php/noticias/show/1101053528/-1/Juez_declar%C3%B3_abandonada_causa_contra_corresponsal.html)

<sup>280</sup> Fundamedios. September 1, 2010. *Journalist ordered arrested, mayor threatens to bring charges against him*. Available at: [http://www.ifex.org/ecuador/2010/10/04/alcivar\\_new\\_lawsuit/](http://www.ifex.org/ecuador/2010/10/04/alcivar_new_lawsuit/)

<sup>281</sup> Fundamedios. October 15, 2010. *Journalist who is facing legal proceedings assaulted by public servant*. Available at: [http://www.ifex.org/ecuador/2010/10/15/alcivar\\_assaulted/](http://www.ifex.org/ecuador/2010/10/15/alcivar_assaulted/)

<sup>282</sup> Fundamedios. December 1, 2010. *Journalist accused of terrorism is attacked a second time*. Available at: [http://www.ifex.org/ecuador/2010/12/01/alcivar\\_rios\\_death\\_threat/](http://www.ifex.org/ecuador/2010/12/01/alcivar_rios_death_threat/)

<sup>283</sup> Law Clinic of the Universidad San Francisco de Quito. Letter from the IACHR Office of the Special Rapporteur for Freedom of Expression. September 24, 2010. Available at: [http://asambleanacional.gov.ec/blogs/cesar\\_montufar/files/2010/09/carta-oea-u-san-fsco7.pdf](http://asambleanacional.gov.ec/blogs/cesar_montufar/files/2010/09/carta-oea-u-san-fsco7.pdf). cf. Hearing on the situation of freedom of expression in Ecuador, held at the IACHR on October 29, 2010, during the 140th Period of Sessions.

not appeared, arguing that they have not been called by a competent authority.<sup>284</sup> Also, the journalists have been the subject of various insults and damaging remarks by senior State officials.<sup>285</sup>

212. The Office of the Special Rapporteur received information indicating that on January 15, 2010, a journalist with the newspaper *El Universo*, Peter Tavra Franco, was sentenced by the 3rd Criminal Chamber of Guayaquil to six months in prison and ordered to pay damages of US\$3,000 to an individual questioned by the journalist for the alleged commission of the crime of human trafficking. The lower court ruled against the plaintiff, but a higher court reversed that decision, sources indicated. They added that the process remains open.<sup>286</sup>

213. The Office of the Special Rapporteur was informed of a prison sentence of three years handed down on March 26 against Emilio Palacio, a journalist and columnist for the newspaper *El Universo* in the city of Guayaquil, Ecuador, for the crime of defamation (*injuria calumniosa*). The conviction came after charges were filed by Camilo Samán, president of the Corporación Financiera Nacional (CFN), a State financial institution.<sup>287</sup> In the end, the plaintiff withdrew the complaint on June 4, which concluded the legal action and prevented the ruling from being executed.<sup>288</sup> However, although the Office of the Special Rapporteur values Camilo Saman's decision, the cited legal precedent is cause for particular concern.

214. The Office of the Special Rapporteur also received information on the arrest of Ángel Gabriel Salvador, the executive director of the organization Contraloría Social, on April 20 while he participated in a protest against State Prosecutor General Washington Pesántez with a sign saying, "Down with the corrupt prosecutor." According to the information received, Salvador was arrested on the charge of "disturbing the public space," "offending public authority," and "rebellion." In the end, the charges were replaced by "rebellion against authority."<sup>289</sup>

<sup>284</sup> Ecuador Inmediato. September 27, 2010. *Authors of Big Brother will not withdraw book and Minister Duarte insists on taking the relevant legal actions.* Available at: [http://ns1.ecuadorinmediato.com/index.php?module=Noticias&func=news\\_user\\_view&id=134592&umt=Autores%20de%20%20Gran%20Hermano%20no%20retirar%20libro,%20e%20instan%20a%20ministra%20Duarte%20a%20seguir%20las%20acciones%20legales%20pertinentes](http://ns1.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=134592&umt=Autores%20de%20%20Gran%20Hermano%20no%20retirar%20libro,%20e%20instan%20a%20ministra%20Duarte%20a%20seguir%20las%20acciones%20legales%20pertinentes). Fundamedios. September 15, 2010. *Journalists subjected to insults and harassment after publishing investigative book.* Available at: [http://www.ifex.org/ecuador/2010/09/21/smear\\_campaign/](http://www.ifex.org/ecuador/2010/09/21/smear_campaign/); Fundamedios. October 8, 2010. *In new letter, minister calls journalists to testify.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=952>. Fundamedios. September 21, 2010. *Minister threatens criminal charges if they do not take book out of circulation.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=936>

<sup>285</sup> El Comercio. August 27, 2010. *The book Big Brother causes confrontation.* Available at: <http://www4.elcomercio.com/2010-08-27/Noticias/Politica/Noticias-Secundarias/polemica-por-El-Gran-Hermano.aspx>. El Universo. September 14, 2010. *Alexis Mera calls two journalists wretches.* Available at: <http://www.eluniverso.com/2010/09/14/1/1355/alexis-mera-califica-miserables-dos-periodistas.html>; La Hora. August 26, 2010. *Alvarado challenges the authors of Big Brother to a debate.* Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101008704>

<sup>286</sup> Instituto Prensa y Sociedad (IPYS). February 11, 2010. *Journalist sentenced to six months in prison for defamation.* Available at: [http://ifex.org/ecuador/2010/02/11/tavra\\_franco\\_sentenced/](http://ifex.org/ecuador/2010/02/11/tavra_franco_sentenced/). Fundamedios/Alert N° 135. *Journalist sentenced to prison for defamation.* Available at: [http://www.facebook.com/note.php?note\\_id=285058972026](http://www.facebook.com/note.php?note_id=285058972026)

<sup>287</sup> Fundamedios. April 8, 2010. *Judge rejects appeal for broadening and clarification submitted by journalist.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=860>

<sup>288</sup> Reporters without Borders. June 7, 2010. *Threat of jail lifted for newspaper columnist Emilio Palacio.* Available at: [http://en.rsf.org/ecuador-controversial-jail-sentence-amid-30-03-2010\\_36892.html](http://en.rsf.org/ecuador-controversial-jail-sentence-amid-30-03-2010_36892.html). El Telégrafo. June 8, 2010. *I couldn't make up to Emilio Palacio.* Available at: <http://www.telegrafo.com.ec/actualidad/noticia/archive/actualidad/2010/06/08/1C20-No-lo-puedo-componer-a-Emilio-Palacio-1D20.aspx>

<sup>289</sup> El Universo. April 20, 2010. *Prosecutor opens preliminary investigation against citizen for offenses against the Prosecutor.* <http://www.eluniverso.com/2010/04/20/1/1355/detenido-ofensas-fiscal.html>. Fundamedios. April 22, 2010.

215. The Office of the Special Rapporteur was informed that Fausto Lupera, a member of the Andean Parliament, filed a complaint for defamation (*injuria no calumniosa grave*) against Carlos Ochoa, the news director for channel *Gama TV*, after the latter stated the following on April 14 during a television program: "Let's remind people how it was that Mr. Lupera took the Andean Parliament by force, because it seems like these individuals are used to this kind of thing."<sup>290</sup>

216. The Office of the Special Rapporteur recalls that Principle 10 states that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." In application of this principle, the Office of the Special Rapporteur once again invites the State to move forward with the Penal Guarantees Code bill that would eliminate crimes against honor of public officials.

217. According to the information received, on December 21, 2009, the Telecommunications Superintendence of Ecuador punished broadcaster *Teleamazonas* by suspending its signal for three days, December 22-25, 2009.<sup>291</sup> According to information received by the Office of the Special Rapporteur, the proceeding against the channel started because of news broadcasts on May 8 and May 22, 2009, that were "based on allegations that could cause social or political damage or unrest." The news broadcasts addressed the alleged existence of a clandestine vote counting center and possible damage to fisheries around Puná Island. The news items had violated rules established in the current Radio and Television Law.<sup>292</sup> *Teleamazonas* appealed, and the First Criminal Chamber of the Court of Pichincha ruled that the broadcaster must receive reparations, as the decision of the Telecommunications Superintendence was not constitutional. The Superintendence appealed the case to the Constitutional Court, which in November struck down the Court of Pichincha's ruling and ordered the case returned to the appeals stage.<sup>293</sup>

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*Witness detained in political trial over offenses to public authority.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=869>

<sup>290</sup> Fundamedios. April 22, 2010. *Andean parliament taking journalist to court.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=871>; Diario Hoy. October 29, 2010. *Final hearing over defamation charges postponed.* Available at: <http://www.hoy.com.ec/noticias-ecuador/breves-de-pais-224-438960.html>

<sup>291</sup> El Telégrafo. December 21, 2009. *Telecommunications Superintendent suspends Teleamazonas.* Available at: <http://www.telegrafo.com.ec/files/Actualidad/Resoluci%C3%B3n-de-la-superintendencia-de-telecomunicaciones.pdf>. Instituto Prensa y Sociedad (IPYS). December 23, 2009. *Government suspends channel critical of it.* Available at: <http://www.ifex.org/ecuador/2009/12/23/station-suspended-radio-refused-licence-renewal/es/>

<sup>292</sup> Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL)/Mediaciones. Sin fecha. *Cronology of processes against Teleamazonas.* Available at: <http://www.ciespal.net/mediaciones/index.php/analisis/97-cronologia-de-los-procesos.html>

<sup>293</sup> El Comercio. November 19, 2010. *Teleamazonas suspension revived by the Constitutional Chamber.* Available at: <http://www4.elcomercio.com/Politica/la-suspension-a-teleamazonas-revive-en-la-corte-constitucional.aspx>; National Telecommunications Council. January 19, 2010. *Conatel dismisses appeal filed by Teleamazonas.* Available at: [http://www.conatel.gob.ec/site\\_conatel/index.php?option=com\\_content&view=article&catid=243%3Aresoluciones-2010&id=580%3Aresoluciones-enero-marzo-2010&Itemid=394](http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&catid=243%3Aresoluciones-2010&id=580%3Aresoluciones-enero-marzo-2010&Itemid=394)

218. With regard to this, the Office of the Special Rapporteur expresses its concern over the fact that with the legal proceeding ongoing, some officials have strongly rebuked the judges who ruled in favor of the television channel.<sup>294</sup>

219. Also, as it has done on previous occasions, the Office of the Special Rapporteur expresses concern over the vagueness and ambiguity of the provisions of Ecuador's current Radio and Television Law. These kinds of laws are problematic from the point of view of inter-American freedom of expression standards, especially insofar as they impose sanctions that could seriously compromise the fundamental rights of the individuals involved and have a chilling or silencing affect on democratic debate. These sanctions are genuine restrictions of the right to freedom of thought and expression, and they should respect inter-American standards in order to be legitimate. This means that they must be established by a law that is clear and precise.<sup>295</sup> The Inter-American Court has held that under the rule of law, the principle of legality - together with that of non-retroactivity - prevails over the actions of all State bodies and their respective competencies, especially when it comes to the exercise of their punitive power.<sup>296</sup> For this reason, it has specified that the requirements of Article 9 of the American Convention must also be respected in the case of sanctions imposed administratively.<sup>297</sup> Effectively, the vagueness of the violations and of the sanctions established by radio broadcasting regulations allows for arbitrary action by enforcement authorities, thereby compromising freedom of expression as enshrined in Article 13 of the American Convention.

220. With regard to the legal framework, in December 2009 the Office of the Special Rapporteur for Freedom of Expression sent a letter to the National Assembly of the Republic of Ecuador offering its expert opinion on the Organic Communication Law bill being debated by that legislative body. The communication had been requested by the National Assembly itself, as well as by various Ecuadorian civil society organizations.

221. On August 10, 2010, the Office of the Special Rapporteur sent a new letter to the State, which reviewed an updated version of the bill that was substantially different from the prior version. At that time, the Office of the Special Rapporteur acknowledged the progress that had been made in the new proposal and noted several aspects of the bill that would present difficulties with regard to the freedom of expression standards set by the inter-American system. As of this report's publication deadline, the bill is still under debate in the Legislative Assembly.

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<sup>294</sup> President Rafael Correa stated the following publicly on February 5, 2010: "This is another example of the level of decay of our justice [system] and of the immense power we are facing, media and financial power. But we will not retreat [and we give] all our support to that brave man, the Telecommunications Superintendent." Ecuavisa. February 5, 2010. *Correa supports to appellate sentence in Teleamazonas case*. Available at: <http://www.ecuavisa.com/noticias-internacionales/20155.html>; El Ciudadano. February 5, 2010. *Telecommunications Superintendence will appeal ruling in Teleamazonas case*. Available at: [http://www.elciudadano.gov.ec/index.php?option=com\\_content&view=article&id=9693:-superintendencia-de-telecomunicaciones-apelara-fallo-en-caso-teleamazonas&catid=2:politica&Itemid=43](http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=9693:-superintendencia-de-telecomunicaciones-apelara-fallo-en-caso-teleamazonas&catid=2:politica&Itemid=43)

<sup>295</sup> IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Radio Broadcasting), paras. 137 and following. OEA/Ser.L/V/II. Doc.51. December 30, 2009. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

<sup>296</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 177; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment dated February 2, 2001. Series C No. 72, para. 107; I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment dated November 25, 2004. Series C No. 119, para. 126.

<sup>297</sup> I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment dated February 2, 2001. Series C No. 72, paras. 106-115.

222. The Citizen Participation Law, passed by the National Assembly on February 2, 2010, was subject to partial objection by the Executive Branch on March 3, 2010.<sup>298</sup> The objection sought to include media outlets accountability obligations (rendición de cuentas). This provision was not included in the original text passed by the National Assembly.<sup>299</sup> The system of accountability is structured in the law as a supervisory mechanism that is triggered when a petition is made by any member of the citizenry.<sup>300</sup> According to the Law's Article 91, its purpose is to guarantee access to information "on public management;" facilitate supervision of "the governors, functionaries, and those who handle public funds;" supervise compliance with "public policy" and "prevent and avoid corruption and bad governance." The inclusion of media outlets under a system with these objectives seems disproportionate, as the right to access to information applies to public authorities and those who handle public resources, not private subjects who do not handle public resources or carry out public functions.<sup>301</sup>

223. The Office of the Special Rapporteur wishes to recall that Article 13 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." Taking this into account, it is important that the Ecuadorian authorities do not let the legitimate purposes of the Citizen Participation Law be distorted and that the mechanism for accountability provided for therein does not turn into a method of pressuring, harassing, or intimidating the media in order to influence their editorial stance.

224. With regard to obligatory government broadcasts, according to the information received, Ecuador had 230 broadcasts of this type in 2009,<sup>302</sup> in addition to the *Citizen Connection* programs and Dialogue with the President.<sup>303</sup> It is worth recalling that in its Annual Report 2009, the Office of the Special Rapporteur indicated that "the President frequently spends an hour of his

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<sup>298</sup> National Assembly. Citizen Participation Law. Available at: [http://www.secretariadepueblos.gov.ec/index.php?option=com\\_docman&task=doc\\_download&gid=295&Itemid=204&lang=es](http://www.secretariadepueblos.gov.ec/index.php?option=com_docman&task=doc_download&gid=295&Itemid=204&lang=es)

<sup>299</sup> Effectively, Article 88 of the Law, as it was approved by the National Assembly with the inclusion of the Executive Branch's partial objection, reads as follows: "Article 88 Citizens' right to accountability.- Citizens, either individually or collectively in communes, communities, indigenous nationalities and peoples, Afro-Ecuadorian and *montubio* peoples, and other licit forms of organization, may once a year request a giving of accounts from public or private institutions that provide public services, handle public resources, or carry out activities in the public interest, as well as from mass media outlets, as long as that giving of accounts is not being carried out through a different procedure under law and the Constitution."

<sup>300</sup> Citizen Participation Law. Article 89. Definition.- Accountability is a systematic, deliberate, interactive, and useful process that involves authorities and functionaries - or their representatives and legal representatives according to the specific case - who are required to provide information and submit themselves to the evaluation of the citizenry with regard to their acts and omissions during their management period and with regard to the management of public resources.

<sup>301</sup> Citizen Participation Law. Article 99. The accountability has the following objectives: 1. to guarantee to the public periodic and permanent access to information on public administration; 2. to facilitate society's right to exercise control over the actions and omissions of governors, functionaries, or those who handle public funds; 3. to supervise compliance with public policies; and, 4. to prevent and avoid corruption and bad governance.

<sup>302</sup> Ecuador En Vivo. January 27, 2010. *Ecuador is country with most obligatory government broadcasts during 2009, according to Rodas.* Available at: <http://www.ecuadorenvivo.com/2010012745171/politica/el-ecuador-ha-sido-el-pais-que-mas-cadenas-nacionales-ha-transmitido-durante-el-2009-segun-rodas.html>. Medios Latinos. January 21, 2010. *Study by Ecuador's Fundación Ethos reveals that in 2009, Correa beat Chávez' record with 233 obligatory government broadcasts.* Available at: <http://www.medioslatinos.com/modules/news/article.php?storyid=3260>

<sup>303</sup> Presentation by César Ricaurte (Fundamedios) during the hearing on the situation of freedom of expression in Ecuador, held at the IACHR in Washington, D.C., on March 23, 2010.

weekly television broadcast strongly denouncing the press, branding it as ‘conspiratorial,’ ‘corrupt,’ ‘disruptive,’ ‘irresponsible’ and ‘lying.’ Similarly, he has told the people not to buy newspapers and publicly threatened to take legal action against media outlets and journalists critical of his government.”<sup>304</sup> In 2010, senior officials continued the practice of using obligatory television broadcasts to refer in harsh terms to journalists who have questioned the government’s decisions.<sup>305</sup>

225. The Office of the Special Rapporteur has recognized the power of the President of the Republic and senior State officials to use the media with the purpose of informing the population on matters of preponderant public interest that must be reported urgently and through independent media outlets. Effectively, and as the Inter-American Court has indicated, “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”<sup>306</sup>

226. The exercise of this power, however, is not absolute. The information that governments transmit to the citizenry through the obligatory presidential broadcasts must be strictly necessary for meeting an urgent need for information on issues that are of clear and genuine public interest and during the period of time that is strictly necessary to transmit the information. In this sense, both the IACHR and its Office of the Special Rapporteur,<sup>307</sup> along with some domestic bodies of States party to the American Convention, have, applying international standards, indicated that, “not just any information legitimizes the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could catch the interest of the masses by informing on facts that could be of public significance and that are truly necessary for real citizen participation in public life.” Principle 5 of the Declaration of Principles explicitly establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

227. According to the information received, the State of Ecuador currently has a strong presence in the ecosystem of Ecuadorian media. The State effectively owns 19 media outlets, among them television channels, radio broadcasters, newspapers, magazines and newswires. As

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<sup>304</sup> IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 206. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnnual%202009.pdf>

<sup>305</sup> For example, on March 13, 2010, with regard to a commentary by Jorge Ortiz that was critical of the regularization of the migratory situation of Haitian citizens living in Ecuador, the President said, “Nothing surprises us from that guy. How is it possible that society does not react (...) to so much nonsense, to so much smallness, and not just physical smallness, which is evident, but spiritual and intellectual; to so much wickedness, to so much bad faith (...). Enough, free us from these people, we can’t allow this kind of behavior. Gentlemen of the civil society (...) analyze the possibility of bringing him to trial for an attack on human rights.” Ecuador En Vivo. March 13, 2010. *Correa: “Ortiz is inciting xenophobia.”* Available at: <http://www.ecuadorenvivo.com/2010031347658/politica/correa-%20ortiz%20esta%20incitando%20a%20la%20xenofobia.html>

<sup>306</sup> Inter-American Court. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182, para. 131; IACHR. Annual Report 2008. Volume II: Annual Report 2008 of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Framework on the Right to Freedom of Expression. 202. OAS/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>307</sup> IACHR. *Report on the human rights situation in Venezuela*, para. 487. OAS/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm>

stated during the hearing on October 28 at the IACHR, there are no clear rules guaranteeing managerial and editorial independence among public media.<sup>308</sup>

228. The Office of the Special Rapporteur values the role that independent public media play in the public debate. They can and should carry out an essential function in ensuring the plurality and diversity of voices necessary in a democratic society. Their role is fundamental, as they provide content that is not necessarily commercial, is of high quality, and meets the educational, informational, and cultural needs of the population. However, for public media to truly perform their function they must be independent of the Executive Branch; truly plural; universally accessible; adequately funded to fulfill their legal mandate; and they must include mechanisms for community participation at the different levels of production, circulation, and reception of content.<sup>309</sup>

229. The Office of the Special Rapporteur was informed of a series of events in the state newspaper *El Telégrafo*, which culminated in the resignation of the newspaper's assistant editor and 21 columnists, and the firing or resignation of three editors.<sup>310</sup> According to the information received, on February 5, the board of directors of *El Telégrafo* issued internal memo 003-2010, which established "the need for our columnists and editorial writers to refrain from issuing commentary, strategic information and other strictly internal information on the editorial pages."<sup>311</sup> On March 25, the board of directors of *El Telégrafo* fired director Rubén Montoya for opposing the creation of a new state media outlet using his newspaper's personnel and budget. Montoya said his firing was illegitimate, considering that it was in response to a position that was "respectful but in disagreement" with the government.<sup>312</sup> On March 28, the board of directors prevented the publication of a column by journalist Mariuxi León thanking Montoya for his work at the newspaper, recalling an act of censorship that took place on February 1, 2010, and commenting on the newspaper's internal situation. One day later, León was blocked from entering the newspaper building and they notified her that she had been fired.<sup>313</sup> On April 1, the board of directors did not allow the publication of opinion columns written by Silvia Buendía, Gustavo Abad, and Alicia Ortega,<sup>314</sup> and that same day, the newspaper's assistant editor, Carol Murillo, submitted her

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<sup>308</sup> Presentation by César Ricaurte (Fundamedios) during the hearing on the situation of freedom of expression in Ecuador, held at the IACHR in Washington, D.C., on March 29, 2010.

<sup>309</sup> Joint Declaration on Diversity in Broadcasting by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=719&IID=2>

<sup>310</sup> Cf. Hearing on the situation of freedom of expression in Ecuador, held at the IACHR on October 29, 2010, during the 140th Period of Sessions; *Diario Hoy*. April 2, 2010. *Columnists censored at El Telégrafo*. Available at: <http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html>

<sup>311</sup> Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo*. Available at: <http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html>. *Diario Hoy*. April 2, 2010. *Censorship in El Telégrafo for columnists*. Available at: <http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html>

<sup>312</sup> Instituto Prensa y Sociedad (IPYS). April 1, 2010. *Director, editor of state-run newspaper fired*. Available at: <http://www.ifex.org/ecuador/2010/04/01/el-telegrafo-staff-fired/>; Fundamedios. April 1. *Mass resignation of columnists at El Telégrafo*. Available at: <http://www.fundamedios.org/servicios/newsletter/manual/index.php?idMail=230>

<sup>313</sup> Due to these incidents, editors David Sosa and Fausto Lara also resigned. *El Universo*. March 29, 2010. *El Telégrafo blocks author of censored article from entering building*. Available at: <http://www.eluniverso.com/2010/03/29/1/1355/telegrafo-freno-ingreso-autora-articulo-censurado.html>. *Diario Hoy*. April 2, 2010. *Columnists censored at El Telégrafo*. Available at: <http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html>

<sup>314</sup> Fundamedios. April 1, 2010. *Mass resignation of columnists at El Telégrafo*. Available at: <http://www.fundamedios.org/servicios/newsletter/manual/index.php?idMail=230>

resignation.<sup>315</sup> In response to this chain of events, a group of 21 columnists for the newspaper denounced in a public letter what, in their opinion, was happening at *El Telégrafo* and announced their resignation.<sup>316</sup>

## 12. El Salvador

230. The Office of the Special Rapporteur observes with satisfaction that on December 2, 2010, El Salvador's Legislative Assembly passed the Access to Public Information Act, which recognizes citizens' right to request and receive truthful and timely information that has been generated or managed by the State, or that is in the State's possession. The legislation establishes the standards for defining official, secret, and confidential information, for creating administrative structures within State bodies in order to receive and process the requests for information, for defining the appeal procedures for denials of information, and for creating the Institute for Access to Public Information, which is in charge of safeguarding the defense and application of the right to access to information. As of the publication deadline of this report, the Act was awaiting the signature of President Mauricio Funes.<sup>317</sup>

231. The Office of the Special Rapporteur takes note of the progress made in the investigation of the September 2, 2009, murder of Franco-Spanish documentary film maker Christian Poveda. According to the information received, the Salvadorian police arrested three individuals suspected of having participated in the crime. According to the information received, as of this moment the Salvadorian authorities have arrested more than two dozen individuals suspected of having participated in Poveda's murder.<sup>318</sup> This murder's impact on the community and especially on communicators and on the important work Poveda was doing has been extremely serious. It is crucial for the State to deploy all its resources, move the investigations forward, convict both the crime's perpetrators and its masterminds, and provide reparations for the family members of the victims.

232. According to the information received, in early January 2010, communicators with Radio Victoria, a community radio station in the department of Cabañas, received death threats several days after the murder of two environmental activists. The broadcaster supported the efforts of local residents against the mining activity of a multinational company. The information adds that

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<sup>315</sup> Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo*. Available at: <http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html>. *Diario Hoy*. April 2, 2010. *Columnists censored at El Telégrafo*. Available at: <http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html>

<sup>316</sup> In the letter, the columnists stated that they "reject these public acts of censorship and violation of the right to freedom of expression and the press, incompatible as they are with the Constitution and the project to create public media." Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo*. Available at: <http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html>

<sup>317</sup> Legislative Assembly of the Republic of El Salvador. December 2, 2010. *Information Access Law passed*. Available at: <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/avalan-ley-de-acceso-a-la-informacion>. Legislative Assembly of the Republic of El Salvador. December 2010. *Access to Public Information Act*. Available at: <http://www.asamblea.gob.sv/noticias/mediateca/contenidos-de-apoyo/diciembre-2010/LEY%20DE%20ACCESO%20A%20LA%20INFORMACION%20PUBLICA.pdf/view>. Associated Press/Chron. December 3, 2010. *El Salvador: Access to Public Information Act passed*. Available at: <http://www.chron.com/disp/story.mpl/sp/nws/7322678.html>

<sup>318</sup> Reporters without Borders. February 17, 2010. *Another suspect arrested in investigation into filmmaker's murder*. Available at: <http://en.rsf.org/salvador-three-more-suspects-arrested-in-17-02-2010,34442.html>; La Prensa Gráfica. February 16, 2010. *Three more arrested for Poveda murder*. Available at: <http://www.laprensagrafica.com/el-salvador/judicial/93812--tres-capturas-mas-por-asesinato-de-poveda.html>

the broadcaster has been the subject of threats since the middle of 2009.<sup>319</sup> In this respect, the Office of the Special Rapporteur considers it crucial to recall the State's obligation to protect at-risk journalists. In this sense, Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

233. On September 24, 2010, Supreme Court of Justice of El Salvador ruled that the second subsection of Article 191 of the Penal Code is constitutional under certain conditions.<sup>320</sup> Prior to the ruling, the article established that although individuals in general could be held criminally liable for maliciously damaging the honor or privacy of public officials, journalists were exempt from this liability and could only be tried civilly for these charges. The Court found that this law violated the principle of equality as found in the first subsection of Article 6 of the Constitution, which states the following: "All individuals can freely express and distribute their thoughts as long as they do not subvert the public order or harm the morals, honor, or private lives of others. The exercise of this right will not be subject to prior restraint, censorship, or warning; however, those who transgress the law while making use of this right are liable for the crime they commit."

234. In applying this constitutional provision, the Court's judgment extensively cited regional case law and established safeguards in accordance with international law before indicating that when a criminal complaint exists for violation of privacy and honor, with moral damage and specific intent demonstrated, communicators can be ruled criminally liable. In its opinion, this is a direct requirement of Article 6 of the Constitution.

235. The Court also indicated that at the moment of establishing liability for the facts, judges must be sensitive to the importance of freedom of expression when information on matters of public interest or regarding a public official are at issue, and that opinions cannot be subject to criminal prosecution. The ruling included significant discussion on the right to freedom of expression as a right of all individuals and not just journalists, editors, and owners of media outlets. The ruling also addressed the importance of generating the conditions for the existence of true informational pluralism.

236. Despite the important safeguards the judgment establishes - safeguards that today constitute a fundamental guide for the application of criminal law in cases of defamation of public officials in El Salvador - the judgment recognizes the possibility of bringing criminal proceedings against communicators who offend the honor or privacy of public officials, which was previously prohibited by law and considered an example of significant progress in the region.

237. Domestic law, including some constitutional provisions, must be interpreted according to the human rights treaties signed by the State. In this sense, it is improper to rule that in all cases that could eventually be covered by Article 6 of the Constitution - that is, in all cases in which those who exercise freedom of expression fail to comply with the law - the consequence must necessarily be the application of criminal law. In these cases, the legislator must systematically interpret the constitution and establish reasonable differentiations that hew to

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<sup>319</sup> Reporters without Borders. January 8, 2010. *After three environmentalists murdered, community radio threatened over its support for their cause*. Available at: <http://en.rsf.org/salvador-after-three-environmentalists-08-01-2010,35986.html>; Agencia Pulsar. January 5, 2010. *AMARC press release on threats against Radio Victoria*. Available at: <http://www.agenciapulsar.org/nota.php?id=16565>

<sup>320</sup> Supreme Court of Justice of El Salvador. September 24, 2010. Final Judgment in the unconstitutionality proceeding No. 91-2007.

international law, like that enshrined in the aforementioned subsection two of article 191 or others that can be established for radio broadcasting or social protest. It is in no way acceptable that every kind of abuse of freedom of expression in these areas must necessarily give grounds for a criminal punishment. On the contrary, despite the fact that in these cases a complaint can be brought for abuse of freedom of expression, it must be processed through administrative and civil processes, not criminal ones. This is how cases involving those who infringe the law through the use of freedom of expression are treated. In line with this argument, simply declaring constitutionality by citing Subsection 2 of Article 191 would have eliminated any possibility of interpreting Article 6 of the Constitution in conflict with what the legislator set forth. To complete the adaption of defamation laws to international standards, this approach would leave pending the extension of the rule (of non-application of criminal law) to those who offend public servants but do not enjoy the status of journalists.

238. As the Office of the Rapporteur has expressed, it is vitally important for Salvadorian authorities to establish the rules on this issue in such a way that the provisions of Principle 10 of the Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights in 2000, are recognized. Principle 10 states that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

### 13. United States

239. The Office of the Special Rapporteur took note of several judicial decisions with important implications for freedom of expression handed down by United States federal courts in 2010.

240. On June 21, 2010, in the case of *Holder v. Humanitarian Law Project*, the Supreme Court rejected a First Amendment challenge to a provision of the criminal prohibition on knowingly providing "material support or resources to a foreign terrorist organization." The plaintiffs in the case challenged the prohibition on four types of material support—"training", "expert advice or assistance", "service" and "personnel"—claiming the statute violated their First Amendment freedom of speech and association rights by prohibiting them from supporting the lawful, nonviolent activities of groups such as the Partiya Karkeran Kurdistan and the Liberation Tigers of Tamil Eelam. The Supreme Court rejected the claim, finding that the Government's interest in combating terrorism is an "urgent objective of the highest order" which justifies the statute's prohibition on forms of speech such as training designated terrorist organizations regarding international law and international bodies.<sup>321</sup>

241. The Office of the Special Rapporteur recalls that in their 2008 Joint Declaration, the Special Mechanisms of the IACHR, the UN, the OSCE and the ACHPR stated: "The criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or

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<sup>321</sup> U.S. Supreme Court, *Holder, Attorney General et al. v. Humanitarian Law Project et al.*, June 21, 2010. Available at: <http://www.supremecourt.gov/opinions/09pdf/08-1498.pdf>

extremism, the ‘glorification’ or ‘promotion’ of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalized.”<sup>322</sup>

242. On June 24, 2010, the Supreme Court issued its decision in the case of *Doe v. Reed*. In this case, the Supreme Court held that the disclosure of referendum petitions does not in general violate the First Amendment. The Court found that the compelled disclosure of signatory information on referendum petitions is subject to First Amendment review, given that such signatures constitute the expression of a political view. The Court recognized that the disclosure of signatory information may burden the ability to speak, though it does not prevent such speech. Nevertheless, the Court ruled that the government’s interest in preserving the integrity of the electoral process by, for example, promoting transparency and accountability through access to information laws, generally suffices to defeat the argument that the disclosure of referendum petitions constitutes an undue burden on free speech.<sup>323</sup>

243. On March 19, 2010, the U.S. Court of Appeals for the Second Circuit ruled in favor of two news organizations whose Freedom of Information Act (FOIA) request regarding documents related to an emergency lending program was only partially satisfied by the Federal Reserve Board. In *Fox News, LLC v. Board of Governors of the Federal Reserve System* and *Bloomberg L.P. v. Board of Governors of the Federal Reserve System*, the appeals court rejected the government’s argument that the bank loan information should be withheld under a FOIA exception governing trade secrets and commercial or financial information obtained from a person and privileged or confidential.<sup>324</sup> According to the information received, a group representing commercial banks—though not the Federal Reserve Board itself—appealed the ruling to the Supreme Court.<sup>325</sup> At the time this report went to press the Supreme Court had not yet decided whether to grant the petition for a writ of certiorari.

244. On April 6, 2010, the U.S. Court of Appeals for the D.C. Circuit ruled that the Federal Communications Commission (FCC) does not have the authority to impose rules requiring Internet providers to offer equal treatment to all Web traffic, a concept known as “network neutrality.” In the case of *Comcast v. FCC*, the Appeals Court ruled that the FCC exceeded its authority when it found that Comcast contravened federal policy by interfering with certain peer-to-peer networking applications and obliged the company to change its network management policies. Specifically, the Court found that the FCC’s so-called “ancillary authority” to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions” under the Communications Act of 1934 was

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<sup>322</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, IACHR Special Rapporteur on Freedom of Expression and ACHPR African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, 2008 Joint Declaration. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=735&IID=1>

<sup>323</sup> U.S. Supreme Court, *Doe et al. v. Reed, Washington Secretary of State, et al.*, June 24, 2010. Available at: <http://www.supremecourt.gov/opinions/09pdf/09-559.pdf>

<sup>324</sup> U.S. Court of Appeals for the Second Circuit, *Fox News, LLC v. Board of Governors of the Federal Reserve System*, March 19, 2010. Available at: [http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/272/doc/09-3795-cv\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/272/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/272/doc/09-3795-cv_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/272/hilite/); *Bloomberg L.P. v. Board of Governors of the Federal Reserve System*, March 19, 2010. Available at: [http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/273/doc/09-4083-cv\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/273/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/273/doc/09-4083-cv_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7c9bf6a7/273/hilite/)

<sup>325</sup> Reuters. October 26, 2010. *US Fed won’t join banks in appeal to Supreme Court*. Available at: <http://www.reuters.com/article/idUSN2615905420101026>. The New York Times. October 26, 2010. *Fed Won’t Join Appeal to Keep Its Loans Secret*. Available at: <http://www.nytimes.com/2010/10/27/business/27fed.html>

not a sufficient basis for barring Comcast from interfering with its customers' use of peer-to-peer networking applications.<sup>326</sup>

245. In a related matter, on December 21, 2010, the FCC approved Order FCC 10-201, which includes rules that "require all broadband providers to publicly disclose network management practices, restrict broadband providers from blocking Internet content and applications, and bar fixed broadband providers from engaging in unreasonable discrimination in transmitting lawful network traffic."<sup>327</sup>

246. The Office of the Special Rapporteur recalls that in their 2005 Joint Declaration, the Special Mechanisms of the IACHR, the UN, and the OSCE stated: "Filtering systems which are not end-user controlled – whether imposed by a government or commercial service provider – are a form of prior-censorship and cannot be justified. [...] Corporations which provide Internet searching, chat, publishing or other services should make an effort to ensure that they respect the rights of their clients to use the Internet without interference."<sup>328</sup>

247. On July 13, 2010, the U.S. Court of Appeals for the Second Circuit invalidated the indecency policy of the FCC on First Amendment grounds. In the case of *Fox Television Stations, Inc. v. FCC*, the appeals court found that the indecency policy applied by the FCC to broadcast networks and their affiliates beginning in 2004, a policy which punished even "fleeting expletives" with significant fines, was unconstitutionally vague and created a chilling effect far beyond the fleeting expletives at issue in the case.<sup>329</sup>

248. The Office of the Special Rapporteur recalls that: "vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech. Vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to the broad judicial interpretations that unduly restrict freedom of expression. As such, the State must specify the conduct that may be subject to subsequent liability in order to prevent adverse impacts upon the free expression of protest and disagreement with the actions of the authorities."<sup>330</sup>

249. During 2010, the Office of the Special Rapporteur also received information regarding significant federal legislation in the area of freedom of expression.

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<sup>326</sup> US Court of Appeals for the D.C. Circuit, *Comcast Corporation v. Federal Communications Commission and United States of America*, April 6, 2010. Available at: <http://pacer.cadc.uscourts.gov/common/opinions/201004/08-1291-1238302.pdf>

<sup>327</sup> FCC. December 21, 2010. *FCC acts to preserve internet freedom and openness*. Available at: [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1221/DOC-303745A1.doc](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.doc)

<sup>328</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, IACHR Special Rapporteur on Freedom of Expression, 2005 Joint Declaration. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=650&IID=1>

<sup>329</sup> U.S. Court of Appeals for the Second Circuit, *Fox Television Stations, Inc., CBS Broadcasting, Inc., WLS Television, Inc., KTRK Television, Inc., KMBC Hearst-Argyle Television, Inc., ABC, Inc., v. Federal Communications Commission, United States of America v. FCC*, July 13, 2010. Available at: [http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/doc/06-1760-ag\\_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/doc/06-1760-ag_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/hilite/)

<sup>330</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, paras. 70-71.

250. On May 17, 2010, President Barack Obama signed into law the Daniel Pearl Freedom of the Press Act. The law requires the State Department to report on the status of freedom of the press in foreign countries, and to identify those countries in which there are violations of press freedom such as physical attacks, imprisonment, indirect sources of pressure, and censorship by government agents, criminal groups or armed extremist groups. The Act honors Daniel Pearl, a *Wall Street Journal* reporter who was murdered in Pakistan in 2002.<sup>331</sup>

251. On August 10, 2010, President Obama signed into law the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act. The law aims to eliminate the practice of filing lawsuits in foreign countries with more lax standards on defamation—known as “libel tourism”—by prohibiting U.S. courts from enforcing foreign defamation judgments that are inconsistent with First Amendment free speech protections.<sup>332</sup>

252. In addition, on December 8, 2009, after the Special Rapporteurship’s 2009 Annual Report had gone to press, the White House issued an “Open Government Directive.” The Directive requires executive branch departments and agencies to take a series of steps aimed at making the federal government more open, including: publishing government information online, improving the quality of government information, creating and institutionalizing a culture of open government, and creating an enabling policy framework for open government. The Directive established a series of deadlines, including a 60-day deadline for departments and agencies to establish an Open Government Webpage.<sup>333</sup> The Office of Special Rapporteur applauds this effort to facilitate citizens’ access to public information, and encourages the State to continue its efforts to implement the Open Government Directive and improve government transparency.

253. The Office of the Special Rapporteur also received information regarding important freedom of expression developments at the state level during 2010. According to the information received, Kansas<sup>334</sup> (in April) and Wisconsin<sup>335</sup> (in May) became the 38<sup>th</sup> and 39<sup>th</sup> states to pass shield laws for reporters that recognize a journalist’s right to protect confidential sources.<sup>336</sup> The Office of the Special Rapporteur applauds these developments and recalls that Principle 8 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

254. Also, on May 11, 2010, the Supreme Court of New Jersey ruled that the state’s “fair report privilege” provides protection from defamation suits to journalists who report accurately

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<sup>331</sup> Daniel Pearl Freedom of the Press Act, Public Law 111-166, May 17, 2010. Available at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ166.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ166.111.pdf)

<sup>332</sup> Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, Public Law 111-223, August 10, 2010. Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ223/pdf/PLAW-111publ223.pdf>

<sup>333</sup> Executive Office of the President, M-10-06 “Open Government Directive”, December 8, 2009. Available at: [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf)

<sup>334</sup> Governor of the State of Kansas. April 15, 2010. *Governor Parkinson signs reporter shield law*. Available at: <http://governor.ks.gov/media-room/73-2010-legislative-session/646-041510-governor-parkinson-signs-reporter-shield-law>

<sup>335</sup> The Reporters Committee for Freedom of the Press. May 19, 2010. *Wisconsin Governor Signs Shield Law for Reporters*. Available at: <http://www.rcfp.org/newsitems/index.php?i=11439>. The Guardian. May 21, 2010. *Another US State passes a ‘shield law’*. Available at: <http://www.guardian.co.uk/media/greenslade/2010/may/21/press-freedom-us-press-publishing>

<sup>336</sup> The Reporters Committee for Freedom of the Press. May 19, 2010. *Wisconsin Governor Signs Shield Law for Reporters*. Available at: <http://www.rcfp.org/newsitems/index.php?i=11439>. The Guardian. May 21, 2010. *Another US State passes a ‘shield law’*. Available at: <http://www.guardian.co.uk/media/greenslade/2010/may/21/press-freedom-us-press-publishing>

from court filings as well as from final judgments. In the case of *Salzano v. North Jersey Media Group*, the Supreme Court of New Jersey held that the fair report privilege applies to filed pleadings in advance of any judicial action regarding those pleadings. The Court stated that, “the public policy underpinning of the fair-report privilege—advancement of the public's interest in the free flow of information about official actions—would be thwarted by the recognition of the initial pleadings exception. A full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding deserves the protection of the privilege.”<sup>337</sup>

255. In September 2010, the Office of the Special Rapporteur received information indicating that Seattle, Washington cartoonist Molly Norris had entered into hiding after receiving threats against her life. According to the information received, in April 2010 Norris drew a cartoon called “Everybody Draw Mohammed Day” in protest against what she perceived as censorship of and threats against artists who draw representations of the Muslim prophet Muhammad. In July, the press reported that Anwar al-Awlaki, a Yemeni-American cleric associated with al-Qaeda, had issued a *fatwa* placing her on a list of persons to be killed. The information received indicates that Ms. Norris was advised by the Federal Bureau of Investigation (FBI) to relocate and change her identity due to the seriousness of the threat.<sup>338</sup>

256. On October 27, 2010, the Office of the Special Rapporteur received information indicating that a bomb threat had been sent to National Public Radio (NPR). According to press reports, the threat was received by mail and immediately turned over to police and the FBI. Press accounts also suggested a possible connection to the NPR’s firing of reporter Juan Williams several days earlier.<sup>339</sup>

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

258. On September 24, 2010 the FBI conducted searches at eight addresses in Minneapolis, Minnesota and Chicago, Illinois linked to individuals and organizations critical of United States policy in the Middle East and Colombia. According to the information received, the persons affected by the raids, some of whom were reportedly subpoenaed to appear before a federal grand jury, include: Meredith Aby, Mick Kelly, Sarah Martin, Tracy Molm, Anh Pham and Jess Sundin in Minneapolis, as well as Joe Iosbaker and Stephanie Weiner in Chicago. These persons are reportedly linked to organizations such as Freedom Road Socialist Organization and the Minnesota Anti-War Committee.<sup>340</sup> According to the public statements of FBI officials and the warrant to search the

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<sup>337</sup> Supreme Court of New Jersey. *Salzano v. North Jersey Media Group Inc.*, May 11, 2010. Available at: <http://www.leagle.com/xmlResult.aspx?xmldoc=in%20njco%2020100511273.xml&docbase=csIwar3-2007-curr>

<sup>338</sup> New York Daily News. July 11, 2010. *Cleric Anwar al-Awlaki puts ‘Everybody Draw Mohammed’ cartoonist Molly Norris on execution hitlist*. Available at: <http://www.nydailynews.com/news/world/2010/07/11/2010-07-11-cleric-anwar-alawlaki-puts-everybody-draw-mohammed-cartoonist-molly-norris-on-ex.html>. Seattle Weekly. September 15, 2010. *On the Advice of the FBI, Cartoonist Molly Norris Disappears from View*. Available at: <http://www.seattleweekly.com/2010-09-15/news/on-the-advice-of-the-fbi-cartoonist-molly-norris-disappears-from-view/>

<sup>339</sup> Washington Post. October 27, 2010. *NPR receives bomb threat; timing suggests link to Juan Williams firing*. Available at: [http://www.washingtonpost.com/wp-dyn/content/article/2010/10/26/AR2010102604909\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/10/26/AR2010102604909_pf.html). Knight Center for Journalism in the Americas. October 27, 2010. *NPR receives bomb threat, possibly linked to firing of Juan Williams*. Available at: <http://knightcenter.utexas.edu/blog/npr-receives-bomb-threat-possibly-linked-firing-juan-williams>

<sup>340</sup> Minnesota Public Radio. September 24, 2010. *FBI serves terrorism warrants in Minn., Chicago*. Available at: <http://minnesota.publicradio.org/display/web/2010/09/24/anti-war-activists-fbi-searches/>. Fox News. September 24, 2010.

residence of Mr. Kelly in Minneapolis, the searches were conducted in relation to an investigation into possible violations of the prohibition on “providing material support or resources to designated foreign terrorist organizations” established in 18 U.S.C. §2339B.<sup>341</sup> As mentioned previously, this criminal provision was challenged by civil society organizations on First Amendment grounds and upheld by the Supreme Court in June 2010 in the case of *Holder v. Humanitarian Law Project*.

259. On October 15, 2010, the U.S. Department of Homeland Security settled a lawsuit that arose after the November 9, 2009 arrest of an activist for recording video outside a federal courthouse in New York, New York. The charge against him was later dismissed. The activist, Antonio Musumeci, subsequently filed a lawsuit challenging the government regulation cited at the time of his arrest. The settlement agreement stipulates that the regulation in question does not prohibit individuals from photographing or recording the exterior of federal courthouses, and provides that the Federal Protection Service will instruct its officers that there are no general security regulations prohibiting photography or video recording outside federal courthouses.<sup>342</sup>

260. On November 20, 2010, four media workers were reportedly arrested while covering the protests outside the Western Hemisphere Institute for Security Cooperation, formerly known as the School of the Americas, a military training facility located in Fort Benning, Georgia. According to the information received, *Russia Today* correspondent Kaelyn Forde and her cameraman Jonathan Conway were arrested, as were Cecilia Kluding, a 17-year old intern for a community radio station in Colorado, and Jihan Abdel-Hafiz, who told the press she is a television journalist. All four media workers appear to have been convicted of violating city ordinances, despite informing the Columbus Recorder’s Court judge that they were covering the protest, not participating in it. The information received by the Office of the Special Rapporteur indicates that Forde and Conway, both U.S. citizens, were arrested by the police despite abiding by police instructions and showing their press credentials, and subsequently charged with unlawful assembly, demonstrating without a permit, and failing to disperse. According to the information received, Forde and Conway were held for 29 hours, at which point they were released after being convicted and fined on the charge of demonstrating without a permit and failing to disperse, and after being bailed on the unlawful assembly charge. Kluding and Abdel-Hafiz also appear to have been released after being convicted and paying fines.<sup>343</sup>

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*FBI serves warrants on Minn. Anti-war activists, Chicago addresses, looking for terrorist ties.* Available at: <http://www.foxnews.com/us/2010/09/24/fbi-searches-homes-anti-war-activists-minneapolis-chicago-terrorism-case/>

<sup>341</sup> U.S. District Court for the District of Minnesota, case No. 10-mj-389SRN, Search and Seizure Warrant, September 23, 2010. Available at: <http://tc.indymedia.org/files/kelly-warrant-92210.pdf>. Minnesota Public Radio. September 24, 2010. *FBI serves terrorism warrants in Minn., Chicago.* Available at: <http://minnesota.publicradio.org/display/web/2010/09/24/anti-war-activists-fbi-searches/>; Fox News. September 24, 2010. *FBI serves warrants on Minn. Anti-war activists, Chicago addresses, looking for terrorist ties.* Available at: <http://www.foxnews.com/us/2010/09/24/fbi-searches-homes-anti-war-activists-minneapolis-chicago-terrorism-case/>

<sup>342</sup> U.S. District Court, Southern District of New York, *Antonio Musumeci v. United States Department of Homeland Security, et al.*, Stipulation and Order of Dismissal, October 15, 2010. Available at: [http://www.nyclu.org/files/releases/Final Stip and Order 10.18.10.pdf](http://www.nyclu.org/files/releases/Final%20Stip%20and%20Order%2010.18.10.pdf). New York Civil Liberties Union. October 18, 2010. *NYCLU Settlement Ends Restriction on Photography Outside Federal Courthouses.* Available at: <http://www.nyclu.org/news/nyclu-settlement-ends-restriction-photography-outside-federal-courthouses>

<sup>343</sup> Ledger-Enquirer. November 23, 2010. *21 Found Guilty of Violating City Ordinances at SOA Watch Protest.* Available at: <http://www.ledger-enquirer.com/2010/11/23/1356232/21-found-guilty-of-violating-city.html>. Reporters without Borders. November 24, 2010. *Journalists Arrested While Covering “School of the Americas” Protest.* Available at: [http://en.rsf.org/united-states-journalists-arrested-while-24-11-2010\\_38889.html](http://en.rsf.org/united-states-journalists-arrested-while-24-11-2010_38889.html). Committee to Protect Journalists (CPJ). November 23, 2010. *Journalists Arrested at U.S. ‘School of the Americas’ Protest.* Available at: <http://cpj.org/2010/11/journalists-arrested-at-school-of-the-americas-pro.php>

261. On October 17, 2010, private security guards for U.S. Senate candidate Joe Miller detained and handcuffed *Alaska Dispatch* reporter Tony Hopfinger in Alaska. According to the information received, Hopfinger was told he was trespassing and detained for about thirty minutes after attempting to ask the candidate questions in a public school, before eventually being freed by Anchorage police. According to press reports, the Department of Public Safety announced that it was investigating the events.<sup>344</sup>

262. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's Declaration of Principles on Freedom of Expression establishes that: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

263. On April 20, 2010, federal law enforcement agents forced reporters who were covering a gay rights protest to retreat from the White House and adjacent Lafayette Park. The reporters were covering a protest by members of the Armed Forces against the U.S. military's "Don't Ask, Don't Tell" policy. According to the information received, the journalists were removed when the agents undertook to arrest six Armed Forces members who had handcuffed themselves to the White House fence. According to press reports, the U.S. Park Police later acknowledged that the agents' actions in removing the reporters were a mistake.<sup>345</sup>

264. In May 2010, the Department of Defense barred four reporters from further reporting on the military commission proceedings at the Guantánamo Bay, Cuba detention facility, because they published articles identifying a witness whose identity had been protected by the presiding judge even though it had reportedly been in the public domain since 2005. The barred journalists were Carol Rosenberg of the *Miami Herald*, Michelle Shephard of the *Toronto Star*, Paul Koring of the *Globe and Mail*, and Seven Edwards of the CanWest news service.<sup>346</sup> The ban on at least one of the reporters, Carol Rosenberg, was later reported to have been lifted.<sup>347</sup> According to the information received, on September 10, the Defense Department issued new rules for journalists covering the military commissions which established, *inter alia*, that journalists will no longer run the

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<sup>344</sup> NPR. October 18, 2010. *Joe Miller's Private Security Handcuffs Alaska Journalist*. Available at: <http://www.npr.org/blogs/itsallpolitics/2010/10/18/130641686/joe-miller-s-security-guards-handcuff-reporter-at-public-event>. Alaska Dispatch. October 19, 2010. *Details emerge after Miller's 'security agents' detain journalist*. Available at: <http://alaskadispatch.com/dispatches/news/7210-details-emerge-after-millers-security-agents-detain-journalist>

<sup>345</sup> Politico. April 20, 2010. *Most transparent White House Ever...* Available at: [http://www.politico.com/blogs/bensmith/0410/Most\\_transparent\\_White\\_House\\_ever.html?showall](http://www.politico.com/blogs/bensmith/0410/Most_transparent_White_House_ever.html?showall). Fox News. April 21, 2010. *Police Block Reporters from Gay Rights Protest Outside White House*. Available at: <http://www.foxnews.com/politics/2010/04/21/police-block-reporters-gay-rights-protest-outside-white-house/>. Politico. April 21, 2010. *Spokesman: Park Police 'screwed up'*. Available at: [http://www.politico.com/blogs/bensmith/0410/Spokesman\\_Parks\\_Police\\_screwed\\_up.html?showall](http://www.politico.com/blogs/bensmith/0410/Spokesman_Parks_Police_screwed_up.html?showall)

<sup>346</sup> Committee to Protect Journalists (CPJ). May 7, 2010. *Pentagon bars 4 reporters from Guantanamo hearings*. Available at: <http://cpj.org/2010/05/pentagon-bars-4-reporters-from-guantanamo-bay-proc.php>. Knight Center for Journalism in the Americas. May 7, 2010. *Pentagon bans four reporters from covering trials at Guantánamo*. Available at: <http://knightcenter.utexas.edu/blog/pentagon-bans-four-reporters-covering-trials-guantanamo>

<sup>347</sup> New York Times. July 9, 2010. *Pentagon Reinstates Banned Guantánamo Reporter*. Available at: <http://mediadecoder.blogs.nytimes.com/2010/07/09/pentagon-reinstates-banned-guantanamo-reporter/>. Knight Center for Journalism in the Americas. July 9, 2010. *Pentagon Reinstates Reporter Kicked out of Guantánamo Bay*. Available at: <http://knightcenter.utexas.edu/blog/pentagon-reinstates-reporter-kicked-out-guantanamo-bay>

risk of being expelled or barred from Guantánamo Bay because of information they report that was obtained in the course of news gathering outside Guantánamo.<sup>348</sup>

265. On June 23, 2010, according to the information received, photojournalists' access to the Senate of Puerto Rico was restricted, a ban that was extended to reporters the following day. According to press reports, the restrictions on press access were ordered by Senate President Thomas Rivera Schatz to protect the senators' "image." According to the information received, press access to the Senate was renewed on June 29, at the same time that Rivera Schatz's press secretary circulated a letter with four conditions for media coverage of Senate sessions.<sup>349</sup>

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

267. On July 15, 2010, the U.S. Court of Appeals for the Second Circuit ordered documentary filmmaker Joe Berlinger to provide Chevron Corporation copies of certain raw footage taken during the making of Berlinger's film *Crude* about the ongoing environmental litigation against Chevron in Ecuador. Berlinger had argued that at least part of the material was protected by the journalists' privilege. Though the Court of Appeals narrowed the District Court's order to turn over all raw footage, it required Berlinger to provide Chevron with material showing: counsel for the plaintiffs in the case of *Maria Aguinda y Otros v. Chevron Corp.*; private or court-appointed experts in that proceeding; or current or former officials of the Government of Ecuador.<sup>350</sup>

268. On April 23, 2010, officers from the San Mateo Sheriff's Office in California searched the home of Jason Chen, editor of the *Gizmodo* technology website, and seized electronic equipment such as computers, servers and data storage devices pursuant to a search warrant.<sup>351</sup> The warrant was issued in relation to the investigation of a missing Apple iPhone prototype, which

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<sup>348</sup> Reporters without Borders. September 13, 2010. *Pentagon issues new rules for Guantanamo coverage*. Available at: [http://en.rsf.org/etats-unis-pentagon-issues-new-rules-for-13-09-2010\\_38347.html](http://en.rsf.org/etats-unis-pentagon-issues-new-rules-for-13-09-2010_38347.html). The New York Times. September 10, 2010. *Pentagon Eases Some Rules on Guantánamo Coverage*. Available at: <http://www.nytimes.com/2010/09/11/us/11gjtmo.html>

<sup>349</sup> El Nuevo Día. June 30, 2010. *Senado reabre sus gradas*. Available at: <http://www.elnuevodia.com/Xstatic/endi/template/imprimir.aspx?id=732761&t=3>. Inter American Press Association/International Freedom of Expression Exchange (IFEX). June 30, 2010. *IAPA Condemns censorship, restrictions imposed by Senate*. Available at: [http://www.ifex.org/united\\_states/puerto\\_rico/2010/06/30/senate\\_restrictions/](http://www.ifex.org/united_states/puerto_rico/2010/06/30/senate_restrictions/)

<sup>350</sup> U.S. Court of Appeals for the Second Circuit. *Chevron Corporation, Rodrigo Perez Pallares, Ricardo Reis Veiga v. Joseph A. Berlinger, Crupe Productions, LLC, Michael Bonfiglio, Third Eye Motion Picture Company, Inc., @radical.media, Lago Agrio*, order of July 15, 2010. Available at: <http://www.crudethemovie.com/blog/wp-content/uploads/2010/07/7.15.10-ORDER.pdf>. U.S. Court of Appeals for the Second Circuit. *Chevron Corporation, Rodrigo Perez Pallares, Ricardo Reis Veiga v. Joseph A. Berlinger, Crupe Productions, LLC, Michael Bonfiglio, Third Eye Motion Picture Company, Inc., @radical.media, Lago Agrio*, Brief and Special Appendix for Respondents-Appellants, June 14, 2010. Available at: <http://www.crudethemovie.com/blog/wp-content/uploads/2009/08/Berlinger-Appellate-Brief3.pdf>. The New York Times. July 15, 2010. *Appeals Court Rules Filmmaker Must Give Some Footage to Chevron*. Available at: <http://artsbeat.blogs.nytimes.com/2010/07/15/appeals-court-rules-filmmaker-must-give-some-footage-to-chevron/>

<sup>351</sup> Gizmodo. April 26, 2010. *Police seize Jason Chen's computers*. Available at: <http://gizmodo.com/5524843/police-seize-jason-chens-computers>. CNET. April 26, 2010. *Police seize Gizmodo's computers in iPhone probe*. Available at: [http://news.cnet.com/8301-13579\\_3-20003446-37.html](http://news.cnet.com/8301-13579_3-20003446-37.html)

*Gizmodo* had obtained from a third party.<sup>352</sup> According to the information received, *Gizmodo* argued that the search warrant was invalid under the journalist's privilege in California law.<sup>353</sup> However, press reports indicate that San Mateo prosecutors defended the propriety of the search warrant.<sup>354</sup> In July of 2010 San Mateo County officials agreed to drop the search warrant and return the seized items, in return for a commitment from Mr. Chen to grant officials access to the specific information that the officials were seeking.<sup>355</sup>

269. In April 2010, according to the information received, the U.S. Department of Justice obtained a subpoena in an effort to compel *New York Times* journalist James Risen to reveal the confidential sources for his 2006 book *State of War: The Secret History of the C.I.A. and the Bush Administration*. The subpoena allegedly required him to provide documents and testify before a grand jury.<sup>356</sup>

270. The Office of the Special Rapporteur recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression establishes that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

271. On April 15, 2010, the federal government released information under the Freedom of Information Act (FOIA) regarding the destruction of videotapes that allegedly showed Central Intelligence Agency (CIA) agents engaging in torture or other cruel, inhuman or degrading treatment of terrorism suspects with techniques such as waterboarding. According to the information received by the Office of the Special Rapporteur, in 2003 and 2004 the American Civil Liberties Union (ACLU) and other organizations made FOIA requests for documents relating to mistreatment in CIA secret detention facilities.<sup>357</sup> In March 2009, the federal government acknowledged that 92 video recordings of CIA interrogations had been destroyed in 2005.<sup>358</sup> The information released on April 15, 2010 indicates that the decision to destroy the videotapes was taken by the then head of the

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<sup>352</sup> Gizmodo. April 26, 2010. *Police seize Jason Chen's computers*. Available at: <http://gizmodo.com/5524843/police-seize-jason-chens-computers>. CNET. April 26, 2010. *Police seize Gizmodo's computers in iPhone probe*. Available at: [http://news.cnet.com/8301-13579\\_3-20003446-37.html](http://news.cnet.com/8301-13579_3-20003446-37.html)

<sup>353</sup> Gizmodo. April 26, 2010. *Police seize Jason Chen's computers*. Available at: <http://gizmodo.com/5524843/police-seize-jason-chens-computers>

<sup>354</sup> CNN/CNET. April 28, 2010. *Prosecutors defend Gizmodo search in iPhone probe*. Available at: <http://www.cnn.com/2010/TECH/04/28/gizmodo.iphone.search/index.html>

<sup>355</sup> SF Gate. July 18, 2010. *Search warrant dropped in Gizmodo iPhone case*. Available at: [http://articles.sfgate.com/2010-07-18/bay-area/21988300\\_1\\_iphone-search-warrant-mr-chen](http://articles.sfgate.com/2010-07-18/bay-area/21988300_1_iphone-search-warrant-mr-chen); Techeye.net. July 19, 2010. *Search warrant for Gizmodo iPhone4 leak editor dropped*. Available at: <http://www.techeye.net/mobile/search-warrant-for-gizmodo-iphone-4-leak-editor-dropped>

<sup>356</sup> The New York Times. April 28, 2010. *U.S. Subpoenas Times Reporter over Book on C.I.A.* Available at: [http://www.nytimes.com/2010/04/29/us/29justice.html?\\_r=1&scp=1&sq=Risen&st=cse](http://www.nytimes.com/2010/04/29/us/29justice.html?_r=1&scp=1&sq=Risen&st=cse). The Washington Post. April 30, 2010. *After reporter's subpoena, critics call Obama's leak-plugging efforts Bush-like*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/29/AR2010042904656.html>

<sup>357</sup> ACLU. December 12, 2007. *Citing Destruction of Torture Tapes, ACLU asks court to hold CIA in contempt*. Available at: <http://www.aclu.org/national-security/citing-destruction-torture-tapes-aclu-asks-court-hold-cia-contempt>

<sup>358</sup> Reporters without Borders/ International Freedom of Expression Exchange (IFEX). March 10, 2009. *Authorities confirm CIA destroyed 92 videotapes detailing interrogation of detainees held at secret prison*. Available at: <http://www.ifex.org/united-states/2009/03/10/authorities-confirm-cia-destroyed/>. Reporters without Borders. March 5, 2009. *CIA destroyed 92 interrogation videos: "An investigation into the serious abuses of the 'War on Terror' is imperative"*. Available at: [http://en.rsf.org/united-states-cia-destroyed-92-interrogation-05-03-2009\\_30486.html](http://en.rsf.org/united-states-cia-destroyed-92-interrogation-05-03-2009_30486.html)

CIA clandestine service.<sup>359</sup> On November 9, 2010, the Department of Justice announced that it would not pursue charges against CIA officials in relation to the destruction of the videotapes.<sup>360</sup>

272. On October 4, 2010, the Supreme Court declined to hear an appeal by 23 lawyers representing Guantanamo Bay detainees who filed a FOIA request seeking to find out if the National Security Agency (NSA) had wiretapped their phone calls with their clients at Guantanamo. According to the information received, the NSA's refusal to provide the information on national security grounds was upheld by the federal district and appeals courts, and the Supreme Court declined to hear a further appeal.<sup>361</sup>

273. The Office of the Special Rapporteur recalls that Principle 4 establishes that: "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

#### 14. Guatemala

274. The Office of the Special Rapporteur views positively the fact that in December of 2009, the Supreme Court of Justice ordered that the investigation into the murder of politician and journalist Jorge Carpio Nicolle be reopened, in compliance with the judgment of the Inter-American Court of Human Rights. Carpio, a former presidential candidate and editor of the newspaper *El Gráfico*, was murdered in July of 1993. The Office of the Public Prosecutor for Human Rights announced that during the first few months of the year, it had taken measures including taking testimony from witnesses to the crime and requesting autopsies on the victims. As the IACHR has indicated, the Supreme Court's decision was an important step toward complying with the judgment of the regional tribunal and eliminating impunity.<sup>362</sup>

275. According to information received, on September 27, journalist Víctor Hugo Juárez and graphic designer Byron Dávila were murdered. According to reports, both men were found dead in a house in Guatemala City with the bodies bearing signs of violence. Juárez worked in digital media outlets dedicated to corporate communications and had lately been working for the newspapers *Siglo XXI* and *Nuestro Diario*. Motives for the crimes are not yet known.<sup>363</sup>

<sup>359</sup> The Huffington Post/AP. April 16, 2010. *CIA Waterboarding Video Destroyed: Porter Goss Agreed with Decision to Destroy Interrogation Tapes*. Available at: [http://www.huffingtonpost.com/2010/04/15/cia-waterboarding-video-d\\_n\\_539932.html](http://www.huffingtonpost.com/2010/04/15/cia-waterboarding-video-d_n_539932.html). SF Gate. April 16, 2010. *Ex CIA Boss OKd destroying interrogation tapes*. Available at: [http://articles.sfgate.com/2010-04-16/news/20851745\\_1\\_porter-j-goss-cia-official-tapes](http://articles.sfgate.com/2010-04-16/news/20851745_1_porter-j-goss-cia-official-tapes)

<sup>360</sup> New York Times. November 9, 2010. *No Criminal Charges Sought over C.I.A. Tapes*. Available at: <http://www.nytimes.com/2010/11/10/world/10tapes.html>. The Guardian. November 9, 2010. *No charges over destruction of CIA interrogation tapes*. Available at: <http://www.guardian.co.uk/world/2010/nov/09/no-charges-destruction-cia-interrogation-tapes>

<sup>361</sup> Reporters without Borders/ International Freedom of Expression Exchange (IFEX). October 7, 2010. *In new blow to FOIA, Supreme Court refuses to consider illegal phone tap case*. Available at: <http://www.ifex.org/united-states/2010/10/07/appeal-refused/>. Agence France Presse (AFP). October 4, 2010. *US top court refuses to hear Guantanamo wiretap case*. Available at: <http://www.commondreams.org/headline/2010/10/04-7>

<sup>362</sup> IACHR. February 3, 2010. Press Release No. 15/10. *IACHR Welcomes Decision of Guatemala's Supreme Court of Justice*. Available at: <http://www.cidh.oas.org/Comunicados/English/2010/15-10eng.htm>; Prensa Libre. March 25, 2010. *Office of the Public Prosecutor moves forward in Carpio case*. Available at: [http://www.prensalibre.com/noticias/Fiscalia-avanza-caso-Carpio\\_0\\_231576882.html](http://www.prensalibre.com/noticias/Fiscalia-avanza-caso-Carpio_0_231576882.html)

<sup>363</sup> Agence France-Press (AFP). September 28, 2010. *Journalist tortured and murdered in Guatemala*. Available at: [http://www.google.com/hostednews/afp/article/ALeqM5h\\_mv4561ulwXYmAc8jQZjVD1uuw?docId=CNG.02c72437b1107edfcec4d8b628714acc.4b1](http://www.google.com/hostednews/afp/article/ALeqM5h_mv4561ulwXYmAc8jQZjVD1uuw?docId=CNG.02c72437b1107edfcec4d8b628714acc.4b1); El Periódico. October 4, 2010. *Alarm over deaths and violence against journalists*. Available at: <http://www.elperiodico.com.gt/es/20101004/pais/177774/>

276. The Office of the Special Rapporteur was informed that the Crimes against Journalists Unit of the Office of the Public Prosecutor had received complaints of different kinds during 2010.<sup>364</sup> Some important examples of cases of attacks and threats reported to the Office of the Special Rapporteur are summarized in the following paragraphs.

277. According to the information received, on August 3, three local reporters from Suchitepéquez were beaten by officers with the Anti-Narcotics Information and Analysis Division. They were covering a police search.<sup>365</sup>

278. The Office of the Special Rapporteur was informed that on August 26, unknown individuals fired on the residence of Edin Rodelmiro Maaz Bol, a journalist with the news organization *Video Prensa*, in Alta Verapaz.<sup>366</sup> The Office of the Special Rapporteur was informed that journalist Héctor Cordero, a correspondent for the television network *Guatevisión* in the Quiché department, revealed to the Guatemalan press that he had received threats toward the beginning of the year after accusing a legislator aligned with the ruling power of nepotism.<sup>367</sup> On November 16, Luis Ángel Sas, a journalist with *El Periódico*, received threatening phone calls related to the publication of articles on drug trafficking.<sup>368</sup>

279. The Office of the Special Rapporteur was also informed that on September 28, unknown individuals entered the house of Marvin Del Cid, a journalist with *El Periódico*, and stole his computer and files related to his research. This was the second time in less than three months that Del Cid had his house ransacked and his research material and equipment stolen. In the first incident, which took place on June 24, the perpetrators left a death threat in the apartment. Del Cid is a reporter with the investigative journalism section of *El Periódico* and often writes on cases of corruption and other public interest irregularities.<sup>369</sup>

280. With regard to the incidents cited, the Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of

<sup>364</sup> CERIGUA. December 17, 2010. *More than 20 attacks on journalists reported during 2010*. Available at: <http://cerigua.org/la1520/index.php/nota-diaria/48-libertad-de-expresion/618-2010-cierra-con-mas-de-20-agresiones-contra-periodistas->; Diario Avanzada. December 21, 2010. *Guatemala ends year with more than 20 attacks on journalists*. Available at: <http://www.diarioavanzada.com.mx/noticia.php?id=54202>

<sup>365</sup> CERIGUA. August 4, 2010. *Police officers assault journalists in Suchitepéquez*. Available at: <http://www.cerigua.org/servicios/diarios/c-040810.pdf>; Nuestro Diario. August 4, 2010. *Reporters beaten, attacked with tear gas*. Available at: [http://monitoreo.saas.gob.gt/noticias/enviar\\_noticia\\_manual.php?cual=5700](http://monitoreo.saas.gob.gt/noticias/enviar_noticia_manual.php?cual=5700)

<sup>366</sup> CERIGUA/ International Freedom of Expression Exchange (IFEX). August 31, 2010. *Shots fired at journalist's home*. Available at: [http://www.ifex.org/guatemala/2010/08/31/maaz\\_bol\\_shooting/](http://www.ifex.org/guatemala/2010/08/31/maaz_bol_shooting/); Diario Avanzada/CIMAC. December 21, 2010. *Guatemala ends year with more than 20 attacks on journalists*. Available at: <http://www.cimacnoticias.com/site/10122104-Cierra-ano-Guatemala.45586.0.html>

<sup>367</sup> CERIGUA. March 8, 2010. *Politicians threaten freedom of expression*. Available at: [http://cerigua.org/archivo/index.php?option=com\\_content&task=view&id=18736](http://cerigua.org/archivo/index.php?option=com_content&task=view&id=18736); Knight Center for Journalism. February 9, 2010. *Guatemalan TV station accuses politician in death threats to journalist*. Available at: <http://knightcenter.utexas.edu/node/121>

<sup>368</sup> CERIGUA. December 17, 2010. *More than 20 attacks on journalists reported in 2010*. Available at: <http://cerigua.org/la1520/index.php/nota-diaria/48-libertad-de-expresion/618-2010-cierra-con-mas-de-20-agresiones-contra-periodistas->. Knight Center for Journalism. December 1, 2010. *Guatemalan journalist threatened after reporting on military arms theft*. Available at: <http://knightcenter.utexas.edu/blog/guatemalan-journalist-threatened-after-reporting-military-arms-theft>

<sup>369</sup> Office of the Human Rights State's Attorney. October 4, 2010. Communication with the Office of the Special Rapporteur for Freedom of Expression. Ref. Report on search of house of journalist Marvin David Del Cid, of *El Periódico*; *El Periódico*. September 30, 2010. *Journalist Del Cid's house raided*. Available at: <http://www.elperiodico.com.gt/es/20101004/pais/177774/>

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.”

281. The Office of the Special Rapporteur received information indicating that on February 26, 2010, the Guatemalan Institute for Social Democracy (DEMOS in its Spanish acronym) filed a writ of unconstitutionality against the General Telecommunications Law currently in effect in Guatemala. The information received indicates that in the writ filed before the Constitutional Court, the petitioners indicated that the law establishes an auction as the only mechanism for accessing radio and television frequencies, leaving out other considerations. They argued that this harms the equality of opportunities of all actors in Guatemalan society with regard to their exercise of freedom of expression.<sup>370</sup>

282. With regard to this, the Office of the Special Rapporteur recalls that the special report on Guatemala prepared by the IACHR recommended that the State eliminate auctions as the sole mechanism for assigning frequencies.

283. The Office of the Special Rapporteur received with concern reports on changes made during 2010 to draft legislation of the Community Media Act, submitted to the Guatemalan Congress in August 2009. The changes would restrict the geographic reach of community radio stations and impose discriminatory standards for accessing the frequencies. According to the information received, the modifications mean that the coverage of community radio stations would be reduced on the municipal level to a reach of only 2.5km and only on the FM band.<sup>371</sup> The Office of the Special Rapporteur repeats the call it made in 2009 for the Guatemalan State to attend to the need to implement effective policies that ensure equal opportunity in the access to concessions of space for radio and television broadcasting. Likewise, it reminds the State of its obligation to adopt all necessary measures - including affirmative action - to ensure minority groups' access to the media and their enjoyment of that access free from discrimination.<sup>372</sup>

284. As it recommended in 2009, the Office of the Special Rapporteur insists that, “the State [...] must promote different groups' access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair.” Likewise, to ensure free,

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<sup>370</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym). March 10, 2010. *DEMOS Institute files writ of unconstitutionality against Guatemala Telecommunications Law*. Available at: <http://legislaciones.item.org.uy/index?q=node/1189>; Agencia Púlsar. March 1, 2010. *Institute files writ against Telecommunications Law in Guatemala*. Disponible en: <http://www.agenciapulsar.org/nota.php?id=16779>

<sup>371</sup> AMARC Guatemala. September 22, 2010. *AMARC Guatemala report on the backward step in the legislative reform intended to comply with IACHR recommendations*. Available at: [http://legislaciones.item.org.uy/files/GUA\\_informeAmarc\\_paraCIDH\\_220910.pdf](http://legislaciones.item.org.uy/files/GUA_informeAmarc_paraCIDH_220910.pdf). World Association of Community Broadcasters (AMARC in its Spanish acronym). September 28, 2010. *AMARC Guatemala demands access to frequencies and equality of opportunity without discrimination*. Available at: <http://legislaciones.item.org.uy/index?q=node/1758>

<sup>372</sup> IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 237 - 238. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&IID=1>

vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.

285. Principle 12 of the Declaration of Principles establishes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur urges the Guatemalan State to adapt its legislative framework on radio broadcasting to international standards on freedom of expression on this subject.<sup>373</sup>

286. Finally, the Office of the Special Rapporteur reiterates the importance of the fact that that Guatemala has adopted an access to information law that, among other things, establishes that information on human rights violations may not be withheld. It is now crucial to adopt measures for implementing the law that truly generate the culture of transparency that the law is intended to foster. In this respect, the Office of the Rapporteur received information indicating that through November 2010, 98 complaints of alleged failure to comply with the Access to Public Information Act were filed with the Human Rights Ombudsman. This is 63 more complaints than in 2009, the majority related to the alleged commercialization of personal information.<sup>374</sup>

287. According to the information received, both the Executive Branch and the Human Rights Ombudsman recognized progress in the application of the law since it entered into force in April 2009. However, they pointed to weaknesses such as a high rate of non-compliance with the obligatory annual report on the application of the law, lack of knowledge of the law among the population, little training of officials in the application of the law, resistance in some institutions to making their information public, and unjustified declarations of “confidential information” with regard to information in the public interest<sup>375</sup> as well as some threats and intimidations experienced by people who have made use of the law.<sup>376</sup>

## 15. Guyana

288. According to the information received, the publication of an article by columnist Freddie Kissoon in the newspaper *Kaieteur News* on June 28, 2010, accusing the President of the nation of being a racist was grounds for a lawsuit for defamation brought by the President against the columnist and the newspaper’s editor.<sup>377</sup> The information received by the Office of the

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<sup>373</sup> IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). paras. 237 y 238. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&IID=2>

<sup>374</sup> El Periódico. December 23, 2010. *Violations of the Access to Public Information Act have increased*. Available at: <http://www.elperiodico.com.gt/es/20101223/pais/187074/>

<sup>375</sup> CERIGUA. April 21, 2010. *Compliance with the Access to Information Act faces various obstacles a year after its enactment*. Available at: <http://noticias.com.gt/nacionales/20100421-ley-acceso-informacion-obstaculos-ano-vigencia.html>; Prensa Libre. April 18, 2010. *Country still held hostage by secrecy*. Available at: [http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo\\_0\\_245975404.html](http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo_0_245975404.html)

<sup>376</sup> Legislator Nineth Montenegro was threatened after requesting information on how a government assistance program works. Also, there have been cases of individuals threatened for similar reasons in the municipalities of Huehuetenango, Izabal, Concepción, Sololá and Suchitepéquez. Prensa Libre. April 18, 2010. *Country still held hostage by secrecy*. Available at: [http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo\\_0\\_245975404.html](http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo_0_245975404.html); CERIGUA. April 21, 2010. *Compliance with the Access to Information Act faces various obstacles a year after its enactment*. Available at: <http://noticias.com.gt/nacionales/20100421-ley-acceso-informacion-obstaculos-ano-vigencia.html>

<sup>377</sup> The Daily Herald. July 14, 2010. *Jagdeo files libel suit against Kaieteur News and columnist*. Available at: <http://www.thedailyherald.com/regional/2-news/5851-jagdeo-files-libel-suit-against-kaieteur-news-and-columnist.html>; Fox

Rapporteur indicates that the case's initial hearing took place on August 5, 2010,<sup>378</sup> and as of the date of this report, we do not have information with regard to a ruling in the case.

289. The Office of Rapporteur wishes to recall that Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Furthermore, Principle 11 of the same declaration states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

## 16. Haiti

290. The Office of the Special Rapporteur notes that after the earthquake that took place in Haiti on January 12, 2010, the main topic on the agenda with regard to freedom of expression in Haiti has been the effort to rebuild media outlets and put them in operation once more. Practically all media outlets were affected by the earthquake, and many of them had to cease publishing or broadcasting. In this sense, according to the information received, of the 50 radio broadcasters in operation before the earthquake, 25 of them were back to broadcasting within a month of the disaster, many from tents and with equipment rescued from the rubble. This was the case for television station *Télé Ginen* and radio station *Radio-Télé Soleil*. The print media were also affected by the catastrophe. Leading Haitian newspaper *Le Nouvelliste* suspended its print edition for 45 days and published only on the Internet during that time. The other national newspaper, *Le Matin*, is being printed in the Dominican Republic. It is no longer distributed daily, now appearing only twice a week. Many media outlets have had to reduce their staffs due to the economic difficulties.<sup>379</sup> Additionally, the only Creole-language newspaper - *Bon Novel* - was destroyed.<sup>380</sup>

291. The Office of the Rapporteur observes that one of the main contributors to the recovery of the media and the exercise of freedom of expression in the context of the disaster was the establishment of a Media Operations Center through international cooperation. The center included more than 20 computers, a broadband Internet connection, satellite uplinks, and printers. It became an essential source of support for the work of dozens of Haitian journalists. According to

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News. July 16, 2010. *Guyana leader sues newspaper over column that portrayed him as racist*. Available at: <http://www.foxnews.com/world/2010/07/16/guyana-leader-sues-newspaper-column-portrayed-racist/>

<sup>378</sup> Guyana Chronicle Online. August 6, 2010. *President Jagdeo libel case against Frederick Kissoon begins*. Available at: [http://www.guyanachronicleonline.com/site/index.php?option=com\\_content&view=article&id=17014:president-jagdeo-libel-case-against-frederick-kissoon-begins&catid=2:news&Itemid=3](http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=17014:president-jagdeo-libel-case-against-frederick-kissoon-begins&catid=2:news&Itemid=3)

<sup>379</sup> International Freedom of Expression Exchange (IFEX). April 12, 2010. *Media slowly resurfacing, operations centre approaching three-month mark* Available at: [http://www.ifex.org/haiti/2010/04/15/media\\_operations\\_centre/](http://www.ifex.org/haiti/2010/04/15/media_operations_centre/); Committee to Protect Journalists. January 26, 2010. *Haitian media casualties, damages mount*. Available at: <http://cpj.org/blog/2010/01/haitian-media-casualties-damages-mount.php>; International Freedom of Expression Exchange (IFEX). May 5, 2010. *On World Press Freedom Day, AMARC asserts communication rights of disaster-hit communities* Available at: [http://www.ifex.org/international/2010/05/05/amarc\\_wpfd/](http://www.ifex.org/international/2010/05/05/amarc_wpfd/)

<sup>380</sup> Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&inford=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&inford=403&idioma=us)

the information received, the center's mandate is to offer basic equipment to Haitian journalists, serve as a meeting point for national and international reporters, offer a base of operations to organizations that defend the work of journalists, function as an information center for government authorities and NGOs, and advise the government and international agencies on the recovery of the media outlets effected by the earthquake.<sup>381</sup> In this sense, the Office of the Rapporteur applauds the initiative and the help offered by the State and international donors to affected media outlets to contribute to the recovery of their operating capacity.<sup>382</sup>

292. Separately, the Office of the Special Rapporteur received information indicating that on February 3, 2010, a group of US Marines took a camera away from Homère Cardichon, a photographer with newspaper *Le Nouvelliste*, while he was covering a demonstration in front of the US Embassy in a suburb of Port-au-Prince. The protest was being carried out due to the anguish and desperation of the Haitian population after the earthquake that devastated the country on January 12, 2010, causing the deaths of more than 200,000 Haitians, dozens of journalists among them. According to the information received, an hour later the US soldiers returned the camera to Cardichon, but with the images of the protest erased.<sup>383</sup>

293. In this regard, the Office of the Special Rapporteur recalls that Principle 5 of the IACHR's Declaration of Principles indicates that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

294. The information received indicates that Haitian journalists also continue to be threatened and attacked by police officers and politically and economically influential figures.<sup>384</sup> The same information points to individual cases like that of Kertis Emma, a correspondent with Radio Caribe FM, who in February was attacked by a police officer while reporting on a local incident. There was also the case of José Guylor C. Delva, who on March 15, 2010, had a new altercation with ex-Senator Rudolph Boulos while doing an interview with the president of the Inter-American Development Bank (IDB).<sup>385</sup> According to the information received, the journalist said that on

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<sup>381</sup> Reporters without Borders. January 21, 2010. *Media Operations Centre gets backing from Haitian government*. Available at: <http://www.rsf-es.org/news/haiti-el-centro-operacional-de-los-medios-de-comunicacion-recibe-el-apoyo-del-gobierno-haitiano/>; International Freedom of Expression Exchange (IFEX). April 12, 2010. *Media slowly resurfacing, operations centre approaching three-month mark*. Available at: [http://www.ifex.org/haiti/2010/04/15/media\\_operations\\_centre/](http://www.ifex.org/haiti/2010/04/15/media_operations_centre/)

<sup>382</sup> Reporters without Borders. January 21, 2010. *Media Operations Centre gets backing from Haitian government*. Available at: <http://www.rsf-es.org/news/haiti-el-centro-operacional-de-los-medios-de-comunicacion-recibe-el-apoyo-del-gobierno-haitiano/>; Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&infoid=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us)

<sup>383</sup> Reporters without Borders. February 4, 2010. *US military must explain why marines censored Haitian photographer*. Available at: <http://en.rsf.org/haiti-us-military-must-explain-why-04-02-2010,36309.html>; Inter-American Press Association (IAPA). *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&infoid=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us)

<sup>384</sup> International Press Institute. September 15, 2010. *Feeding Press Freedom in Haiti*. Available at: [http://www.freemedia.at/fileadmin/media/Images/World\\_Congress\\_2010/Press\\_Freedom\\_Post\\_Tuesday.pdf](http://www.freemedia.at/fileadmin/media/Images/World_Congress_2010/Press_Freedom_Post_Tuesday.pdf); Inter-American Press Association. *IAPA Midyear Meeting, March 22-19, 2010, Oranjestad, Aruba: Haiti*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&infoid=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us)

<sup>385</sup> Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&infoid=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us)

September 14, 2010, he was the subject of death threats and that he did not have a permanent residence because he had to keep his family constantly on the move.<sup>386</sup>

295. Finally, the information indicates that multiple attacks and acts of intimidation have been reported by more than a score of journalists working for six different media outlets during the presidential campaign. For example, on October 25, 2010, four armed bandits shot to death a bus driver driving seven journalists to cover a campaign event of a presidential candidate, leaving one of the reporters wounded.<sup>387</sup>

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

297. Likewise, on May 15, 2009, the rapporteurs for freedom of expression of the UN, OSCE, OAS, and the African Commission highlighted in their "Joint Declaration on Media and Elections" the importance of open and vigorous debate, of access to information and electoral processes, and of the fundamental role of media outlets in raising electoral issues and informing the citizenry. In particular, the Joint Declaration urges States to: "put in place effective systems for preventing threats and attacks against the media."<sup>388</sup>

## 17. Honduras<sup>389</sup>

298. The June 2009 *coup d'état* set off a series of massive human rights violations; the right to freedom of thought and expression was not spared.<sup>390</sup> Although Mr. Porfirio Lobo Sosa was sworn in as President of the Republic of Honduras on January 27, 2010, the danger to social communicators, journalists and human rights defenders persisted. Particularly troubling to the Commission were the number of journalists murdered in 2010; the threats, aggression and harassment perpetrated against journalists and the media; and the fact that these crimes continue to

<sup>386</sup> International Press Institute (IPI). September 15, 2010. Feeding Press Freedom in Haiti. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=25&infoid=403&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us)

<sup>387</sup> Le Nouvelliste. December 14, 2010. *SOS Journalistes condamne les attaques contre la presse*. Available at: <http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=86652>; Journalism in the Americas. October 26, 2010. *Attack on journalists' campaign bus kills driver in Haiti, wounds reporter*. Available at: <http://knightcenter.utexas.edu/blog/attack-journalists-campaign-bus-kills-driver-haiti-wounds-reporter>

<sup>388</sup> Joint Declaration on Media and Elections. May 15, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=745&IID=2>

<sup>389</sup> This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression. The section includes information received until December 1, 2010. However, it is paramount to take into account the murder of journalist Henry Suazo on December 20, 2010, in the town of La Masica, departament of Atlantida. According to information available to this Office, two unknown individuals fired shots at journalist Henry Suazo as he was leaving his home. The journalist was a reporter for the HRN radio station and worked for a local TV station. Suazo had apparently denounced on the radio in days prior that he had received a death threat via a text message sent to his phone. With the death of Henry Suazo, the number of journalists murdered in Honduras in 2010 rises to nine. IACHR. *Office of the Special Rapporteur Condemns Murder of Journalist in Honduras*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=830&IID=1>; Committee to Protect Journalists (CPJ). December 30, 2010. *Honduran journalist gunned down in front of his home*. Available at: <http://www.cpj.org/2010/12/honduran-journalist-gunned-down-in-front-of-home.php>; El Heraldo. December 28, 2010. *Another journalist murdered in the north of Honduras*. Available at: <http://www.elheraldo.hn/Ediciones/2010/12/28/Noticias/Asesinan-otro-periodista-al-norte-de-Honduras>

<sup>390</sup> IACHR. *Honduras: Human Rights and the Coup d'État*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

go unpunished, which has a widespread chilling effect on citizen's exercise of their freedom of expression, on their right to access information, and on the strength and vitality of public discourse.

**a. Journalists murdered**

299. In 2010, at least eight journalists were murdered in Honduras.

300. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was shot to death. His companion, journalist Karol Cabrera, sustained injuries but survived. According to the information received, on the night of March 1, the automobile in which journalists Hernández Ochoa from Channel 51 and Cabrera from Radio Cadena Voces and State Channel 8 were traveling was attacked by a number of individuals wielding firearms. Reports indicate that Mr. Hernández Ochoa was shot to death, while Cabrera sustained three bullet wounds, but recovered. According to accounts in the local press, Cabrera –who reported having received threats on several occasions- had police protection at home and was the target of the assailants.<sup>391</sup>

301. David Meza Montesinos, 51, was murdered on March 11, 2010; at the time he was a journalist with Radio América and Radio El Patio in the city of La Ceiba. He was killed at around 17:30, near his home in the coastal city of La Ceiba, located two hundred kilometers north of Tegucigalpa, the capital of the country. The journalist was attacked from a passing vehicle as he was walking down a street in La Ceiba.<sup>392</sup>

302. On March 14, 2010, journalist Nahúm Palacios was murdered in the city of Tocoa; Palacios had been news director for Television Channel 5 in Aguán. The IACHR had requested that the State adopt precautionary measures for him. According to the information received, Nahúm Palacios was murdered by two unknown assailants who attacked with AK-47 automatics on the night of Sunday, March 14, as Palacios was returning to his home in the Los Pinos neighborhood of the city of Tocoa, some 400 kilometers north of Tegucigalpa. The journalist sustained 30 bullet wounds, and the car in which he was driving was shot 42 times. The two persons with him were injured. After the June 28, 2009 *coup d'état*, Nahúm Palacios covered the demonstrations organized by the resistance and publicly criticized the *coup*. According to the information the Commission has received, on June 30, 2009, a military operation was carried out in which the channel's operating equipment was confiscated; Palacios' residence was searched, his children held at gunpoint and his vehicle confiscated. On July 24, 2009, the Commission granted precautionary measures for Nahúm Palacios and requested that the necessary measures be taken to protect his life and personal integrity. According to the information received, the Honduran authorities did not take these measures.<sup>393</sup>

303. On March 26, 2010, José Bayardo Mairena and Manuel Juárez, journalists for R.Z. Television Channel 4 and Radio Excelsior, were murdered as they were driving down a highway in the vicinity of the city of Juticalpa, in the department of Olancho. According to the reports received, Mairena and Juárez were on road near the city of Juticalpa, when they were taken over by

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<sup>391</sup> IACHR, Press release No. 24-10: [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras](#). Committee to Protect Journalists. March 5, 2010, "[Journalist Killed, Another Wounded in Honduras Shooting](#)". International Press Institute. March 15, 2010. "[Second Honduran journalist killed in two weeks](#)".

<sup>392</sup> CODEH. June 19, 2010, Entry on [Davir Meza Montesinos](#); Committee to Protect Journalists. March 12, 2010. "[Honduran Radio Reporter Gunned Down](#),"; Diario La Tribuna. March 11, 2010. "[Matan al periodista David Meza](#)" [Journalist David Meza killed].

<sup>393</sup> IACHR, Press Release No. 31/10: [IACHR Deplores Murder of Journalist in Honduras](#). Committee to Protect Journalists, March 14, 2010, [article on Nahúm Palacios Arteaga](#). IFEX, March 16, 2010. "[Third Honduran Journalist Gunned Down in Two Weeks](#)".

another vehicle; those inside the second vehicle fired off several bursts of machine gun fire. Sources that the Office of the Special Rapporteur consulted indicated that Mairena had recently done newspaper reports on the land dispute and organized crime in Honduras.<sup>394</sup>

304. On April 20, 2010, Jorge Alberto “Georgino” Orellana, a journalist with the *Televisión de Honduras* channel, was murdered in the city of San Pedro Sula.<sup>395</sup> According to the information received, Orellana was shot on Tuesday, April 20, at night, minutes after leaving the offices of channel *Televisión de Honduras*, where he was the anchor of an opinion program dealing with current issues. The journalist died shortly thereafter from the bullet wounds he had sustained.

305. On July 14, Luis Arturo Mondragón Morazán, director of Channel 19 and of the news program “*Teleprensa*”, was killed in El Paraíso, which is in the eastern part of the country. According to the information received, Mondragón was shot four times as he was leaving the offices of Channel 19. In his program, the journalist covered such issues as corruption, crime and environmental problems. He died at the scene, having succumbed to the bullet wounds he sustained.<sup>396</sup>

306. Israel Zelaya Díaz was murdered on August 24, 2010. He was a journalist with *Radio Internacional* in the city of San Pedro Sula, Honduras. According to the information received, Israel Zelaya was found shot to death in a sugarcane field. His personal belongings had not been stolen. Three months earlier, a fire had done damage to his home; the cause of the blaze was never established. The Office of the Special Rapporteur for Freedom of Expression learned that Zelaya was working on a local news program on *Radio Internacional* in San Pedro Sula, and routinely complained about public interest matters.<sup>397</sup>

307. Henry Suazo, a correspondent for radio HRN in La Ceiba department and a journalist for a local television station, was killed on December 28, 2010, as he was leaving his home in La Masica. According to the information received, two days earlier the journalist had received a death threat delivered by a text message sent to his cell phone.<sup>398</sup>

308. The Secretariat of Security filed a report with the National Congress on May 5, in which it updated the status of the investigations into these murders.<sup>399</sup> The report was confidential

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<sup>394</sup> IACHR, Press Release No. R39-10: [Special Rapporteurship Condemns Murder of Honduran Journalists](#); El Heraldo. “[Asesinan a dos periodistas al oriente de Honduras](#)” [Two journalists murdered in eastern Honduras], March 26, 2010; La Prensa. “[Asesinan a 2 periodistas hondureños en Olanchito](#)” [Two Honduran journalists killed in Olanchito], March 26, 2010; AMARC. “[Con la muerte de otros dos periodistas son ya cinco los profesionales de la prensa asesinados en Honduras en marzo](#)” [The death of two more journalists brings the number of journalists murdered in Honduras in March to 5], April 9, 2010.

<sup>395</sup> IACHR, Press Release No. R45-10: [Special Rapporteurship Concerned about the Latest Murder of Journalist in Honduras](#); Committee to Protect Journalists. TV Host Slain. “[6th Honduran Journalist killed since March](#)”; BBC Mundo. “[Asesinado otro periodista en Honduras](#)”. [Another journalist killed in Honduras], April 21, 2010.

<sup>396</sup> IACHR, Press Release No. R62-10: [Office of the Special Rapporteur Expresses Concern at Latest Murder of Journalist in Honduras](#). UNESCO. July 1, 2010. “[UNESCO Director-General condemns murder of TV journalist Luis Arturo Mondragón Morazán](#)”. C-Libre IFEX. June 16, 2010. “[Another Journalist Killed](#)”.

<sup>397</sup> IACHR, Press release No. R85-10. [Special Rapporteur for Freedom of Expression Condemns Latest Murder of Journalist in Honduras](#). Committee to Protect Journalists. [Article on Israel Zelaya Díaz](#). La Tribuna. August 25, 2010. “[Matan a periodista Israel Zelaya Díaz](#)” [Journalist Israel Zelaya Díaz murdered].

<sup>398</sup> IACHR, Press Release No. R125-10. Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras. December 29, 2010. “[Asesinan otro periodista al norte de Honduras](#)” [Another journalist murdered in northern Honduras] *Diario El Heraldo*, December 28, 2010.

<sup>399</sup> The report was requested by deputy Augusto Cruz Asensio, when the violence against journalists spiked in 2010.

and its contents were not revealed. Authorities at the Secretariat of Security argued that revealing the content of the report could obstruct the investigations.<sup>400</sup> In May 2010, the Vice Minister of Security, Armando Calidonio, told the Commission that “thus far, the deaths of the journalists appear to be unrelated to the practice of their profession.”<sup>401</sup> However, both the Office of the Special Prosecutor for Human Rights and nongovernmental organizations that are monitoring the progress made into the investigations of these crimes stated that in some cases, there are credible theories that link the crimes to the victims’ practice of journalism. Those nongovernmental organizations maintained that no headway had been made in the investigations and were of the view that the authorities were not interested in solving the murders.<sup>402</sup> The Office of the Special Prosecutor for Human Rights blamed the shortcomings in the investigations on the fact that “the police were ill-equipped to conduct investigations.”<sup>403</sup>

309. At the public hearing the Commission held on October 25, 2010 on the *Situation of the Right to Freedom of Expression in Honduras*, the State’s representatives asserted that progress has been made in the investigations into the crimes committed against journalists, and indicated that none of the journalists murdered in 2010 was killed for practicing his craft; the State’s contention was that these were common crimes.<sup>404</sup> However, like the officials the Commission interviewed during its official visit in May, the State’s representatives did not offer any evidence to support their claim.<sup>405</sup>

310. In its observations on the IACHR’s 2010 Annual Report, the State pointed out the following: “The preliminary investigations have established that the murders were the work of a common criminal or criminals; it has not yet found anything to suggest that the motive for the crime was the opinions expressed by the journalists or that agents of the State were in any way involved. For that reason, the cases are being investigated by the Office of the Prosecutor for Common Crimes and not by the Special Prosecutor for Human Rights. In two of the cases, the investigations have concluded, the corresponding criminal indictments have been filed, and the suspects in those two cases are in custody pending trial. In another two cases, the investigations have concluded and the Public Prosecutor’s Office is expected to present them shortly.”<sup>406</sup> It should pointed out that the State did not mention which cases had moved forward and did not provide any evidence to support its claims.

311. The nongovernmental organization C-Libre reported that someone was convicted of the murder of Georgino Orellana; however, suspicions that the crime was politically motivated

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<sup>400</sup> Diario La Tribuna. May 6, 2010. “[En secretividad investigación sobre asesinatos de periodistas](#)” [Investigation into murders of journalists cloaked in secrecy].

<sup>401</sup> Diario La Tribuna. April 22, 2010. “[Capturan a implicado en la muerte de periodista](#)” [Suspect taken into custody and charged in journalist’s death].

<sup>402</sup> Information received at the IACHR’s meeting with communicators on May 16, 2010, in Tegucigalpa, Honduras.

<sup>403</sup> Meeting with the Office of the Special Prosecutor for Human Rights, May 15, 2010, Tegucigalpa, Honduras.

<sup>404</sup> The representatives of the Honduran State said that the alleged murderer of Georgino Orellana is locked up and that robbery had been the motive for the crime. They also reported that two persons are in custody for the murder of David Meza Montesinos, that the crime was related to organized crime and that “significant headway” had been made in the investigation of the murder of Nahúm Palacios. See IACHR, public hearing on “[Situation of Freedom of Expression in Honduras](#)” held on October 25, 2010, during the Commission’s 140<sup>th</sup> regular session.

<sup>405</sup> See IACHR, public hearing on “[Situation of Freedom of Expression in Honduras](#)” held on October 25, 2010, during the Commission’s 140<sup>th</sup> regular session.

<sup>406</sup> In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 7.

persist. It also indicated that someone was reportedly in custody for the murder of David Meza, but said that no significant progress had been made in the case.<sup>407</sup>

312. As the Commission maintained after its May 2010 visit, it is imperative that the State urgently undertake investigations, run by independent, specialized bodies that follow special investigative procedures that can reliably establish whether the crimes are related to the practice of the victims' profession and that can enable the prosecution and conviction of those responsible for the crimes. The State must also adopt permanent protective mechanisms to ensure the lives and personal safety of media workers who are at risk. Allowing the perpetrators of these crimes to go unpunished not only offends the victims' next of kin but affects society as a whole as well, as it instills fear and a tendency toward self-censorship, as various journalists and social communicators have observed in the meetings held with the IACHR during its visit to Honduras in May 2010.<sup>408</sup>

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

**b. Threats, assaults and harassment of journalists**

314. Sometime after 3:30 am on January 6, 2010, unknown persons set fire to the community radio station Faluma Bimetu (Coco Dulce), which serves the community of Triunfo de la Cruz in the department of Atlántida. The radio station belongs to the Garifuna community. Since the June 2009 *coup*, the radio station had received a number of threats because of its opposition to the *coup d'état* and to various real estate development projects underway in the region. As a result, the radio station told the Commission that its situation was dangerous. Alfredo López, manager of Faluma Bimetu, said that on April 24, shortly before the Commission's visit to Honduras in May 2010, he had made arrangements with the State consisting of two daily police patrols.<sup>409</sup> However, López said that the patrols stopped within a few days.<sup>410</sup> The Honduran State reported that the investigations into this case have "not turned up any suspects who might have caused the fire at the community radio station in question." It reported that "investigations continue in order to find those responsible."<sup>411</sup>

315. In late March 2010, journalist José Alemán, a correspondent for Radio América and contributor to the *Diario Tiempo* in San Marcos de Ocotepeque, left the country because of the threats he received. According to the information received, on March 28, 2010 Alemán received an anonymous call in the morning, in which they threatened him. That same day, unknown persons entered his residence when he was not at home and fired off their weapons inside the reporter's home. According to the information received, the San Marcos de Ocotepeque police told him that

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<sup>407</sup> E-mail of November 23, 2010 (in the files of the Office of the Special Rapporteur).

<sup>408</sup> Information received during the meeting the Commission held with social communicators in Tegucigalpa, Honduras, May 16, 2010.

<sup>409</sup> Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

<sup>410</sup> Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

<sup>411</sup> In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 8.

they were “incapable” of providing him with security. As a result of these events, Alemán decided to leave the country that very night.<sup>412</sup>

316. On April 9, 2010, unidentified persons fired shots at the residence of Channel 40 journalist Ricardo Oviedo. The journalist, who is also president of the Colón Social Communicators Association, complained that he has been persecuted and harassed since the June 2009 *coup d'état*. On the day his home was attacked, the journalist had covered the police barricade where security forces were stopping buses and checking their passengers. When Oviedo asked why the people were being checked, one of the police officers answered him in a hostile manner using language laced with obscenities.<sup>413</sup>

317. During its May 2010 visit, the Commission received information about an attack made on members of the community radio station *La Voz de Zacate Grande*, in the town of Zacate Grande, which is in the area of the Gulf of Fonseca. This radio station has ties to a movement of *campesinos* in the region who are currently locked in a dispute with a businessman from the area over the control of land. According to the information received, in April 2010 *La Voz de Zacate Grande* was attacked by a group of individuals who supposedly had ties to the businessman in question. Later, persons bearing arms turned up at the radio station claiming to be with the Public Prosecutor's Office. They asked to see the papers authorizing the station to operate. In the days that followed, prosecutor Marco Tulio Campos filed a criminal complaint with the Amapala district court, charging Pedro Canales Torres, José Ernesto Laso, Wilmer Rivera Cabrera, Ethel Verónica Corea, Rafael Osorio, José Danilo Osorio, all employees of the radio station, with the crimes of usurpation of land and the crime of defrauding the public administration by setting up a radio station without CONATEL's authorization.<sup>414</sup> The charges of defrauding the government were dropped. According to the information received, the accused were found guilty of the crime of “usurpation.” An appeal filed with the Choluteca Appellate Court was denied.<sup>415</sup>

318. On April 18, 2010, journalist Jorge Ott Anderson, owner of a small cable channel in the city of Colón, received a call on his program in which the anonymous caller warned him that he would be killed at anytime. On May 13, 2010, he received another threat during the night. According to the journalist, the threats against him began two days after the *coup d'état*, on June 30, 2009. They were made by phone and were broadcast live, since the journalist takes calls from viewers live and on the air. The military shut down the channel, which was off the air for two and a half months. According to Ott Anderson, the threats have continued unabated ever since. Their frequency had reportedly increased after Ott Anderson reported on the murder of journalist Nahúm Palacios and the detention of a young man in Bonito Oriental, who had allegedly been mistreated by police in April 2010.<sup>416</sup>

319. In late April 2010, the Society of Jesus reported that Father Ismael Moreno, director of *Radio Progreso*, Gerardo Chévez, a journalist with the station, and Lucy Mendoza, the attorney

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<sup>412</sup> Committee to Protect Journalists. April 1, 2010. [“Honduran Journalist Leaves the Country after Attacks”](#); Reporters Without Borders, April 2, 2010. [Month of violence turns Honduras into world's most dangerous place for journalists](#).

<sup>413</sup> Telephone interview with Ricardo Oviendo, May 14, 2010. See also COPA Press Release, April 28, 2010. [“Otro periodista amenazado en el Aguán”](#) [Another journalist threatened in El Aguán]; C-Libre/IFEX. [“Canal 40 journalist followed, threatened”](#).

<sup>414</sup> Information received at the Commission's meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010. Information also obtained from the [IFEX alert of April 29](#), 2010. See also <http://conexihon.com/?q=node/26>.

<sup>415</sup> Information supplied by C-Libre, e-mail of November 2010 (on file in the Office of the Special Rapporteur).

<sup>416</sup> Telephone interview with Jorge Ott Anderson, May 14, 2010. Committee to Protect Journalists. May 4, 2010. [“Two Honduran TV reporters receive death threats”](#).

with the Jesuit Reflection, Research and Communication Team [Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús] –ERIC- had reportedly been threatened. According to the information received, the threats that Father Moreno received forced him to go into hiding in late April 2010.<sup>417</sup> According to the same report, journalist Gerardo Chévez was threatened via a text message on March 29, 2010, at approximately three in the afternoon. In the early morning hours that same day, the journalist received another message which read as follows: “*Resistance, we’re eliminating the Chévezes first and then the priests.*” It is important to point out that on April 11, 2010, Chévez’ cousin, the broadcaster Luis Alberto Chévez, had been murdered.<sup>418</sup> Attorney Lucy Mendoza was threatened on April 24, 2010, by way of a text message that told her the following: “*Colonel: You think we don’t know you? When you walk in the park, we know when you arrive. We see when you come and with whom. You better get out of all that resistance business.*” Attorney Mendoza, who had been followed and threatened in other ways, has been working for ERIC for some two years; in recent months, she has been providing direct support to the journalists with Radio Progreso.<sup>419</sup>

320. Jessica Pavón is the news anchor on two news programs on Tegucigalpa’s Channel 6: *Notiseis Matutino* [The Channel 6 Morning News] and *Notiseis Nocturno* [The Channel 6 Nightly News]. On May 13, 2010, Pavón received a call on her cell phone and then a message to the following effect: “You feel death. Right, bitch? Because you’re dressed in white, we’re going to kill you, bitch” [sic]. Pavón was in fact wearing white that day. Almost ten minutes later, she received another message, which said the following: “When we see you, we’re going to blow your head off, bitch. Get ready, because it’s channel 6’s turn now. Orlin Castro [one of Pavón’s colleagues at Channel 6 who works in San Pedro Sula and had been a recent target of persecution] got away from us. The luck is for you, JESSICA PAVON. Regards el Chele” [sic]. After contacting the police, at 8:00 p.m. Pavón was taken home in a private car by two police officers sent by the Secretariat for Security. Since then she has received a number of calls and similar messages. Pavón filed a complaint with the Office of the Director General of Criminal Investigations and the Public Prosecutor’s Office. As a news anchor, she usually reports police news and had recently interviewed persons connected to the teachers union and workers and business people about the negotiations on the minimum wage<sup>420</sup>.

321. On May 19, 2010, Arturo Rendón Pineda, the owner of Radio *La Voz de Occidente* in Santa Rosa de Copán, and Manuel Gavarrete, a journalist with that media outlet (and director of the news program “Sucesos”), were both victims of a number of threatening telephone calls. Thus, for example, on May 17, 2010, while the news program was being broadcast, they received three calls at the station threatening the life of the owner of the station and that of journalist Gavarrete and his family. Rendón Pineda denounced that since the *coup d’état*, he and the journalists who work at his radio station have been the targets of serious acts of harassment, such as bursts of machinegun fire outside the station and at Rendón’s home.<sup>421</sup> Gavarrete, for his part, complained that his wife had received a call warning her that her children would be killed unless her husband

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<sup>417</sup> *Revistazo*. April 22, 2010. “[Miembros de la Compañía de Jesús en Honduras, amenazados a muerte](#)” [Jesuits in Honduras receive death threats]. See also, *Proceso Digital*. April 22, 2010. “[Compañía de Jesús denuncia amenazas contra el Padre Melo y periodistas](#)” [Jesuits denounce threats against Father Melo and journalists].

<sup>418</sup> Telephone conversation with Gerardo Chévez, May 12, 2010. IFEX. April 26, 2010. “[Journalist receives death threat](#)”.

<sup>419</sup> Information received at the Commission’s meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010.

<sup>420</sup> Telephone interview with Jessica Pavón, May 18, 2010. IFEX. May 17, 2010. “[Canal 6 journalist receives death threats](#)”.

<sup>421</sup> Telephone interview with Arturo Rendón Pineda on May 24, 2010.

shut up.<sup>422</sup> Rendón Pineda decided to file complaints with the Public Prosecutor's Office and various civil society organizations. According to Rendón Pineda, the harassment and the threats are because of the station's editorial line, which was very critical of the June 28 *coup d'état*. The owner of *La Voz de Occidente* recalled that shortly before receiving the threatening phone calls, they had read an opinion piece over the air that had been published in the newspaper *Tiempo* in which questions were raised about the figures from the Supreme Electoral Tribunal on the November 2009 elections.<sup>423</sup>

322. On June 3, 2010, members of a military and police contingent who planned to capture five leaders of the Zácate Grande Land Recovery and Titling Movement, appeared at the community radio station *La Voz de Zácate Grande*. According to the information received, the members of the security forces placed yellow tape reading "crime scene" on the door to the community radio station, supposedly for the purpose of preventing *La Voz de Zácate Grande* from broadcasting its programming.<sup>424</sup>

323. According to the information received, on August 30, 2010, *Radio Uno*, located in San Pedro Sula, was reportedly sabotaged when the power lines feeding the station's headquarters with electric power were cut. At around 8:20 p.m., while the suppression of a teachers' demonstration some days before was being discussed, the station was suddenly off the air.<sup>425</sup>

324. On September 14, unidentified persons fired on Honduran journalist Luis Galdámez Álvarez. The communicator's quick reaction foiled the attack. The journalist heads up an opinion program on *Radio Globo* and has been critical of the June 28, 2009 *coup d'état*. Because of the death threats he had received, the IACHR granted precautionary measures for Luis Galdámez Álvarez on July 24, 2009. However, when the measures were not properly implemented and the threats continued, on December 6, 2010 the IACHR requested provisional measures of the Inter-American Court.<sup>426</sup>

325. Furthermore, according to information received, on September 15, 2010 security forces used teargas to break up a march and a concert organized by the San Pedro Sula Frente Nacional de Resistencia Popular, while the 189th anniversary of Honduran Independence was being celebrated. During the course of the measures taken to repress the march and concert, the building housing *Radio Uno* was attacked and its employees assaulted.<sup>427</sup> Once again, the Commission feels compelled to underscore the importance of observance of Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression.

### c. Poor implementation of precautionary measures

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<sup>422</sup> Telephone interview with Manuel Gavarrete on May 24, 2010.

<sup>423</sup> The opinion piece in question is titled "Statistics from the Supreme Electoral Tribunal, 2009," and was published on May 17, 2010, in the Honduran newspaper *El Tiempo*.

<sup>424</sup> AMARC. 3 de junio de 2010. "[Contingente militar-policial clausura transmisiones de la Voz de Zácate Grande;](#)" IFEX. 30 de agosto de 2010. "[Continued persecution of community radio station in Zacate Grande.](#)"

<sup>425</sup> IFEX. September 1, 2010. "[Radio station forced off air by vandalism](#)".

<sup>426</sup> IACHR, Press Release R96/10: [Office of the Special Rapporteur Expresses Concern over New Attacks against Journalists and Media in Honduras](#), September 20, 2010. IFEX. September 16, 2010. "[Journalist survives assassination attempt](#)". Committee to Protect Journalists. September 16, 2010. "[Critical Honduran reporter survives shooting attack](#)".

<sup>427</sup> AMARC. September 16, 2010. "[Militares y policías atacan Radio Uno](#)" [Military and Police Attack Radio Uno]. TeleSur. September 16, 2010. "[Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante](#)" [Honduran Resistance claim that unwarranted repression caused demonstrator's death].

326. In 2010, the Commission granted precautionary measures for 24 persons whose freedom of expression was threatened; most of the beneficiaries were journalists.<sup>428</sup> In many cases, the measures included their immediate families. Nahúm Palacios, the journalist murdered on March 14, 2010, was under that protection at the time of his murder. Both during the Commission's visit in May 2010 and at the hearing on *Mechanisms for implementation of precautionary measures in Honduras*, held in Washington, D.C. on October 25, 2010, civil society organizations and the beneficiaries themselves described the enormous difficulties they had experienced in having the precautionary measures properly implemented.<sup>429</sup>

327. The journalists' mistrust of the police and the lack of an effective response by the authorities appear to be among the reasons for the inadequate implementation of these measures.<sup>430</sup> The situation is compounded by the impunity that the perpetrators of crimes against media workers enjoy, a fact mentioned in preceding paragraphs.

328. It is worthwhile noting that, thus far, the authorities' response to the precautionary measures, when there has been a response, has consisted of offering to supply identification cards, patrols of homes, escorts to and from work, and personal guard services at night.<sup>431</sup> However, some journalists said that they were very fearful of the police because of their association with the repression that followed the *coup d'état* and with groups having ties to organized crime.<sup>432</sup> At the hearing the Commission held in October 2010, representatives of Honduran civil society observed that the State is clearly not committed to protecting journalists and media workers who are at risk, given that there are no proper risk assessments. They also stated that the bodyguards the State provides are at the expense of the person being guarded (a cost of some 250 dollars weekly); that the patrols are stationed in urban areas and are not available in rural areas; that the telephone connections often don't work and there are no personnel who specialize in or are trained in implementing protective measures.<sup>433</sup> The State reported that a Human Rights Unit was created within the Secretariat of Security in March 2010, and is tasked with arriving at a consensus on, implementing and following up on protective measures. It also reported that a Human Rights Investigation Unit had been created within the Secretariat of Security, under the Office of the Special Prosecutor for Human Rights, and that in July 2010 the Working Group of the Inter-Institutional Commission on Human Rights had agreed that a "permanent staff" should be

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<sup>428</sup> The journalists for whom the IACHR granted precautionary measures in 2010 are as follows: Marvin Emilio Hernández Duarte and his immediate family (January 8, 2010, MC 196/09, amplification); Gilberto Vides and his immediate family (January 22, 2010, MC 196/09, amplification); Anselmo Romero Ulloa and María Brígida Ulloa Hernández (February 12, 2010, MC 196/09, amplification); Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez and their families (February 25, 2010, MC 38/10); Pedro Brizuela, Mateo Enrique García Castillo, and immediate families (March 19, 2010, MC 91/10); X and family (name withheld because he is a minor, March 24, 2010, MC 95/10); Inmer Genaro Chévez and Lucy Mendoza (May 3, 2010, MC 196/09, amplification); Karla Patricia Rivas Sánchez; José Pablo Peraza Chávez; Rita Suyapa Santamaría Velásquez; Alfredo Bográn, Lolany Mariela Pérez Parada; Rommel Alexander Gómez; Lesly Castro; José Domingo Miranda; Héctor Hernández; Víctor Emilio Borjas; Leticia Castellanos and Pablo Ordóñez (May 20, 2010, MC 196/09, amplification for journalists from Radio Progreso); Juan Ramón Flores (June 21, 2010, MC 180/10); Edwin Róbilo Espinal (July 22 2010, MC 221/10).

<sup>429</sup> See IACHR, public hearing on "[Situation of Freedom of Expression in Honduras](#)", held October 25, 2010, during the Commission's 140<sup>th</sup> regular session.

<sup>430</sup> Telephone interviews with Jorge Ott Anderson and Ricardo Oviedo on May 14, 2010.

<sup>431</sup> Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

<sup>432</sup> Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

<sup>433</sup> Statements made by petitioners Marcia Aguiluz (CEJIL), Mary Agurcia (COFADEH) and Lucy Mendoza (ERIC) at the public hearing on the "[Situation of Freedom of Expression in Honduras](#)", held on October 25, 2010, during the Commission's 140<sup>th</sup> regular session.

appointed. However it did not report whether those appointments had been made or where staffing was to be reinforced. It also acknowledged that “in some instances, it is difficult to arrive at a consensus on the measures to be taken and how to implement them, but not necessarily for reasons attributable to the State.” Among the difficulties mentioned, it cited the “uncooperative attitude on the part of the beneficiary” as the main problem, as well requests from beneficiaries that “exceed the national police’s authority, such as providing the beneficiaries with funds to hire private security services.”<sup>434</sup> Finally, the State reported that the beneficiaries have to provide their bodyguards with meals since “the State is materially unable to get meals to all the places where bodyguards are posted.” It also rejected the claim that patrols only work in urban areas and observed that it does not have the funds to pay for private guard services.<sup>435</sup>

329. The lives of journalists and social communicators in Honduras are fraught with peril. The crimes committed against journalists in 2010 demand efficient and effective responses. It is imperative that the State set up special, independent investigative bodies and protocols, and specialized mechanisms of protection that are effective, stronger and arranged with the journalists themselves. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression is particularly relevant here.

#### d. Investigations into shutdowns of media outlets

330. On June 28, 2009, *Channel 36* was taken over by the Armed Forces and was off the air until July 4, when it resumed operation after the Office of the Special Prosecutor for Human Rights intervened. The transmission towers of *Radio Globo* and *Radio La Catracha*, located in the area of Cerro Cantagallo, were taken over.<sup>436</sup>

331. According to the information compiled, on the morning of June 28, 2009 Army Lieutenant Colonel José Arnulfo Jiménez took over the facilities of Channel 36, while Army Lieutenant Darvin Ismael Ardón took control of the Radio Globo and Radio la Catracha transmitters.<sup>437</sup> Both were charged with the crimes of “destroying or damaging the telecommunications service” and “abuse of authority.” In the case, brought by the Office of the Special Prosecutor for Human Rights, the defendants argued that they had orders from superiors and had acted in compliance with an order from the Administrative Law Court which allegedly ordered confiscation of propaganda and other materials related to the so-called “fourth ballot box”.<sup>438</sup> The two officers argued that they suspected that the two media outlets in question were housing such materials. As the defendants themselves acknowledged at the initial hearing, those materials were never found. However, the takeover of the Channel 36 building lasted eight days. Judge Marta Murillo decided to dismiss the case on the grounds that the military had been following a legitimate order.<sup>439</sup> The Office of the Special Prosecutor for Human Rights filed an appeal on January 13, 2010. According to the information received, the appeal had not yet been decided.<sup>440</sup>

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<sup>434</sup> In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, pp 8- 9.

<sup>435</sup> In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 20.

<sup>436</sup> See the report titled *Honduras: human rights and the coup d’état*, IACHR, 2009, paragraphs 414 et seq.

<sup>437</sup> Record from the Initial Hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

<sup>438</sup> See the report titled *Honduras: human rights and the coup d’état*, IACHR, 2009, paragraphs 82 et seq.

<sup>439</sup> Record of the initial hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

<sup>440</sup> Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

However, on August 31, 2010, Judge Lilian Maldonado of the Multi-jurisdictional Courts of Francisco Morazán ruled that Lieutenant Colonel Jiménez was innocent of the charges that the Public Prosecutor's Office and the victims' attorneys had brought against him.<sup>441</sup>

332. On June 28, 2009, *Radio Juticalpa* in the department of Olancho, and *Radio Progreso* in the department of Yoro were also taken over and forced to suspend broadcasting. The Office of the Special Prosecutor for Human Rights filed a formal request with the court seeking indictment of the military officers who led these actions. In the case of the closing of *Radio Juticalpa*, while the lower court ordered that one of the accused members of the army be taken into custody, the Third Court of Appeals revoked that order and dropped the charges against the accused.<sup>442</sup> In the case of the takeover of *Radio Progreso*, the charges against the accused were dismissed. As of the date of preparation of this report, the appeal filed by the Office of the Special Prosecutor for Human Rights had not been decided.<sup>443</sup>

333. On September 28, 2009, the equipment of Channel 36, Radio La Catracha and Radio Globo was confiscated, making it impossible for them to go on air. The equipment seizure was the result of a process instituted by CONATEL on the basis of decree PCM-M-016-2009, which had been issued just two days earlier.<sup>444</sup> A number of different security forces took part in the operation, some of whom wore hoods. In October, the State informed the IACHR that the equipment had been returned and that the stations had resumed normal broadcasting, since the decree authorizing the closing of those media outlets had been revoked.<sup>445</sup> On December 15, 2009, the Office of the Special Prosecutor for Human Rights sought indictment of those members of CONATEL who had ordered confiscation of the media outlets' equipment. However, the request was denied: Judge Marta Murillo ordered that the charges against the CONATEL commissioners who had ordered this shutdown be dropped.<sup>446</sup> The Office of the Special Prosecutor for Human Rights filed an appeal to challenge the decision on April 15, 2010, but the appeal has still not been decided.<sup>447</sup>

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<sup>441</sup> See C-Libre/IFEX. September 7, 2010. "[Jueza declara inocente a coronel que cerró varios medios de comunicación](#)" [Colonel who closed various media outlets found innocent by judge]. *El Libertador*. September 3, 2010. "[Jueza declara inocente a militar responsable del cierre de Canal 36](#)" [Military officer responsible for shutting down Canal 36 found innocent by judge].

<sup>442</sup> Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

<sup>443</sup> Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

<sup>444</sup> IACHR, Press release R71/09: [Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression](#), September 29, 2009. This decree suspended, among others, the constitutional right to freedom of expression, by banning all the publications that may "offend human dignity, Government employees, or may threaten the law, and the government resolutions". This decree authorized the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CONATEL) to immediately interrupt, through the use of State security forces, the broadcasting of any radio station, television channel or cable television system that in its opinion may violate the aforementioned dispositions.

<sup>445</sup> IACHR, [Honduras: Human Rights and the Coup d'état](#), paragraph 421.

<sup>446</sup> The accused commissioners were Miguel Ángel Rodas Martínez, Héctor Eduardo Pavón Aguilar, Gustavo Lara López, José Antonio López Sanabria and Germán Enrique Marthel Beltrán.

<sup>447</sup> Information received from the Office of the Special Prosecutor for Human Rights at a meeting held on May 15, 2010. See also *El Libertador*, "[Jueza Martha Murillo falla en contra de la Libertad de Expresión; la sentencia aprueba el saqueo y cierre de Canal 36](#)" ["Judge Martha Murillo rules against Freedom of Expression; the ruling rubberstamps the sacking and shutdown of Channel 36"].

## 18. Jamaica

334. The Office of the Special Rapporteur views positively the efforts of the Government of Jamaica, begun in 2007, to review and modify its laws on defamation. However, according to the information received, although the competent commission has met on several occasions in 2010 to discuss the recommendations, the project has not moved forward.<sup>448</sup> In this same sense, the Office of the Special Rapporteur has received information indicating that Jamaica's media outlets have been lobbying for the Parliament to complete the review of these laws, indicating that current rules are very costly and that the risk of being subjected to the high costs of damages often leads them to exclude potentially contentious news items. For this and other reasons, the laws are a true obstacle to the media's function as democracy's watchdog.<sup>449</sup>

335. The Office of the Rapporteur invites the State to make progress in its efforts to effectively review its defamation laws, giving special consideration to inter-American standards, particularly the provisions of Principle 10 of the Declaration of Principles, which states that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

336. Separately, during the course of 2010, several calls were made by the media to abolish the 1911 Official Secrets Act. Some media outlets consider it in conflict with the Access to Information Act<sup>450</sup> or the proposed Whistleblower legislation<sup>451</sup>, while others argued that the law would be used to silence allegations that are uncomfortable for the administration.<sup>452</sup> The Office of the Rapporteur recalls in this respect that Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." The Office of the Rapporteur lauds the passage and implementation of the provisions of Jamaica's Access to Information Act in recent years and invites the State to remove the obstacles that could block its effective application.

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<sup>448</sup> Inter-American Press Association (IAPA). *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&infoid=774&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp)

<sup>449</sup> Fox News/AP. October 5, 2010. Jamaica media push for libel law reform. Available at: <http://www.foxnews.com/world/2010/10/05/jamaica-media-push-libel-law-reform/#>; Jamaica Gleaner News. September 2, 2010. *A shackle to freedom of expression*. Available at: <http://jamaica-gleaner.com/gleaner/20100902/letters/letters6.html>

<sup>450</sup> Jamaica Gleaner News. September 15, 2010. *US Journalist Bats For Secret Act To Be Abolished – Gleaner Cops Two Fair Play Awards*. Available at: <http://jamaica-gleaner.com/gleaner/20100915/lead/lead6.html#>; Inter-American Press Association (IAPA). *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&infoid=774&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp)

<sup>451</sup> Jamaica Observer. July 18, 2010. *Official Secrets Act a relic*. Available at: [http://www.jamaicaobserver.com/news/Official-Secrets-Act-a-relic\\_7805999](http://www.jamaicaobserver.com/news/Official-Secrets-Act-a-relic_7805999); Inter-American Press Association. *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&infoid=774&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp)

<sup>452</sup> Jamaica Gleaner News. July 4, 2010. *Shut Up!*. Available at: <http://jamaica-gleaner.com/gleaner/20100704/lead/lead1.html>

337. Finally, the Office of the Rapporteur views positively the proposed Whistleblower legislation, which is designed to “encourage and give protection to employees to speak about malpractice and acts of corruption that have been committed or are likely to be committed in the workplace.”<sup>453</sup> In reference to secrecy legislation, the 2004 Joint Declaration establishes that, “‘Whistleblowers’ are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy. ‘Whistleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in ‘good faith.’”<sup>454</sup>

## 19. Nicaragua

338. On Tuesday, October 26, 2010, during the 140th Period of Sessions, a public hearing was held before the IACHR on the human rights situation in Nicaragua. The information sent on the occasion of the hearing and supplied during the hearing has been very useful for understanding the situation.

339. According to the Office of the Special Rapporteur’s understanding, State institutions have blocked journalists from independent media outlets from participating in some press conferences on matters in the public interest. On March 9, the Supreme Elections Council (CSE in its Spanish acronym) prohibited journalists with the newspapers *La Prensa* and *El Nuevo Diario* - as well as journalists with TV station *Canal 2* - from entering a conference on the results of the regional elections carried out the day before. At the same time, media outlets with close ties to the government were able to enter the CSE without trouble to participate in the conference. On the previous day, the CSE also failed to authorize the presence of a reporter with *La Prensa* at an announcement on the preliminary results of the vote.<sup>455</sup> According to the information received, on March 9, officials with the Health Ministry did not authorize a journalist with the newspaper *La Prensa* to participate in another press conference on a plan regarding flu vaccinations.<sup>456</sup> On October 28, the CSE once again blocked *La Prensa* from participating in a press conference on elections to be held on November 3. Journalists for *Canal 2* and *La Prensa* were once again banned from the CSE during the filing of forms by two political parties indicating their intention to participate in the elections.<sup>457</sup>

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<sup>453</sup> Inter-American Press Association. *Country reports: Jamaica 66th General Assembly, November 5-9, 2010*, Merida, Mexico. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=774&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=774&idioma=us); Protected Disclosures Act 2010. Jamaica. Available at: [http://www.japarliament.gov.jm/attachments/339\\_The%20Protected%20Disclosures%20Act,%202010.pdf](http://www.japarliament.gov.jm/attachments/339_The%20Protected%20Disclosures%20Act,%202010.pdf) and <http://www.moj.gov.jm/Protected%20Disclosures%20Act%202010.pdf>

<sup>454</sup> 2004 Joint Declaration of the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=2>

<sup>455</sup> Bolsa de Noticias. March 9, 2010. *Irregularities denounced as FSLN celebrates victory*. Available at: <http://www.bolsadenoticias.com.ni/2010/marzo/09/fsl.htm>; *La Prensa*. March 9, 2010. *CSE blocks access to La Prensa*. Available at: <http://www-ni.laprensa.com.ni/2010/03/09/la-prensa-en-video/18493>

<sup>456</sup> Medios Latinos. March 10, 2010. *Nicaragua’s La Prensa denounces move toward censoring official information on public interest topics like health*. Available at: <http://www.medioslatinos.com/modules/news/article.php?storyid=3430>; *La Prensa*. March 10, 2010. *Health Ministry joins censorship of La Prensa*. Available at: <http://www-ni.laprensa.com.ni/2010/03/10/nacionales/18662>

<sup>457</sup> *La Prensa*. November 4, 2010. *Journalists blocked again at the CSE*. Available at: <http://www.laprensa.com.ni/2010/11/04/politica/42652>. Cf. Johel Simon, Executive Director for the Committee to Protect Journalists (CPJ). June 16, 2010. Hearing on the freedom of expression situation in the Americas. Available at: <http://foreignaffairs.house.gov/111/56996.pdf>

340. The Office of the Special Rapporteur received information indicating that media outlets that are critical of the government could be the subject of indirect mechanisms of pressure, including surprise inspections and disproportionate actions by different state agencies.<sup>458</sup> For example, according to the information supplied to the Office of the Special Rapporteur, between September 2009 and November 2010, the Labor Ministry had carried out five inspections of the newspaper *La Prensa*, while the Social Security administration had carried out another four. The newspaper *El Nuevo Diario* was also subject to the similar procedures.<sup>459</sup> As the Office of the Special Rapporteur has recognized, all moral persons are subject to the rule of law, and the State has the authority to supervise compliance with the law at all times. However, the State's administrative actions cannot include standards that are discriminatory or that in any way send the message that they are in fact indirect sanctions in retaliation for the editorial stance of independent media.

341. Article 13(3) of the American Convention on Human Rights 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."

342. According to the information received, for several hours on December 9, a group of individuals blockaded the personal home of the general manager of newspaper *La Prensa* and his family.<sup>460</sup> This incident was preceded by other incidents that took place on August 31, when a group of people blocked the entrance to the newspaper, using homemade explosives and obstructing the newspaper's distribution. This act against *La Prensa* took place in the context of protests by 23 of the newspaper's distributors.<sup>461</sup> In the early morning hours of December 7, the former newspaper distributors and individuals allegedly aligned with the government blocked the entrance to *La Prensa* once more to keep the paper from being distributed. Although the Police were present, they did not intervene.

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

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<sup>458</sup> Cf. Johel Simon, Executive Director for the Committee to Protect Journalists (CPJ). June 16, 2010. Hearing on the freedom of expression situation in the Americas. Available at: <http://foreignaffairs.house.gov/111/56996.pdf>; en also cf. International Freedom of Expression Exchange (IFEX). July 8, 2009. *Nicaragua at war with media, says CPJ report*. Available at: [http://www.ifex.org/nicaragua/2009/07/08/ortega\\_media\\_war/es](http://www.ifex.org/nicaragua/2009/07/08/ortega_media_war/es)

<sup>459</sup> Inter-American Press Association. November 7, 2010. *Nicaragua's La Prensa audited as means of intimidation*. Available at: <http://www.sipse.com/noticias/74238-auditan-prensa-nicaragua-intimidar.html>

<sup>460</sup> *La Prensa*. December 8, 2010. *Mob boycotts La Prensa for no reason*. Available at: <http://www.laprensa.com.ni/2010/12/08/nacionales/45853>; *La Prensa*. December 10, 2010. *Aggression toward La Prensa and police passivity*. Available at: <http://www.laprensa.com.ni/2010/12/11/politica/46093>

<sup>461</sup> Agencia EFE. December 24, 2010. *Nicaraguan newspaper La Prensa attacked*. Available at: <http://www.laestrella.com.pa/mensual/2010/12/24/contenido/15143876.asp>; Inter-American Press Association. September 2, 2010. *IAPA questions harassment of distribution of Managua's La Prensa*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&idioma=sp&id=4430](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4430)

## 20. Panama

344. The Office of the Special Rapporteur received information according to which on July 7, 2010, the Police arrested Mauricio Valenzuela, a photographer with the newspaper *Panamá América*, stripped him and held him in detention for several hours. According to the information received, Valenzuela was detained by police while taking photographs of a Panama Canal access zone where a workers' strike was taking place. The Office of the Special Rapporteur was informed that President Ricardo Martinelli offered his apologies to the photographer and promised to punish those responsible.<sup>462</sup> This was the second physical attack suffered by the journalist in two months. On May 10, during a prior incident, the photographer was beaten by police and private security guards for having photographed a public official during a social activity in a public place.<sup>463</sup> The Office of the Special Rapporteur requested information from the Panamanian State on this and other incidents that could have affected the right to freedom of expression during 2010.<sup>464</sup> The Panamanian State informed the Office of the Special Rapporteur that with regard to the incident on July 7, it had not been recorded that the photographer had filed a complaint. As a consequence, there was no investigation into the incident. As far as the incident that took place on May 10, the State reported that the Public Ministry investigated the complaint filed by Valenzuela. The complaint was dismissed in favor of those allegedly responsible as "the conduct that supposedly took place does not fall within the framework of a crime against personal freedom, as (Valenzuela) was not deprived of his freedom nor taken to another place against his will."<sup>465</sup>

345. According to information received, on September 28, the Second Superior Court of Justice of Panama sentenced Sabrina Bacal, the news director for *Canal Dos*, and Justino González, a journalist with radio station *KW Continente*, to one year in prison for the offense of defamation to the detriment of two officials of the Immigration Directorship. The ruling also banned them from carrying out activities linked to their professions for a year and substituted the prison term for a fine of US\$3,650 each.<sup>466</sup> The ruling struck down two rulings to acquit issued by two criminal courts in the First Criminal Circuit of Panama. The Office of the Special Rapporteur was informed that President Ricardo Martinelli pardoned the two convicted journalists on October 7.<sup>467</sup> Although this pardon is without a doubt a positive development, the Office of the Special Rapporteur considers that this decision does not prevent the possibility of new criminal punishment in the future for

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<sup>462</sup> Panamá América. July 8, 2010. *EPASA photographer arrested and abused*. Available at: [http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story\\_id=938681](http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story_id=938681); Hora Cero. July 8, 2010. *Martinelli apologizes for arrest and abuse of EPASA photographer*. Available at: [http://horacero.com.pa/index.php?option=com\\_content&view=article&id=24795:horacero&catid=24:panama&Itemid=111115](http://horacero.com.pa/index.php?option=com_content&view=article&id=24795:horacero&catid=24:panama&Itemid=111115)

<sup>463</sup> German Press Agency (DPA)/Prensa.com. May 10, 2010. *Police attack against Panamanian photographer denounced*. Available at: <http://www.panamanewsbriefs.com/?p=159104>; Panamá América. May 10, 2010. *Attack on photographers*. Available at: [http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story\\_id=918604](http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story_id=918604)

<sup>464</sup> IACHR Office of the Special Rapporteur for Freedom of Expression. Request for information from the Panamanian State under Article 41 of the American Convention on Human Rights. Ref.: Request for information on incidents related to the protection of freedom of expression in the Republic of Panama. July 23, 2010, and October 20, 2010.

<sup>465</sup> Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

<sup>466</sup> On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Sabrina Bacal and Justino González, the State of Panama provided the September 28, 2010 judgment of the Second Superior Tribunal of Justice of the First Judicial District. The Office of the Special Rapporteur observes that Magistrate Luis Mario Carrasco dissented with regard to the ban on practicing the profession of social communication for one year, considering that "it is excessive and disproportionate."

<sup>467</sup> Republic of Panama. Governance Minister. Executive Decree No. 864, October 7, 2010. Available at: <http://mensual.prensa.com/mensual/contenido/2010/10/07/uhora/indulto.pdf>

reports denouncing possible irregularities of interest to the public.<sup>468</sup> The Panamanian State said in a communication to the Office of the Special Rapporteur that, “During the course of the investigation, due process was complied with and (the accused) were guaranteed all their rights provided for by Law.”<sup>469</sup>

346. The Office of the Special Rapporteur was also informed of a criminal sentence of 500 days in prison handed down against journalist Rafael Antonio Ruíz for the crime of defamation, commuted to the payment of US\$1,000. The ruling was issued on October 14 by the Second Court of Justice. According to the information received, the case began with a news item published by Ruíz in October of 2005 in the newspaper *El Siglo* about a member of the presidential guard who was allegedly the subject of a court investigation.<sup>470</sup> In regard to this case, the Panamanian State responded to the Office of the Special Rapporteur that the journalist had been investigated “for an offense against the honor of the Seventh Circuit Public Prosecutor of the First Judicial Circuit of Panama and in compliance with all guarantees provided for by Law.”<sup>471</sup>

347. These criminal convictions imply a serious step backward in the Panamanian State’s thus-far demonstrated willingness to bring alleged offenses against honor involving public officials and the public interest to trial in the civil system. Likewise, the ban on exercising one’s profession for one year disproportionately limits the freedom of expression of the journalists affected.

348. The Office of the Special Rapporteur also received information according to which on April 30, the Second Court of the Civil Circuit condemned the newspaper *La Prensa* to pay a public prosecutor US\$300,000 in moral damages. According to the information received, the public prosecutor filed a complaint for defamation over the publication of a report in *La Prensa* on August 30, 2005, that was based on the content of an official communication referring to the dismissal of the official.<sup>472</sup>

349. Due to the 2008 annulment of a presidential pardon benefiting 62 journalists, the Office of the Special Rapporteur has learned that the Panamanian press is concerned over the possibility that pending trials against journalists will be restarted or that arbitrary detentions will be carried out. According to the information received, the concern among Panamanian journalists grew

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<sup>468</sup> Second Superior Court of Justice of the First Judicial District. Judgment No. 250 S.I., dated September 28, 2010. IACHR Office of the Special Rapporteur for Freedom of Expression. Press Release R101/10. *Office of the Special Rapporteur Concerned About Criminal Conviction of Journalists in Panama*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=822&IID=2>; Inter-American Press Association (IAPA). October 6, 2010. *IAPA sees court ruling against two journalists in Panama as a step backward for freedom of the press*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4454&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4454&idioma=sp)

<sup>469</sup> Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010.

<sup>470</sup> Panamá América. October 15, 2010. *Second Court convicts journalist Rafael Antonio Ruiz*. Available at: [http://www.pa-digital.com.pa/periodico/edicion-actual/hoy-interna.php?story\\_id=974312](http://www.pa-digital.com.pa/periodico/edicion-actual/hoy-interna.php?story_id=974312); La Estrella. October 14, 2010. *Another journalist convicted of defamation*. Available at: <http://www.laestrella.com.pa/mensual/2010/10/14/contenido/14105318.asp>

<sup>471</sup> Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010. On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Rafael Antonio Ruíz, the State of Panama provided the December 30, 2008 judgment of the Twenty-fourth Criminal Circuit Court of the First Judicial Circuit of the Province of Panama, as well as the August 17, 2010 judgment of the Second Superior Tribunal of Justice. The latter judgment confirmed the defamation conviction against Rafael Antonio Ruiz.

<sup>472</sup> Inter-American Press Association. May 10, 2010. *IAPA condemns conviction of Panama’s La Prensa newspaper*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4372&idioma=us](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4372&idioma=us). La Prensa. May 6, 2010. *Judge condemns La Prensa to pay US\$300,000 to public prosecutor*. Available at: <http://mensual.prensa.com/mensual/contenido/2010/05/06/hoy/panorama/2179220.asp>

as a result of the arrests of communicators Carlos Núñez and José Otero (see below), as there is uncertainty over whether the sentences are in effect or not and fear of being arrested during routine police operations.<sup>473</sup> In its 2008 annual report, the Office of the Special Rapporteur expressed its concern over the issue as follows: “The Special Rapporteur’s Office is concerned with the situation of judicial uncertainty affecting 62 journalists whose pardons for criminal defamation offenses may now be without effect. On June 30, 2008, the Supreme Court of Justice held that the pardons granted by former president Mireya Moscoso in 2004 were unconstitutional.”<sup>474</sup> The Panamanian State responded to the Office of the Special Rapporteur that among the decrees declared unconstitutional, in addition to the journalists there were 120 other individuals convicted of various crimes. It would therefore be necessary to identify this group of communicators to verify their legal status.<sup>475</sup>

350. According to information provided to the Office of the Special Rapporteur, journalist Carlos Núñez was arrested on June 26 during a routine police action during which his personal information was submitted into an information system known as “pele-police.”<sup>476</sup> In this information system, police found the communicator had been convicted of an “offense against honor,” sentenced to 12 months of prison, and banned from holding a position as a public official during the same time period. The ruling was handed down on December 21, 2006, and according to the information received, Núñez had not been notified of the ruling.<sup>477</sup> In a 2004 article in the newspaper *La Crónica*, Núñez had denounced environmental damage to a river, allegedly caused by landowner, who brought charges against the communicator.<sup>478</sup> The journalist was imprisoned until July 14, 2010, at which time the sentence was replaced with a fine worth 34 standard daily wages.<sup>479</sup>

351. The Office of the Special Rapporteur was informed that on October 16, José Otero, a journalist with the newspaper *La Prensa*, was also detained for several hours after a routine inspection with the “pele police” system, where he was registered under a complaint against him

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<sup>473</sup> Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=787&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=787&idioma=us)

<sup>474</sup> IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 201 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>. On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the pardons, the State of Panama provided the June 30, 2008 judgment of the Supreme Court of Justice.

<sup>475</sup> Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010.

<sup>476</sup> Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=787&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=787&idioma=sp)

<sup>477</sup> On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Carlos Núñez, the State of Panama provided the December 21, 2006 judgment of the Twenty-fourth Criminal Circuit Court of the First Judicial Circuit of the Province of Panama, as well as the June 20, 2008 judgment of the Second Superior Tribunal of Justice. The latter judgment confirmed in its entirety the criminal conviction of December 21, 2006.

<sup>478</sup> Committee to Protect Journalists (CPJ). June 30, 2010. *Veteran Panamanian journalist jailed on defamation charges*. Available at: <http://cpj.org/2010/06/veteran-panamanian-journalist-jailed-on-defamation.php>. Criminal Court of the Fourteenth Circuit of the First Circuit of the Province of Panama. December 21, 2010. Judgment No. 186.

<sup>479</sup> Reporters without Borders. July 19, 2010. *Retired journalist freed after being held for 19 days* Available at: <http://en.rsf.org/panama-retired-journalist-arrested-to-29-06-2010,37839.html>; Committee to Protect Journalists (CPJ). *Veteran journalist jailed on defamation charges*. [http://www.ifex.org/panama/2010/06/30/nunez\\_lopez\\_arrested/](http://www.ifex.org/panama/2010/06/30/nunez_lopez_arrested/); Republic of Panama. Foreigner Minister. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

from 1998. The complaint was related to an alleged offense against honor, whose file had been closed in 2001.<sup>480</sup>

352. The Office of the Special Rapporteur feels it is important to highlight that, in a decision that we value for its importance in the defense of freedom of expression, Panama decided in 2007 to decriminalize defamation offenses when the information includes information or opinions critical of official acts or omissions of senior public officials. This decision should favor those who previously benefited from the pardon.

353. The Office of the Special Rapporteur observes with concern an opinion from the Office of the Public Prosecutor dated September 17. The opinion calls for Article 196 of the Penal code, which partially decriminalizes offenses against honor when it comes to information on senior State officials, to be declared unconstitutional.<sup>481</sup> The Office of the Special Rapporteur has said that applying criminal sanctions to offenses against honor has a chilling and intimidating effect on the exercise of freedom of expression, since that approach is disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to punish expression about issues in the public interest or public officials could constitute a measure of indirect censorship for its intimidating and inhibiting effect on the debate of matters of public relevance.<sup>482</sup>

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

355. Furthermore, Principle 11 of the same declaration states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

356. The Office of the Special Rapporteur received information indicating that administrative proceedings against companies owned by journalists have been moved forward after those journalists issued opinions that were critical toward the government. According to the information received, sports commentator Juan Carlos Tapia, who often does political commentary, said he was the subject of "persecution" from the Economy and Finance Ministry due to his opinions on the government. The journalist also said he has received death threats over his

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<sup>480</sup> La Prensa. October 19, 2010. *Executive, champion of out-of-date "Pele Police."* Available at: <http://mensual.prensa.com/mensual/contenido/2010/10/19/hoy/panorama/2375478.asp>. La Estrella. October 17, 2010. *Series of attacks against journalists.* Available at: <http://www.laestrella.com.pa/mensual/2010/10/17/contenido/291696.asp>. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

<sup>481</sup> Public Ministry. National State's Attorney. September 17, 2010. Vista N° 24.

<sup>482</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. October 8, 2010. Press Release R101/10. *Office of the Special Rapporteur Concerned About Criminal Conviction of Journalists in Panama.* Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=822&IID=2>; Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama.* Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&infoid=787&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=787&idioma=us)

journalism work.<sup>483</sup> Guillermo Antonio Adames, journalist and owner of the radio station *Omega Stereo*, received warnings that he would be the subject of a tax audit one day after having criticized several public officials in an interview published in the newspaper *La Prensa* on November 14. According to the information received, a few days after the publication, a team of auditors from the General Directorship for Revenue of the Economy and Finance Ministry visited the headquarters of *Omega Stereo*.<sup>484</sup> State representatives rejected the idea that the audit of the media outlet was done in retaliation and said that it was part of routine activity designed to prevent tax evasion.<sup>485</sup>

357. The Office of the Special Rapporteur was also informed that on July 4, 2010, Francisco Gómez Nadal, a Spanish journalist with residency in Panama, was warned that he would be prevented from returning to the country if he traveled abroad. According to the information received, Gómez Nadal was detained for several hours by immigration officials in the Panama City international airport. The information indicates that the detention took place several days after he published several articles that were critical of senior Panamanian officials in the newspaper *La Prensa*.<sup>486</sup> The State informed the Office of the Rapporteur that the Labor Ministry's Department of Migrant Labor informed the National Immigration Office, by means of a note dated July 5, 2010, that Gómez Nadal did not have a work permit. The State also responded that neither the Ministry of Public Safety nor the Immigration General Directorship had any record of a complaint filed by Francisco Gómez Nadal.<sup>487</sup> On July 4, the journalist filed a writ of *habeas corpus* with the Supreme Court of Justice, as well as a complaint with the People's Ombudsman's Office that was accepted on July 5.<sup>488</sup>

358. The Office of the Special Rapporteur recalls that Principle 13 of the Declaration of Principles indicates that, "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right

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<sup>483</sup> La Estrella. February 28, 2010. *Juan Carlos Tapia denounces persecution*. Available at: <http://www.laestrella.com.pa/mensual/2010/02/28/contenido/208524.asp>; TVN Noticias Panamá. April 12, 2010. *Tapia says he has been threatened*. Available at: [http://tvn-2.com/NOTICIAS/noticias\\_detalle.asp?id\\_news=30744](http://tvn-2.com/NOTICIAS/noticias_detalle.asp?id_news=30744)

<sup>484</sup> La Prensa. November 14, 2010. *Mr. President should understand that the campaign is over. It's time to govern*. Available at: <http://www.prensa.com/hoy/panorama/2398553.asp>. TVN Noticias. November 22, 2010. *Guillermo Adames' company audited*. Available at: [http://www.tvn-2.com/noticias/noticias\\_detalle.asp?id\\_news=42228](http://www.tvn-2.com/noticias/noticias_detalle.asp?id_news=42228); La Estrella. November, 19, 2010. *Communicator owner of Omega Stereo denounces threats*. Available at: <http://www.laestrella.com.pa/mensual/2010/11/19/contenido/09565975.asp>

<sup>485</sup> Panamá América. March 12, 2010. *Vallarino rejects criticism of audit*. Available at: [http://www.pa-digital.com.pa/periodico/buscador/resultado.php?story\\_id=897892&page=6&texto=dirección%20general%20de%20ingresos](http://www.pa-digital.com.pa/periodico/buscador/resultado.php?story_id=897892&page=6&texto=dirección%20general%20de%20ingresos); La Prensa. November 24, 2010. *Tax authority criticizes Adames*. Available at: <http://mensual.prensa.com/mensual/contenido/2010/11/24/hoy/panorama/2412216.asp>. La Estrella. November, 19, 2010. *Communicator owner of Omega Stereo denounces threats*. Available at: <http://www.laestrella.com.pa/mensual/2010/11/19/contenido/09565975.asp>

<sup>486</sup> Reporters without Borders. July 12, 2010. *Government tries to expel Spanish journalist resident in Panama*. Available at: [http://en.rsf.org/panama-government-tries-to-expel-spanish-12-07-2010\\_37931.html](http://en.rsf.org/panama-government-tries-to-expel-spanish-12-07-2010_37931.html); La Prensa. July 4, 2010. *Gómez Nadal: Detention was completely arbitrary*. Available at: [http://mensual.prensa.com/mensual/contenido/2010/07/04/uhora/local\\_2010070416124019.asp](http://mensual.prensa.com/mensual/contenido/2010/07/04/uhora/local_2010070416124019.asp)

<sup>487</sup> Ministry of Foreign Affairs. Republic of Panama. October 22, 2010. A.J.D.H No.179. Report of the Office of the Special Rapporteur for Freedom of Expression.

<sup>488</sup> Gómez Nadal, Francisco. July 4, 2010. Writ of habeas corpus (preventative) against the Immigration and Naturalization National Directorship; People's Ombudsman's Office of the Republic of Panama. July 7, 2010. Resolution No. 672<sup>a</sup>-10.

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.”

## 21. Paraguay

359. According to information received by the Office of the Special Rapporteur, journalist Gabriel Bustamante of radio station *FM Ayolas* and a correspondent with newspapers *La Nación* and *Crónica*, all located in Ayolas, was the subject of death threats and three attempted murders during July. According to the information, the attacks are related to stories by the journalist on an alleged case of municipal corruption. Bustamante filed a complaint about the situation with the authorities; one of the attackers has been identified and is currently a fugitive.<sup>489</sup>

360. The Office of the Special Rapporteur also received information on the attempted murder of journalist Martín Caballero, with *Radio Sagrado Corazón*, located in Villa Hayes. On the night of August 11, Caballero was chased by a vehicle from which shots were fired at him, while at the same time a man on a motorcycle threatened him with a pistol. According to the information received, Caballero has made public denouncements with regard to a prolonged workers' strike at a steel company, as well as with regard to bad practices among area police.<sup>490</sup>

361. The Office of the Special Rapporteur was informed that journalist Rosendo Duarte, correspondent with newspaper ABC Color in Salto del Guairá, was threatened on August 25 during the broadcast of the radio program that he hosts. The threat came from the family member of an individual suspected of working in narcotics trafficking, about whose arrest Duarte had written a news article.<sup>491</sup>

362. According to information received, on October 22, community radio station *San Rafael FM 89.1*, in the Alto Vera Itapúa district, suffered a fire that was apparently intentional. The Office of the Special Rapporteur was informed that unknown individuals broke into the radio station's facilities in the early morning hours and set fire to equipment crucial for the broadcaster's operation.<sup>492</sup>

363. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the

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<sup>489</sup> Reporters without Borders. July 27, 2010. *Three attempts to murder provincial reporter*. Available at: <http://en.rsf.org/paraguay-three-attempts-to-murder-27-07-2010,38040.html>; Sindicato de Periodistas del Paraguay. July 24, 2010. *P-MAS candidate attacks journalist, who suspects he has protection from Filizzola*. Available at: [http://www.sindicatodeperiodistas.org.py/detalle\\_denuncia.php?id\\_noticia=179](http://www.sindicatodeperiodistas.org.py/detalle_denuncia.php?id_noticia=179); Sindicato de Periodistas del Paraguay. July 25, 2010. *Brother of P-MAS council candidate tries to murder journalist Ayolas*. Available at: [http://www.sindicatodeperiodistas.org.py/detalle\\_noticia.php?id\\_noticia=180](http://www.sindicatodeperiodistas.org.py/detalle_noticia.php?id_noticia=180)

<sup>490</sup> International Freedom of Expression Exchange (IFEX)/Sindicato de Periodistas del Paraguay. August 16, 2010. *SPP condemns actions against journalist, attempt to censor radio station*. Available at: [http://www.ifex.org/paraguay/2010/08/16/caballero\\_threatened/](http://www.ifex.org/paraguay/2010/08/16/caballero_threatened/); ABC Color. August 15, 2010. *SPP denounces threat against host*. Available at: <http://www.abc.com.py/nota/169316-SPP-denuncia-amenaza-contra-locutor/>

<sup>491</sup> ABC Color. August 26, 2010. *ABC correspondent threatened*. Available at: <http://www.abc.com.py/nota/amenazan-corresponsal-abc/>; Sindicato de Periodistas del Paraguay. August 27, 2010. *Sindicato de Periodistas del Paraguay repudiates threat against ABC Color journalist*. Available at: <http://www.nanduti.com.py/v1/noticias-mas.php?id=20665>

<sup>492</sup> Voces Paraguay: October 24, 2010. Paraguay. *Attack on Alto Vera radio station repudiated*. Available at: <http://noticiasderadiodelmundo.blogspot.com/2010/10/paraguay-repudian-atacado-sufrido-por.html>. ABC Color. October 22, 2010. *Itapúa community radio station set on fire*. Available at: <http://www.abc.com.py/nota/incendian-radio-comunitaria-en-itapua>

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.”

364. The Office of the Special Rapporteur was informed that on April 5, a civil and commercial legal proceeding ended with the civil sanction of Aldo Zuccolillo, director of the newspaper *ABC Color*. Zuccolillo was ordered to pay US\$50,000, plus interest, to magistrate Carmelo Castiglioni in reparation of moral damages. The newspaper had criticized Castiglioni for having handed down a high court ruling acquitting former president Luis González Macchi. According to the information received, the judge's ruling found that ABC Color "could have mentioned that the ruling (of magistrate Castiglioni) was sufficiently well argued." The Office of the Special Rapporteur was informed that the judge found that the information was not false but rather "inappropriate and inexact." Also, the judge indicated that ABC published a right to reply by Castiglioni, but not in the same space as the information at issue.<sup>493</sup> Aldo Zuccolillo announced he would appeal the ruling.<sup>494</sup>

365. The Office of the Special Rapporteur recalls that Principle 11 of the aforementioned Declaration of Principles states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

366. The Office of the Special Rapporteur received information concerning the passage of the Telecommunications Bill by the Chamber of Deputies on July 8 and by the Senate on October 29. The reform bill modifies six articles in the Telecommunications Law currently in force; places a signal strength limit of between 50 and 300 watts for community, educational, association and citizen radio stations; and restricts the broadcasting of private and public advertising on these stations. This bill, which is supposedly intended to combat pirate radio stations, also establishes prison time for up to two years or a fine equal to between 300 and 500 standard daily wages for those who operate without a license or without prior authorization from the National Telecommunications Commission.<sup>495</sup> President Fernando Lugo vetoed the law on November 12, but on December 10 the Chamber of Deputies rejected the presidential veto. As of the publication deadline of this report, the presidential veto was being discussed in the Senate.<sup>496</sup>

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<sup>493</sup> ABC Color. April 5, 2010. *Judge convicts ABC for criticizing court ruling*. Available at: <http://www.abc.com.py/nota/98598-Jueza-condena-a-ABC-por-criticar-fallo-judicial>; Ultima Hora. April 7, 2010. *Castiglioni says ruling against media outlet is historic*. Available at: <http://www.ultimahora.com/notas/310922-Castiglioni-alega--que-fallo-contra-medio-es-histórico>

<sup>494</sup> Radio 1 de marzo. April 7, 2010. *Businessman Zuccolillo announces appeal of ruling that ordered him to pay a judge*. Available at: <http://www.780am.com.py/articulo.php?articulo=11998>; Portal Paraguayo de Noticias. April 7, 2010. *Zuccolillo announced appeal of ruling that ordered him to pay a judge*. Available at: <http://www.ppn.com.py/html/noticias/noticia-ver.asp?id=60142&rss=go>

<sup>495</sup> Community Radio and Alternative Media Association of Paraguay. July 6, 2010. *Paraguay: Press release from the Community Radio and Alternative Media Association of Paraguay*. Available at: <http://www.sccportal.org/Noticias.aspx?M=News&PID=2184&NewsID=3789>; International Freedom of Expression Exchange (IFEX)/ World Association of Community Broadcasters (AMARC). July 14, 2010. *Organizations reject discriminatory telecommunications initiative in Paraguay*. Available at: [http://www.ifex.org/paraguay/2010/07/14/iniciativa\\_discriminatoria/es/](http://www.ifex.org/paraguay/2010/07/14/iniciativa_discriminatoria/es/); Sindicato de Periodistas del Paraguay. July 14, 2010. *Bill on alternative radio contradicts the OAS and the UN on access to advertising*. Available at: [http://www.sindicatodeperiodistas.org.py/detalle\\_noticia.php?id\\_noticia=171](http://www.sindicatodeperiodistas.org.py/detalle_noticia.php?id_noticia=171); Knight Center of Journalism in the Americas. July 16, 2010. *Sindicato de Periodistas del Paraguay criticizes community radio bill*. Available at: <http://knightcenter.utexas.edu/es/blog/sindicato-de-periodistas-del-paraguay-critica-proyecto-de-ley-de-radios-comunitarias>

<sup>496</sup> World Association of Community Broadcasters (AMARC). December 10, 2010. *Chamber of Deputies overrides Lugo's Telecommunications Law veto*. <http://www.agenciapulsar.org/nota.php?id=18714>. ABC Color. November 12, 2010. *Lugo vetoes Telecommunications Law*. Available at: <http://www.abc.com.py/nota/lugo-veto-la-ley-de-telecomunicaciones/>

367. The Office of the Special Rapporteur offered its opinion on the changes to the Telecommunications Law being discussed in the legislature. In the opinion of the Office of the Special Rapporteur, some of the reforms proposed by the bill are problematic from the point of view of inter-American standards on freedom of expression, particularly the provisions that limit community radio signal strength, the ban on broadcasting any kind of advertising, and the establishment of criminal sanctions for people who carry out unauthorized radio broadcasts. These rules would establish discriminatory conditions that would tend to exclude or limit participation of certain expression transmitted through non-profit community media outlets in the public debate. Also, the establishment of criminal sanctions is disproportionate and beyond the measures necessary for prevention, such as the establishment of a proportional regime of punishment that includes civil sanctions.<sup>497</sup>

## 22. Peru

368. The Office of the Special Rapporteur expresses satisfaction at the Peruvian State's decision to suspend the application of a sanction canceling the operating license of the radio station *La Voz*, in Bagua.<sup>498</sup> According to the information provided, on October 5, 2010, the Transportation and Telecommunications Ministry issued a resolution restoring the authorization issued in 2007 - that is, the authorization to provide commercial radio broadcasting services with frequency modulation in the area of Bagua, Bagua Grande, in the Amazonas department - and annulled the June 8, 2009, cancellation of the broadcasting license.<sup>499</sup> The resolution that suspended the broadcasting permission was adopted following the serious acts of violence that took place in Bagua on June 5, 2009, and, according to information available at that time, after several state authorities stated that *La Voz* had incited those acts.<sup>500</sup> In a letter to the Office of the Special Rapporteur that was received on November 12, 2010, the Peruvian State indicated that, "The cancellation of the operating license was due to the radio broadcaster's failure to comply with its legal and regulatory obligations established during its installation and test period. Also, given that these painful events in Bagua intervened between the detection of the lack of compliance and the application of the sanction, this gave a basis to allege that the administrative sanction was, in reality, an abuse of official regulations. In order to dispel any doubt with regard to the Peruvian State's firm adherence to its international human rights obligations (...) the Transportation and Communications Ministry decided to suspend (...) the application of the sanction."<sup>501</sup>

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<sup>497</sup> Report of the IACHR Office of the Special Rapporteur for Freedom of Expression. October 15, 2010. Ref.: Bill to reform the Telecommunications Law.

<sup>498</sup> Transportation and Telecommunications Ministry. October 15, 2010. Communication No.1966-2010-MTC/01. Communication with the Office of the Special Rapporteur for Freedom of Expression.

<sup>499</sup> Through Vice-Ministerial Resolution No. 751-2010-MTC/03, Vice-Ministerial Resolution No. 211-2009-MTC/03, which ordered the cancellation of the radio broadcasting license of *La Voz*, in Bagua, and placed Vice-Ministerial Resolution No. 064-2007-MTC/03, which authorized the original license, back into effect.

<sup>500</sup> In the incidents that took place in June 2009, at least 30 people died and others were wounded. Victims included indigenous leaders and members of security forces. The incidents were the result of an operation carried out by the National Police of Peru to disperse a blockade maintained by indigenous groups on the highway that provides access to the city of Bagua. The act of protest was organized by indigenous peoples from the Peruvian Amazon after legislative measures were passed that affected their right to property over their lands and territories. IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 479. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&IID=1>

<sup>501</sup> "Transportation and Telecommunications Ministry. October 15, 2010. Communication No.1966-2010-MTC/01. Communication with the Office of the Special Rapporteur for Freedom of Expression.

369. The government's decision indicated above is greatly important given that, as the government states in its communication, State actions that affect freedom of expression have to not only conform to the law, but avoid any suspicion that they have in reality been taken to punish a media outlet for its editorial stance. The simple idea that the State is able to or wishes to use its power to affect freedom of expression can produce a chilling or inhibiting effect that affects the environment of freedom in which this right should be guaranteed. For this reason, the Office of the Special Rapporteur particularly values this decision, as well as the motives behind it.

370. The Office of the Special Rapporteur considers the creation of a special jurisdiction for processing cases of crimes committed against journalists in the course of carrying out their work as an important step forward. According to the information provided, on November 5, Administrative Resolution No 187/2010 took effect. The resolution broadens the competence of the National Criminal Chamber and the Extra provincial Criminal Courts of Lima to hear cases of homicide, assassination, serious injury, kidnapping, and extortion perpetrated against journalists during the course of their work.<sup>502</sup>

371. With regard to attacks on media outlets and journalists, the Office of the Special Rapporteur learned that the most numerous cases of aggression are physical and verbal attacks and threats committed by private individuals, although there have also been reports of some cases of attacks, harassment, and judicial pressure brought by civilian officials and members of the police force.<sup>503</sup>

372. Among the cases reported, the Office of the Special Rapporteur was informed that on August 4, unknown individuals threw two homemade bombs at the installations of radio station *La Bravaza* in the province of Pacasmayo, Libertad department. The bombs caused damage to equipment. The Office of the Special Rapporteur was informed that prior to the attack, the broadcaster had been revealing alleged corruption in the municipality of Guadalupe<sup>504</sup>. On October 5, a group of individuals sympathetic to the "We Are All Ucayali" political movement destroyed the broadcasting equipment of radio station *Melodía*. The station's director, Raúl Velásquez, received death threats<sup>505</sup>. The Office of the Special Rapporteur was also informed that on October 20, someone set fire to radio station *Libertad*, in the city of Atalaya, Ucayali, due to the conflicts there from disputes over local elections.<sup>506</sup>

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<sup>502</sup> Official Newspaper El Peruano. November 5, 2010. Administrative Resolution No. 187/2010-CE-PJ. Available at: <http://www.lozavalos.com.pe/alertainformativa/index.php?mod=contenido&com=contenido&id=4789>; Inter-American Press Association (IAPA). November 24, 2010. *IAPA welcomes creation of special jurisdiction in Peru to deal with serious crimes against journalists*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&idioma=us&id=4478](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=us&id=4478)

<sup>503</sup> In order to see the records of attacks on freedom of expression in Peru, also see National Journalist Association of Peru. December 28, 2010. *194 attacks on the Peruvian press in 2010*. Available at: <http://www.anp.org.pe/noticias/pronunciamentos-anp/711-194-atentados-a-la-prensa-peruana-en-2010>; Instituto Prensa y Sociedad (IPYS) <http://www.ipys.org/comunicados.shtml> and Instituto de Defensa Legal <http://www.idl.org.pe/>

<sup>504</sup> National Journalist Association of Peru. August 4, 2010. *Unknown individuals throw homemade bombs at La Bravaza radio station*. Available at: <http://www.anp.org.pe/ofip/alertas/573;%20Inter-American%20Press%20Association>. Inter-American Press Society (IPYS). November 2010. Information by Country: Peru. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=789&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=789&idioma=us)

<sup>505</sup> The radio broadcaster was attacked due to its criticism of a mayoral candidate and for reporting on the damage caused by a group of individuals in the municipality building. Reportaje Perú. October 5, 2010. *Sympathizers with a political group destroy radio station in Atalaya*. (On file at the office of the Special Rapporteur); National Association of Journalists. No date. *Political movement activists destroy Radio Melodía equipments*. Available at: <http://www.anp.org.pe/ofip/alertas/644>

<sup>506</sup> Instituto Prensa y Sociedad (IPYS). October 20, 2010. *Unknown individuals set radio station on fire*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2508>; El Comercio. October 20, 2010. *Mob sets radio station on fire*

373. The Office of the Special Rapporteur was informed that on March 31, a municipal official physically attacked Ronaldo Escobar Alegría, a journalist and the director of the program Vox Populi, broadcast on radio station Vox Populi in the province of Urubamba, Cusco. The attack was over criticism of the local mayor's office<sup>507</sup>. On March 12, Florencio Rebata, a journalist with radio station *Vida Mix*, was struck by a Huaral Municipality councilman<sup>508</sup>. On April 7, municipal police with the municipality of Huaraz attacked Orlando Rucana Cuba, a journalist and director of bimonthly magazine *La Revista* as he was filming the removal of informal vendors<sup>509</sup>. The Office of the Special Rapporteur received information on an April 8 attack suffered by Lenín Quevedo and Andrés Velarde, journalists with the channel *Vía Televisión*, at the hands of two police officers from the Morales police station in the San Martín province<sup>510</sup>. The Office of the Special Rapporteur was also informed of a September 1 attack on Eder Sotomayor Santiago and Moisés Ayme Ticona, journalists with the *TV Canal 56* program *La Hora Noticias*. They were attacked by followers of the mayor, who was up for reelection in the province of Ica. According to the information, the attack took place when the reporters were covering the reading of a court ruling against the mayor<sup>511</sup>. On October 1, Antonio Mollehuanca, news director for *La Voz de Radio Espinar*, was attacked and humiliated by a group of individuals who broke into the station and beat him. The incident took place in the Yauri neighborhood of Espinar, Cusco. According to the information, they hung a sign around Mollehuanca's neck saying, "I am a traitor to the people" and paraded him through the streets.<sup>512</sup>

374. The Office of the Special Rapporteur received information according to which on March 25, 2010, journalist Alfredo Zamora Nolly, host of a program on radio station *LEGT*, in the Ucayali department, received a telephone call from a penitentiary warning him that a group of

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...continuation

during post-election protest. Available at: <http://www4.elcomercio.com/2010-10-20/Noticias/Mundo/Noticias-Secundarias/incendio-radio-Peru.aspx>

<sup>507</sup> Instituto Prensa y Sociedad (IPYS). April 7, 2010. *Journalist stabbed for denouncing Mayor*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2250>. Inter-American Press Association (IAPA). November 2010. Information by Country: Peru. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=789&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=789&idioma=us)

<sup>508</sup> According to the information received, the attack arose from the journalist's criticism of the councilman's job performance. Instituto Prensa y Sociedad (IPYS). April 13, 2010. *Journalist assaulted by city councilor*. Available at: [http://www.ifex.org/peru/2010/04/07/rebata\\_reyes\\_assaulted/](http://www.ifex.org/peru/2010/04/07/rebata_reyes_assaulted/); National Journalist Association of Peru. No date. *Councilman insults and strikes journalist*. Available at: <http://www.anp.org.pe/ofip/alertas/435>

<sup>509</sup> The police had ordered the journalist to stop filming. When he continued filming, they struck him in the head and left him unconscious. International Freedom of Expression Exchange. April 12, 2010. *Journalist beaten, knocked unconscious by local police*. Available at: [http://www.ifex.org/peru/2010/04/12/rucana\\_beaten/](http://www.ifex.org/peru/2010/04/12/rucana_beaten/); Contacto Informativo Huaral. April 11, 2010. *Municipal police and neighborhood security guards make journalist pass out with blow to the head*. Available at: <http://contactoinformativohuaralperu.blogspot.com/2010/04/alerta-peru-huaraz-anp.html>

<sup>510</sup> Both journalists tried to get a comment from police officers mentioned in a report on alleged police corruption. National Journalist Association of Peru. April 8, 2010. *Police accused of allegedly taking bribes attack journalists*. Available at: <http://www.anp.org.pe/ofip/alertas/438>; Inter-American Press Association. November 2010. Information by Country: Peru. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=789&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=789&idioma=us)

<sup>511</sup> National Journalist Association of Peru. No date. *Journalist brutally beaten by followers of Ica mayor*. Available at: <http://www.anp.org.pe/ofip/alertas/616>. Inter-American Press Association (IAPA). November 2010. Information by Country: Peru. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=789&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=789&idioma=us)

<sup>512</sup> The attack was caused by comments by the journalist supporting political dialog with regard to a conflict over a hydroelectric project. Instituto Prensa y Sociedad (IPYS). November 11, 2010. *Journalist attacked and humiliated by radicals*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2518>; La República. November 11, 2010. *Journalist attacked by Espinar residents*. Available at: <http://www.larepublica.pe/11-11-2010/periodista-fue-agredido-por-pobladores-de-espinar-informan>

hitmen had been hired to kill him. According to the information received, Nolly said on air that a source imprisoned in the Pucallpa jail warned him that alleged hitmen had received US\$1,000 as an advance payment for ending his life. The information adds that Nolly has recently denounced several acts of corruption in the government and the local police force.<sup>513</sup>

375. With regard to these incidents, Principle 9 of the Declaration of Principles on Freedom of Expression states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

376. With regard to court proceedings, the Office of the Special Rapporteur was informed of the partial annulment of the trial for defamation against the mayor-elect of Lima, Susana Villarán. According to the information provided, on November 17, the 26th Criminal Court of Lima annulled part of the proceeding brought in this case and sent the initial proceedings to the 36th Criminal Court, before which the risk of a conviction still exists.<sup>514</sup> On November 15, the Office of the Special Rapporteur for Freedom of Expression expressed its concern over the reading of the judgment and the possibility of a conviction in the criminal trial for aggravated defamation to the detriment of Jorge Mufarech Nemy, former labor minister under Alberto Fujimori.<sup>515</sup>

377. The Office of the Special Rapporteur received information according to which Alejandro Carrascal Carrasco, the director of weekly newspaper *Nor Oriente* of Bagua Grande, was convicted of the crime of aggravated defamation against the former director of the Utcubamba Superior Public Technology Institute and sentenced to one year in prison. He was also subject to a fine equivalent to 120 working day wages, as well as 5,000 nuevos soles (approx. US\$1,800) to be paid to the plaintiff.<sup>516</sup> On January 11, the journalist was arrested. One day later the judgment was read to him in the First Criminal Court of Utcubamba.<sup>517</sup> On March 3, 2010, the Utcubamba Mixed Chamber upheld all aspects of the judgment. The defendant presented an appeal for annulment of

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<sup>513</sup> Latin American Observatory for Freedom of Expression (OLA in its Spanish acronym)/IFEX. March 31, 2010. *Journalist refuses to be silenced despite plot to kill him*. Available at: [http://www.ifex.org/peru/2010/03/31/zamora\\_death\\_threat/](http://www.ifex.org/peru/2010/03/31/zamora_death_threat/); Oficina de los Derechos Humanos del Periodista (OFIP). March 30, 2010. *Journalist alerted from prison that hitmen want to kill him*. Available at: <http://ofip.blogspot.com/2010/03/alerta-peru-padre-abad-desde-penal.html>

<sup>514</sup> Perú.com. November 17, 2010. *Susana Villarán half saved over her denouncement of Jorge Mufarech*. Available at: <http://www.peru.com/noticias/lima20101117/127729/Susana-Villaran-se-salva-a-medias-por-denuncia-de-Jorge-Mufarech->; *Semana Económica*. November 17, 2010. *Partial annulment of Jorge Mufarech's lawsuit against Susana Villarán*. Available at: <http://semanaeconomica.com/articulos/60855-anulan-en-parte-querella-de-jorge-mufarech-contra-susana-villaran>

<sup>515</sup> In 2009, Susana Villarán published an opinion article on a website that recalled the 2004 complaint filed by several individuals - including her - against Mr. Mufarech alleging crimes of corruption committed while he was minister. On August 10, 2009, Mufarech Nemy filed a criminal complaint against Villarán for the crime of aggravated defamation over the article. The criminal complaint of corruption originally formulated by Villarán had already caused Mr. Mufarech to file a previous criminal complaint, and in October of 2006, the competent judge issued an order finding the case inadmissible. IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release No. R113/10. Office of the Special Rapporteur Expresses Concern over Criminal Defamation Case against the Elected Mayor of Lima*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=826&IID=1>

<sup>516</sup> Supreme Court of Justice of the Republic. Permanent Criminal Chamber. June 18, 2010. R.N. No. 1372-2010 Amazonas. Available at: [http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N\\_201372-2010-Amazonas.pdf](http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N_201372-2010-Amazonas.pdf).

<sup>517</sup> Committee to Protect Journalists (CPJ). January 14, 2010. *Peru: Editor of weekly newspaper imprisoned for defamation*. Available at: <http://cpj.org/es/2010/01/peru-editor-de-semanario-presos-por-difamacion.php>. La República. April 2, 2010. *Abusive judgement against journalist*. Available at: <http://www.larepublica.pe/02-04-2010/abusiva-sentencia-periodista>

the ruling before the Supreme Court. The journalist remained in prison for more than five months and was released on June 18 after a ruling by the Permanent Criminal Chamber of the Supreme Court of Justice to close the file on the case and annul the prior rulings.<sup>518</sup>

378. This Office learned of a judgment handed down by the 33rd Criminal Court of Lima on October 29 against blogger José Alejandro Godoy for the alleged crime of aggravated defamation. The judgment convicted the blogger and sentenced him to the maximum penalty, meaning three years in prison - suspended for three years - and the payment of 300,000 nuevos soles (approx. US\$107,000) in civil damages, as well as a fine equivalent to 120 working days' wages<sup>519</sup>. The criminal complaint was presented by Jorge Mufarech, who served as labor minister during the Alberto Fujimori government, after Godoy published an article on his blog *Desde el Tercer Piso* with several links to articles making reference to accusations over alleged crimes that Mufarech had faced in the past. The journalist appealed the ruling.<sup>520</sup> As of the publication deadline of this report, the final ruling is unknown.

379. The Office of the Special Rapporteur received information indicating that the Criminal Case-Transfer Court of Cajamarca ruled on September 1 to sentence journalist Marco Bonifacio Sánchez to prison time, suspended, and the payment of 5,000 nuevos soles (about US\$1,800) in civil damages, as well as 13 days of community services, for the crimes of libel and aggravated defamation against Marco La Torre, the mayor of Cajamarca. The journalist, who hosts the program "El Canillita" on Canal 19 Turbo Mix, criticized the official's administration using strong language. The sentence has been appealed.<sup>521</sup> As of the publication deadline of this report, the final ruling is unknown.

380. On August 5, the First Mixed Court of Satipo sentenced journalist Fernando Santos Rojas to a prison term of one year for the crime of aggravated defamation against the Satipo mayor. The Office of the Special Rapporteur was informed that in addition to the prison term, the Court sentenced the journalist to pay 25% of his income over 120 days as a fine and 2,000 nuevos soles (about US\$713) to the plaintiff. The prison sentence was conditionally suspended, but Santos Rojas will be subject to a year of probation during which he must present himself to the court at the end of each month "to control and justify his activities." He will not be allowed to leave his neighborhood without authorization from a judge and must correct his articles and opinion pieces

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<sup>518</sup> The Criminal Chamber of the Supreme Court of Justice concluded that, of the nine publications subject to the complaint, only two were defamatory, and in both cases the statute of limitations had expired. In another seven publications, the high court found that their content was in the public interest. In spite of being "intensely disrespectful to the plaintiff" it does not contain "insults or humiliation; the terminology it uses, although strong and perhaps somewhat exaggerated, cannot be classified as criminal and does not cross the line beyond what is constitutionally guaranteed freedom of expression. Also, it has sufficient basis in fact." For this reason, the Criminal Chamber ordered the journalist to be freed immediately. Supreme Court of Justice of the Republic. Permanent Criminal Chamber. June 18, 2010. R.N. No. 1372-2010 Amazonas. Pages 7 and following. Available at: [http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N\\_201372-2010-Amazonas.pdf](http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N_201372-2010-Amazonas.pdf); Reporters without Borders. June 21, 2010. *Journalist Alejandro Carrascal Carrasco freed: "It's time to decriminalize defamation."* Available at: <http://es.rsf.org/peru-el-director-de-un-semanario-fue-13-01-2010,36064>

<sup>519</sup> José Alejandro Godoy must also appear to sign his attendance before the court once a month and may not change his residence or leave the country without authorization from a judge. Judicial Branch of Peru. 33rd Criminal Court of Lima. October 29, 2010. Case File 24304-2009-0-1801-JR-PE-33. Resolution No. 21.

<sup>520</sup> Instituto Prensa y Sociedad (IPYS). October 29, 2010. *Maximum sentence against blogger in Peru without precedent and unconstitutional.* (On file at the Office of the Special Rapporteur); El Comercio. October 29, 2010. *Citizen convicted over link published on his blog.* Available at: <http://elcomercio.pe/lima/661206/noticia-ciudadano-fue-sentenciado-tres-anos-prision-link-que-publico-su-blog>

<sup>521</sup> As an example of terms the journalist used, he called the mayor "crazy," "mentally retarded," and an "ass." Judicial Branch of Peru. 3rd Transitory Criminal Case-Transfer Court. September 1, 2010. Case File 01967-2008-0-601-JR-PE-03. Sentence No. 79. Resolution No. 27; Instituto Prensa y Sociedad (IPYS). September 14, 2010. *Judge sentences journalist to conditional release.* (On file at the Office of the Special Rapporteur).

about the mayor. The journalist appealed the sentence.<sup>522</sup> As of the publication deadline of this report, the final ruling is unknown.

381. The Office of the Special Rapporteur was informed that on April 7, the First Single Judge Court of the Criminal Circuit of Ilo sentenced Enrique Lazo Flores, a journalist and director of the newspaper *La Región*, to a suspended prison sentence of 18 months. The court found him guilty of the crime of defamation against a local public official who felt he had been wronged by articles that were critical of his performance. According to the information received, the journalist also must pay 500 nuevos soles (some US\$178) in civil damages.<sup>523</sup>

382. The sentences listed imply serious limitations to the freedom of expression of the journalists involved by blocking them from referencing matters of public interest in which public officials are involved and by restricting their freedom to move around to find information due to the risk of violating the conditions of their suspended prison terms.

383. The Office of the Special Rapporteur has repeatedly expressed concern over the application of the crime of defamation in Peru to individuals who have simply exposed issues or expressed opinions that were critical of those who hold or have held public office. Denouncing or expressing opinions against public officials or those who have held public office is broadly protected by Article 13 of the American Convention on Human Rights. This type of expression can under no circumstances be categorized as an act of criminal defamation for the sole reason that the person in question feels offended. Those who hold or have held public office have the duty to withstand a greater level of criticism and questioning specifically because they voluntarily assumed the administration of important public responsibilities. The application of criminal law that tends toward silencing criticism or denouncements against public officials seriously affects freedom of expression, not only for the individual tried, but for society as a whole.

384. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have established repeatedly that freedom of expression must be guaranteed not only with regard to the distribution of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend, shock, upset or are unpleasant or perturbing for the State or any segment of the population. Also, there must be special protection for messages related to matters of public interest and public officials carrying out their work. Likewise, both the IACHR and the Inter-American Court have repeated categorically that opinions cannot be subject to subsequent liability.

385. In this respect, Principle 10 of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a

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<sup>522</sup> As the Office of the Rapporteur was informed, the case began in June 2008, when the journalist used a radio program to question the abilities, aptitude, and transparency of the mayor of Satipo, a town located 440 kilometers east of Lima. During the trial, Santos Rojas repeated his statements and argued that he did not defame the mayor but rather was simply giving his opinion on the official based on certain notorious facts. Judicial Branch of Peru. First Mixed Court of Satipo. August 5, 2010. Case File No. 2009-60. Sentence and ruling not numbered; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release No. R88/10. Office of the Special Rapporteur Expresses its Concern over Criminal Conviction of Journalist in Peru*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=816&IID=1>

<sup>523</sup> International Federation of Journalists (IFJ in its Spanish acronym). April 8, 2010. *IFJ rejects defamation conviction that punishes Peruvian journalist with 18 months in prison*. Available at: <http://www.ifj.org/en/articles/la-fip-rechaza-la-condena-por-difamacion-que-castiga-a-un-periodista-peruano-a-18-meses-de-carcel>; Ilo al Día. April 8, 2010. *Journalist Enrique Lazo sentenced to a year and a half suspended prison term*. Available at: [http://www.ilodia.com/index.php?option=com\\_content&view=article&id=2900:sentencian-a-un-ano-y-medio-de-pena-suspendida-a-periodista-enrique-lazo&catid=40:locales&Itemid=86](http://www.ilodia.com/index.php?option=com_content&view=article&id=2900:sentencian-a-un-ano-y-medio-de-pena-suspendida-a-periodista-enrique-lazo&catid=40:locales&Itemid=86)

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

386. Likewise, Principle 11 states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

387. The Office of the Special Rapporteur calls on the competent Peruvian judicial authorities to take these current international standards on freedom of expression into account when resolving cases related to this fundamental right.

388. In other cases reported, the Office of the Special Rapporteur was informed of a request by the Office of the Public Prosecutor in April to send the director of *Radio TV Oriente* in Yurimaguas, Geovanni Acate, to prison for 10 years. According to the information received, the Office of the Public Prosecutor accused Acate of crimes "against the public order" and "against the powers of State and the constitutional order" through the "instigation of the crime of rebellion" during its coverage of the clashes in June 2009 in the Bagua Amazon region.<sup>524</sup> On December 21, the Mixed Court of Ato Amazonas acquitted Acate.<sup>525</sup>

389. Principle 1 of the aforementioned Declaration of Principles states that, "Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society." Likewise, Principle 13 states that, "Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

390. The Office of the Special Rapporteur expresses its concern at the current status of the criminal proceeding against individuals accused of having ordered the murder of the journalist Alberto Rivera in 2004. According to the information received, the victim's representatives requested that the process be nullified, and the case was raised to the First Transitory Criminal Court of the Supreme Court of Justice. In that instance, on June 16 the court ruled by three votes to two to acquit the accused. However, four out of five votes are needed for the ruling to take effect. For this reason another judge was brought in to cast a deciding vote. On December 16, the judge voted to annul the acquittal, tying the vote three to three. For this reason, the court is waiting for another judge to cast the tie-breaking vote. Shortly before being murdered, journalist Alberto Rivera Fernández criticized the municipal administration and linked senior local officials with drug trafficking activity.<sup>526</sup>

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<sup>524</sup> Agencia Púlsar. April 14, 2010. *Office of the Public Prosecutor seeks 10 years in prison for director of Radio Oriente*. Available at: <http://www.agenciapulsar.org/nota.php?id=17048>

<sup>525</sup> Together with the journalist, prison terms were also sought for the priest Mario Bartolini and four other grassroots leaders. The judge acquitted the priest but not the leaders, who were sentenced to four years in prison. Coordinadora Nacional de Radio. December 21, 2010. *Director of Radio Oriente acquitted*. Available at: [http://www.cnr.org.pe/nueva\\_web/nota.shtml?x=4951](http://www.cnr.org.pe/nueva_web/nota.shtml?x=4951); Spacio Libre. June 21, 2010. *Father Bertolini and journalist Acate acquitted, but two social leaders are convicted and sentenced*. Available at: <http://spaciolibre.net/?p=5933>

<sup>526</sup> El Comercio. December 17, 2010. *Deciding judge casts vote to annul acquittal of Luis Valdez*. Available at: <http://elcomercio.pe/politica/685523/noticia-juez-dirimente-vota-anular-absolucion-luis-valdez>; La República. June 15, 2010. *Supreme Court will hear Alberto Rivera case today*. Available at: <http://www.larepublica.pe/16-06-2010/corte-suprema-ve-hoy-caso-del-periodista-alberto-rivera>

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

392. The Office of the Special Rapporteur was informed of the December 10, 2010, ruling of the Constitutional Tribunal (case file No. 00655/2010/PHC/TC) clarifying a judgment dated October 27, 2010, concerning the authority to publish information obtained illegally. In the December 10 ruling, the Constitutional Tribunal stated the following in Paragraph 4: “That with regard to the interception of telecommunications and their distribution by the media, the distribution of information that affects the personal or familial privacy of any individual, the private life of the person whose communication was intercepted, or third parties, is prohibited, except when the information is of public interest or relevance, which should be determined in each individual case by the media outlet. In the case of excess, the journalist, as well as the editors and/or owners of the media outlets, will be liable for those excesses, according to the determinations of the competent authorities.” Also, the Constitutional Tribunal establishes in Paragraph 7 that, “those who carry out the interception, including if it is the journalist, commit a crime; those who encourage those interceptions, including if it is the journalist, also commit a crime. Likewise, those who have access to the information and intend to distribute it, be they journalists, editors, or owners of media outlets, must evaluate whether doing so will affect the personal or familial privacy or private lives of those whose communications were intercepted, their family members, or third parties. In this last case, the control is subsequent to the act, as the Constitution prohibits prior censorship.”<sup>527</sup>

393. With regard to this, the Office of the Rapporteur recalls the Joint Declaration of the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), dated December 21, 2010, according to which, “Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information.”<sup>528</sup>

## 23. Dominican Republic

394. The Office of the Special Rapporteur notes that on January 12, a Santiago de los Caballeros preliminary investigation court upheld the order of preventative detention against a businessman suspected of being the mastermind behind the murder of cameraman Normando García, a murder that took place in August of 2008. According to the information received, the Dominican authorities also identified two of the alleged perpetrators of the crime and placed them in preventative detention. The Office of the Special Rapporteur was informed that the cameraman was

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<sup>527</sup> Constitutional Tribunal. December 10, 2010. Case File No. 00655-2010-PHC/TC. Ruling of the Constitutional Tribunal. Paras. 4 and 7.

<sup>528</sup> IACHR Office of the Special Rapporteur for Freedom of Expression and UN Office of the Rapporteur for Freedom of Expression. December 21, 2010. Joint Declaration on WikiLeaks. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

murdered for circulating footage that exposed the businessman's participation in a different crime.<sup>529</sup>

395. The Office of the Special Rapporteur received information on a series of attacks against communicators. For example, on June 2, attorney and commentator Jordi Veras, director of *Canal 25* debate program "*Mañana Boreal*", suffered an attempt on his life in Santiago de los Caballeros. According to the information, a masked individual fired on the journalist as he was arriving at the channel where he worked, seriously wounding him. The Office of the Special Rapporteur takes note that the Dominican authorities investigating the attack have identified the individuals suspected of being the masterminds and perpetrators, placed them in preventative detention, and begun legal proceedings<sup>530</sup>.

396. The Office of the Special Rapporteur was informed that on June 19, a motorcyclist armed with a pistol fired on journalist Ramón Ramírez and producer Zoila Villa as they were leaving *Canal 35* in Santo Domingo, where they produce the program *Contenido Semanal*.<sup>531</sup> The Office of the Special Rapporteur also received information according to which on July 4, journalist Robinson Cruz González, co-producer of the program "The Government of Boca Chica", on *Teleimágenes Canal 13*, was wounded by gunfire while traveling with his wife in Santo Domingo.<sup>532</sup>

397. The Office of the Special Rapporteur received information according to which in September, State security agencies discovered a plan to murder the journalist Esteban Rosario, producer of the television program "Behind the News". According to the information received, the Police and the Office of the Public Prosecutor alerted the journalist to the danger he faced after learning that an unknown individual had contracted a group of hit men to kill him. According to the information, the journalist regularly used his program to denounce public administration irregularities and recently published a book titled *Corruption in Santiago Municipalities*.<sup>533</sup>

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<sup>529</sup> Public Ministry. Office of the Public Prosecutor, Santiago de los Caballeros. January 11, 2010. *Suspect in murder of cameraman Normando García Azabache to remain in prison*. Available at: <http://fiscaliasantiago.gov.do/?p=132>; Reporters without Borders. January 14, 2010. *Businessman accused of paying two men to murder cameraman 18 months ago*. Available at: <http://en.rsf.org/dominican-republic-businessman-accused-of-paying-two-14-01-2010,36096.html>

<sup>530</sup> Reporters without Borders/ International Freedom of Expression Exchange (IFEX). June 3, 2010. *TV host wounded in shooting, motive still unknown*. Available at: [http://www.ifex.org/dominican-republic/2010/06/03/rodriguez\\_shot/](http://www.ifex.org/dominican-republic/2010/06/03/rodriguez_shot/); Listín Diario. December 28, 2010. *Judge sets review of Jordi Veras for January*. Available at: <http://www.listin.com.do/la-republica/2010/12/28/171586/Jueza-dejapara-enero-la-revision-del-caso-Jordi-Veras>

<sup>531</sup> Dominican Journalists Professional Association. June 20, 2010. *Dominican Journalists Professional Association condemns attack on Tito Ramírez*. Available at: [http://atodasluces.net/index.php?option=com\\_content&view=article&id=264:colegio-dominicano-de-periodistas-condena-agresion-contra-tito-ramirez&catid=40:pais&Itemid=67](http://atodasluces.net/index.php?option=com_content&view=article&id=264:colegio-dominicano-de-periodistas-condena-agresion-contra-tito-ramirez&catid=40:pais&Itemid=67); Inter-American Press Association (IAPA). November 2010. Information by Country: Dominican Republic. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=791&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=791&idioma=us); Barahonero.com. June 19, 2010. *Gunmen try to murder journalist Ramón Ramírez and Zoila Villa*. Available at: <http://www.barahonero.com/2010/06/pistoleros-intentan-asesinar-al.html>

<sup>532</sup> El Comercio de Santo Domingo. July 7, 2010. *Investigation sought in gunfire attack against journalist Robinson Cruz*. Available at: [http://www.elcomerciodesantodomingo.com/index.php?option=com\\_content&view=article&id=2441:piden-investigar-ataque-a-tiros-contra-periodista-robinson-cruz](http://www.elcomerciodesantodomingo.com/index.php?option=com_content&view=article&id=2441:piden-investigar-ataque-a-tiros-contra-periodista-robinson-cruz); Inter-American Press Association (IAPA). November 2010. Information by Country: Dominican Republic. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=791&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=791&idioma=us)

<sup>533</sup> 7 Días. September 16, 2010. *Esteban Rosario receives death threat*. Available at: <http://www.7dias.com.do/app/article.aspx?id=83262>; Diario Digital. September 16. *Plan to assassinate journalist detected*. Available at: <http://www.diariodigital.com.do/articulo,56740,html>

398. The Office of the Special Rapporteur was informed that threats had been received by Fausto Rosario Adames, the director of the weekly newspaper *Clave* and its electronic version, Clave Digital, after the weekly published articles on drug trafficking activity. According to the information received, Mr. Rosario was warned on August 4 that he ran the risk of being murdered over his investigation of a case of local corruption linked to drug trafficking. That same day, another Dominican journalist received a message with similar warnings about Rosario. The warning of the journalist coincides with serious acts of violence that, according to the information received, could be directly related to the threats. According to the information, on the afternoon of August 4, Rosario announced to his collaborators that *Clave* was closing. The Office of the Special Rapporteur received information indicating that President Leonel Fernández met with Rosario and several colleagues in his office to learn about the situation and order protective measures.<sup>534</sup>

399. The threats received by the journalists are of great concern to the Office of the Special Rapporteur, and the Office takes note of the measures taken by the State. In this respect, Principle 9 of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression establishes that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

400. According to information received by the Office of the Special Rapporteur, on August 21 Kendy Joel Jiménez, a cameraman with Canal 12, was arrested and beaten by officers with the Metropolitan Transportation Authority (AMET in its Spanish acronym) in an attempt to prevent him from recording a traffic operation being carried out by AMET in the Higüey area. The cameraman was freed several hours later.<sup>535</sup>

401. The Office of the Special Rapporteur also received information indicating that on March 25, 2010, *Canal 53, Cibao TV Club*, was ordered to stop broadcasting by the Dominican Telecommunications Institute (Indotel in its Spanish acronym). According to the information received, Indotel justified the closure order by saying it had found the television channel was making "illegal broadcasts" by using two broadcast frequencies without permission. The information adds that after blocking the two frequencies, Indotel authorized the channel to begin broadcasting again. However, the channel's owner indicated that he cannot begin broadcasting again because the authorities temporarily confiscated his broadcasting equipment.<sup>536</sup>

<sup>534</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 10, 2010. Press Release R80/10. *The Special Rapporteur expresses its concern over threats received by the editor of a Dominican Republic weekly newspaper.* Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=807&IID=2>; Hoy. August 5, 2010. *Why did Clave close?* Available at: <http://www.hoy.com.do/el-pais/2010/8/5/336760/Por-que-cerro-Clave/>; El Nacional. August 5, 2010. *Said that crisis forced Clave newspapers to close.* Available at: <http://www.elnacional.com.do/nacional/2010/8/5/56511/Aseguran-crisis-obligo-cierre-periodicos-Clave>. Diario Libre. August 4, 2010. *Fausto Rosario says Clave and Clave Digital officially closed.* Available at: [http://www.diariolibre.com/noticias\\_det.php?id=255941&l=1](http://www.diariolibre.com/noticias_det.php?id=255941&l=1). El Comercio de Santo Domingo. August 6, 2010. *Presidente Leonel Fernández meets with journalist Fausto Rosario.* Available at: [http://www.diariolibre.com/noticias\\_det.php?id=255941&l=1](http://www.diariolibre.com/noticias_det.php?id=255941&l=1)

<sup>535</sup> Listín Diario. August 21, 2010. *Higüey journalists are mistreated by AMET agents.* Available at: <http://www.listindiario.com.do/la-republica/2010/8/21/155642/Gremios-denuncian-que-periodistas-de-Higuey-son-maltratados-por-Amet>; El Nacional. August 21, 2010. *AMET agent breaks cameraman's face and hands.* <http://www.elnacional.com.do/nacional/2010/8/21/58201/Agente-de-la-Amet-rompecara-y-manos-camarografo>

<sup>536</sup> Reporters without Borders . March 31, 2010. *Controversy after broadcasting authority forces TV station off the air.* Available at: [http://en.rsf.org/dominican-republic-controversy-after-broadcasting-31-03-2010\\_36905.html](http://en.rsf.org/dominican-republic-controversy-after-broadcasting-31-03-2010_36905.html); Portal Clave Digital.com/El Poder Miami. March 27, 2010. *Closed channel aired Dr. Fadul's program, which strongly criticized President Fernández.* Available at: <http://elpoderdemiami.com/2010/03/27/canal-cerrado-transmitia-el-programa-del-dr-fadul-con-fuertes-criticas-al-presidente-fernandez/>

402. States have the authority to regulate the use of the electromagnetic spectrum and supervise compliance with the law. However, Principle 5 of the Declaration of Principles states, among other things, that disproportionate or unjustified interference into any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law.

403. Finally, the Office of the Special Rapporteur takes note of the Dominican State's initiative to ask law and communications professionals to draft a reform of Law 6132, on Expression and Spreading of ideas, as well as a group of bills related to the media and access to information that jointly make up the Communication Code. According to the information received, the government is promoting a series of public debates to discuss the proposals prior to sending them to the legislature. The Office of the Special Rapporteur invites the Dominican State to distribute the draft bills widely in order to stimulate a vigorous and well-informed national debate and to be able to trust that the changes hew to international freedom of expression standards.<sup>537</sup>

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<sup>537</sup> Diario Dominicano. September 20, 2010. *Communication Code*. Available at: <http://www.diariodominicano.com/n.php?id=60526&sec=editorial>; Hoy. September 22, 2010. *Molina fears that interests will block reform*. Available at: <http://www.hoy.com.do/el-pais/2010/9/22/342937/print>; El Caribe.com. September 10, 2010. *Law 6132 will be subject to changes*. Available at: [http://www.elcaribe.com.do/site/index.php?option=com\\_content&view=article&id=255151:ley-6132-sera-objeto-de-cambios&catid=104:nacionales&Itemid=115](http://www.elcaribe.com.do/site/index.php?option=com_content&view=article&id=255151:ley-6132-sera-objeto-de-cambios&catid=104:nacionales&Itemid=115)

## 24. Suriname

404. According to the information received, senior Suriname government officials are being investigated for incidents of violence that took place in the military barracks of Fort Zeelandia on December 8, 1982, in which five journalists died. According to the information received, President Desi Bouterse has taken political responsibility for the incidents that took place. However, according to the information received, there still has been no punishment of those responsible, nor has full reparation been provided to the victims.<sup>538</sup> Principle 9 of the Declaration of Principles on Freedom of Expression, approved by the IACHR, states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

## 25. Trinidad y Tobago

405. The Office of the Special Rapporteur views positively the support given by the Government of Trinidad and Tobago toward improving news coverage during elections.<sup>539</sup> Likewise, according to the information received, the new government has demonstrated a significant willingness to respect freedom of expression and, in particular, the rights of media outlets.<sup>540</sup>

## 26. Uruguay

406. In its 2009 annual report, the Office of the Rapporteur viewed positively the fact that the Uruguayan State has taken measures to incorporate the standards of the inter-American system on the subject of freedom of expression into its domestic legal system. In particular, the Office of the Rapporteur indicated that in June of 2009, the General Assembly of the Legislative Branch passed Law No. 18.515, which makes important changes to the Penal Code and the Press Law by eliminating sanctions for the dissemination of information or opinions on State officials and matters of public interest, except when the person allegedly affected by that dissemination is able to demonstrate the existence of "actual malice." As the Office of the Rapporteur has indicated, the

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<sup>538</sup> Reporters without Borders. August 12, 2010. *Bouterse's installation as president must not mean impunity for past murders of journalists*. Available at: <http://en.rsf.org/surinam-bouterse-s-installation-as-12-08-2010,38124.html> y en [http://www.ifex.org/suriname/2010/08/12/bouterse\\_charges/](http://www.ifex.org/suriname/2010/08/12/bouterse_charges/); The International Freedom of Expression Exchange (IFEX). August 18, 2010. *President responsible for murder of journalists and activists*. Available at: [http://www.ifex.org/suriname/2010/08/18/impunity\\_elected/](http://www.ifex.org/suriname/2010/08/18/impunity_elected/); The New York Times. April 13, 2008. *Long Memories May Ensnare a Dictator*. Available at: <http://www.nytimes.com/2008/04/13/weekinreview/13romero.html>; BCCaribbean.com. July, 20, 2010. *Desi Bouterse back in power*. Available at: [http://www.bbc.co.uk/caribbean/news/story/2010/07/100720\\_presidentbouterse.shtml](http://www.bbc.co.uk/caribbean/news/story/2010/07/100720_presidentbouterse.shtml); Reuters. August 12, 2010. *Strongman Bouterse sworn-in as Suriname president*. Available at: <http://www.reuters.com/article/idUSTRE67B47P20100812>; Al Jazeera. February 20, 2009. *Ex-Suriname head faces murder trial*. Available at: <http://english.aljazeera.net/news/americas/2009/02/2009220201340400544.html>; Freedom House. May 3, 2010. *Freedom in the World 2010 – Suriname*. Available at: <http://www.unhcr.org/refworld/category,COI,,,SUR,4c0cead32,0.html>; IACHR. Report on the Human Rights Situation in Suriname. Chapter II: The Right to Life and the Right to Personal Integrity. OEA/Ser.L/V/II.61. doc 6 rev 1. October 6, 1983.

<sup>539</sup> International Freedom of Expression Exchange (IFEX). March 11, 2010. *Electoral authorities agree to collaborate to improve journalistic performance in election coverage*. Available at: [http://www.ifex.org/trinidad\\_and\\_tobago/2010/03/11/elections\\_roundtable/](http://www.ifex.org/trinidad_and_tobago/2010/03/11/elections_roundtable/). Association of Caribbean Media Workers. March 8, 2010. *T&T Electoral Authorities Agree to Collaborate for Better Coverage of Elections*. Available at: <http://www.acmediaworkers.com/archive/2010/pdf2010/20100308-EBConElectionCoverage.pdf>.

<sup>540</sup> Inter-American Press Association. *Country reports: Trinidad y Tobago. 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inforid=774&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inforid=774&idioma=us)

new rules add that human rights treaties constitute the guiding principles for interpreting, applying, and integrating civil, procedural, and criminal law on freedom of expression. They also recognize the relevance of the decisions and recommendations made on this issue by the Inter-American Court and the IACHR.<sup>541</sup> Despite this important progress, the Office of the Special Rapporteur received information according to which in August, a criminal prosecutor had requested the confiscation of all the copies of the book *Secrets of the Communist Party*, as well as a prison sentence of 24 months with possibility of parole for the author, the journalist Álvaro Alfonso, for the crime of defamation. The Office of the Public Prosecutor argued that the journalist had acted with “actual malice.” According to the information received, the Office of the Public Prosecutor had alleged that the continued sale of the book to the public constituted “perpetuation” of the crime. Among other claims, the text accused a member of the Communist Party and former Uruguayan legislator of collaborating with the military while under arrest during the dictatorship (1973-1985) by identifying their comrades.<sup>542</sup> As of the publication deadline of this report, no information has been received on developments in the case.

407. In this respect, the Office of the Rapporteur recalls that Article 13 of the Convention prohibits prior censorship, which includes a prohibition of seizing or prohibiting the distribution of printed material. The Convention allows for the imposition of subsequent sanctions that are proportionate and necessary in a democratic society, meaning they must adhere to a strict test of proportionality.

408. The Office of the Special Rapporteur was informed that on September 9, an appeals court ordered the file in a lawsuit against weekly newspaper *Búsqueda* definitively closed. The lawsuit had been brought in 2009 by former senator Leonardo Nicolini following a 2007 article that the politician found damaging to his honor<sup>543</sup>. On September 15, an official with the council of the department of Treinta y Tres withdrew a lawsuit for defamation against journalists with the radio station *FM Conquistador* and several council members.<sup>544</sup>

409. The Office of the Special Rapporteur was informed that on July 21, the Uruguayan government began a process to draft a new Radio and Television Act to regulate audio-visual communications services on different technological platforms, promoting plurality and diversity. The

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<sup>541</sup> Legislative Branch of the Oriental Republic of Uruguay. July 15, 2009. Law 18.515. *Media*. Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18515&Anchor>; IACHR. Press Release No. R38/09. June 22, 2009. *The Office of the Special Rapporteur for Freedom of Expression expresses its satisfaction with the recent decisions on the issue of freedom of expression adopted by the legislative assemblies of Uruguay and Québec, Canada, and by the highest courts of justice in Brazil and Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>; Committee to Protect Journalists (CPJ). June 11, 2009. *CPJ hails approval of press law by Uruguayan Congress*. Available at: <http://www.cpj.org/2009/06/cpj-hails-approval-of-press-law-by-uruguayan-congr.php>; Reporters without Borders. July 9, 2009. *Decriminalization of press offenses promulgated by Head of State*. Available at: <http://www.rsf.org/La-despenalizacion-de-los-delitos.html>; International Federation of Journalists (FIP in its Spanish acronym)/IFEX. June 24, 2009. *IFJ welcomes legislative changes eliminating “press crimes.”* Available at: [http://www.ifex.org/uruguay/2009/06/26/press\\_crimes\\_eliminated/](http://www.ifex.org/uruguay/2009/06/26/press_crimes_eliminated/)

<sup>542</sup> La República. August 4, 2010. *Public Prosecutor requests book “Secrets of the Communist Party” confiscated*. Available at: <http://www.larepublica.com.uy/politica/419284-fiscal-pidio-requisita-del-libro-secretos-del-pcu>; El Corresponsal. August 4, 2010. *Two years of prison sought for nationalist Aguas Corrientes mayor along with confiscation of book written by him, entitled “Secrets of the Communist Party.”* Available at: <http://diarioelcorresponsal.blogia.com/2010/080401-piden-condena-de-2-anos-para-el-alcalde-nacionalista-de-aguas-corrientes-y-la-re.php>

<sup>543</sup> Inter-American Press Association. November 2010. 66th General Assembly. Information by Country: Uruguay Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=26&inford=792&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&inford=792&idioma=us)

<sup>544</sup> FM Conquistador. September 15, 2010. *Complaint against journalists withdrawn by architect Susana Martínez in lawsuit against National Party council members*. Available at: <http://www.fmconquistador.com/vernoticias.php?ids=4151>; Uruguay Press Association. September 11, 2010. *Uruguay Press Association rejects defamation trial against Treinta y Tres journalists*. Available at: <http://www.apu.org.uy/noticias/apu-rechaza-juicio-por-difamaciona-periodistas-contra-treinta-y-tres>

new law would also promote transparent, equal, and egalitarian citizen access to the use of the electromagnetic spectrum. The Executive Branch has expressed its commitment that the new legislation will not establish any content regulation that could interfere with the editorial stances of the media.<sup>545</sup> As of this report's publication deadline, the bill is being drafted.

410. The Uruguayan government's Access to Public Information Unit (UAIP in its Spanish acronym) resolved on October 6 that the Courts have the legal obligation to inform the general public with regard to their case files, including the identities of the parties and the court where each case is being heard. According to the information received by the Office of the Special Rapporteur, the decision results from a complaint filed by the Center for Archives and Access to Public Information (Cainfo in its Spanish acronym) over the Supreme Court of Justice's refusal to provide information requested for the preparation of an academic study. The UAIP commented that "the Judicial Branch is included in the (transparency) requirements" of Law 18.381, the Right to Access Public Information, promulgated in October 2008.<sup>546</sup>

411. The Office of the Special Rapporteur was informed that on August 2, the Executive Branch issued the regulations for the Right and Access to Public Information Acct, which permit the law to be applied and its established procedures executed.<sup>547</sup> According to the information received, the government has committed to adopting important mechanisms for applying the legislation, given that two years after the law took effect a high rate of failure of compliance with the law's transparency obligations is reported. A report from Cainfo found that of the 66 institutions evaluated during 2010, 61% qualified in the mid or low levels as far as adherence to the legislation. That is to say, they complied with less than 60% of the law's provisions.<sup>548</sup> The Office of the Rapporteur invites the State to continue with and strengthen its efforts toward implementing the existing legislation.

## 27. Venezuela<sup>549</sup>

412. The Commission notes that notes that Rafael Segundo Pérez, a former Carabobo state police officer, was sentenced to 25 years in prison after being convicted of the crimes of contract killing and conspiracy to commit crime, all in connection with the murder of journalist Orel Zambrano. The Carabobo Sixth Examining Court delivered the sentence on May 19. According to the information received, the journalist was murdered on January 16, 2009, in the city of Valencia.

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<sup>545</sup> Presidency of the Oriental Republic of Uruguay. July 21, 2010. *Uruguay commits to drafting a new radio broadcasting law*. Available at: <http://www.presidencia.gub.uy/sci/noticias/2010/07/2010072204.htm>; La República. July 22, 2010. *New Law of Radio and TV introduced*. Disponible en: <http://www.larepublica.com.uy/politica/417989-presentan-una-nueva-ley-de-radio-y-tv>

<sup>546</sup> Center for Archives and Access to Public Information. October 6, 2010. *Ruling: Judicial Branch required to report to citizens*. Available at: <http://www.cainfo.org.uy/noticias/3-general/113-unidad-de-acceso-a-la-informacion-publica-el-poder-judicial-esta-obligado-a-informar-a-los-ciudadanos>. Inter-American Press Association (IAPA). November 2010. 66th General Assembly. Information by Country: Uruguay Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=26&infoid=792&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&infoid=792&idioma=us)

<sup>547</sup> Presidency of the Oriental Republic of Uruguay. August 2, 2010. Decree regulating the application of the law and execution of the proceedings established under law No. 18.381 dated October 17, 2008. Available at: [http://www.cainfo.org.uy/images/Documentos/Legislacion/decreto\\_reglamentario\\_leyuy.pdf](http://www.cainfo.org.uy/images/Documentos/Legislacion/decreto_reglamentario_leyuy.pdf); El País. August 4, 2010. *Regulations under information access law established*. Available at: <http://www.elpais.com.uy/100804/pnacio-506117/politica/reglamentan-ley-de-acceso-a-informacion>

<sup>548</sup> Center for Archives and Access to Public Information. November 2010. Online Active Transparency Index. *The Uruguayan State and the providing of public information through the Internet*. Pages 4 and 34, Available at: [http://www.cainfo.org.uy/images/Publicaciones/libro\\_ita.pdf](http://www.cainfo.org.uy/images/Publicaciones/libro_ita.pdf)

<sup>549</sup> This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

Orel Zambrano was director of the political magazine *ABC*, an editorial writer for the newspaper *Notitarde* and vice president of a private radio station, *Radio América 890 AM*. According to the reports received, the journalist had reported that members of the Makled family, in the state of Carabobo, were allegedly involved in the drug trafficking business. In August, Colombian authorities detained the alleged Venezuelan drug trafficker Walid Makled. In November, President Juan Manuel Santos promised the Venezuelan State that the suspect would be swiftly extradited to stand trial for his links to a number of murders, one of which was that of Orel Zambrano. Two other persons are also being prosecuted in Venezuela for their involvement in the journalist's murder.<sup>550</sup>

413. The Commission also notes that on August 12, the Zulia State Legislative Council unanimously approved the Zulia State Transparency and Information Access Act. According to the wording of the first article of that law, the law is intended to facilitate citizen oversight of state public affairs, to ensure that personal information is properly protected within the state government, and enable persons to participate in decision-making and oversight of the business of government in the state of Zulia.<sup>551</sup>

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

414. The Commission is troubled by a number of incidents in which State agents or private citizens allegedly behaved aggressively toward persons working in the communications business during coverage of the news. According to information received, on June 7 a group of motorcyclists allegedly hurled five Molotov cocktails at the Torre de la Prensa (Press Building), headquarters of *Cadena Capriles* in Caracas. *Cadena Capriles* publishes newspapers, magazines and hosts news portals. Although the explosive devices never detonated, they did alarm the workers in the building. No organization claimed responsibility for the attack.<sup>552</sup> According to what the IACHR was told, on June 8 the Public Prosecutor's Office launched an investigation and performed technical tests and procedures at the scene of the incident.<sup>553</sup> In August 2009, a number of journalists working for Capriles had allegedly been the victims of violent assaults, presumably by government sympathizers.<sup>554</sup> Nevertheless, as of the date this report went to press, none of the assailants had been brought to trial. Early on the morning of August 3, motorcyclists threw two homemade bombs at the offices of the newspaper *Las Noticias de Cojedes*, in San Carlos, Cojedes state. According to the information received, one of the explosive devices blew up against a car, and the other against the façade of the building that is home to the newspaper. The newspaper publishes complaints of community problems and prior to the attack had investigated cases of discoveries of spoiled food from the Venezuelan Food Producer and Distributor [*Productora y*

<sup>550</sup> Public Prosecutor's Office. May 19, 2010. *Former Carabobo police office sentenced to 25 years for murder of Orel Sambrano and Francisco Larrazábal*. Available at: <http://www.ministeriopublico.gob.ve/web/guest;jsessionid=99E6CE71A48F599F434E36B1B56CBA05>; Reporters Without Borders. May 21, 2010. *First suspect convicted in journalist Orel Sambrano's murder*. Available at: <http://en.rsf.org/venezuela-breakthrough-arrests-of-suspected-02-03-2010,36575.html>; Agencia EFE. November 21, 2010. *Chávez says he believes Santos' word on Wakled's extradition*. Available at: <http://www.sandiegored.com/noticias/543/Chavez-dice-que-cree-en-la-palabra-de-Santos-sobre-extradicion-de-Makled/>.

<sup>551</sup> Zulia State Legislative Council. August 12, 2010. *Transparency Law unanimously approved*. Available at: [http://www.clezulia.gov.ve/index.php?option=com\\_content&view=article&id=4474%3Aley-de-transferencia-fue-aprobada-por-unanimidad&catid=1&Itemid=1](http://www.clezulia.gov.ve/index.php?option=com_content&view=article&id=4474%3Aley-de-transferencia-fue-aprobada-por-unanimidad&catid=1&Itemid=1)

<sup>552</sup> Associated Press and France Presse. June 9, 2010. *Five Molotov cocktails hurled at various Venezuelan newspapers*. Available at: [http://www.clarin.com/mundo/america-latina/Lanzan-bombas-molotov-diaros-Venezuela\\_0\\_277172330.html](http://www.clarin.com/mundo/america-latina/Lanzan-bombas-molotov-diaros-Venezuela_0_277172330.html)

<sup>553</sup> Public Prosecutor's Office. June 9, 2010. *PPO stepped up investigation into explosives thrown at Cadena Capriles*. Available at: [http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal\\_content/56/10136/49993](http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/49993)

<sup>554</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 705.

*Distribuidora Venezolana de Alimentos*] (PDVAL). The Public Prosecutor's Office launched an investigation.<sup>555</sup>

415. On September 26 in El Tigre, Anzoátegui state, persons presumed to be PSUV (*Partido Socialista Unido de Venezuela*, United Socialist Party of Venezuela) sympathizers allegedly attacked Sara Vargas, a journalist with channel Órbita TV, and Susana Quijada, a journalist with TV Sur, as they were covering the moment when the former mayor and member of the opposition, Ernesto Paraqueima, cast his vote. According to the reports received, shortly after interviewing the former mayor, who had been beaten up by supporters of the party in power, someone had grabbed the camera from the Órbita TV cameraman. The camera, which was on the ground broken, was picked up and hurled at the head of Sara Vargas; in trying to avoid the blow, she cut her hand and needed ten stitches. In the same incident, government sympathizers had reportedly surrounded Susana Quijada and grabbed her microphone.<sup>556</sup>

416. The IACHR received information on an attack that journalist Andrea Rocha and cameraman Víctor Davalí, from the press retinue of opposition deputy Ismael García, reportedly experienced after recording the destruction that presumed government sympathizers had allegedly caused at the scene of a campaign event staged by the Podemos party on May 28. When members of the group realized that they had been caught on film, they demanded that the journalists hand over the film. When the cameraman refused, the group surrounded him, and beat and kicked him. Andrea Rocha managed to safely reach in a vehicle and get away. One member of the group reportedly threw a stone that broke the vehicle's window and injured the reporter's arm.<sup>557</sup>

417. On September 25, the Vice President of Venezuela, Elías Jaua, allegedly shoved a journalist from *Globovisión*, Johnny Ficarella, when he tried to interview him about the flooding caused by the rains in the community of Marapa, Vargas state. According to the information received, within minutes soldiers tried to confiscate the film from the *Globovisión* cameraman.<sup>558</sup> On September 30, another *Globovisión* journalist, Beatriz Adrián, was allegedly shoved and beaten by a group of persons, as she was asking for information in a shelter of victims of the rains. According to what was reported to the Commission, the attack allegedly happened in the presence of Vice President Elías Jaua, who reportedly did not intervene to stop the attack.<sup>559</sup> On October 17, a group of persons presumed to be supporters of the government allegedly attacked the teams of journalists from the newspapers *El Siglo* and *Notitarde* as they were covering the process of collecting signatures for a petition to protest the fact that specimens were being sent from the Valencia

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<sup>555</sup> Public Prosecutor's Office. August 4, 2010. *PPO investigates detonation of 2 explosive devices intended for Las Noticias de Cojedes*. Available at: [http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal\\_content/56/10136/52738](http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/52738)

<sup>556</sup> El Universal. September 26, 2010. *Voting in Anzoátegui marked by aggression and taunting*. Available at: [http://www.eluniversal.com/2010/09/26/v2010\\_ava\\_proceso-en-anzoategu\\_26A4523533.shtml](http://www.eluniversal.com/2010/09/26/v2010_ava_proceso-en-anzoategu_26A4523533.shtml); El Nacional. September 26, 2010. *Former mayor of El Tigre and journalists attacked by PSUV sympathizers*. Available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/157171/Sufragio%202010/Ex-alcaldede-El-Tigre-y-periodistas-fueron-agredidos-por-simpatizantes-de-PSUV](http://el-nacional.com/www/site/p_contenido.php?q=nodo/157171/Sufragio%202010/Ex-alcaldede-El-Tigre-y-periodistas-fueron-agredidos-por-simpatizantes-de-PSUV)

<sup>557</sup> Instituto de Prensa y Sociedad. June 9, 2010. *Press team the target of violence*. Available at: [http://www.ifex.org/venezuela/2010/06/09/aragua\\_protest/es/](http://www.ifex.org/venezuela/2010/06/09/aragua_protest/es/)

<sup>558</sup> Colegio Nacional de Periodistas. September 25, 2010. *President of National Press Association asks Vice President Jaua for respect*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=626>

<sup>559</sup> Colegio Nacional de Periodistas. October 1, 2010. *National Press Association communiqué responds to attack on Beatriz Adrián*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/885-comunicado-del-cnp-ante-agresion-a-beatriz-adrian>

Aquarium to South Korea.<sup>560</sup> On November 17, teams of journalists from *Globovisión* and *Televén*, who were covering the damage done by the heavy rains, were said to have been attacked in Guarico, Lara state, by an official from the mayor's office and persons wearing PSUV shirts. According to the information received, the presumed assailants reportedly attempted to use force to disrupt the journalists' work.<sup>561</sup>

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

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

419. The Office of the Special Rapporteur was informed that on June 11, 2010, a criminal court in the city of Valencia convicted journalist Francisco "Pancho" Pérez and sentenced him to three years and nine months in prison and a fine of some US\$20,000 for supposed crimes of defamation against the mayor of the city of Valencia, Edgardo Parra. The court also ordered additional penalties involving political disqualification and disqualification from the practice of his profession. According to the information received, the conviction was the result of a complaint concerning a column published in the newspaper *El Carabobeño* in March 2009, in which the reporter mentioned the fact that members of the mayor's family were in the municipal government.<sup>562</sup> According to the information received, on Tuesday November 30, 2010, the Carabobo State Court of Appeals overturned Pérez' conviction.<sup>563</sup> The Office of the Special Rapporteur applauds the court's ruling.

420. On March 8, 2010, Oswaldo Álvarez Paz, former governor of the state of Zulia and a member of the National Assembly, made a statement on the program *Aló Ciudadano*, aired on *Globovisión*, in which he complained that high-ranking state officials supposedly had ties to drug trafficking. The following day, PSUV deputy Manuel Villalba filed a complaint with the Public Prosecutor's Office asking that Álvarez Paz's conduct be investigated for commission of a number of offenses criminalized in Venezuela's Penal Code, including conspiracy against the republican form of government, public instigation to commit crime, public intimidation, false information and creating uncertainty among the public. On March 22, Álvarez Paz was detained and the court confirmed his detention on March 24. Álvarez Paz was held in a unit of DISIP.<sup>564</sup> Álvarez Paz was held in custody

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<sup>560</sup> *Espacio Público*. October 18, 2010. *Journalists assaulted in Carabobo state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/898-agreden-a-periodistas-en-el-estado-carabobo>

<sup>561</sup> Colegio Nacional de Periodistas. *National Press Association deplors assault on journalists in Lara*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=648>

<sup>562</sup> Cf. Hearing on the right to freedom of expression and information in Venezuela, held on October 29, 2010, during the Commission's 140<sup>th</sup> Session; *Espacio Público*. June 11, 2010. *Espacio Público rejects conviction of journalist Francisco Pérez*. Available at: <http://www.espaciopublico.org/index.php/inicio-mainmenu-1/1-libertad-de-expresi/805-espacio-publico-rechaza-condena-contra-periodista-francisco-perez>

<sup>563</sup> El Universal. *Conviction of "Pancho" Pérez overturned*. December 1, 2010. Available at: [http://www.eluniversal.com/2010/12/01/pol\\_art\\_anulan-fallo-contra\\_2123719.shtml](http://www.eluniversal.com/2010/12/01/pol_art_anulan-fallo-contra_2123719.shtml). Agencia Carabobeña de Noticias. *"Pancho Pérez" conviction overturned*. November 30, 2010. Available at: <http://www.acn.com.ve/regional/item/18950-este-30-de-noviembre-le-dictan-sentencia-a-pancho-p%C3%A9rez.html>

<sup>564</sup> El Universal. March 23, 2010. *Oswaldo Álvarez Paz taken into custody and held in El Helicoide*. Available at: [http://www.eluniversal.com/2010/03/23/pol\\_art\\_detienen-y-recluyen\\_23A3629571.shtml](http://www.eluniversal.com/2010/03/23/pol_art_detienen-y-recluyen_23A3629571.shtml). LA Times. March 25, 2010. *Venezuela ex - governor to remain in jail without bail over drug remarks*. Available at: <http://articles.latimes.com/2010/mar/25/world/la-fg-venezuela-governor25-2010mar25>

for almost two months. On May 7, 2010, the Public Prosecutor's Officer dropped the "conspiracy" charge, which had been the most serious charge, carrying a penalty of six to eight years' imprisonment under Venezuelan law.<sup>565</sup> As a result, on May 13, 2010, he was released on bail; as conditions for his release, he was prohibited from leaving the country, had to appear before the court hearing the case every fifteen days, and was prohibited from making any public statements about the case against him.<sup>566</sup> As of the date this report went to press, the case against Álvarez Paz was still open and his trial had not yet been held.<sup>567</sup>

421. On March 24, Congressional Deputy Manuel Villalba also asked the Public Prosecutor's Office to launch an investigation into Guillermo Zuloaga, president of *Globovisión*, for statements made at an assembly of the Inter-American Press Association.<sup>568</sup>

422. On March 25, 2010, the IACHR expressed its deep concern over the use of the State's punitive power to criminally prosecute persons whom the authorities consider to be political opponents in Venezuela.<sup>569</sup> The IACHR also stated that "the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power in Venezuela to criminalize human rights defenders, penalize peaceful social protest, and persecute political dissidents through the criminal justice system."<sup>570</sup> The IACHR underscored the fact that "it is extremely troubling that those who make allegations or state opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The public statements made by many government officials supporting the detention of Álvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals."<sup>571</sup>

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<sup>565</sup> El Universal. May 7, 2010. *Álvarez Paz near release on bail*. Available at: [http://politica.eluniversal.com/2010/05/07/pol\\_art\\_alvarez-paz-a-pocos\\_1891456.shtml](http://politica.eluniversal.com/2010/05/07/pol_art_alvarez-paz-a-pocos_1891456.shtml)

<sup>566</sup> IFEX. May 19, 2010. Former governor granted parole after two months in detention. Available at: [http://www.ifex.org/venezuela/2010/05/19/alvarez\\_paz\\_parole/19](http://www.ifex.org/venezuela/2010/05/19/alvarez_paz_parole/19) de mayo de 2010. El País. May 14, 2010. *Political opponent who linked Chávez to ETA and FARC released*. Available at: [http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint\\_10/Te](http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint_10/Te)  
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<sup>567</sup> According to information received from Juan Carlos Álvarez, by e-mail dated November 13, 2010 (on record with the Office of the Special Rapporteur for Freedom of Expression). Aporrea. August 10, 2010. *Antonio Rivero told media outlets that he knew beforehand that the Military Prosecutor would investigate him*. Available at: <http://www.aporrea.org/oposicion/n163204.html>. Aporrea. August 14, 2011. *Court orders precautionary measures for Antonio Rivero*. Available at: <http://www.aporrea.org/actualidad/n163383.html>. On this issue, it is worth noting that the State of Venezuela said that Rivero "hasn't been detained or subjected to any kind of trial, as the Commission stated." Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression. It is worth noting that, as stated in the relevant paragraph, the Commission never stated that Rivero has been "detained."

<sup>568</sup> Diario El Impulso. March 24, 2010. *Manuel Villalba requested investigation of Guillermo Zuloaga*. Available at: <http://www.elimpulso.com/pages/vernoticia.aspx?id=99763>

<sup>569</sup> IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

<sup>570</sup> IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

<sup>571</sup> IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

423. The IACHR also learned that in August, the military prosecutor's office charged former director of Civil Protection, retired general and independent candidate for the National Assembly, Antonio Rivero, with the crimes of slandering the Armed Forces and disclosing private or secret military information. The charges carry a sentence of three to 10 years in prison. General Rivero went into retirement in April 2010, and shortly thereafter called a press conference where he denounced Cuba's supposed influence over the Armed Forces. The military justice system ordered precautionary measures that prohibited Rivero from leaving the country and from making statements to the domestic or international media about information that might "compromise the Bolivarian National Armed Forces."<sup>572</sup>

424. On March 30, a Táchira state court convicted Gustavo Azócar, a journalist and former candidate for the office of Governor of Táchira state, and sentenced him to two and a half years' imprisonment, with conditional release, for the crime of "unlawful enrichment from the business of government." The court also imposed an additional penalty which was to disqualify Azócar from participation in politics. According to the information reported to the Commission, the case started in 2000 when a complaint was filed in the Public Prosecutor's Office when the station at which the journalist then worked allegedly stopped airing commercials advertising a state entity. Azócar was prohibited from speaking about his case and in July 2009 was incarcerated for eight months for publishing, on a personal blog site, news related to his legal situation. Media organizations believe that Azócar's conviction was politically motivated, as he was critical of the local government; they also believe it was in retaliation for accusations he made alleging corruption.<sup>573</sup>

425. The Commission was also informed of a number of court cases against persons who expressed comments critical of the authorities. The Ministry of the People's Power for Communications and Information allegedly requested that journalist and humorist Laureano Márquez be prosecuted for an editorial he wrote on January 29, in which he imagined the day when a presidential succession would take place in Venezuela.<sup>574</sup> In the opinion of the Ministry of the People's Power for Communications and Information, the humorous article was "a blatant call for the public to refuse to recognize the constitutional order and incited it to violence," an "invitation to a genocidal and terrorist plot to overthrow the government." The Ministry also announced that it would file a criminal complaint against the newspaper so that the "appropriate" sanctions might be enforced.<sup>575</sup> Regarding this issue, the State of Venezuela stated that Márquez "only suffered criticism through the mass media by some citizens who thought that he was calling for the disregard of the constitutional order"<sup>576</sup>. It is worth noting that public officials, though entitled to their right to freedom of expression, are subject to strict limitations as a consequence of their particular duties and responsibilities<sup>577</sup>.

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<sup>572</sup> El Universal. August 9, 2010. *Military Prosecutor's Office charges Antonio Rivero*. Available at: [http://www.eluniversal.com/2010/08/09/pol\\_ava\\_fiscalia-militar-imp\\_09A4317051.shtml](http://www.eluniversal.com/2010/08/09/pol_ava_fiscalia-militar-imp_09A4317051.shtml); New York Times. 11 de agosto de 2010. *Ex - General in Venezuela, a Chávez Foe, faces inquiry*. Disponible en: <http://www.nytimes.com/2010/08/12/world/americas/12venez.html>.

<sup>573</sup> Public Prosecutor's Office. March 27, 2010. *Journalist Gustavo Azócar sentenced to prison for two years six months*. Available at: [http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal\\_content/56/10136/36783](http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/36783)

<sup>574</sup> Tal Cual Digital. January 29, 2010. *A Venezuela without Esteban*. Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=31096&secid=44>. See also Reporte 360. January 29, 2010. *Minci will charge Laureano Márquez*. Available at: <http://www.reporte360.com/detalle.php?id=24154>

<sup>575</sup> Ministry of the People's Power for Communications and Information. Communiqué dated January 29, 2010. Available at: [http://www.minci.gob.ve/noticias/1/195620/comunicado\\_del\\_ministerio.html](http://www.minci.gob.ve/noticias/1/195620/comunicado_del_ministerio.html).

<sup>576</sup> Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

<sup>577</sup> On this issue, see *infra* par. \*\*\* 469.

426. A baseball fan, Miguel Hernández Souquett, was tried on December 1, 2010, for having worn a shirt that read “Hugo, Screw Your Revolution.” He could receive a sentence of 3 to 6 years in prison for the crime of offending heads of government. According to the information reported to the Commission, Miguel Hernández wore the shirt at a sports event on the island of Margarita. As he was leaving the stadium, he was allegedly stopped by the police and taken to a unit of the Bolivarian Intelligence Service (SEBIN). A court ordered that he be released, but he was required to make regular appearances before the judge. He was later notified that he would stand trial.<sup>578</sup> In the observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010, the State informed that “this citizen is not [currently] detained”<sup>579</sup>.

427. On November 12, 33 people were reportedly arrested at a Caracas metro station for having demonstrated to protest train delays and service problems.<sup>580</sup>

428. On June 8, the Health Commission of the Anzoátegui Legislative Council launched an investigation into the Director of the Tropical Medicine Center of the Universidad de Oriente, Antonio Morocoima, for statements made concerning Chagas disease and a possible outbreak of that sickness. According to the information received, Venezuela’s Parasitological Association supported Morocoima and asked authorities to rely on research papers which, the Association said, would back up what the scientist was saying.<sup>581</sup>

429. The IACHR received information to the effect that on April 7, *Globovisión* journalist Beatriz Adrián was reportedly held for several hours at the Directorate of Military Intelligence (DIM) for having taped an interview in the parking lot of a business center located in the building that houses the Office of Comprehensive Security of the Armed Forces Social Security Institute (IPSFA). According to the information received, the journalist was interviewing someone who had been summoned to make a statement in the Office of the Military Prosecutor.<sup>582</sup>

430. The Office of the Special Rapporteur received information to the effect that members of the Venezuelan Army had detained Colombian journalists Philip Moreno, Milton Uscátegui and Paula Osorio on July 16. According to the reports received, the Venezuelan military held the journalists in custody for two days. The news material that the journalists had gathered (a video containing recordings taken on Venezuelan soil) were said to have been confiscated by members of the Venezuelan Army. According to the reports received, the journalists were deported to Colombia on July 18, 2010. On August 3, 2010, the Office of the Special Rapporteur for

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<sup>578</sup> Espacio Público. November 12, 2010. *Fan will have to stand trial for anti-revolutionary message on T-shirt*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/914-fanatico-debera-comparecer-ante-tribunales-por-mensaje-antirrevolucionario-en-franela>

<sup>579</sup> Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights by the IACHR, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

<sup>580</sup> El Nacional. November 12, 2010. *33 people detained after protests at Caracas metro*. Available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/165218/Ciudad/Protesta-en-estaci%C3%B3n-del-Metro-de-Propatria-dej%C3%B3-33-personas-detenas](http://el-nacional.com/www/site/p_contenido.php?q=nodo/165218/Ciudad/Protesta-en-estaci%C3%B3n-del-Metro-de-Propatria-dej%C3%B3-33-personas-detenas)

<sup>581</sup> Sociedad Parasitológica Venezolana. May 27, 2010. *Comunicué from the Sociedad Parasitológica Venezolana*. Available at: <http://www.asovac.org/2010/05/31/comunicado-de-la-sociedad-parasitologica-venezolana/>. Espacio Público. June 11, 2010. *Parliament of the state of Anzoátegui begins investigation against doctor from that state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/803-parlamento-del-estado-anzoategui-inicio-investigacion-en-contra-de-medico-de-esa-entidad>

<sup>582</sup> Federación de Periodistas de América Latina y el Caribe. April 8, 2010. *FEPALC joins the SNTP in condemning the detention of a Venezuelan journalist*. Available at: [http://www.fepalc.org/noticias\\_det.php?Itemid=516](http://www.fepalc.org/noticias_det.php?Itemid=516)

Freedom of Expression asked the Venezuelan State to provide information regarding these events. Thus far, it has not replied.<sup>583</sup>

### C. Ban on publishing certain materials in the print media

431. On August 13, 2010, the newspaper *El Nacional* published on its front page a picture of nude and presumably lifeless bodies inside what was said to be the Bello Monte morgue in Caracas, Venezuela. The photograph was accompanied by an article on the increase in violent crime in Caracas. After officials publicly complained about the photograph published on the cover of *El Nacional*, the newspaper *Tal Cual* published the same photograph on August 16, 2010 out of solidarity with *El Nacional*.<sup>584</sup>

432. As a result of the photograph published in the two newspapers, representatives from the Ombudsperson's Office filed a petition seeking protection in which they requested that all the print media be ordered to refrain from publishing images that are "violent, bloody and grotesque (sic), irrespective of whether they are depicting events and inasmuch as such pictures violate the mental and moral integrity of children and adolescents."<sup>585</sup> Representatives of the Public Prosecutor's Office brought a similar action against the newspaper *El Nacional*, to protect the collective and diffuse rights of children and adolescents. In that action, the Public Prosecutor's Office asked that the court order "that [...] publication of images, information and advertising of any type, containing blood, weapons, messages of terror, physical aggression, images that depict war and messages on killing and death be prohibited as they can affect the psychological health of children and adolescents."<sup>586</sup>

433. On August 16, 2010, the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents, William A. Páez, ruled that the right to freedom of expression is not absolute and has limits when it affects other basic rights, such as "the right to have one's physical, mental and moral integrity respected; the right to timely, truthful and impartial information, especially when it conflicts with the best interests of children and adolescents, which always takes preference."<sup>587</sup> The magistrate therefore decided that "the newspaper *El Nacional* is prohibited from publishing images, information, and advertisements of any type that contain blood, weapons, messages of terror, physical assaults, images that evoke content about war, and messages about deaths that could alter the psychological well-being of children and adolescents

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<sup>583</sup> El Tiempo. July 16, 2010. *Colombian journalists detained in Venezuela held incommunicado*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7810897>

<sup>584</sup> Committee to Protect Journalists. August 20, 2010. *Venezuelan censorship over morgue photos is selective*. Available at: <http://cpj.org/blog/2010/08/venezuelan-censorship-over-morgue-photos-is-select.php>. El Universal. August 16, 2010. *Newspaper Tal Cual denounced for Publishing Photo of Morgue*. Available at: [http://www.eluniversal.com/2010/08/16/pol\\_ava\\_denuncian-a-diario-t\\_16A4345011.shtml](http://www.eluniversal.com/2010/08/16/pol_ava_denuncian-a-diario-t_16A4345011.shtml)

<sup>585</sup> Office of the Ombudsperson of the Bolivarian Republic of Venezuela. August 16, 2010. *Ombudsperson's Office asks print media to refrain from publishing images that adversely affect children and adolescents*. Available at: [http://www.defensoria.gob.ve/index.php?option=com\\_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79](http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79)

<sup>586</sup> Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: [http://www.el-nacional.com/www/files/ADMISION\\_DICTADA\\_MEDIDA\\_PREVENTIVA\\_INNOMINADA\\_17\\_8\\_2010.pdf](http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf)

<sup>587</sup> Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: [http://www.el-nacional.com/www/files/ADMISION\\_DICTADA\\_MEDIDA\\_PREVENTIVA\\_INNOMINADA\\_17\\_8\\_2010.pdf](http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf)

who reside in the Bolivarian Republic of Venezuela, until the merits of the present petition seeking protection are decided.”<sup>588</sup>

434. On August 17, 2010, the same magistrate decided the merits of the petition brought by the Ombudsperson’s Office seeking an order of protection and prohibited the newspaper *Tal Cual* from “publishing images containing violent, bloody or grotesque content, irrespective of whether they are depicting events, and which in one way or another are detrimental to the mental and moral integrity of children and adolescents...” Applying the principle of *jura novit curia*, the court also stated that “All print media published in the Bolivarian Republic of Venezuela shall refrain from PUBLISHING IMAGES that are violent, bloody or grotesque, irrespective of whether they are depicting actual events, as they may in one way or another be detrimental to the mental and moral integrity of children and adolescents ...”<sup>589</sup> The magistrate reasoned that “when the media are used in a superficial way, heavily biased in favor of a given sector, they [the media] become a weapon wielded against the citizenry.”<sup>590</sup>

435. On August 19, 2010, the magistrate lifted the general ban established on all the print media, but left the ban in place in the case of the newspapers *El Nacional* and *Tal Cual*.<sup>591</sup>

436. The defense of the superior interests of children and adolescents is a common objective of all nations that is protected by international law. This important interest may give rise to legal restrictions on freedom of expression, which should be clear, precise and proportional in conformity with article 13.2 of the Convention. In turn, judges have the ability to apply such restrictions in concrete cases in which they should, within the strict requirements of article 13.2, weigh the legal interests in conflict taking into account the superior interest of the child. None of these requirements is compatible with the existence of judicial decisions of an injunctive nature that impose generic prior constraints on content in an ambiguous or imprecise manner, as was ordered by the judge in the situation just discussed<sup>592</sup>.

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

437. In late late 2009 the Bureau of Social Responsibility issued Administrative Order No. 1/09 of December 22, 2009, in which it published the *Technical Standard on Domestic Audiovisual*

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<sup>588</sup> Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper “*El Nacional*,” dated August 16, 2010. Available at: [http://www.el-nacional.com/www/files/ADMISION\\_DICTADA\\_MEDIDA\\_PREVENTIVA\\_INNOMINADA\\_17\\_8\\_2010.pdf](http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf)

<sup>589</sup> Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper “*Tal Cual*,” dated August 17, 2010. Available at: [http://static.eluniversal.com/2010/08/17/medida\\_de\\_proteccion.jpg](http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg)

<sup>590</sup> Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper “*Tal Cual*,” dated August 17, 2010. Available at: [http://static.eluniversal.com/2010/08/17/medida\\_de\\_proteccion.jpg](http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg)

<sup>591</sup> Agencia Venezolana de Noticias. August 19, 2010. *Ban on publishing violent images in print media lifted*. Available at: <http://www.avn.info.ve/node/12388>

<sup>592</sup> At the time, the IACHR’s Office of the Special Rapporteur for Freedom of Expression and the UN Special Rapporteur for Freedom of Expression, in an August 19, 2010 joint press release, expressed their concern regarding these events. Press Release R82/10. Rapporteurs for Freedom of Expression concerned over Prior Censorship in Venezuela. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=811&IID=1>

*Production Services* (hereinafter, the “Technical Standard”).<sup>593</sup> This Technical Standard extends the reach of the Law so that it applies to cable television channels, unless:

“1. Over 70% of a channel’s weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.// 2. When more than 70% of the total time of a channel’s weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.”<sup>594</sup>

438. As can be inferred from the text of the provision cited above, the Technical Standard divides cable television channels into “domestic” and “international”. Whereas the system created by the Technical Standard applies to domestic cable television channels, which implies enforcement of the Law on Social Responsibility in Radio and Television, that system does not apply to international cable television channels.<sup>595</sup> The Technical Standard establishes certain specific obligations, such as broadcasting of government messages or speeches (Article 5); a ban prohibiting commercial interruption of programs (Article 6); registration of these channels in the record created for that purpose (Article 10); and others. Finally, the conditions it imposes in the area of advertising are more restrictive than the conditions imposed under the Law on Social Responsibility in Radio and Television; whereas the Law on Social Responsibility allows five commercial interruptions every 60 minutes, the Technical Standard bans any commercial interruption and confines advertising to the intervals between various programs.<sup>596</sup>

439. The Technical Standard establishes a procedure where cable channels will be evaluated to determine whether they qualify as “domestic” or “international”. Channels that were already broadcasting when the norm was approved are to submit to CONATEL,<sup>597</sup> “within fifteen (15) working days from the date of publication of this technical standard, the paperwork to show that they either are or are not purveyors of domestic audiovisual production services for a sample period of four (4) months of programming aired prior to publication of the standard.”<sup>598</sup> The

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<sup>593</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>594</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 3. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>595</sup> In this connection, Article 4 of the Technical Standard provides that “Domestic Audiovisual Production Services shall comply with the provisions of the Law on Social Responsibility in Radio and Television.” Available [in Spanish] at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>596</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 6. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>597</sup> See, in this regard, CONATEL. December 2009. *Guide to doing notifications for Domestic Audiovisual Production Services*. Available at: [http://docs.google.com/viewer?a=v&q=cache:wSCBZFIZ01kJ:www.conatel.gob.ve/download/Servicio\\_Produccion\\_Nacional\\_Audiovisual/Guia\\_Notificacion\\_PNA\\_%2812-2009%29.pdf+para+los+servicios+de+Producci%C3%B3n+Nacional+Audiovisual+%22Gu%C3%ADa+para+realizar+notificaciones+%22+site:www.conatel.gob.ve&hl=en&gl=us&pid=bl&srcid=ADGEESiilcads2V6qHGI5mtWFieEj6Fynro3K9xhit4kMnrhSXR2mzBYchVagBvIF1wQ7Ftf6JgiBEUbkxJI7iDLYFjoxrLbS4r4XEU7XXOv6HoQ3-JiKtEjav0\\_HDZPJ0R08j6pRfRm-&sig=AHIEtbTUEin-D4wSYmTqSx92OAXpf2ZliQ&pli=1](http://docs.google.com/viewer?a=v&q=cache:wSCBZFIZ01kJ:www.conatel.gob.ve/download/Servicio_Produccion_Nacional_Audiovisual/Guia_Notificacion_PNA_%2812-2009%29.pdf+para+los+servicios+de+Producci%C3%B3n+Nacional+Audiovisual+%22Gu%C3%ADa+para+realizar+notificaciones+%22+site:www.conatel.gob.ve&hl=en&gl=us&pid=bl&srcid=ADGEESiilcads2V6qHGI5mtWFieEj6Fynro3K9xhit4kMnrhSXR2mzBYchVagBvIF1wQ7Ftf6JgiBEUbkxJI7iDLYFjoxrLbS4r4XEU7XXOv6HoQ3-JiKtEjav0_HDZPJ0R08j6pRfRm-&sig=AHIEtbTUEin-D4wSYmTqSx92OAXpf2ZliQ&pli=1)

<sup>598</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

provision also states that if channels fail to produce the required documentation, they will automatically be regarded as Domestic Audiovisual Production Services.

440. Finally, the last paragraph of Transitory Provision One requires that cable television providers exclude “those audiovisual production services that have failed to produce for the National Telecommunications Commission the documentation to which this article refers and those that are not listed in the register of domestic audiovisual production services.”<sup>599</sup>

441. A number of earlier reports have documented the tension between government authorities and channel RCTV due to the latter’s editorial position. The authorities have described the channel as “horsemen of the Apocalypse”, “fascists”, the force behind “a campaign of terrorism against the people, the law and the Republic,” “liars, perverts, immoral people, rebels and terrorists” and other epithets.<sup>600</sup> In 2007, its license expired and was not renewed.<sup>601</sup> Around the middle of that year, RCTV began to broadcast on cable television, which meant that the provisions of the Law on Social Responsibility in Radio and Television did not apply to it. As previously observed, the language of that law is too vague and imprecise for the law to constitute a legitimate restriction on freedom of expression. Under the Law on Social Responsibility in Radio and Television, those television channels that are subject to its provisions are required to carry the blanket presidential broadcasts. According to the information supplied by civil society organizations that monitored the use of this resource, there were 1,932 blanket official broadcasts between February 1999 and July 2009, which amounted to 52 uninterrupted days of presidential broadcasts.<sup>602</sup>

442. Given the new provision issued by CONATEL, RCTV decided to change its programming to conform to the parameters established by the Technical Standard for international channels, a decision it reported to the State on January 13, 2010.<sup>603</sup> This meant drastic programming changes, such as cancellation of a number of programs produced in Venezuela.<sup>604</sup> In the words of RCTV International, “within the established time period it applied the new programming parameters described for International Channels operating within Venezuelan territory; it did so in order to continue to function as we are, an International Channel.”<sup>605</sup>

443. Despite the programming changes RCTV made, on January 15, 2010 CONATEL classified RCTV International as a domestic audiovisual production service, and so notified RCTV International on Thursday, January 21, 2010. RCTV challenged that decision by filing a writ for

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<sup>599</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>600</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. 115.

<sup>601</sup> See IACHR. 2007 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Situation of Freedom of Expression in the Region).

<sup>602</sup> IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter 2, Para. 572. OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Available at: <http://www.IACHR.oas.org/pdf%20files/Annual%20Report%202009.pdf>

<sup>603</sup> CONATEL. Administrative Order 1,569 dated March 4, 2010. On file with Office of the Special Rapporteur. See also Apporeea. March 5, 2010. *Conatel rejects RCTV’s inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

<sup>604</sup> *El Universal*. January 21, 2010. *RCTV radically changes its programming*. Available at: [http://www.eluniversal.com/2010/01/21/til\\_art\\_rctv-cambia-radicalm\\_1731007.shtml](http://www.eluniversal.com/2010/01/21/til_art_rctv-cambia-radicalm_1731007.shtml)

<sup>605</sup> Communiqué from RCTV Internacional, dated January 21, 2010. Available at: <http://www.rctv.net/Noticias/VerNoticia.aspx?Noticiaid=8207&Categoriald=31>

constitutional protection (*amparo*).<sup>606</sup> Since the petition seeking *amparo* relief was pending before the courts, RCTV -which felt it had proven that it was an “international” channel- decided not to carry the blanket presidential broadcasts on the following Friday and Saturday. CONATEL did an evaluation of the content, using a sample taken from the four months that preceded issuance of the Technical Standard. As a result, the changes that RCTV made to its programming starting on December 22, 2009, did not count since, in order to be classified as an “international producer” under the technical standard issued on December 22, 2009, RCTV had to be in compliance with the requirements stipulated therein four months before the standard was issued, in other words, as of August 22, 2009.

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

“Cable providers are to exclude from their programming any audiovisual production services that have not produced for the National Telecommunications Commission the documentation to which this article refers, as well as those not listed in the register of domestic audiovisual production services.”<sup>607</sup>

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

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

(...)

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

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

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

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<sup>606</sup> CONATEL. Administrative Order 1,569 of March 4, 2010. On file with Office of the Special Rapporteur. See also Apporea. March 5, 2010. *Conatel rejects RCTV’s inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

<sup>607</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

(...) By now, anyone who is not in compliance... well the operators will begin to make their decisions. I guarantee you, that's how it will be!<sup>608</sup>

446. At midnight, January 23, RCTV and five other television stations went off the air.<sup>609</sup>

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

"The decision to take a cable channel off the air for alleged non-compliance with the Law of Television and Radio Social Responsibility means, for all intents and purposes, the closure of a channel for not complying with this law. This decision therefore has enormous repercussions when it comes to freedom of expression, and as such must comply with all the guarantees consecrated in law, in the Venezuelan Constitution and in the international treaties to which the Bolivarian Republic of Venezuela is a party. In particular, in order for the closing of a media outlet to be legitimate, it is necessary that prior to the exhaustion of due process, an independent and impartial state body verify that the media outlet committed an offense clearly established by law and that the agency charged with enforcing the law adequately and sufficiently justifies the decision. These minimum guarantees of due process cannot be sidestepped on the pretext that the media outlet in question is a cable channel. // In this case, the channels that were so suddenly taken off the air did not have an opportunity to defend themselves with due process and before an impartial authority. These channels were punished summarily, without due process and without justification under Venezuelan law. With this decision, the right to freedom of expression in Venezuela is further eroded, as it blocks cable media outlets from operating independently and without fear of being silenced on account of the focus of their reporting or their editorial stance."<sup>610</sup>

448. In the case described here, the cable television providers were informally warned that they should take the supposedly noncompliant television channels off the air; if they failed to do so, they would face administrative proceedings and penalties. That indirect pressure is based on retroactive enforcement of a provision that had reportedly been devised to get at RCTV specifically. This would imply a violation of the principle of legality, which presupposes that any restrictions on freedom of expression must be established by pre-existing law, written in clear and unambiguous language in order to provide the necessary "foreseeability", as both the IACHR and the European Court have recognized.<sup>611</sup> Moreover, as the Office of the Special Rapporteur for Freedom of Expression wrote in its 2009 Annual Report, "because punitive procedures can seriously affect the

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<sup>608</sup> Venezolana de Televisión. Minister Cabello's press conference. Available at: [http://www.youtube.com/watch?v=UPQOnu2WC\\_I&feature=related](http://www.youtube.com/watch?v=UPQOnu2WC_I&feature=related)

<sup>609</sup> In addition to RCTV, the following channels were also taken off the air: América TV, TV Chile, American Network, Ritmo Son and Momentum. See IFEX. January 26, 2010. *Cable companies take six television stations off the air following communications regulator's orders.* Available at: [http://www.ifex.org/venezuela/2010/01/26/cable\\_stations\\_off\\_air/](http://www.ifex.org/venezuela/2010/01/26/cable_stations_off_air/). Committee to Protect Journalists. February 25, 2010. *Venezuela bars RCTV, 5 other stations from cable, satellite.* Available at: <http://cpj.org/2010/01/venezuela-bars-rctv-5-other-stations-from-cable-sa.php>

<sup>610</sup> Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release No. R08/10 of January 24, 2010. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=781&IID=1>

<sup>611</sup> European Court of Human Rights, Case of Tolstoy Miloslavsky v. United Kingdom, Judgment of July 13, 1995, para. 37, where it wrote that: "The expression 'prescribed by law' [in Article 10 of the European Convention on Human Rights] requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them [...] to foresee, to a degree that is reasonable in the circumstances, which a given action may entail."

exercise of freedom of expression, they must provide for all of the due process guarantees enshrined in Articles 8 and 25 of the American Convention.”<sup>612</sup>

449. The IACHR was told that in February 2010, five of the six suspended cable channels were authorized to broadcast again. The exception was RCTV International. Later that same month, RCTV International agreed to its classification as a “domestic audiovisual producer.”<sup>613</sup> In effect on February 22, 2010, RCTV International notified CONATEL of its intention to provide two services: one domestic audiovisual production service, which would be subject to the laws described in the preceding paragraphs, and RCTV Mundo, an “international” channel whose “domestic” content would not exceed 29%.<sup>614</sup> On March 4, 2010, CONATEL ruled that the petition that RCTV International filed to register that channel as a domestic audiovisual production service had been submitted too late, and it would therefore take no further action. In so doing, CONATEL applied Article 32 of the Organic Law on Telecommunications which provides that no further action shall be taken on applications filed with CONATEL for licensing if, through the interested party’s fault, the proceedings come to a standstill for more than fifteen working days.<sup>615</sup> CONATEL also claimed that the documentation presented in connection with RCTV Mundo had been “inaccurate and incomplete” and, as a result, CONATEL could not do the necessary evaluation to determine whether this was a “domestic” or “international” channel.<sup>616</sup> At the present time, RCTV is not being carried by cable providers.

450. RCTV filed an action asking the courts to strike down the Technical Standard and the decision that classified RCTV as a domestic audiovisual production service. On August 11, 2010, Examining Court of the Administrative Political Chamber of the Supreme Court agreed to hear the nullification action; the next step was to be the hearing.<sup>617</sup> As of the date this report went to press the hearing had not been held.

#### **E. The *Globovisión* case**

451. *Globovisión* is a privately-owned Venezuelan television channel whose position tends to be critical of the Venezuelan government. In previous reports, the Office of the Special Rapporteur has recounted various episodes of harassment of the channel because of its editorial position. In the 2009 Annual Report the IACHR and the Office of the Special Rapporteur singled out at least six administrative proceedings that CONATEL had instituted against *Globovisión* for alleged

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<sup>612</sup> In this regard it is worth recalling that the Inter-American Court held that “Although Article 8 of the American Convention is entitled ‘Judicial Guarantees’ [in the Spanish version – ‘Right to a Fair Trial’ in the English version], its application is not strictly limited to judicial remedies, ‘but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees, so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.’” And that “although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters.” IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Broadcasting), para. 144; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 69-70.

<sup>613</sup> Reporters without Borders. February 23, 2010. *RCTV yields in order to resume broadcasting, but problem of “cadenas” remains*. Available at: [http://en.rsf.org/venezuela-rctvi-yields-in-order-to-resume-23-02-2010\\_36202.html](http://en.rsf.org/venezuela-rctvi-yields-in-order-to-resume-23-02-2010_36202.html)

<sup>614</sup> See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

<sup>615</sup> Organic Law on Telecommunications. Article 32. Available at: [http://www.tsj.gov.ve/legislacion/lt\\_ley.htm](http://www.tsj.gov.ve/legislacion/lt_ley.htm)

<sup>616</sup> See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

<sup>617</sup> See Supreme Court, Political Administrative Chamber, Examining Court. August 11, 2010. Available at: <http://www.tsj.gov.ve/decisiones/jspa/Agosto/467-11810-2010-10-657.html>

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>618</sup> As of the date this report went to press, the outcome of these proceedings was still unknown.

452. Between March 19 and 22, 2010, the midyear meeting of the Inter-American Press Association was held in Oranjestad, Aruba. Participating in the event was Guillermo Zuloaga, president of *Globovisión* of Venezuela. At the meeting, Zuloaga made a statement in which he criticized the handling of public funds to support public media outlets that serve governmental ends; he underscored the political polarization in Venezuela, which he blamed on the President of the Republic. According to Zuloaga, Venezuela's head of state "has devoted himself to being President of one group of Venezuelans and has tried to divide Venezuela for the sake of something, and that something is twenty-first century socialism." Zuloaga also denied the accusations that President Hugo Chávez Frías had made publicly against him, to the effect that he and other media entrepreneurs were somehow linked with the 2002 *coup d'état*.<sup>619</sup>

453. On March 23, 2010, the National Assembly approved a draft resolution in which Zuloaga's assertions were rejected. Through this resolution, the National Assembly urged "the Public Prosecutor's Office to conduct all investigations and take all measures necessary to determine what crimes citizen Guillermo Zuloaga had committed under the current legal system by uttering the statements he made before the Inter-American Press Association, in which he repeated a series of false accusations against the legitimate and democratic government of constitutional President Hugo Chávez."<sup>620</sup> The following day, Deputy Manuel Villalba, President of the National Assembly's Commission on the Social Media, met with Prosecutor General Luisa Ortega Díaz to file a formal complaint.<sup>621</sup>

454. On March 25, 2010, at Josefa Camejo Airport in Punto Fijo, Falcón state, Zuloaga was detained by virtue of an arrest warrant requested by the Public Prosecutor's Office as part of the investigation instituted against him. The Public Prosecutor reported that "the evidence is sufficient to presume that the businessman constitutes a flight risk in an attempt to avoid the criminal proceedings brought after the complaint filed concerning his remarks at a meeting of the Inter-American Press Association."<sup>622</sup> Villalba emphasized the fact that Zuloaga's statements

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<sup>618</sup> Article 171.6 of the Organic Law on Telecommunications provides as follows: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, the penalty shall be cancellation of the government license or concession, as the case may be, in the case of: [...] (6) Someone who utilizes or allows the use of telecommunications services for which one is licensed, as a means to aid and abet the commission of crimes." Article 172 of the Organic Law on Telecommunications states: "Article 172. Natural or legal persons whose government license or concession is revoked will be unable to obtain another, either directly or indirectly, for a period of five years. This period will be start as of the date the administrative decision becomes final. In the case of legal persons, the de-licensing will extend to administrators or other organs responsible for the management and direction of the sanctioned operator which were performing these functions at the time the offense was committed, provided they had knowledge of the situation that led to the de-licensing and did nothing to notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the de-licensing and disqualifications established in this Law will cause natural persons responsible for such an offense to be liable for a special disqualification prohibiting them from owning capital shares in or being administrators or managers of telecommunications companies, either directly or indirectly, for a period of five years." Available at: [http://www.tsj.gov.ve/legislacion/lt\\_ley.htm](http://www.tsj.gov.ve/legislacion/lt_ley.htm)

<sup>619</sup> Guillermo Zuloaga's statements, available at: <http://www.youtube.com/watch?v=1KpM4g1uwa4>

<sup>620</sup> National Assembly. *National Assembly asks Public Prosecutor's Office to investigate Guillermo Zuloaga*. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=24416&Itemid=27](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=24416&Itemid=27)

<sup>621</sup> Reporte 360. March 24, 2010. *Manuel Villalba asked Public Prosecutor's Office to investigate Zuloaga*. Available at: <http://www.reporte360.com/detalle.php?id=29756&c=1>

<sup>622</sup> IPYS. March 25, 2010. *Globovisión Owner Taken into Custody*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2231>. Noticias 24. March 25, 2010. *Prosecutor General explains reasons for*

constituted the crime of “contempt of and offending” the President of the Republic.<sup>623</sup> The following day, Caracas’ 40<sup>th</sup> Examining Court decided to grant Zuloaga conditional release, although in lieu of incarceration, it ordered him not to leave the country.<sup>624</sup> As of the date this report went to press, the case against Zuloaga was still ongoing.

455. On June 3, 2010, President Hugo Chávez Frías allegedly publicly criticized the Judiciary for having allowed Guillermo Zuloaga to remain at liberty.<sup>625</sup>

456. On June 11, 2010, Caracas’ 13<sup>th</sup> Examining Court issued a warrant for the arrest of Guillermo Zuloaga and his son Guillermo Zuloaga Siso. Both were accused of the crimes of usury and hoarding for having kept 24 vehicles in storage on a property they owned in the countryside.<sup>626</sup> According to the information received, Zuloaga is the owner of a car dealership.<sup>627</sup>

457. Reacting to this turn of events, the Office of the Special Rapporteur for Freedom of Expression sent a letter to the Venezuelan government expressing concern over various issues related to freedom of expression, one of which was the order issued for the arrest of Guillermo Zuloaga and his son. The Office of the Special Rapporteur for Freedom of Expression expressed its concern regarding the arrest warrant, “noting the constant threats and harassment of *Globovisión* in general and Zuloaga in particular”. It also pointed out that, “according to information received, on June 3, 2010 (...) the President of the Republic had criticized the Judicial Branch because Zuloaga was still free. It observed that it seems no coincidence that just eight days after the President’s rebuke, the Judicial Branch issued a warrant for Zuloaga’s arrest”.<sup>628</sup>

458. The Office of the Special Rapporteur underscored the fact that “freedom of expression is a right that can be violated by direct and indirect means. Article 13, subsection 3 of the American Convention states that ‘the right of expression may not be restricted by indirect

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...continuation

*Zuloaga’s arrest.* Available at: <http://www.noticias24.com/actualidad/noticia/149235/video-fiscal-general-cuenta-razones-de-la-detencion-de-zuloaga/>

<sup>623</sup> El Universal. March 25, 2010. *Zuloaga to be charged with crime of contempt and offending the President.* Available at: [http://www.eluniversal.com/2010/03/25/pol\\_ava\\_imputaran-a-zuloaga\\_25A3646055.shtml](http://www.eluniversal.com/2010/03/25/pol_ava_imputaran-a-zuloaga_25A3646055.shtml)

<sup>624</sup> El Universal. March 26, 2010. *Zuloaga will not be jailed during his trial for “contempt of and offending the President”.* Available at: [http://politica.eluniversal.com/2010/03/26/pol\\_art\\_enjuiciaran-en-liber\\_1810121.shtml](http://politica.eluniversal.com/2010/03/26/pol_art_enjuiciaran-en-liber_1810121.shtml)

<sup>625</sup> El Universal. June 12, 2010. *Arrest warrant issued for Zuloaga and his son.* Available at: [http://www.eluniversal.com/2010/06/12/pol\\_art\\_dictan-orden-de-apre\\_1936129.shtml](http://www.eluniversal.com/2010/06/12/pol_art_dictan-orden-de-apre_1936129.shtml). Tal Cual. June 12, 2010. *Chávez gives the orders and the judge acts.* Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=36344&secid=28>. Notitarde. June 11, 2010. *13<sup>th</sup> Examining Court ordered arrest of Guillermo Zuloaga.* Available at: <http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1051140&idcat=9841&tipo=2>

<sup>626</sup> El Universal. June 11, 2010. *Zuloaga ordered arrested for usury and hoarding.* Available at: [http://www.eluniversal.com/2010/06/11/pol\\_ava\\_ordenan-arrestar-a-z\\_11A4006611.shtml](http://www.eluniversal.com/2010/06/11/pol_ava_ordenan-arrestar-a-z_11A4006611.shtml). *El Nacional.* June 29, 2010. *Public Prosecutor’s Office accuses Zuloaga of usury and hoarding.* Available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/143323/Nacional/Ministerio-P%C3%BAblico-acusa-a-los-Zuloaga-de-usury-agavillamiento](http://el-nacional.com/www/site/p_contenido.php?q=nodo/143323/Nacional/Ministerio-P%C3%BAblico-acusa-a-los-Zuloaga-de-usury-agavillamiento)

<sup>627</sup> Telesur. June 11, 2010. *Venezuelan Public Prosecutor’s Office orders businessman’s arrest for the crime of usury.* Available at: <http://www.telesurtv.net/secciones/noticias/73447-NN/ministerio-publico-venezolano-ordena-captura-de-empresario-por-delito-de-usura/>

<sup>628</sup> Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur). See in this regard, IACHR Commissioner for Venezuelan Matters and the Special Rapporteur for Freedom of Expression Send Communication to the Venezuelan State Expressing Deep Concern over the Serious Situation of Freedom of Expression. Press Release No. R61/10, July 14, 2010. Available at: <http://www.IACHR.org/Relatoria/showarticle.asp?artID=800&ID=1>

methods or means, such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.’ From this point of view, criminal prosecution for supposed crimes unrelated to the exercise of freedom of expression may constitute an illegitimate infringement of that right if it is established that prosecution is exclusively because of the accused’s political position or the exercise of his fundamental rights, such as freedom of expression in this case.”<sup>629</sup>

459. According to the information received, Zuloaga left the country, whereupon proceedings for his extradition were instituted, at the request of the Public Prosecutor’s Office.<sup>630</sup> In mid-August 2010, the Supreme Court cleared the way for the extradition request to proceed.<sup>631</sup>

460. Nelson Mezerhane Gozen is one of *Globovisión*’s co-founders and serves as its Principal Director. He is also president of the Federal Bank. On December 19, 2009, in one of his nationwide broadcasts, the President of the Republic questioned statements made by Mezerhane and ordered an investigation of him for the statements Mezerhane had made to the daily newspaper *El Mundo Economía y Negocios*. President Chávez said the following: “I’m going to call the Prosecutor General later and ask that she have those statements investigated, as I consider them to be very serious and irresponsible, especially coming from the mouth of the president of a bank, which has had serious problems, for sure.”<sup>632</sup>

461. On December 21, 2009, a criminal investigation was instituted against Mezerhane, by order of the Prosecutor General of the Republic, Luisa Ortega Díaz.<sup>633</sup>

462. On June 14, 2010, the Minister of State for Public Banking, Humberto Ortega Díaz, decided to take over the Federal Bank.<sup>634</sup> On June 16, 2010, in one of his nationwide broadcasts, President Chávez said the following: “While it is true that Mr. Banker, who left and said he wasn’t coming back [Mezerhane] has shares in *Globovisión*, Zuloaga is going to have to show up for us to come to some understanding over that channel.”<sup>635</sup> He also said that if the court cases demonstrate

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<sup>629</sup> Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur).

<sup>630</sup> El Universal. June 29, 2010. *Public Prosecutor’s Office seeks extradition of Guillermo Zuloaga*. Available at: [http://www.eluniversal.com/2010/06/29/pol\\_ava\\_ministerio-publico-p\\_29A4106093.shtml](http://www.eluniversal.com/2010/06/29/pol_ava_ministerio-publico-p_29A4106093.shtml). Ministry of the People’s Power for Communications and Information. June 29, 2010. *Public Prosecutor’s Office asks for Zuloaga’s extradition*. Available at: [http://minci.gob.ve/nacionales/1/200778/ministerio\\_publico\\_solicita.html](http://minci.gob.ve/nacionales/1/200778/ministerio_publico_solicita.html)

<sup>631</sup> El Universal. August 17, 2010. *Supreme Court authorizes Zuloaga’s extradition*. Available at: [http://www.eluniversal.com/2010/08/17/pol\\_ava\\_tsj-autoriza-extradi\\_17A4349131.shtml](http://www.eluniversal.com/2010/08/17/pol_ava_tsj-autoriza-extradi_17A4349131.shtml). Agencia Venezolana de Noticias. August 17, 2010. *Supreme Court allows request to extradite Guillermo Zuloaga*. Available at: <http://www.avn.info.ve/node/11919>

<sup>632</sup> Public statements by the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías. Available at: <http://www.youtube.com/watch?v=3NzzmVGtqls>

<sup>633</sup> El Universal. December 21, 2010. *Prosecutor’s Office launches investigation into alleged bank-related “rumor mills”*. Available at: [http://www.eluniversal.com/2009/12/21/pol\\_ava\\_fiscalia-abre-invest\\_21A3220251.shtml](http://www.eluniversal.com/2009/12/21/pol_ava_fiscalia-abre-invest_21A3220251.shtml). Noticias RTV. December 22, 2010. *Chávez again says that Mezerhane’s claims will be investigated*. Available at: <http://noticiasrtv.com/noticiasrtv/2009/12/22/chavez-reitero-que-declaraciones-de-mezerhane-seran-investigadas/>

<sup>634</sup> Venezolana de Televisión. June 14, 2010. *Sudeban announces closed-door takeover of Federal Bank*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37501>. El Universal. June 14, 2010. *Closed-door takeover of Federal Bank ordered*. Available at: [http://www.eluniversal.com/2010/06/14/eco\\_ava\\_ordenan-intervencion\\_14A4020011.shtml](http://www.eluniversal.com/2010/06/14/eco_ava_ordenan-intervencion_14A4020011.shtml)

<sup>635</sup> Código ADN. June 16, 2010. *Chávez: ‘Zuloaga and the Banker: Come to me, I have a flower’*. Available at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/>.

that both Zuloaga and Mezerhane have shares in *Globovisión*, “both will have to straighten up and come my way; I have a flower to offer.”<sup>636</sup>

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

“Mezerhane has a business that was taken over, and that business has a 20% stake in *Globovisión*. He owns another business that has a 5.8% stake in *Globovisión*. Adding the two together, that’s a 25.8% stake. Well, come to see me, I have a flower. In the days ahead, the Board that intervened in the Federal Bank is required (...) to appoint a representative to sit on *Globovisión*’s Board of Directors, because the 25.8% stake we now have gives us the right to name a representative to the Board of Directors. And I was thinking who should I nominate? (...) Well, it’s not my function to appoint the Board member, but I would recommend someone to be appointed to the Board. (...) We hear names, someone to defend the shareholders’ interests (...) This is pure capitalism, my friend, pure capitalism by the shareholders (...) We’re joining the business (...) And oh, by the way, another 20% of the shares in *Globovisión* are up in the air. They’re up in the air because when the State awarded the concession, 20% of the shares went to a gentleman by the name of (...) Tenorio; he got 20 percent (...). Regrettably, the gentleman is now deceased. By law, these concessions are not inherited; in other words, what one leaves to one’s children, one’s heirs is one’s own property, but radio frequencies are the property of the State. If anyone receives a concession it is for use of the radio frequency; when that person dies, the concession goes back to the State. We’ll see to whom it goes now. So, adding all this together, 28.5% plus 20%, well, my friends that’s a 48.5% stake in *Globovisión*.”<sup>637</sup>

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

“Mr. Zuloaga is being criminally prosecuted for a number of crimes that are violations of the Defense of the People Law, which makes hoarding and speculation criminal offenses. That law gives the State the authority to adopt precautionary measures, because the crime of which Mr. Zuloaga is accused affects all people (...). The State is fully within its rights to take over, as a precautionary measure, Mr. Zuloaga’s shares in *Globovisión*, which would make the State the majority shareholder in *Globovisión*. Being a majority shareholder means having 55% of the shares; but taking over Mr. Zuloaga’s shares would mean that the State would have roughly a 77% stake (...). This is far more than a 55% stake in that phantom business.”<sup>638</sup>

465. Subsequently, in a blanket presidential radio and television broadcast delivered on July 2, 2010, the President again made reference to *Globovisión* and stated “Let’s see who holds out longer: crazy *Globovisión* or Venezuela.” He went on to say the following: “So some thought

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*Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707>

<sup>636</sup> *Código ADN*. June 16, 2010. “Chávez: ‘Zuloaga y ‘El Banquero’: Vengan a mí, que tengo flor” Chávez: ‘Zuloaga and the Banker: Come to me, I have a flower’]. Available [in Spanish] at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/>.

*Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707>

<sup>637</sup> Statements made by President Hugo Chávez, available at: <http://www.youtube.com/watch?v=PWp2PQ6iKUQ>

<sup>638</sup> *Venezolana de Televisión*. Programa La Hojilla. July 20, 2010. On file with the Office of the Special Rapporteur for Freedom of Expression and available at: <http://www.ojopelao.com/opinion/la-hojilla/18065-la-hojilla-del-dia-martes-20-de-julio-de-2010-video.html>

will have to be given to the question of what happens to that television channel; so, what's going to happen? The owners are out there, fugitives from justice. And I'm calling upon those who run that channel -who are not the owners- and especially those on the front lines, who are acting on the instructions from the owners -who are in hiding, as fugitives from justice-: you are undermining the country's stability on the owners' orders...; it's very dangerous to allow a television channel to incite a country. That's something we just can't allow."<sup>639</sup>

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

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

"And he's not just a fugitive from justice; just yesterday he was at the United States Congress casting aspersions on his own country, his own government, this president; and he's the owner of that channel. As Head of State, I am calling upon Vice President Elías Jaua, the Prosecutor General, and the Supreme Court to do something. Because this is something very odd: here we have the owner of a television channel who is a criminal and a fugitive from justice. He appears at the United States Congress and says whatever he pleases against this government, and conspires against it. They're raising money to pay someone to kill me. I'm telling you this. Yes, Yes. They're paying someone; (...) I have it from very reliable sources that they have 100 million dollars for the person who kills me. And he's one of them; the owner of a television channel that is at this very moment broadcasting in Venezuela. Do you realize what's happening? I'm asking the appropriate organs to investigate this, because something has to be done. Either the owner comes to defend his assets -show his face, as he should- or something will have to be done about that channel..."<sup>640</sup>

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

"Just three or four days ago representatives of the ultra right gathered in Washington. And the *Globovisión* owner was there at that meeting, one of them for sure. This is inexplicable; I still don't understand it, and hope to understand it better... In other words, here we have a Venezuelan who is a fugitive from justice. He is the owner of, among other things, a television channel that is on the air every day. Broadcasting from here! Right here in Caracas! And he's out there, a fugitive from justice. Oh, he also goes to Washington to say... well to say whatever he wants; to brand this soldier a tyrant; to say that Venezuela is a dictatorship and Venezuela is foundering; he is practically asking the Yankee imperialists to intervene in Venezuela. And he's the owner of a television channel that remains on the air. I've called upon the branches of government (...) the Office of the Prosecutor General, the Judicial Branch, the Vice President -our dear friend Elías Jaua- to see what we can do. Right? Because that gentleman fled the country, a fugitive from justice; he is a criminal and yet he has a television channel criticizing the government every day, misrepresenting the truth. This government and the Venezuelan State have to do something about this! Let's see what happens... But this situation cannot go on; it is a violation of the Constitution and the law. That gentleman should come here and show his face ... Face the Venezuelan courts. But no, he's there in Washington, asking the empire to intervene in his own country, which is very likely treason (...). I know that this matter is already under review, to see what we can do.

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<sup>639</sup> *Debate socialista*. Address by President Chávez. Available at: [http://www.debatesocialistadigital.com/Discursos/discursos\\_2010/julio/acto\\_ahorrista\\_banco\\_federal.html](http://www.debatesocialistadigital.com/Discursos/discursos_2010/julio/acto_ahorrista_banco_federal.html)

<sup>640</sup> President's interview with *Venezolana de Televisión* on November 20, 2010. Video available at: <http://www.youtube.com/watch?v=zpR-V-MQnEw>

Either this man shows up here or some action will have to be taken against his businesses, one of which is a television channel..."<sup>641</sup>

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

470. On November 24, 2010, the Bolivarian Republic of Venezuela responded to request for information made by the Office of the Special Rapporteur and observed the following: "Thus far, no measures of any kind have been taken against *Globovisión* television, inasmuch as each of the constitutionally established branches of government are independent of each other; hence, simple statements made by the President do not constitute an order that the other branches of government are bound to follow." The State also noted that "just as Citizen Guillermo Zuloaga turned to the United States Congress to exercise his right to freedom of expression, Citizen President Hugo Chávez has the same right to answer the accusations made against his Government." Lastly, it wrote that "the investigations instituted against citizen Guillermo Zuloaga have to do with alleged criminal offenses, and not with *Globovisión's* editorial stance; the fact that he is a shareholder in that television channel does not make him immune to investigation or to any criminal, civil or administrative penalties that may be in order after an impartial investigation and a trial with all the guarantees of due process established in the Constitution and the law."<sup>642</sup>

471. It is important to point out that, as the Office of the Special Rapporteur for Freedom of Expression observed in its 2009 Annual Report, "Public officials, like all people, are entitled to the right to freedom of expression in its diverse manifestations. Nevertheless, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized under the case law of the inter-American system."<sup>643</sup> That case law has held that public authorities' right of freedom of expression has certain strict limits that are the product of the particular obligations and responsibilities vested in officials who serve in public office. In effect, when public officials exercise their freedom of expression, either in compliance with their obligation under the law or as a simple exercise of their right to express themselves, "in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by

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<sup>641</sup> Address delivered by the President of the Republic before a gathering of students. Video available at: <http://www.youtube.com/watch?v=EuSspn04hEg>. See also: Bloomberg. November 21, 2010. *Venezuela's Chavez Threatens 'Actions' Against Globovisión*. Available at: <http://www.bloomberg.com/news/2010-11-21/venezuela-s-chavez-threatens-actions-against-globovision.html>. El Universal. November 22, 2010. *Chávez gives orders to go after Zuloaga*. Available at: <http://www.eluniversal.com.mx/internacional/70630.html>

<sup>642</sup> Response received from the Bolivarian Republic of Venezuela on November 24, 2010. AGEV. 000485 (on file with the Office of the Special Rapporteur).

<sup>643</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 200.

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>644</sup>

472. Furthermore, given the State’s obligations to ensure, respect and promote human rights, public officials have a duty to ensure that when exercising their right to freedom of expression, they are not disregarding fundamental rights. As the Inter-American Court wrote: “[T]hey should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”<sup>645</sup> Therefore, public officials may not, for example, “violate the presumption of innocence by accusing media outlets or journalists of crimes that have not been investigated and judicially determined.”<sup>646</sup>

473. In making statements, public officials must also be certain not to infringe upon the rights of those who contribute to the public discourse by expressing and publishing their thoughts, such as journalists and media outlets. Here, the Inter-American Court has indicated that public officials must bear in mind the context in which they express themselves, so that their utterances do not constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts.” This duty of special care becomes all the more important in situations of heightened “social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time.”<sup>647</sup>

474. Public officials have a duty to ensure that their exercise of the right to freedom of expression does not interfere with or encumber the functions that other public officials are called upon to perform and in a manner detrimental to the rights of individuals, particularly in the case of the autonomy and independence of the courts. As the Inter-American Court has found: “public officials, particularly the top [g]overnment authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action,” as that would adversely affect the citizens’ right to an independent judiciary.<sup>648</sup>

475. As the Inter-American Court held in the *Ríos* and *Perozo* cases, in contexts and periods of “very high political and social polarization and conflict”<sup>649</sup> it is especially imperative that

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<sup>644</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131. See also: I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151

<sup>645</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

<sup>646</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 204.

<sup>647</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; 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.

<sup>648</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

<sup>649</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. 121; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 132.

public officials exercise prudence, so as not to create dangerous situations or further inflame the dangers already present.

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

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

477. The IACHR and its Special Rapporteurship received information concerning accusations brought in Venezuela against Venezuelan organizations that defend human rights and, particularly, against organizations that defend the right to freedom of expression. The accusations concern the international funding they have received. The IACHR was informed that on July 12, the Minister of Public Works and Housing and director of CONATEL, Diosdado Cabello, publicly criticized the funding received by some nongovernmental organizations devoted to defending the right to freedom of expression. Minister Cabello based his criticism on an article written by Eva Golinger that appeared on a number of sites on the internet and was titled "United States finances Venezuelan media and journalists."<sup>650</sup> According to the article, United States government agencies or agencies that receive funding from the US government were reportedly funneling monies to nongovernmental organizations in Venezuela. One day later, the Venezuelan group "*Periodismo Necesario*" filed a complaint with the Office of the Prosecutor General asking it to investigate the organizations that are receiving funds.<sup>651</sup> Both President Chávez and the Venezuelan National Assembly asked for in-depth investigations into the financing of the organizations.<sup>652</sup> On August 16, Eva Golinger supplied documents to the Office of the Prosecutor General that allegedly showed the international funding that a number of Venezuelan organizations had allegedly received.<sup>653</sup> However, as of the date this report went to press, the organizations under investigation had not been notified of what crime one commits by accepting funds from foreign agencies or governments to be used to promote and guarantee human rights. Nor have they been notified that an investigation is being conducted into their affairs.

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<sup>650</sup> United Socialist Party of Venezuela. July 12, 2010. *Cabello: Counter-revolutionary journalists receiving funding from abroad*. Available at: <http://www.psuve.org.ve/temas/noticias/cabello-periodistas-contrarrevolucionarios-reciben-financiamiento-externo/>

<sup>651</sup> Venezolana de Televisión. July 13, 2010. *Movimiento Periodismo Necesario asked that alleged U.S. funding of NGOs and the media be investigated*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>; El Universal. July 13, 2010. *Investigations of IPYS and Espacio Público sought*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>

<sup>652</sup> On July 14, in a publicly televised event, President Hugo Chávez asked for an "in-depth" investigation of the complaint filed with the Office of the Prosecutor General concerning the funding of nongovernmental organizations. *Programa Venezolano de Educación-Acción en Derechos Humanos*. July 14, 2010. President Chávez asked for "in-depth" probe of U.S. funding of Venezuelan NGOs. Available at: <http://www.derechos.org.ve/proveaweb/?p=5140>. Similarly, on July 20, the Permanent Parliamentary Commission on Science, Technology and Social Communication presented a report on foreign funding of journalists and political parties in Venezuela, based on "declassified U.S. State Department documents." The Chair of the Commission, Manuel Villalba, recommended that the investigation delve further "to ascertain whether activities that could be classified as crimes under the Constitution and other laws, are being carried out." *El Nacional*. July 20, 2010. *National Assembly approves report on international funding of Venezuelan journalists*. Available at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/145966/Nacional/AN-aprueba-informe-contr-financiamiento-internacional-a-periodistas-venezolanos](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/145966/Nacional/AN-aprueba-informe-contr-financiamiento-internacional-a-periodistas-venezolanos)

<sup>653</sup> Venezolana de Televisión. August 16, 2010. *Golinger files complaint with Prosecutor General concerning U.S. funding of opposition NGOs*. Available at: <http://www.vtv.gov.ve/noticias-nacionales/42054>

478. The IACHR also received information on a series of televised messages and programs shown repeatedly by official media outlets that attempt to discredit and stigmatize the aforementioned nongovernmental organizations that are critical of the government.<sup>654</sup> Both *Espacio Público* and the *Instituto de Prensa y Sociedad*, two of the organizations in question, have publicly reiterated that the international funding they receive comes from multiple sources and that they are operating within the law.<sup>655</sup> On December 16, 2010, as mentioned previously, the Executive Director of *Espacio Público*, Carlos Correa, was in front of the National Congress when he was physically assaulted and threatened with death. With no police control, persons hurled an object at him and seriously injured him in the head.<sup>656</sup> Correa had gone to the National Assembly to submit a petition with objections to some of the laws that the deputies were discussing at the time (see *infra*). The attack against Correa, following the campaign to smear and discredit him driven by the government via the public airwaves, demonstrates just how serious government campaigns of this kind can become. The Inter-American Court had already warned Venezuela about this possibility and pointed out that while these official addresses may not directly instigate violence, they nonetheless place the individuals attacked in the speeches in a situation of greater vulnerability vis-à-vis the State and certain sectors of society.<sup>657</sup> In the case of employees of a television channel harassed by Venezuelan authorities and labeled as the “opposition” and branded as “rebel”, “uninformed” or “destabilizing,” primarily in the presidential addresses, the Court held that this alone meant that this group of persons ran the risk of having their rights violated by private persons, not because of their personal qualities or condition but merely because of their status as employees of that channel.<sup>658</sup>

479. On July 23, the IACHR asked the Venezuelan State to supply information on the criminal investigations requested against the aforementioned persons and nongovernmental organizations, the grounds for requesting such inquiries, the status of the investigations and the laws that prohibited NGOs from receiving international funding. In its request for information, the IACHR reminded the Venezuelan State of the recommendation made to States that they “[r]efrain from restricting the means of financing of human rights organizations”<sup>659</sup>; of the leading role that human rights defenders play in the full achievement of the rule of law and in strengthening democracy, and that freedom of expression is incompatible with direct or indirect pressure brought to silence the work done by social communicators to report and inform.<sup>660</sup>

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<sup>654</sup> International Coalition of Organizations for Human Rights in the Americas [*Coalición Internacional de Organizaciones por los Derechos Humanos en las Américas*]. August 12, 2010. *International Coalition condemns harassment of organizations and persons who defend human rights in Venezuela*. Available at: <http://www.derechos.org/ve/proveaweb/?p=5871>

<sup>655</sup> Instituto Prensa y Sociedad. July 2010. *Concerning our funding and the smear campaign against PIYS Venezuela*. Available at: <http://www.ipys.org/ve/documentos/En%20Venezuela.pdf>

<sup>656</sup> El Nacional. December 16, 2010. *Carlos Correa struck on the head during NGO demonstration en route to the National Assembly*. Available at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/172370/Naci%C3%B3n/Carlos-Correa-result%C3%B3-agredido-en-manifestaci%C3%B3n-de-ONG-hacia-la-AN](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/172370/Naci%C3%B3n/Carlos-Correa-result%C3%B3-agredido-en-manifestaci%C3%B3n-de-ONG-hacia-la-AN). El Universal. December 17, 2010. *Reporters without Borders condemns attack on Carlos Correa*. Available at: [http://tiempolibre.eluniversal.com/2010/12/17/pol\\_ava\\_reporteros-sin-front\\_17A4868573.shtml](http://tiempolibre.eluniversal.com/2010/12/17/pol_ava_reporteros-sin-front_17A4868573.shtml)

<sup>657</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. 145; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157.

<sup>658</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. 146; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 158.

<sup>659</sup> IACHR. Report on the situation of human rights defenders in the Americas, para. 342, recommendation 19. OEA/Ser.L/V/II.124. Doc. 5 rev.1. March 7, 2006.

<sup>660</sup> IACHR. Request to the Bolivarian Republic of Venezuela seeking information. Ref: Investigation launched against nongovernmental organizations. July 23, 2010.

480. On February 22, 2011, the IACHR received the observations of the State of Venezuela on the IACHR's Annual Report for 2010. There, in relation to this issue, the State observed: "It is true that the Venezuelan State has questioned NGOs that receive funding from foreign governments. For this reason, a law was passed that forbids this kind of financing. The Venezuelan State has corroborated that the NGOs from Venezuela supported the coup d'état of April 11, 2002 [and] none of them presented a request for precautionary measures to the Commission to guarantee the life of President Chávez." <sup>661</sup>

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

481. The IACHR and the Office of the Special Rapporteur have acknowledged the authority that the President and high-ranking State officials have to use the media to inform the public on issues of vital public interest and those that urgently need to be reported by way of the independent communications media. In effect, as the Inter-American Court has stated, "making a statement on public interest matters is not only legitimate but, at times, it is also a duty of the state authorities." <sup>662</sup>

482. Exercise of this authority, however, is not absolute. The information that the head of state conveys to the citizenry in the blanket presidential broadcasts must be that strictly necessary to address urgent needs for information in matters that are clearly and genuinely of public interest, and during the time strictly necessary to relay the information. Applying international standards, both the IACHR and its Special Rapporteurship, <sup>663</sup> as well as certain domestic agencies of States parties to the American Convention, have indicated that "it is not just any information that gives the President of the Republic the authority to interrupt regular programming; rather, it is information that the general public wants or needs to know about issues that may be of importance to the public and really essential for citizens to be truly able to participate in collective life." Principle 5 of the Declaration of Principles of Freedom of Expression explicitly provides that "Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

483. In 2009, the IACHR received information from civil society organizations and the academic sector indicating that between February 1999 and July 2009 the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and 41 minutes, in other words 52 days of uninterrupted broadcasting of presidential messages. <sup>664</sup> The trend held in 2010. On February 2, 2010, President Hugo Chávez went on the airwaves with his 2000<sup>th</sup> blanket presidential broadcast. <sup>665</sup>

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<sup>661</sup> Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

<sup>662</sup> I/A Court H.R. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131; IACHR. *2008 Annual Report*. Volume II: 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American legal framework of the right to freedom of expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/INFORME%20ANUAL%20RELE%202008.pdf>

<sup>663</sup> CIDH. *Democracy and Human Rights in Venezuela*. December 30, 2009, Chapter IV, para. 411. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPIVENG.htm>

<sup>664</sup> IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter II, Para. 572. OEA/Ser.L/V/II. Doc.51, December 30, 2009. Available at: <http://www.cidh.oas.org/pdf%20files/Annual%20Report%202009.pdf>

<sup>665</sup> Reporters without Borders. February 3, 2010. *Presidential speeches should have to be broadcast by just one station*. Available at: [http://en.rsf.org/venezuela-presidential-speeches-should-have-03-02-2010\\_36299](http://en.rsf.org/venezuela-presidential-speeches-should-have-03-02-2010_36299)

484. On December 22, 2009, the Bureau of Social Responsibility of the Bolivarian Republic of Venezuela issued an Administrative Order establishing the Technical Standard on Domestic Audiovisual Production Services, according to which cable television channels that have less than 70% international programming would be regarded as Domestic Audiovisual Production Services and would be required to carry government messages or addresses free of charge, in keeping with the provisions of the Law on Social Responsibility in Radio and Television (*Ley Resorte*).<sup>666</sup>

485. On June 17, 2010, one of the five electoral rectors on the National Electoral Council, Vicente Díaz, questioned the increase in the frequency and duration of the presidential broadcasts, as the September 26 parliamentary elections approached. According to the information received, Mr. Díaz publicly stated that the blanket presidential broadcasts would serve to promote the party in power and the intent might be to influence the electorate.<sup>667</sup>

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

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

488. On February 22, 2011, the IACHR received the observations of the State of Venezuela to the IACHR's 2010 Annual Report. There, the State of Venezuela indicated that presidential broadcasts have a legal basis in article 58 of the Constitution<sup>668</sup> of the Bolivarian Republic of Venezuela.<sup>669</sup>

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<sup>666</sup> CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: [http://imagenes.globovision.com/archivos/136439\\_2009\\_diciembre\\_g.o\\_39.333.pdf](http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf)

<sup>667</sup> El Nacional. June 17, 2010. *Vicente Díaz complains that presidential broadcasts are being increased to help the government party's campaign.* Available at: [http://el-nacional.com/www/site/p\\_contenido.php/comentar/p\\_contenido.php?q=nodo/141940/Nacional/Vicente-D%C3%ADaz-denuncia-incremento-de-cadenas-para-favorecer-campa%C3%B1a-oficial](http://el-nacional.com/www/site/p_contenido.php/comentar/p_contenido.php?q=nodo/141940/Nacional/Vicente-D%C3%ADaz-denuncia-incremento-de-cadenas-para-favorecer-campa%C3%B1a-oficial); Venevisión. *National Electoral Council Dean Vicente Díaz complains of notable increase in blanket presidential broadcasts.* Available at: <http://www.youtube.com/watch?v=4RRchK90aOQ>; Informe21.com. June 17, 2010. *Electoral Dean Vicente Díaz asks for an investigation of the increase in blanket presidential broadcasts.* Available [at: <http://informe21.com/politica/rector-vicente-diaz-pide-investigar-incremento-las-cadenas-presidenciales>

<sup>668</sup> Article 58 of the Constitution states: "Communication is free and plural, according to the duties and responsibilities established by law. Every person is entitled to timely, truthful and impartial information, with no censorship, in accordance with the principles established in this Constitution, as well as to reply and rectify whenever [the person] is harmed by inaccurate or harmful information. Boys, girls and teenagers have a right to receive appropriate information for their holistic development."

<sup>669</sup> Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

## H. The of right of access to information

### i) The National Situational Study Center

489. On June 1, 2010, the President of the Republic created the National Situational Study Center [Centro de Estudio Situacional de la Nación] (hereinafter, “CESNA”) by Decree 7,454 (Official Gazette 39,436 of June 1, 2010).<sup>670</sup> CESNA was created as a decentralized organ of the Ministry of the People’s Power for Domestic Relations and Justice. The Center will have administrative and financial autonomy and will be headed by a president who shall be an appointee of the Minister of the People’s Power for Domestic Relations and Justice, with the President’s authorization.<sup>671</sup>

490. The purpose of this agency, created invoking national security arguments,<sup>672</sup> is “to constantly compile, process and analyze information from the various situation rooms or similar bodies belonging to institutions of the State and of society, on any issue of national interest. The goal is to provide analytical and informational support to the Office of the Presidency, keeping it supplied with the up-to-date information needed to facilitate strategic decision-making and thus protect the Nation’s vital interests and objectives, and to facilitate execution of public policy and fulfillment of the State’s essential functions.”<sup>673</sup>

491. Article 9 of the Decree gives CESNA the authority to classify as “confidential, classified or for limited distribution, any piece of information, fact or circumstance that the National Situational Study Center learns of or processes in discharging its functions...”<sup>674</sup> A number of Venezuelan civil society organizations challenged this provision, arguing that it could “lead to abuses on the part of CESNA officials” and that it implies “serious restrictions [on the exercise of the right to freedom of thought and expression] with multiple adverse consequences.”<sup>675</sup>

492. National security objectives are most certainly legitimate, as expressly stated in Article 13(2)(b) of the American Convention. However, the concept of “national security” used in regulations that restrict access to public information and authorize that information to be classified as confidential, must be compatible with the standards of openness and transparency essential in a democratic society.<sup>676</sup> In effect, in order for a restriction on access to information to be valid, the

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<sup>670</sup> Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

<sup>671</sup> Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Articles 1 and 4. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

<sup>672</sup> See in this regard the *consideranda* to Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2> (where it is asserted that national security “is an essential authority and responsibility of the State” and that the National Executive has exclusive authority over “the collection, classification and dissemination of those matters that have a direct bearing on the planning and executions of operations that concern the security of the Nation.”)

<sup>673</sup> Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 3. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

<sup>674</sup> Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 9. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

<sup>675</sup> Espacio Público. July 15, 2010. *Espacio Público, CNP and SNTP demand repeal of CESNA decree*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/825-espacio-publico-cnp-y-sntp-exigen-derogatoria-del-decreto-del-cesna->

<sup>676</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV (The right of access to information), paras. 52, 57, 59. See also, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

State must show that disclosing certain information in the State's possession would do certain, objective, serious and immediate harm to a democratic state's national security.<sup>677</sup> In this specific case, the provision speaks of generic national security purposes, without specifying the circumstances and conditions under which a piece of information that in principle should be public, is legitimately withheld from the public. Nor does the regulation make any reference to or cite a law that spells out those circumstances and conditions.

493. Furthermore, Article 9 of Decree 7,454 authorizes the president of CESNA to classify as confidential any type of "information, fact or circumstance of which he/she learns in the course of performing his/her functions or that is processed at the National Situational Study Center ..."<sup>678</sup> The authorities given to CESNA are a source of concern, because it has broad discretionary powers to establish exceptions to the exercise of freedom of information and access to information, exceptions that, as the case law of the inter-American system has held, may only be established by law, both in the formal and material sense, written in precise and unambiguous language. The relevant definition in this regard is the one that the Inter-American Court established in Advisory Opinion OC-6/86, where it wrote that "the word 'law' is not just any legal norm, but rather a general provision enacted for the general welfare by a legislative body provided for in the Constitution and democratically elected according to procedures set forth in the Constitution."<sup>679</sup> If the State cannot determine by decree the conditions under which certain information can be classified, it can hardly delegate that function to an administrative official, as it appears to do in article 9 of decree 7,454.

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

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

495. On July 15, 2010, the Constitutional Chamber of the Supreme Court decided an action seeking constitutional *amparo*. The action was brought by the Public Arena Civil Association [*Asociación Civil Espacio Público*] to challenge the refusal of the Office of the Comptroller General of the Bolivarian Republic of Venezuela to turn over information concerning the "base salary and other benefits that the Comptroller General of the Republic receives and the remunerations received by the rest of the staff at the Office of the Comptroller General of the Republic..."<sup>680</sup> By a majority vote, the Constitutional Chamber of the Supreme Court decided to deny the petition seeking *amparo* relief on the grounds that the request to have access to that information violated the right to privacy of the public officials.

496. As there was no specific law governing this matter, the Constitutional Chamber of the Supreme Court established binding jurisprudence to the effect that anyone requesting information of this type must "expressly state the reasons why the information is needed or

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<sup>677</sup> See in this regard, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

<sup>678</sup> Decree 7,454 from the Office of the President of the Republic, Article 9. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

<sup>679</sup> I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 89.

<sup>680</sup> Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

purposes to which it will be used” and must prove that “the amount of information being requested is commensurate with the use to which the requested information will be put.”<sup>681</sup>

497. The jurisprudence established by the Constitutional Chamber of the Supreme Court in its ruling of July 15, 2010, disregards the principle of “maximum disclosure” which must govern access to information in the possession of the State. In effect, in its case law the Inter-American Court has established that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure.”<sup>682</sup> The IACHR has also held that under Article 13 of the American Convention, the right of access to information must be governed by the principle of maximum disclosure.<sup>683</sup>

498. The Inter-American Court established that the principle of maximum disclosure “establishes the presumption that all information is accessible, subject to a limited system of exceptions.”<sup>684</sup> That limited system of exceptions must be set forth by law; in the event of any doubt or gap in the law, then access to information should be allowed. The Court also wrote that, living in a state, every person has a legitimate interest in knowing how public resources are being used. Therefore, persons interested in knowing how much a civil servant earns need not show and demonstrate what their specific interest in the information is.

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

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

### i) The Penal Code

500. In its 2009 Annual Report, the Office of the Special Rapporteur made reference to the March 2005 changes in the Penal Code, which expanded the scope of the provisions on protection of state officials’ honor and reputation against criticisms aired publicly that may be deemed offensive to them.<sup>685</sup> Prior to the 2005 reform, the President of the Republic, the Executive

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<sup>681</sup> Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010, Section V. Operative paragraph two. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

<sup>682</sup> I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92.

<sup>683</sup> IACHR. Arguments made to the Inter-American Court of Human Rights in the case of *Claude Reyes et al.* Transcribed in: I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 58 c).

<sup>684</sup> I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92. See also, the 2004 Joint Declaration of the UN Rapporteur for Freedom of Expression, the OAS Rapporteur for Freedom of Expression and the OSCE Representative on Freedom of the Media, where they explained that the principle of maximum disclosure establishes “a presumption that all information is accessible subject only to a narrow system of exceptions.”

<sup>685</sup> In its 2005 Annual Report, the IACHR observed that: “The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. It also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws.” IACHR. *2005 Annual Report*. Chapter IV, para. 357. Available at: <http://www.IACHR.oas.org/annualrep/2005eng/chap.4d.htm>. See also: IACHR. *2005 Annual Report: Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 227. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur – IACHR, March 28, 2005. *Press Release No. 118/05*. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=402&IID=1>; IACHR. *Report on the Situation of Human Rights in*

Vice President, the ministers of government, the governors, the Mayor of the Caracas Metropolitan District, the justices of the Supreme Court, the chairpersons of the Legislative Councils and the superior court judges had the authority to institute criminal proceedings for the crime of *desacato* [disrespect]. The amendment of the law added the following to the list: the members of the National Assembly, officials on the National Electoral Council, the Prosecutor General, the Attorney General, the Ombudsperson, the Comptroller General and the members of the Military High Command.<sup>686</sup> The March 2005 reform retained the article criminalizing the offense known as "*vilipendio*" (contempt or scorn), which is a kind of offense against the institutions of the State.<sup>687</sup>

501. The 2009 Annual Report criticized the fact that these laws were still on the books. The Commission and the Special Rapporteur pointed out that, as the Inter-American Court has stated, "defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing or unpleasant for the State, since this is the requirement of a democratic order founded on diversity and pluralism. In addition, the doctrine and jurisprudence have been consistent and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater –not lesser– protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression."<sup>688</sup>

502. Indeed, the IACHR and the Office of the Special Rapporteur have repeatedly voiced their objections to the existence of laws criminalizing *desacato* [disrespect], such as those just described. The Commission has echoed the conviction that *desacato* laws "conflict with the belief that freedom of expression and opinion is the 'touchstone of all the freedoms to which the United Nations is consecrated' and 'one of the soundest guarantees of modern democracy'."<sup>689</sup> In this regard, *desacato* laws are an unlawful restriction on freedom of expression, because (a) they do not serve a legitimate end under the American Convention, and (b) are not necessary in a democratic society.

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...continuation

*Venezuela*, paragraphs 451-466. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

<sup>686</sup> "Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half that period if it was minor.//The penalty will be increased by one-third if the offense was committed publicly".

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

<sup>687</sup> "Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment for a period of fifteen days to ten months.

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

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

<sup>688</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur on Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 550.

<sup>689</sup> IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of the *Desacato* Laws with the American Convention on Human Rights. OEA/Ser. Doc. 9 rev., February 17, 1995, Title I: Introduction. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: <http://www.IACHR.oas.org/annualrep/94eng/chap.5.htm>

503. Therefore, as the IACHR did in its 2003 *Report on the Situation of Human Rights in Venezuela*, the Office of the Special Rapporteur once again concludes that Venezuela's criminal laws contain provisions that are incompatible with Article 13 of the American Convention<sup>690</sup> and therefore urges the Venezuelan State to take urgent action to bring its criminal laws into compliance with the aforementioned standards on *desacato* and *vilipendio*.

**ii) The Organic Code of Military Justice**

504. Article 505 of the Organic Code of Military Justice provides that: "Whosoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall face a term of three to eight years imprisonment."<sup>691</sup> Establishing criminal penalties for someone who expresses views that can "offend" or "disparage" institutions is contrary to international standards on freedom of expression, because it is a needless restriction in a democratic society.

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

506. The Inter-American Court of Human Rights addressed this specific provision in the case of *Usón Ramírez v. Venezuela*, decided in late 2009. In that case, the Court was called upon to examine the case of a retired military officer, Francisco Usón Ramírez, who, while appearing on a television program, had expressed opinions critical of the Armed Forces in a case involving a group of soldiers who had been severely injured in a military institution. Analyzing Article 505 of the Organic Code of Military Justice, the Inter-American Court held that the provision in question "does not establish the elements that may offend, slander, or disparage, and it does not specify whether it is important that the active subject attribute facts that damage the honor or whether it suffices simply to give an offensive or disparaging opinion, without attributing any illicit acts, for example, for the imputation of the crime."<sup>692</sup> The Court therefore considered that Article 505 "is vague and ambiguous and it does not specify clearly the typical context of a given criminal behavior, which could lead to broad interpretations, allowing the behaviors in question to be penalized incorrectly using the criminalized offense of slander."<sup>693</sup> It therefore found that the article was incompatible with the American Convention. The Court also found that in this particular case, the use of criminal sanction was unsuitable, unnecessary and disproportionate in a democratic society.<sup>694</sup>

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<sup>690</sup> IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

<sup>691</sup> It is important to point out that this was the article under which Francisco Usón Ramírez was convicted and sentenced to six years and five months in prison. I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 38.

<sup>692</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

<sup>693</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

<sup>694</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paras. 59 *et seq.*

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

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

## **J. Amendments and bills in the National Assembly**

### **i) Regulation of Telecommunications**

509. The original law gave CONATEL and the Bureau of Social Responsibility the authority to regulate the telecommunications sector and impose sanctions.<sup>695</sup> In August 2010, CONATEL was placed under the Office of the Executive Vice President of the Republic.<sup>696</sup> In the 2009 Annual Report, the IACHR and the Office of the Special Rapporteur reiterated their concern over the laws in force, writing that “the search for a significant degree of impartiality, autonomy and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communications processes, and the exchange and publication of information and ideas of all kinds. The 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.”<sup>697</sup>

510. Again in its 2009 Annual Report, the IACHR urged the state to modify the text of Article 29 of the Law on Social Responsibility,<sup>698</sup> to subject the interpretation of the provisions on sanctions to the regional standards mentioned there, and to establish institutional, organic and functional guarantees to ensure the independence of the authorities enforcing the laws on

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<sup>695</sup> The relevant laws and regulations are explained in greater detail in the 2009 Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), paragraphs 505 *et seq.*

<sup>696</sup> National Assembly of the Bolivarian Republic of Venezuela. *Decree 7,588 from the Office of the President of the Republic* (Official Gazette No. 39,479 of August 3, 2010). Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_download&gid=2500&Itemid=250&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_download&gid=2500&Itemid=250&lang=es)

<sup>697</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), paragraphs 535 *et seq.*

<sup>698</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 538. Under Article 29 of the Law on Social Responsibility, providers of radio and television services that “promote, justify or incite to war; that promote, defend or incite disruption of law and order; promote, defend or encourage crime; are discriminatory; promote religious intolerance; [or] are inimical to the Nation’s security” may face a penalty of suspension for a period of 72 hours or have their operating license revoked for up to five years in the case of repeat offenders. Heretofore, the Commission has commented on the dangers that provisions like Article 29 pose [which] “set very punitive sanctions for violating restrictions that are defined in vague or generic language.” Cf. IACHR. *2008 Annual Report*. Chapter IV. Human Rights Developments in the Region, para. 381. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/Chap4eng.htm>

broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch. To date, however, Article 29 is still in effect and, as will be described below, CONATEL has expanded the scope of its authorities.

511. In early December 2010, the National Assembly began discussion of a series of bills that have the potential to seriously impact the observance and exercise of human rights. As of the date this report went to press, some of those bills had been passed, while others were on the way to being passed. Of particular concern where freedom of expression is concerned is a law, written in vague language, that gives broad legislative authority to the Executive Branch. Others of concern are those that unduly restrict the right to freedom of thought and expression and another aimed at limiting the activities of social organizations that defend and promote human rights. The National Assembly took less than a week to discuss and vote on these legislative initiatives, since the President let it be known that he wanted them passed before the end of 2010, in other words, before the end of the legislative term, which is December 15, 2010.<sup>699</sup> In effect, President Hugo Chávez Frías said that “there is a set of laws that I need and want to have enacted quickly, by Christmas; these are decrees, emergency laws for housing, urban and rural land. They are special laws.”<sup>700</sup>

512. One of the laws that the National Assembly passed was the “Enabling Law” that vests the Executive Branch with the authority to exercise legislative functions for a period of twelve months. That law, enacted on December 18, 2010, is written in sweeping and ambiguous language, which implies a delegation of authority that is incompatible with the American Convention. In effect, as the Commission and its Special Rapporteurship for Freedom of Expression stated: “[t]he principle of legality, which must be respected when imposing restrictions on human rights, is jeopardized by permitting the delegation of legislative authority in terms that are overly broad and that could extend to criminal matters. The frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms.”<sup>701</sup>

513. From the standpoint of freedom of expression, it is troubling that Article 1(2)(b) of the law gives the President the authority to “enact and amend regulatory provisions in the telecommunications and information technology sector, [and with regard to] the public mechanisms of informatics, electronic and telematic communications.”<sup>702</sup> This provision gives the Executive Branch the authority to modify any telecommunications regime without having to go through the

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<sup>699</sup> Article 219 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: “Article 219. The first regular legislative session of the National Assembly shall begin, without advance notice, on January fifth of each year or as soon thereafter as possible, and will last until August 15.// The second session shall begin on September 15 or as soon thereafter as possible and will end on December 15.” Available at: <http://www.tsj.gov.ve/legislacion/enmienda2009.pdf>

<sup>700</sup> *El Nacional*. December 10, 2010. Chávez solicitará Habilitante a la AN para aprobar leyes extraordinarias en navidad [Chávez will ask NA for Enabling Law in order to approve special laws at Christmas]. Available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/171254/Naci%C3%B3n/Ch%C3%A1vez-solicitar%C3%A1-Habilitante-a-la-AN-para-aprobar-leyes-extraordinarias-en-navidad](http://el-nacional.com/www/site/p_contenido.php?q=nodo/171254/Naci%C3%B3n/Ch%C3%A1vez-solicitar%C3%A1-Habilitante-a-la-AN-para-aprobar-leyes-extraordinarias-en-navidad). *Noticiero Digital*. December 10, 2010. Chávez solicitará una Ley Habilitante y pide “celeridad” a la AN [Chávez will seek an Enabling Law and is asking the NA to work quickly]. Available at: <http://www.noticierodigital.com/2010/12/chavez-solicitar-ley-habilitante-a-la-an/>

<sup>701</sup> IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

<sup>702</sup> Law authorizing the President of the Republic to issue decrees with the rank, value and force of law on the subjects delegated to him. Approved by the National Assembly on December 16, 2010. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es)

National Assembly, thereby preventing a complex system of laws and regulations –such as the one governing broadcasting- from being discussed and debated in the legislative branch. This type of broad, generic delegation of authority allows the executive branch to act suddenly, without the time necessary to reach a reasonable consensus, and modify a provision on the subject from one moment to the next, even those related to control of content, bans, sanctions and procedures that affect the communications media subject to the State’s control. The mere existence of this possibility could have a chilling effect on freedom of expression incompatible with the American Convention.

514. That same week, the National Assembly passed an amendment to the *Law on Social Responsibility in Radio and Television*, now called the *Law on Social Responsibility in Radio, Television and Electronic Media*. The Chair of the National Assembly’s Commission on Science, Technology and Social Communications, Manuel Villalba, said that the law does not regulate the Internet and observed that it must be interpreted according to the Constitution, which guarantees freedom of expression and free and pluralistic communications, bans prior censorship, and provides for subsequent imposition of liability. According to Deputy Villalba, “[t]he idea is to be able to put this informative medium to good use, while protecting the integrity of the most vulnerable among us, namely children and adolescents.”<sup>703</sup>

515. As will be briefly examined later in this report, the new law increases the likelihood of interference in Internet content and applications;<sup>704</sup> it adds more conditions to be able to operate as a domestic cable television channel and regulates cable and noncable content;<sup>705</sup> and it adds to the list of prohibitions by introducing a number of extremely broad, far-reaching and ambiguous restrictions.<sup>706</sup> The new law also makes the penalties for violating the bans or prohibitions much stiffer.<sup>707</sup> The amendment does not incorporate any of the recommendations the Commission has made in its various reports, as it offers no new guarantees in proceedings in which penalties are imposed, it does not make the administrative bodies charged with imposing those penalties any

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<sup>703</sup> El Universal. December 21, 2010. *New Ley Resorte said to limit internet violence*. Available at: [http://internacional.eluniversal.com/2010/12/21/eco\\_ava\\_afirman-que-nueva-le\\_21A4883573.shtml](http://internacional.eluniversal.com/2010/12/21/eco_ava_afirman-que-nueva-le_21A4883573.shtml). Telesur. December 22, 2010. *Venezuela’s Media Law enacted*. Available at: <http://www.telesurtv.net/secciones/noticias/86202-NN/promulgada-ley-de-medios-en-venezuela/>

<sup>704</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). Article 1 reads as follows: The provisions of the present law shall apply to any text, image or sound that is disseminated and received within the territory of the Bolivarian Republic of Venezuela, whether it be by way of: (...) 4. Electronic media.”

<sup>705</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). Article 6 establishes four content types for rating programs: language, health, sex and violence. The regulation defines various types of content whose broadcasting by the communications media, mainly the audiovisual media, is subject to prohibitions and restrictions that confine that content to certain times of the day, which are spelled out in Article 7.

<sup>706</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). Article 27 provides that: “The radio, television and electronic media services are not permitted to broadcast messages that: // 1. Incite or promote hatred and intolerance on grounds of religion, politics, gender, racism or xenophobia. // 2. Incite or promote and/or justify or defend crime. // 3. Constitute war propaganda. // 4. Cause public fear or unrest. // 5. Ignore the legally constituted authorities. // 6. Induce killing. // 7. Incite or encourage disobedience of the established legal system.”

<sup>707</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). Indeed, Article 29 of the law establishes a fine for violations whereas under the previous version of the law, the penalty was simply to make airtime available for public interest announcements and the like.

more autonomous, and it does not limit the scope of the pre-existing prohibitions, which were already sweeping and ambiguous.<sup>708</sup>

516. As for the added content restrictions, the bill introduces new prohibitions on conduct using vague and ambiguous language. For example, it prohibits any media outlet, even those on the Internet, regardless of the format, from circulating statements or information that “incite or promote hatred or intolerance”, “cause anxiety and fear in the citizenry”, “ignore the legally constituted authorities,” or “incite or encourage disobedience of the established legal system.”<sup>709</sup> These behaviors are extremely difficult to define, leaving the persons (the broadcasters or carriers of these messages) uncertain as to just how far their right to freedom of expression goes and what ideas or information cannot be broadcast by a cable or noncable communications medium or even over the Internet. For these reasons, and as the Commission has explained, laws and regulations of this type give the authorities charged with enforcing them enormous latitude and discretion to a degree that is incompatible with full observance of the right to freedom of thought and expression.<sup>710</sup>

517. As previously observed, the new law authorizes the State to restrict access to Internet content or web sites that, in its judgment, violate the ambiguous provisions of the law.<sup>711</sup> Specifically, the law authorizes CONATEL to order electronic media “to refrain from circulating the kinds of messages that the law prohibits”.<sup>712</sup> The law also requires Internet service providers to create mechanisms “that enable them to restrict (...) the dissemination” of messages of this kind and holds a service provider liable for messages circulated by third parties when the service provider fails to take the necessary measures to restrict those messages when so requested by CONATEL which, as previously observed, is an agency of the executive branch.<sup>713</sup> This means that a service provider, like for example a business that provides data hosting or storage services, would have to take immediate steps to eliminate content that CONATEL deems to be prohibited whenever CONATEL simply issues an administrative order to that effect. The digital media that violate these

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<sup>708</sup> See in this regard, IACHR. Democracy and Human Rights in Venezuela (2009). Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>. See the recommendations in Chapter IV at paragraphs 555 *et seq.*, especially paragraph 555(1).

<sup>709</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es)

<sup>710</sup> This has been the Commission’s finding when similar provisions were examined. In effect, the Office of the Special Rapporteur for Freedom of Expression wrote that “vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression” (IACHR, 2008 Annual Report. Volume II. Chapter III, paragraphs 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>).

<sup>711</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es)

<sup>712</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 33. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). See, in particular, Article 33 of the law, which reads as follows: “In the course of the penalty phase of the proceedings, or even when the case is opened, the National Telecommunications Commission may, either *ex officio* or at a party’s request, order the following precautionary measures: 1.- Order the providers of radio, television, cable or electronic media services to refrain from circulating messages that violate the provisions of this law. (...)”.

<sup>713</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es). The pertinent part of Article 28 reads as follows: “Electronic media providers shall be liable for any prohibited information and content to which the present article refers, in those cases in which they were the originators of the transmission, altered the data, selected the receivers or neglected to limit access to them, when so requested by the organs with competence in this matter.”

regulations could face fines of up to 13 thousand bolivars (three thousand United States dollars). Furthermore, those that do not comply with CONATEL's orders regarding prohibited content could be fined as much as four percent of the gross profits earned in the year prior to the one in which the violation was committed.<sup>714</sup> Service providers that do not respond to the government's requests could face fines based on "10 percent of the previous year's gross earnings" as well as "suspension of service for 72 uninterrupted hours."<sup>715</sup>

518. The possibility of the government excluding any electronic media content when, in its judgment, the ideas or information stored might cause anxiety and fear in the public, promote intolerance, ignore the authorities, or promote noncompliance with the legal system, without any guarantee of due process, appears to constitute a restriction on the right to freedom of expression on those who transmit that content and those who receive it, as well as a violation of due process and of freedom of expression in the case of those who originated the banned message, whose views are silenced and excluded from the Internet without understanding clearly what the prohibited content is and without ever having had the opportunity to defend themselves before an impartial authority separate from the executive branch. In order to avoid the possible abuses that can be committed via the Internet, there are general standards that apply in cases in which a message has done unwarranted harm. These provisions should apply only to the authors of Internet content, i.e., those who are directly responsible for the offending content. Only in very rare cases can an independent judicial authority order certain network content removed, and then only in strict and complete conformity with international human rights norms. To do so, the provisions applied must conform to international law and must be fully respectful of the guarantees of due process; adequate and effective control and oversight must be in place.<sup>716</sup>

519. For these reasons, the IACHR and its Office of the Special Rapporteur for Freedom of Expression questioned the reform. They expressed that "[b]y holding service providers responsible and extending the application of vague and ambiguous norms that have been questioned by the IACHR and the Office of the Special Rapporteur in their 2009 report *Democracy and Human Rights in Venezuela*, the draft law targets freedom of expression on the Internet in an unprecedented fashion. The initiative includes ambiguous norms that sanction intermediaries for speech produced by third parties, based on assumptions that the law does not define, and without

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<sup>714</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 27. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es). The pertinent part of Article 27 provides as follows: "Paragraph One. The owners of the electronic media shall face a fine of from 50 to 200 tax units when they violate any of the bans contained in this article. Paragraph Two: Electronic media providers that fail to heed requests from the competent authorities to comply with the provisions of this law, shall face a fine of up to 4% of the gross earnings in the year immediately preceding the year in which the violation was committed."

<sup>715</sup> See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 29. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2771&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es). The pertinent part of Article 29 reads as follows: "The subjects to whom this law shall, whenever warranted, face the following penalties in the circumstances indicated: 1. A fine of up to 10% of the gross earnings in the year immediately preceding the year in which the violation was committed, and/or suspension for up to seventy-two uninterrupted hours of broadcasting, when they disseminate messages that: a) promote, justify or incite disruptions of public law and order; b) promote, justify or incite crime; c) incite or promote hatred or intolerance based on religion, politics, gender difference, racism or xenophobia; d) encourage discrimination; e) use anonymity; f) constitute propaganda for war; g) cause public anxiety or unrest; h) ignore the legitimately constituted authorities."

<sup>716</sup> 2005 joint declaration of the rapporteurs for freedom of expression of the United Nations, the OSCE and the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=650&IID=1>

guaranteeing basic elements of due process. This would imply a serious restriction of the right to freedom of expression enshrined in the American Convention on Human Rights.”<sup>717</sup>

520. The National Assembly also passed a bill amending the Organic Law on Telecommunications.<sup>718</sup> The bill declares “telecommunications, radio, television and domestic audiovisual production services” to be public interest services, which means that “they may be subject to the limitations and restrictions that the Constitution and law establishes for the sake of the public interest.”<sup>719</sup> Given the broad legislative power that has been given to the President through the “Enabling Law,” the Executive Branch now has the authority to institute any restriction or limitation that, in its judgment, is called for in the area of telecommunications. The amendment of the Law on Telecommunications also provides that it shall be the National Telecommunications Commission (CONATEL) that determines the “General conditions that those seeking to obtain a government license, concession or permit under the provisions of this law must meet,” which means that a government agency in the executive branch (CONATEL) is being given the authority to determine the conditions under which one can engage in radio broadcasting in Venezuela.<sup>720</sup> The law provides that current providers of domestic audiovisual production services must re-apply to CONATEL in order to be able to remain in operation, even though they may already have valid, current operating licenses.<sup>721</sup> The law authorizes a government agency<sup>722</sup> to revoke licenses or

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<sup>717</sup> IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

<sup>718</sup> AFP. December 21, 2010. *New controls established on telecommunications and the internet in Venezuela.* Available at: <http://www.google.com/hostednews/afp/article/ALeqM5hVpCngs2i2MAWWTbatMQewyMMa2Q?docId=CNG.f7b316619e9b55b1cae698370b94f3cb.131>. ANSA. December 21, 2010. *Law regulating telecommunications passes.* Available at: <http://www.ansa.it/ansalatina/notizie/notiziari/venezuela/20101221155135194298.html>. El Nacional. December 21, 2010. *Telecommunications Law passed Monday night.* Available at: [http://www.el-nacional.com/www/site/p\\_contenido.php?q=nodo/173005/Naci%C3%B3n/Aprobada-Ley-de-Telecomunicaciones-en-horas-de-la-noche-del-lunes](http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/173005/Naci%C3%B3n/Aprobada-Ley-de-Telecomunicaciones-en-horas-de-la-noche-del-lunes)

<sup>719</sup> Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2780&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es)

<sup>720</sup> Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2780&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es). Article 20 reads as follows: “The National Telecommunications Commission shall establish, based on the distinguishing characteristics of the type of networks and services concerned, the General Conditions that those interested in obtaining a government license, concession or permit must meet under the provisions of this law.”

<sup>721</sup> Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2780&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es). Transitory regulation fourth reads as follows: “Current providers of domestic audiovisual production services shall apply to the National Telecommunications Commission for the necessary permit, within the time period and under the conditions that the National Telecommunications Commission establishes for that purpose. Only those natural or legal persons that apply for and obtain the corresponding permit, under the terms prescribed in this law, may continue to provide domestic audiovisual production services.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

<sup>722</sup> The law simply states that “[a]s the appointed organ, the National Telecommunications Commission is in charge of telecommunications in the State, and as such establishes the policies, plans and general standards that are to be followed in the telecommunications sector, in accordance with this law and in keeping with the national development plans that the National Executive establishes” (Article 34).

concessions when “it deems such action to be in the Nation’s interest or when public order or security so demands.”<sup>723</sup> Finally, the provision stipulates that repeat offenders of any of the violations proscribed in the first section of Chapter II of the law shall face the possibility of losing their radio frequency concession if the repeat offense occurs within the space of one year from the date on which the first violation was definitively established.<sup>724</sup> This means that recidivism with respect to any of the offenses proscribed by the law, even those punishable by a fine, will lead to loss of the operating license. All decisions in such cases shall be taken by the Executive Branch.

521. The IACHR and its Special Rapporteurship for Freedom of Expression indicated their concern over these reforms, as the new law creates very powerful mechanisms for interfering in the communications media, but adds no guarantees to ensure that such mechanisms will not be used to prevent dissemination of information that may be unsettling for the authorities.<sup>725</sup> Furthermore, the law establishes very strict conditions for engaging in radio broadcasting which, when combined with enforcement by an agency in the executive branch and patently ambiguous provisions, renders broadcasters highly vulnerable to possible pressure or abuses on the part of State authorities.

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

522. The bill passed by the National Assembly, called Law on Defense of the Nation’s Political Sovereignty and Self-Determination is also troubling.<sup>726</sup> This law makes it illegal for organizations charged with promoting citizen participation, overseeing the exercise of public power or defending the full exercise of political rights, to receive funds in the form of international cooperation. It also establishes severe penalties for the organizations and their members if such funding is received. Those penalties include political disqualification for periods ranging from five to eight years.<sup>727</sup> This bill is of great concern, because “of the possibility that non-governmental human rights organizations whose purpose is to monitor the exercise of public power (which is true of the vast majority of these organizations) will see their capacity to perform their important functions

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<sup>723</sup> Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2780&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es). The pertinent part of Article 22 reads as follows: “The lead agency may, when it deems such action to be in the national interest or when public order or security so demand, revoke or suspend the government licenses or concessions.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

<sup>724</sup> Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2780&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es). Article 170(10) provides that: “A repeat of any of the offenses to which this section refers and that occurs within the space of one year from the date when the previous violation was definitively established.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

<sup>725</sup> IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

<sup>726</sup> *Radio Nacional de Venezuela*. December 22, 2010. *Head of State enacts laws on Parties and Defense of Sovereignty*. Available at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=145270>. *La Crónica de Hoy*. December 23, 2010. *National Assembly approves law that prevents parties and NGOs from receiving foreign support*. Available at: [http://www.cronica.com.mx/nota.php?id\\_notas=551474](http://www.cronica.com.mx/nota.php?id_notas=551474)

<sup>727</sup> Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2769&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&form_at=raw&Itemid=185&lang=es)

seriously compromised".<sup>728</sup> In Latin America, most non-governmental organizations dedicated to defending and promoting human rights and monitoring the government rely on the funding they receive through international cooperation in order to be able to function effectively, since there are few or no opportunities for financial independence at the local level. By prohibiting funding of this kind, the law proposed in the National Assembly would have the effect of shutting down all independent organizations, which in recent years have done important work in all countries in the region to defend and promote human rights, often by bringing cases to the inter-American system for the protection of human rights.

523. That same bill makes it illegal for any Venezuelan citizen to invite to the country any foreign person or organization that expresses views that may "[offend] the institutions of the State, its high-ranking officials or attack its exercise of sovereignty."<sup>729</sup> It also stipulates that aliens who participate in such activities will be expelled from Venezuelan territory; sanctions will be imposed on the citizens who invited them to Venezuela.

524. Finally, the National Assembly passed a bill on University Education which, at the time this report went to press, had generated a broad national debate.<sup>730</sup> This bill provides that university education is not just a universal human right, but also "an irrevocably public good that serves to transform society, (...) in the context of building a socialist society"<sup>731</sup> and "to build cultural hegemony to definitively do away with capitalist society."<sup>732</sup> The State's establishment of public policies in the area of university education is a legitimate State objective. However, that objective must be pursued within the boundaries that respect for human rights imposes. In the area of university education, those rights include, *inter alia*, the right to freedom of thought and expression, which is the very basis of academic freedom. Although the law establishes strong mechanisms for intervention in university affairs and in the content of instruction, the law does refer to the autonomy of universities and provides that their autonomy shall be exercised "through academic freedom, in order to debate the current trends in thinking."<sup>733</sup> From that standpoint, the

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<sup>728</sup> IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

<sup>729</sup> Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2769&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&form_at=raw&Itemid=185&lang=es). Article 8. Representatives of political organizations, representatives of organizations for the defense of political or private individuals that invite, under their sponsorship, foreign citizens or organizations to express views that offend the institutions of the State, its high-ranking officials or attack their exercise of sovereignty, shall face a fine of between five and ten thousand tax units, apart from any penalties established in other laws. // Foreign citizens who participate in the activities described in this article shall be expelled from the territory of the Republic, in accordance with the provisions of the laws that regulate this subject.

<sup>730</sup> According to the information received, at the time this report went to press, the President had vetoed the legislation. For original articles, see AFP. December 23, 2010. *Venezuela approves law that promotes socialism in universities*. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5jMroNmzm-jj5jPOE72U9hdDBeoBQ?docId=CNG.50e279c89752000e7527bb02f044cce8.331>. La Nación. December 23, 2010. *Polémica ley sobre socialismo en Venezuela*. Available at: <http://www.nacion.com/2010-12-24/Mundo/NotasSecundarias/Mundo2631604.aspx>

<sup>731</sup> University Education Bill. Article 3.2. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2788&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&form_at=raw&Itemid=185&lang=es)

<sup>732</sup> University Education Bill. Article 3.6. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2788&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&form_at=raw&Itemid=185&lang=es)

<sup>733</sup> University Education Bill. Article 17. Available at: [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2788&tmpl=component&form\\_at=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&form_at=raw&Itemid=185&lang=es)

bill poses a serious contradiction since freedom of thought and expression, which is the basis of academic freedom, is to be strictly observed in the academic and university environment, and can in no way be limited by subordinating it to the ideological, religious or moral principles that the State imposes as an obligation.

## **28. Mexico: 2010 Special Report on Freedom of Expression in Mexico**

### **I. INTRODUCTION**

525. Between August 9 and 24, 2010, in fulfillment of its mandate to promote and monitor the right to freedom of expression in the countries of the Americas, a delegation from the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (hereinafter "Office of the Special Rapporteur") undertook an on-site visit to the United Mexican States at the invitation of the country's government. The delegation was led by the Special Rapporteur for Freedom of Expression, Catalina Botero Marino, and included lawyers Michael Camilleri and Alejandra Negrete Morayta from the Office of the Special Rapporteur. The visit was carried out in conjunction with the United Nations Rapporteurship on Freedom of Opinion and Expression, led by Rapporteur Frank La Rue. The objective of the visit was to observe the situation of freedom of expression in the country.

526. In the course of the official visit, the Office of the Special Rapporteur spent time in the Federal District and in the states of Chihuahua, Guerrero and Sinaloa. The delegation met with officials from over forty federal and state public institutions belonging to the executive, judicial and legislative branches, as well as with representatives from autonomous bodies. Further, it held meetings with over one hundred journalists, representatives of civil society organizations, family members of murdered and disappeared journalists and members of the international community based in Mexico.

527. The Office of the Special Rapporteur wishes to emphasize the invitation extended by the Mexican State and its openness in facilitating all the necessary conditions for the visit to be carried out. Likewise, it recognizes the efforts of the officials from the Foreign Ministry who supported the visit and thanks all the authorities, civil society organizations and journalists it met during the course of its visit.

528. Upon completing its visit on August 24, 2010, the Special Rapporteurs of the Inter-American Commission on Human Rights (hereinafter "IACHR" or "Commission") and the United Nations presented a preliminary report to the Mexican State and subsequently to the public.<sup>734</sup> The Mexican State took the opportunity to issue a press release regarding the visit in which it stated:

In the working session held today at the SRE (Foreign Ministry), attended by several institutions that participated in the visit, the Office of the Special Rapporteurs presented a preliminary report setting out some of their conclusions and recommendations.

The Office of the Special Rapporteurs thanked the Mexican Government for its broad cooperation in engaging in dialogue and providing information about each of the issues in which they expressed an interest.

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<sup>734</sup> Office of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights and United Nations Rapporteurship on Freedom of Opinion and Expression, "Official Joint Visit to Mexico, Preliminary Observations", August 24, 2010, Available at: <http://www.cidh.oas.org/relatoria/ShowDocument.asp?DocumentID=216>

The visit of the Special Rapporteurs has been of particular use for gaining a deeper understanding of some of the emerging challenges to freedom of expression in the context currently confronting the country.

[...] In thanking them for their visit, the Federal Government expressed to both Special Rapporteurs that it will examine their reports, and particularly their recommendations, in detail and will establish the most appropriate follow-up and implementation mechanisms.

The Government of the Republic expresses its satisfaction with the visit of the Special Rapporteurs and reiterates its commitment to confronting the challenges to freedom of expression in order to fully guarantee this right, which is an essential component of our democratic system.<sup>735</sup>

529. The present report reiterates and explores in greater depth the issues mentioned in the preliminary observations presented at the end of the on-site visit. The Office of the Special Rapporteur has gathered a great deal of information before, during, and after its visit to Mexico. In drawing up this report the Office of the Special Rapporteur has made use of a wide spectrum of sources. In particular, it has utilized information received from the federal and state governments, the legislature and judiciary, autonomous bodies such as the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, hereinafter CNDH) and its counterparts at the state level, as well as from non-governmental organizations (hereinafter NGOs), journalists and media heads. Likewise, the Office of the Special Rapporteur has taken note of information that has appeared in the press, as well as studies, investigations and reports prepared by national and international human rights and freedom of expression organizations. Finally, in the framework of its on-site visit, the Office of the Special Rapporteur requested detailed information from the Mexican State regarding the criminal investigations carried out into a considerable number of murders, disappearances and attacks suffered by journalists in Mexico.<sup>736</sup> The information provided by the State in response to this request,<sup>737</sup> originating in a number of different bodies of the federal executive and some state bodies, has been incorporated into this report.

530. On December 28, 2010 the Office of the Special Rapporteur sent the preliminary version of the present report to the Mexican State in order to allow it the opportunity to formulate the observations it considers pertinent, in conformity with article 59 of the IACHR's Rules of Procedure. On February 3, 2011,<sup>738</sup> and February 11, 2011,<sup>739</sup> the Mexican State submitted observations on this preliminary version. In these observations, it stated:

The Federal Government thanks the Office of the Special Rapporteur for Freedom of Expression for the report it prepared in fulfillment of its mandate. The Federal Government welcomes its thoughtful observations and recommendations.

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<sup>735</sup> Mexican Foreign Ministry, communication #259, August 24, 2010, Available at: [http://www.sre.gob.mx/csocal/contenido/comunicados/2010/ago/cp\\_259.html](http://www.sre.gob.mx/csocal/contenido/comunicados/2010/ago/cp_259.html)

<sup>736</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>737</sup> See Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>738</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>739</sup> Communication OEA-00262 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received on February 11, 2011.

Without a doubt, the joint visit carried out by the OAS and UN mechanisms in August 2010 stems from a policy of dialogue, cooperation, and complete openness that the Government of Mexico maintains toward international human rights mechanisms.

The visit by both Rapporteurs has been especially useful for developing a deeper understanding of some of the emerging challenges for freedom of expression at this moment in our country's history, and in implementing mechanisms and strategies that guarantee the full exercise of this fundamental right in our country.

Just as the Federal Government committed to the Special Rapporteurs that it would do, it has carefully examined the preliminary version of the report sent by the Inter-American Commission on Human Rights. It appreciates that the document reflects the vast amount of information received during and after the visit from the authorities of the three branches of government, both federal and in the states of Chihuahua, Guerrero, Sinaloa, and the Federal District.

It is noted that, in general terms, the report maintains a balance between positive steps or progress and the challenges the country is facing. However, and with a view to strengthening the content of the document, the following observations are passed along from the various authorities involved in the visit.<sup>740</sup>

After considering the observations made by the State and incorporating the changes it considered pertinent, the IACHR approved the incorporation of the final text of this report into its Annual Report.

531. Based on the information received and analyzed in the framework of its on-site visit to Mexico, the Office of the Special Rapporteur observes that articles 6 and 7 of the Political Constitution of the United Mexican States explicitly protects the rights to freedom of expression and access to information. Likewise, Mexico has made notable legal advances such as the Federal Law on Transparency and Access to Public Governmental Information and equivalent laws at the local level; the decriminalization of offenses against honor at the federal level and in several states; the protection of confidentiality of sources in the Federal Code of Criminal Procedure; and article 134 of the Mexican Constitution with regard to government advertising. Likewise, the Office of the Special Rapporteur applauds the proposed modifications to article 1 of the Constitution approved by the Senate that grant constitutional standing to international human rights treaties; the reform awaits approval by the Chamber of Deputies.<sup>741</sup> Finally, the Office of the Special Rapporteur welcomes the measures adopted by the Mexican State in response to the situation of violence against media workers in the country, including the creation of a special prosecutor to investigate these crimes and, recently, the establishment of a committee for the protection of journalists.

532. Nonetheless, the full enjoyment of freedom of expression in Mexico faces grave obstacles of various kinds, among them the murders of journalists and other extremely serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity that holds sway in such cases. It is also of concern to the Office of the Special Rapporteur that legislation still exists that allows the application of criminal sanctions to the exercise of freedom of expression both at the federal level and in a significant number of states. Likewise, the Office of the Special Rapporteur considers that the vigor, diversity and pluralism of the democratic

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<sup>740</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>741</sup> See Foreign Ministry (SRE) Newsletter No. 173, April 9, 2010, available at: <http://portal.sre.gob.mx/montreal/pdf/Bolderhum.pdf>

debate is seriously limited by, among other reasons, the high concentration of ownership and control of the communications media to which radio and television frequencies have been assigned; the absence of a clear, precise and equitable legal framework for the assignation of such frequencies; the absence of mechanisms allowing access to alternative communications media; and the lack of regulation of government advertising. Finally, the Office of the Special Rapporteur observes with concern an emerging tendency to restrict the right to access public information. It is precisely the need to recognize this crisis and to join in efforts to find solutions, together with the State and society, that prompted the Office of the Special Rapporteur to carry out the on-site visit to Mexico and to prepare this report.

533. The situation confronting freedom of expression in Mexico is set out below with respect to the following issues: violence, impunity and self-censorship; freedom, pluralism and diversity in the democratic debate; legal actions related to the exercise of freedom of expression; and access to information. Conclusions and recommendations are also formulated, which in general coincide with those issued at the conclusion of the on-site visit. The report also presents concrete cases to illustrate the situations observed by the Office of the Special Rapporteur. The cases discussed were chosen essentially on the basis of their illustrative nature and in view of the availability of relevant information from a number of sources. The Office of the Special Rapporteur once again thanks all the entities, organizations and individuals who shared information, particularly journalists who have been victims of violence and their families. It is our hope that the observations, conclusions and recommendations set out in this report contribute to the strengthening of freedom of expression for all Mexicans.

## **II. VIOLENCE, IMPUNITY AND SELF-CENSORSHIP**

### **A. Violations of the right to life and personal integrity based on the victims' exercise of freedom of expression**

#### **1. General Overview: violence on the rise**

534. During the course of the on-site visit, the Office of the Special Rapporteur paid particular attention to violence carried out against journalists and media outlets in the country. The ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." The Office of the Special Rapporteur recalls in this regard that, in accordance with international human rights standards, the Mexican State is not only obliged to guarantee that its agents do not commit acts of violence against journalists, but also to take reasonable steps to prevent acts of aggression by third parties. The State is also obliged to investigate, prosecute and, where applicable, punish the perpetrators of such violence, even when those responsible are not state agents. As such, the fact that the Office of the Special Rapporteur makes reference to an act of violence does not necessarily imply that the act is directly attributable to the State. However, such acts do make clear the State's obligation to prevent, protect and, where applicable, punish these kinds of acts.

535. The various sources consulted by the Office of the Special Rapporteur confirm that—without ignoring the fact that the problem of violence affects all segments of Mexican society—violence against journalists in Mexico is alarming and on the rise, due to factors such as the growth of organized crime in certain regions of the country. The Office of the Special Rapporteur was struck by the fact that the National Human Rights Commission (hereinafter "CNDH") is the only state institution that maintains a public, documented register of crimes against journalists. As the table below shows, the CNDH reports that 64 journalists were murdered in Mexico between 2000

and July 2010, and 11 have been disappeared between 2006 and July 2010.<sup>742</sup> Of these cases, 29 murders and 5 disappearances occurred since 2008 alone.<sup>743</sup>

**CNDH: Violence against journalists in Mexico 2000-2010<sup>744</sup>**

Year	Homicides	Disappearances
2000	4	
2001	4	
2002	3	
2003	1	
2004	5	
2005	4	1
2006	10	2
2007	4	3
2008	10	1
2009	12	1
2010 (to 27/7/2010)	7	3
<b>TOTAL</b>	<b>64</b>	<b>11</b>

536. To these figures may be added the kidnappings of journalists and attacks with explosives against media outlets that have occurred in recent years. In addition, the Office of the Special Rapporteur observed through its encounters with journalists during the on-site visit, that threats and harassment are a regular feature of the practice of journalism, particularly local journalism that covers issues of corruption, organized crime, drug trafficking, and public security, among other issues. According to the information received, many attacks on local journalists are not formally reported due to a lack of confidence in the respective authorities. The statistics reported as well as the additional information received confirms that since 2000 Mexico has been the most dangerous country in the Americas in which to practice journalism.

537. The Office of the Special Rapporteur notes that the compilation of detailed, disaggregated criminal statistics is an essential prerequisite for designing, implementing, and evaluating effective public policies for prevention, protection, and criminal prosecution of human rights violations.<sup>745</sup> In this regard, public security and law enforcement authorities should urgently assume the task of compiling quantitative and qualitative information on violence against journalists and the investigation of such crimes, which is essential to the design and implementation of effective public policies of prevention, protection and criminal prosecution. While the figures compiled by the CNDH are a useful tool for understanding the grave and deteriorating situation faced by journalists, the Office of the Special Rapporteur observes with concern the absence of an institution charged with collecting and maintaining up-to-date documented records of violence against journalists in Mexico, and on the legal and administrative proceedings carried out in these cases. In its observations on the preliminary version of this report, the Mexican State reported that "the Special Prosecutor's Office [for Crimes against Freedom of Expression] has set about building an electronic database of murders and disappearances of persons reported by various governmental

<sup>742</sup> CNDH, Press release CGCP/206/10, July 27, 2010.

<sup>743</sup> CNDH, Press release CGCP/206/10, July 27, 2010.

<sup>744</sup> CNDH, Press release CGCP/206/10, July 27, 2010.

<sup>745</sup> See, for example, IACHR. Press Release 59/08, "IACHR Issues Preliminary Observations on Visit to Jamaica," December 5, 2008, "Conclusions," available at: <http://www.cidh.oas.org/Comunicados/English/2008/59.08eng.htm>

and nongovernmental organizations."<sup>746</sup> It also reported that the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets plans during 2011 to promote the creation of "a national database, called the National Register of Attacks, in order to have reliable statistics, broken down by crime committed and by state."<sup>747</sup>

538. Notwithstanding the limitations generated by the lack of comprehensive statistics on violence against journalists, the Office of the Special Rapporteur was able to verify that the majority of murders, disappearances and kidnappings of journalists are concentrated in states that suffer from a strong presence of organized crime, including, among others, the states of Chihuahua, Guerrero and Sinaloa, visited by the Office of the Special Rapporteur. Though the absence of completed investigations in the great majority of cases makes it impossible to determine the exact motives and parties responsible for these crimes, the information received by the Office of the Special Rapporteur confirms that in these regions organized crime represents the greatest threat to the life and physical integrity of journalists, especially those who report on local issues of corruption, drug trafficking, organized crime, public security and related matters.

539. In addition, according to the information received, in some regions, violence and intimidation against journalists appears to be carried out by armed groups with presumed links to political factions. Such is the case, for example, of the journalists who were attacked in April 2010 when they were traveling to San Juan Copala, in the state of Oaxaca, as part of a humanitarian convoy, with the aim of carrying reporting on the 2008 murder of community radio journalists Teresa Bautista Merino and Felicitas Martínez Sánchez. During the attack, presumably carried out by an illegal armed group operating in Oaxaca, two activists were killed, while two journalists, one of them with a bullet wound, remained trapped in the area for two days before they could be rescued.

540. The Office of the Special Rapporteur also received numerous allegations of harassment and attacks carried out by members of both the armed forces and the police, against journalists who, in legitimate practice of their profession, try to cover public security issues.

541. Given the gravity of the situation faced by freedom of expression and those who dedicate themselves to journalism in the country, it is a matter of urgency for the Mexican State to adopt a comprehensive policy of prevention, protection and prosecution with the objective of ensuring a free, robust and uninhibited democratic debate.

## **2. Violence against journalists in 2010**

542. In fulfillment of the Office of the Special Rapporteur's mandate to produce an annual report, this section summarizes the principal acts of violence committed against media workers of which the Office of the Special Rapporteur was informed in 2010. These acts took place in a context, as indicated above, of acute violence against Mexican journalists. In particular, it is important to note that the 13 murders of journalists documented below follow the 57 murders that took place, according to the CNDH, between 2000 and 2009.<sup>748</sup>

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<sup>746</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>747</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>748</sup> CNDH, Press release CGCP/206/10, July 27, 2010.

a. **Murders**

543. On January 11, 2010 the journalist **Valentín Valdés Espinosa**, of the newspaper *Zócalo Saltillo*, was assassinated in the city of Saltillo, state of Coahuila, Mexico.<sup>749</sup>

544. According to the information received, on Thursday January 7, 2010, at around 11 pm, a journalist for the local news section of the newspaper *Zócalo Saltillo*, Valentín Valdés Espinosa, was driving together with two fellow reporters along the Boulevard Venustiano Carranza in the city of Saltillo, state of Coahuila. Unknown assailants traveling in two pickups intercepted them and forced them to get out of their car. Valdés Espinosa and another reporter were then kidnapped. The latter was freed several hours later after being beaten. Early the next morning, the lifeless body of Valdés Espinosa was found on the Boulevard Fundadores, in front of the Motel Marbella, with a message.<sup>750</sup>

545. Valdés was tortured and shot a number of times, and was found with a placard reading: "This is what will happen to those who don't understand the message is for everyone." According to the State Public Prosecutor's office, it is assumed that the crime was carried out by persons involved in organized crime.<sup>751</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>752</sup> In a reply received on November 12, 2010, the State indicated that a criminal investigation was begun by the Office of Prosecutor General's of the Republic (*Procuraduría General de la República*, hereinafter "PGR") on January 8, 2010. This investigation was sent to the PGR's Special Prosecutor's Office for Crimes against Freedom of Expression (hereinafter, "FEADLE") on May 14, 2010 and is still being processed.<sup>753</sup>

546. In January, 2010, information was received about the murder of the journalist **José Luis Romero** from the radio news program *Línea Directa, Radio Sistema del Noroeste* from the state of Sinaloa. According to information from the CNDH, Romero's disappearance was reported on December 30, 2009, in Los Mochis, Sinaloa.<sup>754</sup> According to the information received by the Office of the Special Rapporteur, the lifeless body of Romero, who covered police matters, was found on January 16, 2010, at the side of a highway that leads to the city of Los Mochis, in the state of Sinaloa. The autopsy indicated that Romero had been dead for over 15 days when his remains were found. Suspicion falls on the criminal organizations that control drug trafficking along Mexico's northern border.<sup>755</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>756</sup> In a reply received on November 12,

<sup>749</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. January 11, 2010. Press release No. R03/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=779&IID=1>

<sup>750</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. January 11, 2010. Press release No. R03/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=779&IID=1>

<sup>751</sup> Committee for the Protection of Journalists (CPJ). January 8, 2010. *Mexico: Periodista secuestrado fue hallado muerto*. Available at: <http://cpj.org/es/2010/01/mexico-periodista-secuestrado-fue-hallado-muerto.php>.

<sup>752</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>753</sup> PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>754</sup> CNDH. Press release CGCP/011/10, January 11, 2010.

<sup>755</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. January 23, 2010. Press release No. R07/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=780&IID=1>; CNDH. Press release of January 11, 2010. CGCP/011/10. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/011.pdf>

2010, the State provided information about the investigations undertaken after the death of the journalist, including information requests to various public and private bodies.<sup>757</sup> According to the State, the investigation is still being processed by the Public Prosecutor's Office of the state of Sinaloa.<sup>758</sup>

547. On January 29, 2010, the body of the journalist **Jorge Ochoa Martínez** was found in the municipality of Ayutla de los Libres, in the state of Guerrero. According to the information received the body of the editor of the weeklies *El Sol de la Costa* and *El Oportuno* was found in a private automobile with a gunshot wound to the head.<sup>759</sup>

548. On March 11, 2010, the Public Prosecutor's Office of the state of Guerrero presented to the public the supposed masterminds of the homicide of Jorge Ochoa Martínez. The Mixtec indigenous men Honorio Herrera Villanueva and David Bravo Jerónimo supposedly planned the homicide of the journalist because he was driving the wrong way down a street and refused to reverse to allow the young men's vehicle to pass. According to the authorities, they were "annoyed" and hired a taxi driver to kill the journalist. In the words of the Public Prosecutor's Office of the state of Guerrero, "it was a chance, fortuitous event."<sup>760</sup>

549. On March 16, 2010, Alberto Bravo Jerónimo was arrested, accused by the Public Prosecutor's Office of the state of Guerrero of being the direct perpetrator of the murder of the journalist Jorge Ochoa. According to the Ministerial authority, the motive for the homicide was a traffic incident. The detainee confirmed the Public Prosecutor's Office's allegations in front of the media.<sup>761</sup> However, the family of Jorge Ochoa suspect a professional motive, and major NGOs such as Reporters Without Borders (hereinafter, "RSF") have indicated that the motive given by the Mexican justice system is not credible.<sup>762</sup> In a meeting held during the official visit, the Office of the Special Rapporteur asked the authorities in Guerrero to review the criminal hypothesis and not to discard the hypothesis that the homicide may be linked to the journalist's professional activity until it is exhausted. Similarly, within the framework of its visit, the Office of the Special Rapporteur

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<sup>756</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>757</sup> PGR, Memo 0627/2010 of February 5, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>758</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>759</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. February 1, 2010. Press release No. R16/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=783&IID=1>; Committee to Protect Journalists (CPJ). February 1, 2010. *Proprietario de periodicos mexicano abatido a disparos en Guerrero*. Available at: <http://cpj.org/es/2010/02/proprietario-de-periodicos-Mexican-abatido-a-dispa.php>

<sup>760</sup> Reporters without Borders. March 15, 2010. *Arrestan a dos sospechosos por el asesinato de un periodista, el móvil señalado es poco creíble*. Available at: <http://es.rsf.org/mexico-un-cuarto-periodista-asesinado-a-15-03-2010,36265>. La Jornada newspaper. March 12, 2010. *Acusan a dos indígenas de provocar asesinato de periodista en Guerrero*. Available at: <http://www.jornada.unam.mx/2010/03/12/index.php?section=estados&article=031n2est>

<sup>761</sup> Committee to Protect Journalists (CPJ). *Journalists killed: Jorge Ochoa Martínez*. Available at: <http://cpj.org/killed/2010/jorge-ochoa-martinez.php>. Centro Nacional de Communication Social (CENCOS). March 18, 2010. *Seguimiento hemerográfico No. 867*. Available at: <http://www.cencos.org/es/node/23039>. La Jornada. March 18, 2010. *Presentan a presunto homicida de periodista*. Available at: <http://www.jornada.unam.mx/2010/03/18/index.php?section=states&article=035n7est>

<sup>762</sup> Reporters without Borders. March 15, 2010. *Un cuarto periodista asesinado a tiros, no hay reacción efectiva de las autoridades frente a la hecatombe*. Available at: <http://es.rsf.org/mexico-un-cuarto-periodista-asesinado-a-15-03-2010,36265>. La Jornada. March 12, 2010. *Acusan a dos indígenas de provocar asesinato de periodista en Guerrero*. Available at: <http://www.jornada.unam.mx/2010/03/12/index.php?section=states&article=031n2est>

requested detailed information from the Mexican State about the case of Jorge Ochoa Martínez.<sup>763</sup> In a reply received on November 12, 2010, the State indicated that a criminal investigation was opened by the PGR on January 30, 2010, but that lack of jurisdiction was declared and the case was transferred to the Public Prosecutor's Office of Guerrero.<sup>764</sup> It also indicated that the case was being processed in the Court of Combined Jurisdiction of First Instance in the city of Ayutla de los Libres, Guerrero.<sup>765</sup> In its observations on the preliminary version of this report, the Mexican State reported that "on December 10, 2010, the judge assigned to the case declared the matter to be ready for judgment, and he is at the point of issuing the final decision."<sup>766</sup>

550. On March 2, 2010, the reporter **Jorge Rábago Váldez** died in a hospital in the state of Tamaulipas. According to the information available, the journalist Jorge Rábago Váldez was one of eight reporters kidnapped in the months of February and March in the city of Reynosa, state of Tamaulipas. The reporter for the radio group *Radio Rey, Reporteros en Red* and for the newspaper *La Prensa* was kidnapped on February 19 as he left a party, and on February 20 was brought to the hospital in a state of coma. In this regard, while some local authorities indicated that his death was the natural result of a diabetic coma, several sources on the ground have indicated to major NGOs, such as the Committee to Protect Journalists (hereinafter "CPJ") and the Inter-American Press Association (hereinafter "IAPA") that the media worker was found with signs of torture and in a state of coma, a few days before his death.

551. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Jorge Rábago Váldez.<sup>767</sup> In a reply received on November 12, 2010, the State indicated that the journalist entered the General Hospital of Reynosa as an unknown person on February 22, and was transferred to the Christus Muguerza Hospital on February 26. He died in this latter hospital on March 2; the autopsy undertaken revealed "multiple blunt trauma injuries with hematoma" and established the cause of death as "hypovolaemic shock due to intracranial and thoracic injury."<sup>768</sup> The State also informed that on March 11, 2010, the PGR opened a criminal investigation for the crime of kidnapping, while the Public Prosecutor's Office of Tamaulipas opened a criminal investigation for the crime of illegal privation of liberty and other rights, as well as another criminal investigation for the crime of homicide.<sup>769</sup> Finally, the State also provided information about the progress made in the investigation carried out by the Public Prosecutor's Office of the state of Tamaulipas up until June 25, 2010.<sup>770</sup> The forensic medical analysis concluded that the death of the journalist was the

<sup>763</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>764</sup> PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 del 20 de July, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>765</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>766</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>767</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>768</sup> State Public Prosecutor's Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>769</sup> PGR, Memo No. SJAI/CAIA/DGCI/2817/2010 of July 20, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>770</sup> State Public Prosecutor's Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

consequence of “diffuse cerebral edema secondary to hemorrhaging cerebral contusions, intraparenchymatous hematoma of the left frontal region, subarachnoid hemorrhaging in the interhemispheric fissure and the upper left occipital region, acute subdural hematoma in the right occipital region, as a consequence of craneoencephalic trauma.”<sup>771</sup>

552. On March 12, 2010, the lifeless body of journalist **Evaristo Pacheco Solís** was found in the city of Chilpancingo, capital of the state of Guerrero. According to the information received the reporter for the local weekly *Visión Informativa* received five gunshots from a low-caliber firearm, one of them in the head. His body was abandoned on a rural road.<sup>772</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>773</sup> In a reply received on November 12, 2010, the State indicated that the investigation is being processed by the Public Prosecutor’s Office of the state of Guerrero, and provided information about the procedures undertaken by this entity up until May 31, 2010, which include the removal of the body, the collection of witness statements, forensic analysis and ministerial attestation of cell phone calls and SMS messages.<sup>774</sup>

553. On April 10, 2010, **Enrique Villicaña Palomares**, a columnist for the newspaper *La Voz de Michoacán* and a university professor, was found dead in Morelia, state of Michoacán. According to the information received, weeks before his disappearance Villicaña Palomares, who reported on attacks by armed groups against local indigenous groups, had reported the threats he had received to the Public Prosecutor’s Office of the state of Michoacán.<sup>775</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>776</sup> In a reply received on November 12, 2010, the State indicated that the investigation is being processed by the Public Prosecutor’s Office of the state of Michoacán.<sup>777</sup>

554. On June 28, 2010, **Juan Francisco Rodríguez Ríos**, correspondent for the newspaper *El Sol de Acapulco*, and **Elvira Hernández Galeana**, editor of the weekly *Nueva Línea*, were shot to death in Coyuca de Benítez, state of Guerrero, when two armed individuals entered the Internet café

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<sup>771</sup> State Public Prosecutor’s Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>772</sup> Committee to Protect Journalists (CPJ). March 15, 2010. *Mexican Reporter shot to death in Guerrero*. Available at: <http://cpj.org/2010/03/mexican-reporter-shot-to-death-in-guerrero.php>. UNESCO. March 24, 2010. *UNESCO Director-General condemns murder of another journalist in Mexico*. Available at: [http://www.unesco.org/new/en/media-services/single-view/news/unesco\\_director\\_general\\_condemns\\_murder\\_of\\_another\\_journalist\\_in\\_mexico/back/18256/](http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_condemns_murder_of_another_journalist_in_mexico/back/18256/). International Freedom of Speech Exchange (IFEX). March 16, 2010. *Journalist shot to death in Guerrero*. Available at: [http://www.ifex.org/mexico/2010/03/16/pacheco\\_solis\\_killed/](http://www.ifex.org/mexico/2010/03/16/pacheco_solis_killed/). El Universal. March 15, 2010. *Reportan Cuarto Periodista Asesinado en 2010*. Available at: <http://www.eluniversal.com.mx/notas/666158.html>

<sup>773</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>774</sup> PGR, Memo 0000144/FEADLE/2010 and State Public Prosecutor’s Office of Guerrero, Memo No. PGJE/FRZC/668/2010 of May 31, 2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>775</sup> Reporters without Borders. April 11, 2010. *Cuestionada de nuevo la pasividad de las autoridades tras el asesinato de un periodista en Michoacán*. Available at: <http://es.rsf.org/mexico-cuestionada-de-nuevo-la-pasividad-11-04-2010,36977.html>. Inter-American Press Association (IAPA). April 15, 2010. *SIP pide indagar recientes asesinatos en Colombia, Honduras y México*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_Communications&seccion=detalles&id=4361&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_Communications&seccion=detalles&id=4361&idioma=sp). International Freedom of Expression Exchange (IFEX). April 14, 2010. *More journalists abducted and murdered*. Available at: [http://www.ifex.org/mexico/2010/04/14/abducted\\_killed/](http://www.ifex.org/mexico/2010/04/14/abducted_killed/)

<sup>776</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>777</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

owned by the murdered reporters. Rodríguez Ríos was also a local leader of the National Press Workers' Syndicate. A few hours before his murder, Rodríguez Ríos had covered the 15th anniversary of the Aguas Blancas Massacre of 1995 in which 17 farm workers died in events that implicated the Guerrero state police force. The Public Prosecutor's Office of the state of Guerrero opened a criminal investigation into the case of the journalist Juan Francisco Rodríguez Ríos.<sup>778</sup> During the on-site visit the judicial authorities of the state of Guerrero confirmed that the investigation is pursuing a course unrelated to the reporters' profession.<sup>779</sup> Once again, the Office of the Special Rapporteur insisted on the importance of there being special protocols for investigations that oblige the authorities not to discard, until exhausted, the hypothesis that the homicide is connected with the professional activities of the journalist. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>780</sup> In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by a state criminal judge in Guerrero.<sup>781</sup>

555. On July 6, 2010, the journalist **Hugo Alfredo Olivera Cartas** was found dead near the city of Apatzingán, in the state of Michoacán. According to the information received, the police found the journalist's body inside his vehicle at 3 a.m., with gunshot wounds to his head. Olivera had gone out to cover a story, but never returned home. The journalist was editor of the newspaper *El Día de Michoacán* and director of the regional news agency *ADN*; he was also a correspondent and contributor to various regional and national news outlets. Olivera wrote about policing and political issues. According to information from Mexican and international press organizations, in the early morning of July 6, 2010, unidentified persons entered the offices of *El Día de Michoacán* and stole computers and memory devices.<sup>782</sup>

556. Olivera had presented an allegation to the CNDH on February 18, 2010, alleging physical assault by officers of the Federal Preventive Police when he was on his way to cover an armed confrontation between alleged members of criminal organizations and the police in the community of Chiquihuitillo, state of Michoacán.<sup>783</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>784</sup> In

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<sup>778</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 2, 2010. Press release No. R66/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=803&IID=1>; See also CNDH. Press release CGCP/178/10, June 29, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0178.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0178.pdf). Committee to Protect Journalists (CPJ). *Journalists Killed: Juan Francisco Rodríguez Ríos*. Available at: <http://cpj.org/killed/2010/juan-francisco-rodriguez-rios.php>. Article 19. June 30, 2010. *Mexico: Matan a otro periodista en el estado de Guerrero*. Available at: <http://www.articulo19.org/articulo/node/89>

<sup>779</sup> Information provided to the Office of the Special Rapporteur by authorities of the Guerrero State executive branch, August 22, 2010.

<sup>780</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>781</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>782</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 8, 2010. Press release No. R67/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=804&IID=1> CNDH. Press release CGCP/185/10, July 6, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0185.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0185.pdf). RSF. July 7, 2010. *Otro periodista es asesinado en el estado de Michoacán*. Available at: <http://es.rsf.org/mexico-otro-periodista-es-asesinado-en-el-07-07-2010,37891.html>. Committee to Protect Journalists (CPJ). July 6, 2010. *Mexican Reporter shot to death in Michoacán state*. Available at: <http://cpj.org/2010/07/mexican-reporter-shot-to-death-in-michoacan-state.php>.

<sup>783</sup> Reporters without Borders. July 7, 2010. *Otro periodista es asesinado en el estado de Michoacán*. Available at: <http://es.rsf.org/mexico-otro-periodista-es-asesinado-en-el-07-07-2010,37891.html>. CPJ. July 6, 2010. *Mexican Reporter shot to death in Michoacán state*. Available at: <http://cpj.org/2010/07/mexican-reporter-shot-to-death-in-michoacan-state.php>; Committee to Protect Journalists (CPJ). June 7, 2010. *Federal forces in Mexico increasingly harass journalists*. Available at: <http://cpj.org/2010/06/federal-forces-in-mexico-increasingly-harass-journ.php>

<sup>784</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.<sup>785</sup>

557. On July 10, 2010, journalist **Marco Aurelio Martínez Tijerina**, from the radio station XEDD *Radio La Tremenda*, in Montemorelos, state of Nuevo León, was found dead with a gunshot to the head. According to the information received by the Office of the Special Rapporteur, Martínez Tijerina was kidnapped in this city on the night of Friday July 9, 2010. Martínez covered political stories and also worked as a correspondent for national news outlets.<sup>786</sup> In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>787</sup> In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.<sup>788</sup>

558. On July 10, 2010, the audiovisual producer and cameraman, **Guillermo Alcaraz Trejo**, was assassinated by masked individuals as he left the offices of the newspaper *Omnia*, in Chihuahua city, state of Chihuahua, where he was visiting former colleagues. Alcaraz was responsible for the production of educational programs at the Chihuahua State Human Rights Commission.<sup>789</sup> In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>790</sup> In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.<sup>791</sup>

559. On September 16, 2010, two photographers at *El Diario* newspaper were attacked in Ciudad Juárez, Chihuahua. The attack led to the death of **Luis Carlos Santiago** and injured his colleague **Carlos Sánchez Colunga**. According to the information received, unknown individuals opened fire on the two press photographers for *El Diario* when they were in a public parking lot in Ciudad Juárez. Luis Carlos Santiago died at the scene while his wounded colleague was transferred to a hospital.<sup>792</sup> On the occasion of the murder of Luis Carlos Santiago the Office of the Special

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<sup>785</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>786</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&IID=1>; See also CNDH. Press release CGCP/192/10, July 12, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0192.PDF](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0192.PDF). UNESCO. July 22, 2010. *Director-General condemns murder of two Mexican journalists*. Available at: [http://portal.unesco.org/ci/en/ev.php-URL\\_ID=30675&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=30675&URL_DO=DO_TOPIC&URL_SECTION=201.html). Committee to Protect Journalists (CPJ). *Journalists Killed: Marco Aurelio Martínez Tijerina*. Available at: <http://cpj.org/killed/2010/marco-aurelio-martinez-tijerina.php>. International Freedom of Expression Exchange (IFEX). July 12, 2010. *Radio journalist found dead in Nuevo León; cameraman killed in Chihuahua*. Available at: [http://www.ifex.org/mexico/2010/07/12/two\\_journalists\\_killed/](http://www.ifex.org/mexico/2010/07/12/two_journalists_killed/); La Jornada. July 12, 2010. *Asesinan a periodista en Monterrey*. Available at: <http://www.jornada.unam.mx/2010/07/12/index.php?section=politica&article=012n2pol>

<sup>787</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>788</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>789</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&IID=1>; UNESCO. July 22, 2010. *Director-General condemns murder of two Mexican journalists*. Available at: [http://portal.unesco.org/ci/en/ev.php-URL\\_ID=30675&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=30675&URL_DO=DO_TOPIC&URL_SECTION=201.html); International Freedom of Expression Exchange (IFEX). July 12, 2010. *Radio journalist found dead in Nuevo León; cameraman killed in Chihuahua*. Available at: [http://www.ifex.org/mexico/2010/07/12/two\\_journalists\\_killed/](http://www.ifex.org/mexico/2010/07/12/two_journalists_killed/)

<sup>790</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>791</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>792</sup> Office of the Special Rapporteur for Freedom of Expression- IACHR. September 17, 2010. Press release No. R95/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=819&IID=1>. Reporters without Borders. 17

Rapporteur reminded the Mexican State of its obligation to prevent and to investigate such acts, punish those responsible and guarantee the victims receive suitable reparations.<sup>793</sup>

560. On November 5, 2010, the journalist **Carlos Guajardo Romero** died in the city of Matamoros, Tamaulipas, during a major military operation against drugs traffickers. According to the information received, Carlos Guajardo worked as a reporter on public security issues for the newspaper *Expreso Matamoros*. Around midday on Friday, November 5, the reporter was covering an armed confrontation between the army and criminal organizations in the center of the city, in the course of which a leader of the Gulf Cartel, Antonio Ezequiel Cárdenas Guillén, was killed. After gathering information at the site of the confrontation, the media worker was found dead with bullet wounds.<sup>794</sup> On the occasion of the death of Carlos Guajardo Romero the Office of the Special Rapporteur requested the Mexican State carry out a diligent, rigorous, independent and transparent investigation that clarifies the circumstances in which the journalist died.<sup>795</sup>

#### b. Disappearances and Kidnappings

561. In March 2010 it was learned that eight journalists had been kidnapped in different events over the previous two weeks in the city of Reynosa, state of Tamaulipas. By the time the kidnappings were learned of, five journalists were still missing, two had been freed after being beaten and forced to return to Mexico City, and the reporter Jorge Rábago Váldez had been killed (see *supra*).<sup>796</sup>

562. Of the kidnapped journalists, on March 9, 2010, the Tamaulipas State Public Prosecutor's Office had confirmed the disappearance of **Miguel Ángel Domínguez Zamora**, reporter for the Reynosa newspaper *El Mañana*. According to the investigating authorities, the family of Domínguez had reported his disappearance. Meanwhile, two journalists from the *Multimedios Milenio* channel who had been sent to cover the violent events occurring in the city of Reynosa had been kidnapped on March 3, 2010, and freed the following day on the condition they left the city. The other journalists remain missing.<sup>797</sup> Two of them are the reporters **Pedro Arguello Reyna** and

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de September, 2010. *Violencia contra periodistas no tiene fin*. Available at: <http://es.rsf.org/mexique-la-violencia-contra-los-17-09-2010,38401.html>

<sup>793</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. September 17, 2010. Press release No. R95/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=819&IID=1>

<sup>794</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. November 9, 2010. Press release No. R111/10. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=825&IID=1>. Committee to Protect Journalists (CPJ). November 8, 2010. *Reportero mexicano muere en fuego cruzado en Matamoros*. Available at: <http://cpj.org/es/2010/11/reportero-mexicano-muere-en-fuego-cruzado-en-matam.php>. La Jornada. November 7, 2010. *Repudia El Expreso el asesinato de su reportero y demanda investigación eficaz*. Available at: <http://www.jornada.unam.mx/2010/11/07/index.php?section=politica&article=006n1pol>. El Universal. November 5, 2010. *Muere reportero en enfrentamiento en Matamoros*. Available at: <http://www.eluniversal.com.mx/notas/721490.html>. El Universal. November 6, 2010. *CNDH abre expediente por muerte de periodista*. Available at: <http://www.eluniversal.com.mx/notas/721671.html>

<sup>795</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. November 9, 2010. Press release No. R111/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=825&IID=1>

<sup>796</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. March 11, 2010. Press release No. R28/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=786&IID=1>

<sup>797</sup> Committee to Protect Journalists (CPJ). March 11, 2010. *Violencia del Narcotráfico pone en peligro prensa en Reynosa*. Available at: <http://cpj.org/es/2010/03/violencia-del-narcotrafico-pone-en-peligro-a-la-pr.php>. Reporters without Borders. March 10, 2010. *Ola de violencia en el estado de Tamaulipas: un periodista desaparecido entre otros casos*. Available at: <http://es.rsf.org/mexico-ola-de-violencia-en-el-estado-de-10-03-2010,36683>. International Freedom of Expression Exchange (IFEX). March 17, 2010. *Eight journalists abducted, two killed*. Available at: [http://www.ifex.org/mexico/2010/03/17/abductions\\_eight/](http://www.ifex.org/mexico/2010/03/17/abductions_eight/). Zócalo magazine. May 3, 2010. *Los periodistas desaparecidos*

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**David Silva**, both from the newspapers *El Mañana* and *La Tarde*.<sup>798</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State on the cases of Domínguez, Arguello and Silva.<sup>799</sup> In a reply received on November 12, 2010, the State indicated that these cases were “awaiting documentation by the FEADLE.”<sup>800</sup>

563. On April 12, 2010, the disappearance was reported of journalist **Ramón Ángeles Zalpa**, correspondent in the city of Paracho for the newspaper *Cambio de Michoacán*, state of Michoacán. According to the information received, Ramón Ángeles Zalpa was seen for the last time on April 6, 2010, when he was traveling in his car to the Universidad Pedagógica Nacional, in the city of Paracho, where he was a lecturer. According to the sources consulted, before his disappearance, the journalist was in charge of covering issues relating to organized crime. He had recently written about an armed assault suffered by an indigenous family near the municipalities of San Juan Nuevo and Angahuan, allegedly at the hands of a criminal gang. According to the information received, Ángeles Zalpa had received strange phone calls at his house shortly before his disappearance.<sup>801</sup> In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>802</sup> In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the Public Prosecutor’s Office of Michoacán.<sup>803</sup>

564. On April 20, 2010, **Evaristo Ortega Zárate**, director of the weekly *Espacio*, from Colipa, Veracruz, disappeared in the city of Jalapa, state of Veracruz. According to the information received by the Office of the Special Rapporteur, Irene Ortega Zárate, the sister of the weekly’s director, received messages on her cell phone in which her brother alerted that he had been detained by police in Jalapa, Veracruz. The messages read: “Tell everybody”, “they’ve arrested us”, “they’re taking us in a patrol car towards Veracruz.” At the time of his disappearance Evaristo Ortega Zárate was a prospective candidate for mayor of Colipa for the National Action Party (PAN).<sup>804</sup> On April 22, 2010, the Veracruz State Secretary for Public Security ruled out the possibility that agents working for the entity had participated in the disappearance of the journalist. According to information from NGOs such as IFEX the president of the Veracruz State Human Rights Commission made a declaration on April 22, 2010, about the disappearance of Ortega Zárate, as follows:

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en *Reynosa*. Available at: [http://www.revistazocalo.com.mx/index.php?option=com\\_content&view=article&id=553&Itemid=2](http://www.revistazocalo.com.mx/index.php?option=com_content&view=article&id=553&Itemid=2)

<sup>798</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), appendix 2. Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>799</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>800</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>801</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. April 12, 2010. Press release No. R41/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=793&IID=1>. See CNDH. Press release CGCP/095/10, April 9, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/095.pdf>

<sup>802</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>803</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>804</sup> Reporters without Borders. April 23, 2010. *Un periodista avisa a través de un mensaje de su secuestro por parte de la policía de Veracruz*. Available at: <http://es.rsf.org/mexico-un-periodista-avisa-a-traves-de-un-23-04-2010,37137.html>; Arcano Político. May 3, 2010. *Afianzan mordaza de sangre*. Available at: [http://www.arcanopolitico.com/index.php?option=com\\_content&view=article&id=3154:afianzan-mordaza-de-sangre&catid=89:analisis-arcano-politico&Itemid=85](http://www.arcanopolitico.com/index.php?option=com_content&view=article&id=3154:afianzan-mordaza-de-sangre&catid=89:analisis-arcano-politico&Itemid=85)

I don't even know his name, and I don't think you do either. I didn't know that he was a journalist or had any involvement with journalism, but I would have thought that for an act of repression of this kind to occur he would have to be a very important figure, and I don't think that's the case. He's not someone we know about here in this state. He's the (aspirant) to a post in a village in a tiny little municipality, that's how I'd view the matter.<sup>805</sup>

In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case<sup>806</sup>. In a reply received on November 12, 2010, the State indicated that the investigation was currently being processed by the Public Prosecutor's Office of the state of Veracruz.<sup>807</sup>

565. On June 29, 2010, the journalist **Ulises González García**, director of the weekly *La opinión*, from the city of Jerez, Zacatecas, was kidnapped. According to the information received, the kidnappers demanded a large ransom.<sup>808</sup> On August 9 the reporter was freed and immediately taken to hospital, showing signs of torture.<sup>809</sup>

566. On July 26, 2010, Televisa cameraman **Alejandro Hernández** and reporter **Héctor Gordo**, together with cameraman **Jaime Canales** from *Multimedios Laguna*, and reporter **Óscar Solís** of the newspaper *El Vespertino* were kidnapped in the lagoon region that includes part of the state of Durango and the neighboring state of Coahuila. According to the information received Alejandro Hernández, Jaime Canales and Héctor Gordo were kidnapped on the afternoon of July 26, 2010, while they were making a news report about a prison in Gómez Palacio, state of Durango. The reporter from *El Vespertino*, Oscar Solís, was kidnapped separately, also on July 26, 2010 and was held captive together with the other reporters.<sup>810</sup> Two media workers were set free by their captors: the reporter Oscar Solís of *El Vespertino* was freed on July 27, 2010, and Héctor Gordo was liberated on July 29, 2010. Subsequently, the two journalists still held captive, Javier Canales and Alejandro Hernández, were found on July 31, 2010, by the Federal Police.<sup>811</sup> At the time of the events the Office of the Special Rapporteur requested information from the Mexican

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<sup>805</sup> International Freedom of Expression Exchange (IFEX). April 23, 2010. *Another journalist missing; police may be implicated in his disappearance*. Available at: [http://www.ifex.org/mexico/2010/04/23/ortega\\_missing/](http://www.ifex.org/mexico/2010/04/23/ortega_missing/). *La Jornada*. April 23, 2010. *La SSP-Veracruz niega relación con secuestro de periodista y precandidato*. Available at: <http://www.jornada.unam.mx/2010/04/23/index.php?section=states&article=037n2est>

<sup>806</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>807</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>808</sup> Reporters without Borders. August 3, 2010. *Una desaparición y un exilio después de cuatro liberaciones al final de un trágico mes de julio*. Available at: <http://es.rsf.org/mexico-una-desaparicion-y-un-exilio-03-08-2010,38088.html>. *La Jornada*. July 29, 2010. *Levantán en Zacatecas al director del diario regional La Opinión*. Available at: <http://www.jornada.unam.mx/2010/07/29/index.php?section=politica&article=016n2pol>

<sup>809</sup> Reporters without Borders. August 11, 2010. *Reaparece vivo Ulises González*. Available at: <http://www.rsf-es.org/news/mexico-reaparece-vivo-ulises-gonzalez/>. Agencia EFE de America. August 11, 2010. *Reporteros Sin Fronteras celebra la liberación del director del Semanario Mexicano "La Opinión"*. Available at: [http://www.efeamerica.com/286\\_mexico/802610\\_rsf-celebra-la-liberacion-del-director-del-semanario-Mexican-la-opinion-.html](http://www.efeamerica.com/286_mexico/802610_rsf-celebra-la-liberacion-del-director-del-semanario-Mexican-la-opinion-.html)

<sup>810</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=806&IID=2>; Committee to Protect Journalists (CPJ). August 2, 2010. *Liberan en México a periodistas secuestrados*. Available at: <http://cpj.org/es/2010/08/liberan-en-mexico-a-reporteros-secuestrados.php>

<sup>811</sup> BBC Mundo. Mexico: July 31, 2010. *México: Rescatan a periodistas secuestrados en Durango*. Available at: [http://www.bbc.co.uk/mundo/america\\_latina/2010/07/100731\\_2244\\_rescatan\\_periodistas\\_secuestrados\\_mexico\\_televisa\\_fp.shtml](http://www.bbc.co.uk/mundo/america_latina/2010/07/100731_2244_rescatan_periodistas_secuestrados_mexico_televisa_fp.shtml). Milenio. July 30, 2010. *Exige Segob liberación de periodistas secuestrados*. Available at: <http://www.milenio.com/node/498691>

State and called upon it to do everything in its power to save the lives of these four individuals, and later urged the State to identify and try those responsible for these crimes.<sup>812</sup>

567. According to the information received, the reporters were covering the protests by prisoners and their families at the Social Readaptation Center No. 2 in Gómez Palacio, Durango, who were demanding the reinstatement of its director.<sup>813</sup> Around six in the evening, the media workers appear to have telephoned their editors to alert them that they were being held by a criminal group that objected to the news coverage that had been given to the dispute up to that point.<sup>814</sup> The cameraman from *Multimedios* indicated in his call that the condition set by their captors for freeing them was for three so-called *narco-blog* videos to be broadcast during the midday news of the local channel belonging to *Grupo Milenio*.<sup>815</sup> To save the lives of the kidnapped media workers, the media were at first obliged to accept impositions on their editorial content and to censor themselves in order to avoid any possibility of worsening the situation of the victims.<sup>816</sup> However, faced with a refusal to free all the captured journalists, the media refused to disseminate the material imposed on them.

568. According to information from the Public Security Ministry, on August 5, 2010, in Gómez Palacio, Durango, Federal Police agents detained **Jesús Antonio Villa Nevarez**, 25, **Gilberto Cervantes Pinto**, 33, and **Óscar Manuel Gutiérrez Gómez**, 23, on suspicion of involvement in the kidnapping of the reporters on July 26, 2010. Those detained had in their possession a suitcase with a video camera and microphone, as well as a number of documents belonging to the kidnapped reporters. According to the investigations the detainees belonged to the drug trafficking organization known as the “Pacific Cartel” or the “Sinaloa Cartel.” The detainees made a declaration to the authorities that the motive for the kidnapping was to send out a message denouncing alleged corruption among the local authorities in favor of opposing criminal groups.<sup>817</sup>

569. Meanwhile, the Office of the Special Rapporteur received information indicating that one of the kidnapped journalists, *Televisa* cameraman Alejandro Hernández, has had to seek refuge in the United States after he was freed. According to information reported in the press and a letter written by the reporter himself, he sought refuge “because the government displayed us like hunting trophies at a press conference and we received threatening calls at our house for having

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<sup>812</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=806&IID=2>

<sup>813</sup> International Freedom of Expression Exchange (IFEX). August 3, 2010. *Four journalists released after being held for six days by criminals*. Available at: [http://www.ifex.org/mexico/2010/08/03/journalists\\_released/](http://www.ifex.org/mexico/2010/08/03/journalists_released/). Milenio. July 28, 2010. *Levantán a 4 reporteros y camarógrafos en Durango*. Available at: <http://www.milenio.com/node/496609>

<sup>814</sup> Milenio. July 28, 2010. *Levantán a 4 reporteros y camarógrafos en Durango*. Available at: <http://www.milenio.com/node/496609>. New York Times. July 29, 2010. *Mexican Journalists’ Captors demand Broadcast of Videos*. Available at: [http://www.nytimes.com/2010/07/29/world/americas/29mexico.html?\\_r=2&ref=global-home](http://www.nytimes.com/2010/07/29/world/americas/29mexico.html?_r=2&ref=global-home)

<sup>815</sup> Milenio. July 28, 2010. *Levantán a 4 reporteros y camarógrafos en Durango*. Available at: <http://www.milenio.com/node/496609>

<sup>816</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=806&IID=1>. International Freedom of Expression Exchange (IFEX). August 3, 2010. *Four journalists released after being held for six days by criminals*. Available at: [http://www.ifex.org/mexico/2010/08/03/journalists\\_released/](http://www.ifex.org/mexico/2010/08/03/journalists_released/). Milenio. July 28, 2010. *Levantán a 4 reporteros y camarógrafos en Durango*. Available at: <http://www.milenio.com/node/496609>

<sup>817</sup> Mexican President’s Office. Communication 449, August 5, 2010. Available at: <http://presidencia.gob.mx/?DNA=85&page=1&Prensa=15137&Contenido=59152>. La Jornada. August 6, 2010. *Presenta la PF a tres presuntos plagarios de cuatro periodistas*. Available at: <http://www.jornada.unam.mx/2010/08/06/index.php?section=politica&article=005n1pol>

contradicted [Public Security Secretary, Genaro] García Luna about the fact that it wasn't the Federal Police who freed us, and that he lied when he said they would protect us."<sup>818</sup>

**c. Attacks and Harassment**

570. According to the information received, on January 21, 2010, **Juan Aparicio Sebastián** received a death threat from the Deputy Inspector of the State Border Patrol (hereinafter, "PEF") in Tapachula, Chiapas. According to the information received by the Office of the Special Rapporteur, while reporting on a search being carried out by the PEF, the reporter met with the Deputy Inspector of the PEF, who insulted and threatened him. The magazine *El Observador*, edited by Aparicio Sebastián, had published allegations of extortions, thefts, kidnapping, and illegal detentions committed by a number of PEF agents. According to the information received, the then-Office of the Special Prosecutor for Crimes against Journalists assumed the investigation.<sup>819</sup>

571. According to the information received, on January 21, 2010, **Armando Suárez Martínez**, editor of the magazine *Puerto Viejo*, was subject to illegal detention and threats by Yuan Yee Cunningham, Municipal President of Loreto, state of Baja California Sur, and various members of his administration. According to the information received, Suárez Martínez was in the Press Department of Loreto's Municipal Offices when the municipal president and other officials arrived and began to insult and beat him. He was then forced to get into a vehicle of the Department of Public Security and Transit and taken somewhere else where the beatings and death threats continued. According to the information received, the officials forced Suárez Martínez to offer apologies and promise not to criticize the municipal authorities before later being freed, after four and a half hours.<sup>820</sup> The State informed the Office of the Special Rapporteur that on January 28, 2010, the PGR launched a criminal investigation for the crime of illegal detention and other possible crimes, and on March 26, 2010, a criminal investigation was filed for the crimes of making threats and physical assault.<sup>821</sup>

572. According to the information received, on January 27, 2010, **journalists from the radio broadcasting group Organización Impulsora de Radio** (hereinafter OIR) were threatened via a message left beside an OIR vehicle which was set on fire in Los Mochis, Sinaloa. On arriving at the burnt-out vehicle, the police saw a message written on a piece of cloth that said: "The same thing will happen to all reporters. We'll burn you. Signed: La Mochomera." Directors of the OIR filed a report with Sinaloa's Public Prosecutor's Office.<sup>822</sup>

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<sup>818</sup> Proceso. December 15, 2010. *Periodistas en el olvido*. Available at: <http://www.proceso.com.mx/rv/modHome/detalleExclusiva/86410>. La Jornada. September 17, 2010. "Montaje" de la SSP, el "rescate" de un camarógrafo de Durango, acusan. Available at: <http://www.jornada.unam.mx/2010/09/17/index.php?section=politica&article=018n2pol>. El Paso Times. September 15, 2010. "I'm scared for my life": Televisa cameraman seeks asylum in US. Available at: [http://www.elpasotimes.com/news/ci\\_16077238](http://www.elpasotimes.com/news/ci_16077238). Periodistas de a Pie. December 15, 2010. *Colecta navideña para apoyar a nuestros colegas en el exilio*. Available at: <http://periodistasdeapie.wordpress.com/2010/12/15/colecta-navidena-para-apoyar-a-nuestros-colegas-en-exilio/>

<sup>819</sup> International Freedom of Expression Exchange (IFEX). January 29, 2010. *Police commander threatens magazine editor in Chiapas*. Available at: [http://www.ifex.org/mexico/2010/01/29/aparicio\\_sebastian\\_death\\_threat/](http://www.ifex.org/mexico/2010/01/29/aparicio_sebastian_death_threat/)

<sup>820</sup> Centro de Journalism and Ética Pública (CEPET)/IFEX. February 2, 2010. *Magazine editor abducted, beaten and threatened by mayor and municipal employees*. Available at: [http://ifex.org/mexico/2010/02/02/suarez\\_martinez\\_death\\_threat/](http://ifex.org/mexico/2010/02/02/suarez_martinez_death_threat/). La Jornada. January 27, 2010. *Edil de Loreto agrade y amenaza a periodista*. Available at: <http://www.jornada.unam.mx/2010/01/28/index.php?section=states&article=031n2est>

<sup>821</sup> PGR, Doc. No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010, Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>822</sup> International Freedom of Expression Exchange (IFEX). February 1, 2010. *Broadcasting corporation's vehicle set on fire, journalists threatened*. Available at: [http://www.ifex.org/mexico/2010/02/01/oir\\_fire/](http://www.ifex.org/mexico/2010/02/01/oir_fire/). La Jornada. January 28, 2010. *Edil de Loreto agrade y amenaza a periodista*. Available at:

573. On February 4, 2010, an attack was carried out on the home of journalist **Rafael Martínez de Escobar**, director of the newspaper *Tabasco al Día*, in Villahermosa, Tabasco. According to the information received by the Office of the Special Rapporteur, unknown assailants threw three Molotov cocktails which landed where the reporter had set up a billboard accusing officials of the state oil company PEMEX of corruption. Only one of the bombs exploded.<sup>823</sup> The State informed the Office of the Special Rapporteur that on February 10, 2010, the PGR opened a criminal investigation for the crime of damaging private property.<sup>824</sup>

574. On February 10, 2010, the Office of the Special Rapporteur obtained information from the CNDH, according to which journalists **Carlos Dueñas** and **Guillermo González**, correspondent and cameraman, respectively, at Televisa Tijuana were allegedly assaulted by police in Veracruz.<sup>825</sup>

575. According to the information received, on February 16, 2010, the photographers for the newspaper **AZ Víctor Hugo Yáñez Ramos** and **Estaban Rodríguez Rodríguez** were beaten and had their camera equipment taken from them by various police officers of the state of Veracruz Public Security Secretariat while they reported on a concert. According to the information received, the damage to the cameras was compensated by the state government, after intervention by the State Commission for the Defense of Journalists. However, the journalists have received no response following their report filed with the Public Prosecutor's Office.<sup>826</sup> Within the framework of its visit, the Office of the Special Rapporteur requested the State provide complete information about the case.<sup>827</sup>

576. According to the information received, on February 17, 2010, the reporters **Daniel Domínguez** and **Óscar Amaya** of *Radio 860*; **Carlos Moreno** of the online media site *La Polaka*; **Miguel Lozano** of *Radio Net 1490*; and **David Fuentes** of local channel *Canal 5*, also a correspondent for the Notimex agency, were assaulted by Federal Police and members of the Presidential Guard. According to information from the CNDH office in Ciudad Juárez, the media workers were beaten and had their camera equipment seized, allegedly by federal officials, while covering protests by youths in Ciudad Juárez, in the state of Chihuahua, in response to a visit by President Calderón and a business delegation, who were meeting with local authorities to define the security strategy to be

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<http://www.jornada.unam.mx/2010/01/28/index.php?section=states&article=031n2est>. Milenio. January 28, 2010. *Sinaloa: queman vehículo a dueña de radiodifusora*. Available at: <http://impreso.milenio.com/node/8710602>

<sup>823</sup> International Freedom of Expression Exchange (IFEX). February 8, 2010. *Bombs thrown at journalist's home in Tabasco*. Available at: [http://www.ifex.org/mexico/2010/02/08/martinez\\_de\\_escobar\\_attack/](http://www.ifex.org/mexico/2010/02/08/martinez_de_escobar_attack/). Proceso. February 4, 2010. *Atacan con bombas molotov la casa del director de Tabasco al Día*. Available at: <http://www.proceso.com.mx/rv/modHome/pdfExclusiva/76203>. La Jornada. February 5, 2010. *Atacan casa del director de Tabasco al Día*. Available at: <http://www.jornada.unam.mx/2010/02/05/index.php?section=states&article=031n4est>

<sup>824</sup> PGR, Doc. No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010, Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>825</sup> CNDH. Press release CGCP/037/10, February 10, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/037.pdf>

<sup>826</sup> Centro de Periodismo y Ética Pública (CEPET)/IFEX. April 12, 2010. *Elementos de Seguridad Pública de Veracruz golpean y roban a fotógrafos*. Available at: [http://www.ifex.org/mexico/2010/04/15/veracruz\\_periodistas/es/](http://www.ifex.org/mexico/2010/04/15/veracruz_periodistas/es/). CEPET. April 12, 2010. *Elementos de Seguridad Pública de Veracruz agreden y despojan a fotógrafos*. Available at: <http://libexmexico.wordpress.com/2010/04/page/2/>

<sup>827</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

implemented in the city.<sup>828</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>829</sup>

577. The CNDH reported that on February 18, 2010, **eight journalists** were victims of defamatory texts posted on the Internet, and three others received threats.<sup>830</sup> The CNDH began an investigation into the reporters' claims.<sup>831</sup>

578. According to the information received, on February 18, 2010, federal police officers assaulted reporter **Hugo Alfredo Olivera Cartas** from the newspaper *La Voz de Michoacán* when he was on his way to cover an armed confrontation in Chiquihuitillo, in the state of Michoacán. Olivera reported the incident to the CNDH.<sup>832</sup> The reporter Hugo Alfredo Olivera Cartas was later murdered on July 6, 2010 (see *supra*). Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State on the physical assault on Olivera Cartas on February 18.<sup>833</sup> In a reply received on November 12, 2010, the State reported that the Public Security Ministry, through its Human Rights Department and the Federal Police's Internal Affairs Department, requested a report on the events from the operational departments and carried out a number of inquiries.<sup>834</sup> The Ministry also indicated that the Federal Police's operational departments denied the journalist's accusations and that both the CNDH and the investigation departments of the Ministry and the Federal Police were continuing their investigations.<sup>835</sup>

579. According to the information received, on February 19, 2010, **Irma Nelly Vázquez Colorado**, newspaper reporter for *La Opinión de Poza Rica*, was assaulted and threatened by staff allegedly from the local penitentiary in Misantla, Veracruz. According to the information available, the reporter, accompanied by other colleagues, was reporting on a supposed distribution of supplies among the inmates of Misantla by the alleged guards of the local prison, the wife of the former Prison Service Director of the state of Veracruz government and candidate for the municipal presidency in Misantla. According to the information received, when the official's wife realized that

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<sup>828</sup> CNDH. Press release of February 18, 2010. CGCP/044/10. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/044.pdf>. International Freedom of Expression Exchange (IFEX). February 26, 2010. *Journalists assaulted by members of Presidential Guard*. Available at: [http://www.ifex.org/mexico/2010/02/26/juarez\\_journalists\\_assaulted/](http://www.ifex.org/mexico/2010/02/26/juarez_journalists_assaulted/). *La Jornada*. February 18, 2010. *Con violencia impiden a activistas participar en el foro de Ciudad Juárez*. Available at: <http://www.jornada.unam.mx/2010/02/18/index.php?section=politica&article=005n1pol>

<sup>829</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>830</sup> Inter-American Press Association. 19-22 March, 2010. *Country Report: Mexico*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=26&inford=785&idioma=us](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&inford=785&idioma=us). *El Universal*. February 19, 2010. *CNDH indaga detenciones a periodistas*. Available at: <http://www.eluniversal.com.mx/nacion/175763.html>

<sup>831</sup> CNDH, Press release CGCP/044/10, February 18, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/044.pdf>

<sup>832</sup> Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: <http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php>

<sup>833</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>834</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>835</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

the reporter was taking photographs, she seized the camera from her while the guards assaulted her. The other journalists present intervened to stop the attack.<sup>836</sup>

580. According to the information received, on March 9, 2010, **reporters from various media outlets from the city of Saltillo** in the state of Coahuila were assaulted by the governor's security staff at the Escuela Normal Básica just moments before a press conference which they were prevented from attending to carry out their reporting work.<sup>837</sup>

581. According to the information received, on March 9, 2010, reporter **José Rosas Cano** of *SBC Canal 53*, in Zacapoaxtla, Puebla was assaulted by members of an alleged civil organization. According to the information received by the Office of the Special Rapporteur, Rosas Cano was investigating the *modus operandi* of a supposed single-mother support program being run by an alleged civil organization in the Zacapoaxtla convention center. While he was taking some photographs, one of the accused approached him, refused to speak to the reporter and asked him to leave. Meanwhile, another person began pushing him to eject him from the premises, striking the journalist's equipment and face, which was recorded on camera. The assault was reported to the Public Prosecutor's Office.<sup>838</sup>

582. According to the information received, on March 26, 2010, a **photographer for *El Heraldo de Chihuahua***, whose name was not given, was assaulted by an unknown person in the city of Chihuahua, state of Chihuahua. According to the information received by the Office of the Special Rapporteur, the journalist was reporting on a murder story. On arriving at the scene of the crime, a group of people were preventing journalists representing various media outlets from taking photographs. One member of the group approached the photographer from *El Heraldo* and assaulted him before disappearing into the crowd. At the scene various police officers were present who did nothing to prevent the attack. The journalist filed a police report with the state of Chihuahua's Public Prosecutor's Office.<sup>839</sup>

583. According to the information received, on March 26, 2010, **Miguel Ángel Cervantes Gómez**, correspondent for the newspaper *Novedades Acapulco* in Ometepec, state of Guerrero, received death threats after accusing the municipal authorities of removing stone from the Quetzalpa river.<sup>840</sup>

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<sup>836</sup> International Freedom of Expression Exchange (IFEX). April 21, 2010. *Custodios de la Dirección de Reclusorios de Veracruz golpean y amenazan a reportera*. Available at: [http://www.ifex.org/mexico/2010/04/21/vazquez\\_death\\_threat/es/](http://www.ifex.org/mexico/2010/04/21/vazquez_death_threat/es/); Proceso. February 19, 2010. *En 2009, 13 periodistas fueron asesinados y 189 agredidos: CEPET*. Available at: <http://www.proceso.com.mx/rv/modHome/detalleExclusiva/76740>

<sup>837</sup> CNDH. Press release CGCP/064/10, March 9, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/064.pdf>. CEPET. March 10, 2010. *Escortas de gobernador agreden y amagan con arma de fuego a reporteros* Available at: <http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/>

<sup>838</sup> CEPET. March 12, 2010. *Supuestos promotores de programas sociales golpean a reporter de TV*. Available at: <http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/>; Síntesis. *Agreden a reporteros*. March 10, 2010. Available at: <http://www.periodicosintesis.com.mx/noticias/58285/Agreden-a-reporteros>. "Zacapoaxtla SBC 53 Agreden a Reportero de Canal 53", *Canal SBC 53*, March 9, 2010. Available at: [http://www.youtube.com/watch?v=LA\\_FrOu0KkQ](http://www.youtube.com/watch?v=LA_FrOu0KkQ)

<sup>839</sup> CEPET. March 29, 2010. *Agreden a reportero gráfico ante la inacción de agentes policiacos*. Available at: <http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/>. Colegio de Periodistas del Estado de Chihuahua. March 26, 2010. *Civiles golpearon a fotoreportero de El Heraldo*. Available at: <http://www.colpechi.org/Civiles-golpearon-a-fotoreportero.html>

<sup>840</sup> IRZA news agency. March 28, 2010. *Cuñado del alcalde de Ometepec amenazó de muerte a periodista*. Available at: <http://www.agenciairza.com/2010/03/cunado-del-alcalde-de-ometepec-amenazo-de-muerte-a-periodista/>. El Diario de Guerrero. *Un periodista teme por su vida*. Available at: <http://www.diariodeguerrero.com.mx/CGI-BIN/diariodegro/notipales/shownotipal.php?idnote=20069>

584. At the end of March 2010, according to the information received by the Office of the Special Rapporteur, military personnel assaulted and threatened a **cameraman, whose name was withheld, from the Canal 44** television station in Ciudad Juárez. According to the information available, while the journalist was reporting on the arrest of alleged criminals, the military personnel tried to seize his camera and detain him without giving a reason, all of which was recorded on camera. *Canal 44* filed a report on the incident with the Ministry of National Defense (hereinafter "Sedena"), who said they would investigate the matter.<sup>841</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>842</sup> In a reply received on November 12, 2010, the State reported that the information provided by Sedena indicated that there was an unresolved complaint filed with the CNDH and that Sedena's Internal Affairs Unit had begun investigation proceedings that had not yet reached a conclusion.<sup>843</sup> In its observations on the preliminary version of this report, the Mexican State reported that "the Ministry of National Defense confirmed that on November 30, 2010, the National Human Rights Commission (CNDH) informed them that the matter had been closed... due to lack of grounds for continuing to investigate."<sup>844</sup>

585. According to the information received on April 1, 2010, a **reporter and photographer from El Heraldo de Chihuahua** were prevented from carrying out their work by members of the Mexican Armed Forces who deleted the photographs they had taken. According to the information received, while the reporters were in San Francisco de Conchos, state of Chihuahua, reporting on events surrounding the Easter festivities and on the police operation, they appear to have observed and photographed members of the military abusing local citizens. On noticing this, the soldiers approached the journalists, seized their photographic equipment, and deleted all their images at gun point.<sup>845</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>846</sup> In a reply received on November 12, 2010, the State reported that the Ministry of National Defense had no record of the case.<sup>847</sup>

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<sup>841</sup> Committee to Protect Journalists (CPJ)/IFEX. June 7, 2010. *Federal forces increasingly harass journalists*. Available at: [http://www.ifex.org/mexico/2010/06/08/calderon\\_federal\\_forces/](http://www.ifex.org/mexico/2010/06/08/calderon_federal_forces/). CEPET. March 25, 2010. *Elementos del Ejército cometen abusos contra camarógrafo*. Available at: <http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/>; El Estatal. March 25, 2010. *Agreden militares a reportero del canal 44*. Available at: [http://www.elestatal.com/index.php?option=com\\_content&view=article&id=5865:agreden-militares-a-reportero-del-canal-44&catid=3:la-](http://www.elestatal.com/index.php?option=com_content&view=article&id=5865:agreden-militares-a-reportero-del-canal-44&catid=3:la-). Canal 44 Noticias, *Elementos del Ejército cometen abusos contra camarógrafo de esta misma empresa*, 2010. Available at: [http://www.youtube.com/watch?v=cH1\\_vfs7Wo](http://www.youtube.com/watch?v=cH1_vfs7Wo)

<sup>842</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>843</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>844</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>845</sup> International Freedom of Expression Exchange (IFEX). April 20, 2010. *Militares obstaculizan a reporteros y los obligan a borrar material fotográfico*. Available at: [http://www.ifex.org/mexico/2010/04/23/periodistas\\_chihuahua/es/](http://www.ifex.org/mexico/2010/04/23/periodistas_chihuahua/es/). Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: <http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php>. *El Mexicano*. April 3, 2010. *Militares amenazan a reportero de la OEM*. Available at: <http://www.oem.com.mx/elmexicano/notas/n1582188.htm>

<sup>846</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>847</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

586. According to the information received, on April 2 2010, two members of the military tried to seize a camera from a **photographer from the newspaper *El Mexicano*** while he was taking photos of a vessel which was being towed in Villa Ahumada, in the state of Chihuahua.<sup>848</sup> Non-governmental organizations such as the CPJ reported that the reporter kept his identity secret for his own safety and reported the incident to the state of Chihuahua's Human Rights Commission.<sup>849</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>850</sup> In a reply received on November 12, 2010, the State reported that the Ministry of National Defense had no record of the case.<sup>851</sup>

587. According to the information received, on April 14, 2010, **Jade Ramírez Cuevas**, reporter and broadcast reporter for *Radio Universidad de Guadalajara*, received threats via email as follows: "YOU LOOKED REAL GOOD SATURDAY ... AND YOU SOUND HOT ON THE RADIO ... CARRY ON INVESTIGATING LITTLE REPORTER BITCH ... I TOLD YOUR IDIOT BROTHER EL GRINGO AND NOW YOU'VE GONE AND FUCKED YOURSELF." This threat was in addition to others made to the journalist while she was reporting on the social and community protest against the construction of *El Zapotillo* hydroelectric dam in the state of Jalisco. During previous days and for three consecutive nights, Jade Ramírez received phone calls at home at three in the morning without anyone speaking on the other end of the line. The threat was reported to Jalisco's Public Prosecutor's Office.<sup>852</sup>

588. According to the information received, on April 14, 2010, **Sugeyry Gándara**, a reporter for the newspaper *Tiempo*, was assaulted by a municipal police officer in Chihuahua, in the state of Chihuahua. According the information available, the journalist was reporting on arrests being made by the police at the end of a concert. On noticing that the reporter was taking photographs of the arrest, a policeman insulted her and threw her camera into her face. Chihuahua's municipal president apologized for the assault and indicated that the officer responsible would be punished.<sup>853</sup>

589. According to the information received, on April 14, 2010, **Valentín Hierro**, a photographer for the online newspaper *Entre Líneas*, was beaten and threatened by a state police

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<sup>848</sup> Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: <http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php>

<sup>849</sup> Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: <http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php>

<sup>850</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>851</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>852</sup> CENCOS. April 22, 2010. *Segunda amenaza a periodista de Jalisco en menos de un mes*. Available at: <http://www.cencos.org/es/node/23328>. Campaña Permanente de Protección a Periodistas. September 7, 2010. *Siguele investigando reporterita y ya te cogió la chingada*. Available at: <http://www.libertad-expresion.org.mx/noticias/%e2%80%9csiguele-investigando-reporterita-y-ya-te-cogio-la-chingada%e2%80%9d/#more-5715>. International Freedom of Expression Exchange (IFEX). April 19, 2010. *Reporter receives death threats*. Available at: [http://ifex.org/mexico/2010/04/15/death\\_threats/](http://ifex.org/mexico/2010/04/15/death_threats/)

<sup>853</sup> CEPET. April 15, 2010. *Agreden policías estatales y municipales a periodistas en Chihuahua*. Available at: <http://libexmexico.wordpress.com/2010/04/>. Colegio de Periodistas del Estado de Chihuahua. April 15, 2010. *Agreden policías estatales y municipales a reporteros*. Available at: <http://www.colpechi.org/Agreden-policias-esataales-y.html>. El Devenir de Chihuahua. April 15, 2010. *Se disculpa Álvaro Madero por agresión a reportera de Tiempo*. Available at: [http://diario.devenir.com.mx/index.php?option=com\\_content&view=article&id=1529:vigilaran-200-federales-la-capital-de-chihuahua-alvaro-madero&catid=36:chihuahua&Itemid=56](http://diario.devenir.com.mx/index.php?option=com_content&view=article&id=1529:vigilaran-200-federales-la-capital-de-chihuahua-alvaro-madero&catid=36:chihuahua&Itemid=56)

officer in the city of Chihuahua, Chihuahua state. According to the information received by the Office of the Special Rapporteur, Hierro was trying to take a photograph of a wounded police officer being taken out of an ambulance in the Hospital Central de Chihuahua. However, one of the police officers at the scene hit him to prevent him taking photographs.<sup>854</sup>

590. According to the information received, on April 19, 2010, **Angelina Albarrán Morales** and **at least 25 other journalists** received death threats in the state of Morelos. According to the information received, the death threats against the journalists were made via various anonymous emails containing threats and intimidations. The fear felt by the journalist Angelina Albarrán Morales from the threats has led to her suffering from emotional, professional, and financial problems.<sup>855</sup>

591. According to the information received, on April 27, 2010, an attack was made on a humanitarian convoy in which the journalists **Érika Ramírez** and **David Cilia** from the magazine *Contralínea* were traveling as it headed toward the community of San Juan Copala, in the state of Oaxaca. According to the information received, the journalists, who had gone to San Juan Copala to report on the murder of female broadcasters from the community radio station *La Voz que Rompe el Silencio*, Felicitas Martínez and Teresa Bautista, committed on April 7, 2008, were trapped for two days in the area where the events took place. On the night of April 29, 2010, an operation was carried out in which the reporters were rescued and taken to the city of Santiago Juxtlahuaca, Oaxaca. David Cilia received two bullet wounds in the left leg and another in the hip area. The PGR exercised its authority to assert jurisdiction to investigate the case.<sup>856</sup>

592. According to the information received, on April 27, 2010, in Monterrey, state of Nuevo León, **Ximena Peredo**, a columnist for the newspaper *El Norte* and the biologist **Antonio Hernández Ramírez**, both members of the Colectivo Ciudadano in Defensa de la Pastora [a collective to defend an area of natural parkland from development], received an email containing threats. According to the information received, the email contained the following text: “now it’s time you quit fucking around [...] we’ve got tabs on your little butterfly- and bird-loving homo biologist, he’s the first one who should quit, we’re watching him and if he didn’t stop his bullshit with the first course, let’s just say he can’t complain he wasn’t told [...] the little biologist and the journalist [should] stop screwing around and they’re going to fuck up the stadium the stupid fucks [...] you know, your little biologist friend knows that we’re not fucking around, now you know and if you don’t stop then we’re moving in [...] that means right now [...] get it?” The collective is known for its actions in favor of environmental protection and Peredo has written on these topics in her column.<sup>857</sup>

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<sup>854</sup> International Freedom of Expression Exchange (IFEX). April 20, 2010. *Municipal and state police assault journalists in Chihuahua*. Available at: [http://www.ifex.org/mexico/2010/04/20/hierro\\_assaulted/](http://www.ifex.org/mexico/2010/04/20/hierro_assaulted/) Colegio de Periodistas del Estado de Chihuahua. April 15, 2010. *Agreden policías estatales y municipales a reporteros*. Available at: <http://www.colpechi.org/Agreden-policias-esataales-y.html>

<sup>855</sup> State of Morelos Independent Human Rights Commission. October 28, 2010. Libertad de Expresión bajo ataque pone en riesgo derechos democráticos. Available at: <http://cidhmorelos.wordpress.com/2010/10/28/libertad-de-expresion-bajo-ataque-pone-en-riesgo-derechos-democraticos-2/>

<sup>856</sup> Office of the Special Rapporteur for Freedom of Expression – CIDH. April 30, 2010. Press Release No. R48/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=799&IID=1>; *Contralínea*. May 9, 2010. *El rescate*. Available at: <http://contralinea.info/archivo-revista/index.php/2010/05/09/el-rescate/>. Committee to Protect Journalists (CPJ). April 30, 2010. *Periodistas desaparecidos son rescatados en Mexico; uno esta herido*. Available at: <http://cpj.org/es/2010/04/periodistas-desaparecidos-son-rescatados-en-mexico.php>. Comisión Nacional para el Desarrollo de los Pueblos Indígenas. April 30, 2010. *Apuran investigación de emboscada*. Available at: [http://www.cdi.gob.mx/index.php?option=com\\_content&view=article&id=951:30-de-Abril-de-2010&catid=17&Itemid=200008](http://www.cdi.gob.mx/index.php?option=com_content&view=article&id=951:30-de-Abril-de-2010&catid=17&Itemid=200008)

<sup>857</sup> CENCOS. April 30, 2010. *Amenazas contra miembros del Colectivo Ciudadano en Defensa de la Pastora*. Available at: <http://www.cencos.org/es/node/23422>. Vanguardia. April 30, 2010. *Agreden en mensaje cibernético a*

593. According to the information received, on May 6, 2010, **Luz del Carmen Sosa**, a reporter for *El Diario* of Ciudad Juárez, and photographer **Mario Bañuelos**, were harassed by soldiers while reporting on the disappearance of three state employees in the municipality of El Porvenir, in the state of Chihuahua. According to the information received, the soldiers prevented the journalists from carrying out their work, pointing guns at Bañuelos, trying to seize her camera and threatening to arrest both journalists. The reporters filed a report on the incident with the CNDH.<sup>858</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>859</sup> In a reply received on November 12, 2010, the State reported that the information provided by the Ministry of National Defense indicated that a complaint was being processed with the CNDH.<sup>860</sup>

594. On 10 May, 2010, unidentified persons entered the apartment of **Laura Castellanos**, a freelance journalist working for *Gatopardo* magazine, while the journalist was traveling abroad promoting her book *Mexico Armado*. The unidentified persons who entered the apartment rummaged through her personal items, taking away journalistic information. The journalist reported the theft to the then-Office of the Special Prosecutor for Crimes against Journalists, as well as the accessing of her email and telephone and the constant surveillance by people of “military appearance.” She also filed a complaint with the National Human Rights Commission. According to information from non-governmental organizations such as Article 19, the theft forms part of a series of acts designed to intimidate, including telephone threats, hacked email accounts and harassment.<sup>861</sup>

595. According to the information received, on May 19, 2010, **Marcelo López** and **Félix Nolasco** of *El Heraldo de Tabasco*, **Carlos Castro** of *Diario Olmeca*, **Jaime Ávalos** of *Novedades*, **Eric Banda** of *Tabasco Hoy* and **David Michel Estrada** of *El Independiente of the Sureste* were beaten and intimidated with gun shots by riot police belonging to the Villahermosa State Police, in the state of Tabasco, while they were reporting on a taxi driver protest against the increases in fares imposed by the Ministry for Communications and Transport (hereinafter, “SCT”). According to the information received, while the police and SCT inspectors tried dispersing the protestors and their vehicles, the reporters approached the inspectors to ask them about the incident, to which the police responded using violence. Marcelo López was hospitalized after suffering a traumatic brain injury. The state of Tabasco’s Human Rights Commission filed an investigation to document and

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...continuation

*defensores de La Pastora.* Available at: [http://www.vanguardia.com.mx/agreden\\_en\\_mensaje\\_cibernetico\\_a\\_defensores\\_de\\_la\\_pastora-493973.html](http://www.vanguardia.com.mx/agreden_en_mensaje_cibernetico_a_defensores_de_la_pastora-493973.html)

<sup>858</sup> Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: <http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php>

<sup>859</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>860</sup> Mexican State, “Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010”, Annex to Communication OEA-02567 from Mexico’s Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>861</sup> CNDH. Press release CGCP/147/10, June 2, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/147.pdf>. Campaña Permanente de Protección a Periodistas. 26 May, 2010. *El creciente acoso hacia reportera de investigación es causa de preocupación*. Available at: <http://www.libertad-expresion.org.mx/boletines/alerta-le-el-creciente-acoso-hacia-reportera-de-investigacion-es-causa-de-preocupacion/#more-4806>. La Jornada. June 2, 2010. *Levanta denuncia la periodista Laura Castellanos ante la PGR y la CNDH*. Available at: <http://www.jornada.unam.mx/2010/06/02/index.php?section=politica&article=018n2pol>

request information from the authorities involved.<sup>862</sup> Within the framework of its visit, the Office of the Special Rapporteur requested the State provide complete information about the case.<sup>863</sup>

596. According to the information received, on May 24, 2010, the correspondent for the newspaper *La Opinión Milenio* in the state of Durango, **Karla Tinoco Santillán**, received telephone threats allegedly as a result of a report on the impact of drug trafficking on the municipality of Vicente Guerrero, in the state of Durango. One week after receiving the threats, she was fired from her job. Upon becoming aware of the threats, the newspaper's director of information had requested that she come to the media outlet's offices in Torreón, in the state of Coahuila. On her return to Durango, on May 31, 2010, the journalist was notified of her dismissal. According to the information available, the dismissal had been requested because the reporter posed a risk to the safety of the other newspaper employees.<sup>864</sup>

597. According to the information received, on May 25, 2010, the photographer for *El Sol de Tijuana*, **José Luis Camarillo Téllez**, was intimidated by police in Tijuana, in the state of Baja California. While reporting on the police operation following a violent altercation in Tijuana, a police officer tried to run him over with his patrol car. Shortly afterwards, other police officers insulted him, threatened to arrest him, prevented him from carrying out his work, and tried to seize his camera equipment from him. The harassment was reported to the State Public Prosecutor's Office and a complaint was filed with the Special Prosecutor's Office for Human Rights and Citizen Protection of the state of Baja California.<sup>865</sup>

598. In June 2010, journalists **Isaín Mandujano** and **Ángeles Mariscal**, correspondents for the magazine *Proceso* and the newspaper *La Jornada* in the state of Chiapas, reported being victims of a smear campaign by the state authorities. According to reports by the Federal District Human Rights Commission, the journalists have given a voice to various political actors and members of society in the state of Chiapas, which has led to conflicts and discriminatory acts by the state government and other influential local groups. They also suffered from defamatory accusations made through various media outlets, including those belonging to the Chiapas state government.<sup>866</sup>

599. According to the information received, in the early morning of June 1, 2010, in different incidents, **three distributors of the newspaper *Noroeste*** in Culiacán, in the state of Sinaloa, had motorcycles seized by unknown armed assailants. One of the deliverymen suffered bullet wounds. According to the information received by the Office of the Special Rapporteur, the first robbery took place at approximately 5:30 a.m. on June 1, 2010, when a group of armed men in an

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<sup>862</sup> International Freedom of Expression Exchange (IFEX). May 26, 2010. *Riot police assault journalists during protest*. Available at: [http://www.ifex.org/mexico/2010/05/26/villahermosa\\_journalists/](http://www.ifex.org/mexico/2010/05/26/villahermosa_journalists/) Tabasco Hoy. May 26, 2010. *Va CDEH contra funcionarios por ataque a prensa*. Available at: [http://www.tabascohoy.com.mx/noticia.php?id\\_notas=193303](http://www.tabascohoy.com.mx/noticia.php?id_notas=193303)

<sup>863</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>864</sup> International Freedom of Expression Exchange (IFEX). June 23, 2010. *Reporter fired after receiving threats over article on drug-related violence*. Available at: [http://www.ifex.org/mexico/2010/06/24/tinoco\\_santillan\\_dismissed/](http://www.ifex.org/mexico/2010/06/24/tinoco_santillan_dismissed/). Campaña Permanente de Protección a Periodistas. September 7, 2010. *Síguelo investigando reporterita y ya te cogió la chingada*. Available at: <http://www.libertad-expresion.org.mx/noticias/%E2%80%9Csiguelo-investigando-reporterita-y-ya-te-cogio-la-chingada%E2%80%9D/>

<sup>865</sup> International Freedom of Expression Exchange (IFEX). June 1, 2010. *Police officers harass, try to run over journalist*. Available at: [http://www.ifex.org/mexico/2010/06/01/camarillo\\_assaulted/](http://www.ifex.org/mexico/2010/06/01/camarillo_assaulted/). El Sol de Tijuana. May 26, 2010. *Atiende PDH el caso Camarillo*. Available at: <http://www.oem.com.mx/elsoldetijuana/notas/n1648342.htm>

<sup>866</sup> Federal District Human Rights Commission. Press Release 202/2010, July 23, 2010. Available at: <http://www.cd hdf.org.mx/index.php/boletines/564-boletin-2022010>. International Freedom of Expression Exchange (IFEX). July 29, 2010. *Denuncian periodistas campaña de calumnias*. Available at: [http://www.ifex.org/mexico/2010/07/29/chiapas\\_periodistas/es/](http://www.ifex.org/mexico/2010/07/29/chiapas_periodistas/es/) Noticias MVS. July 23, 2010. *CDHDF manifiesta solidaridad con periodistas*. Available at: <http://www.noticiasmvs.com/CDHDF-manifiesta-solidaridad-con-periodistas.html>

SUV intercepted a female distributor and stole her motorcycle. The second attack took place at approximately 5:50 when a group of unknown armed men in an SUV followed another newspaper distributor until they blocked his path. They forced him to stop and get into the vehicle in which they were travelling. Later they made him get out in another location where death threats were made by one of the assailants, who shot him in the abdomen and in the hand. The last robbery took place shortly afterwards when a group of unknown armed men on board a similar vehicle as those used in the other robberies stole the motorcycle used by another distributor for *Noroeste*.<sup>867</sup>

600. According to the information received, on June 1, 2010, **Roberto Tepepexteco**, a reporter for the newspaper *El Debate de los Calentanos*, was assaulted and threatened by the *síndico procurador* (municipal leader) of Arcelia, in the state of Guerrero. According to the information received by the Office of the Special Rapporteur, the reporter was in the offices of the municipal presidency of Arcelia, when the *síndico*, noting his presence, grabbed him by the neck and shirt and tried to hit him. The cause of the assault, according to the information available, was the publication of an article which denounced the public official's absence from his work in the local administration.<sup>868</sup>

601. According to information from the CNDH, on June 2, 2010, in an operation to disperse protestors who were blocking Río Churubusco Avenue in Coyoacán, Mexico City, members of the riot police assaulted a **group of journalists** who were reporting on the incident and prevented them from carrying out their work.<sup>869</sup> Within the framework of its visit, the Office of the Special Rapporteur requested of the State complete information about the case.<sup>870</sup> In its observations on the preliminary version of this report, the Mexican State reported that, according to information from the Public Security Ministry of the Federal District, "the demonstrators were only dispersed and... journalists who were there covering the event were not beaten."<sup>871</sup>

602. According to the Federal District's Human Rights Commission and the CNDH, on June 10, 2010, the *MVS Noticias* correspondent **Ixtli Martínez** received a bullet wound while reporting on a clash between two rival groups fighting for control over the Law and Social Science Faculty of Oaxaca's Benito Juárez Autonomous University (UABJO). The CNDH filed an investigation into the case and requested the state of Oaxaca to take precautionary measures to protect Martínez and her husband Virgilio Sánchez, also a journalist, to protect them from harassment or intimidation.<sup>872</sup>

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<sup>867</sup> International Freedom of Expression Exchange (IFEX). June 4, 2010. *Newspaper's delivery staff harassed, one vendor shot*. Available at: [http://www.ifex.org/mexico/2010/06/04/repartidores\\_atacados/](http://www.ifex.org/mexico/2010/06/04/repartidores_atacados/). *Noroeste* newspaper. June 2, 2010. *Atacan a repartidores de Noroeste*. Available at: [http://noroeste.com.mx/publicaciones.php?id=588242&id\\_seccion](http://noroeste.com.mx/publicaciones.php?id=588242&id_seccion). *El Economista*. June 4, 2010. *Sicarios atacan a repartidores de periódico en Sinaloa*. Available at: <http://eleconomista.com.mx/seguridad-publica/2010/06/04/sicarios-atacan-repartidores-periodico-sinaloa>

<sup>868</sup> CEPET. June 2, 2010. *Funcionario público insulta y amenaza a reportero*. Available at: <http://libxmxico.wordpress.com/2010/06/02/funcionario-publico-insulta-y-amenaza-a-reportero/>. *La Jornada Guerrero*. June 19, 2010. *Denuncia reportero a síndico de Arcelia*. Available at: <http://www.lajornadaguerrero.com.mx/2010/06/20/index.php?section=sociedad&article=006n3soc>

<sup>869</sup> CNDH. Press release CGCP/147/10, June 2, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/147.pdf>; *El Universal*. June 2, 2010. *CNDH rechaza agresión a periodistas*. Available at: <http://www.eluniversal.com.mx/notas/685077.html>

<sup>870</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>871</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>872</sup> Federal District Human Rights Commission. Press Release 153/2010, June 12, 2010. Available at: <http://portaldic10.cdhd.org.mx/index.php?id=bol15310>; CNDH. Press release CGCP/158/10, June 10, 2010. Available at:

603. According to the information received, on June 23, 2010, the distribution manager of the magazine *Contralínea Puebla*, **Israel Maldonado Flores**, was assaulted, robbed and threatened in Izúcar de Matamoros, in the state of Puebla, allegedly by members of a political party. According to the information received by the Office of the Special Rapporteur, Maldonado Flores was delivering the magazine when around 15 armed men got out of five vehicles, said they were PAN supporters, and then beat him, seized the magazines he was delivering, cash, and a laptop, and threatened him to force him to leave. The assailants said that the front-page report affected their candidate. This report accused this candidate—who was then running for the Puebla governorship—of alleged anomalies while Secretary of the State’s Finance Ministry.<sup>873</sup>

604. According to information from the Federal District Human Rights Commission, on July 1, 2010, 30 hooded Federal Police (hereinafter “PF”) officers broke into the offices of the **Journalists and Media Workers Association of Ciudad Juárez** [*Sociedad de Periodistas y Comunicadores de Ciudad Juárez*], supposedly looking for a group of kidnappers. The reporters were held at gun point and threatened by the agents, who did not properly identify themselves, and were warned they would be shot if they put up any resistance. The uniformed officers withdrew 20 minutes later; later three trucks arrived with more Federal Police agents who tried to detain the *El Mexicano* photographer and Reuters correspondent, **Alejandro Bringas**, in retribution for having taken photographs of the earlier assault.<sup>874</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>875</sup> In a reply received on November 12, 2010, the State indicated that both the CNDH as well as the Public Security Ministry, through its Human Rights Department and the Federal Police’s Internal Affairs Department, had begun the corresponding investigations, which were still awaiting conclusion.<sup>876</sup> The Public Security Ministry stated that “the various operational units of the Federal Police in Ciudad Juárez, in the state of Chihuahua, have stated they were not involved in this incident.”<sup>877</sup>

605. On July 16, 2010, **Edgar Irán López Hernández**, a reporter for the newspaper *Órale* of Coatzacoalcos, state of Veracruz, was arrested, assaulted, and had a death threat made against

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<http://www.cndh.org.mx/comsoc/compre/2010/158.pdf>. CNDH. Press release CGCP/159/10, June 11, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/159.pdf>. See also Office of the High Commissioner on Human Rights in Mexico (OHCHR). June 14, 2010. *La ONU-DH condena agresión contra la periodista Ixtli Martínez en Oaxaca*. Available at: <http://www.hchr.org.mx/Documentos/Communications/2010/06/CDP140610.pdf>

<sup>873</sup> International Freedom of Expression Exchange (IFEX). June 24, 2010. *Armed men attack and rob distribution manager of “Contralínea Puebla” magazine*. Available at: [http://www.ifex.org/mexico/2010/06/25/maldonado\\_flores\\_assaulted/](http://www.ifex.org/mexico/2010/06/25/maldonado_flores_assaulted/). *Contralínea Puebla*. June 23, 2010. *Agreden a personal de Contralínea Puebla en Izúcar*. Available at: <http://contralineapuebla.blogspot.com/2010/06/agreden-personal-de-contralinea-puebla.html>

<sup>874</sup> Campaña permanente de protección a periodistas en México. July 2, 2010. *Fuerzas de seguridad allanan Casas de Periodistas en Ciudad Juárez*. Available at: <http://www.libertad-expresion.org.mx/noticias/fuerzas-de-seguridad-allanan-casa-de-periodistas-en-ciudad-juarez/>. Federal District Human Rights Commission. Press Release 178/2010, July 2, 2010. Available at: <http://portaldic10.cd hdf.org.mx/index.php?id=bol17810>. *El Universal*. July 2, 2010. *Irrumpen en Centro de Periodistas de Juárez*. Available at: <http://www.eluniversal.com.mx/notas/692385.html>

<sup>875</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>876</sup> Mexican State, “Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010”, Annex to Communication OEA-02567 from Mexico’s Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>877</sup> Mexican State, “Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010”, Annex to Communication OEA-02567 from Mexico’s Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

him by municipal police officers from Oluta, Veracruz. According to the information received, the reporters learned that in the municipal police station, the municipal president was reprimanding a group of inebriated police officers. The municipal president, noticing his presence, became angry and seized the photographic equipment from one of the reporters. Edgar Irán López left the scene but was chased by the municipal police who intercepted him on the Oluta-Acayucan road, forced him to get out of the vehicle in which he was traveling and into the patrol car, where he was assaulted in various ways and had death threats made against him. He was then told to get out on a dirt road, where the police took his camera and other belongings from him, and left him there. The journalist reported the assault to the Public Prosecutor's Office of Acayucan, Veracruz.<sup>878</sup> Within the framework of its visit, the Office of the Special Rapporteur requested that the State provide complete information about the case.<sup>879</sup>

606. The CNDH opened an investigation into the case of three journalists from media outlets in Nuevo Laredo, in the state of Tamaulipas, who were allegedly assaulted by military personnel when they were taking part in a police operation in this city. According to the information provided by the journalists, during the operation **Abisaíd Rubio** and **Ricardo Ramírez**, correspondent and cameraman for *Televisión Azteca*, respectively, and **Antonio Neftalí Gómez**, of *Radio Voz*, were beaten and threatened at gun point. The radio reporter had a gun pointed at his head and his equipment was damaged.<sup>880</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>881</sup> In a reply received on November 12, 2010, the State reported that the information provided by the Ministry of National Defense indicated that the journalists "trespassed on the security exclusion zone in order to record a video of the scene despite being warned off by the military personnel, while the latter were searching a vehicle in which a grenade had been found which was in danger of exploding," and that the complaint remained pending before the CNDH.<sup>882</sup>

607. On July 16, 2010, according to the CNDH, the journalist **Irineo Mújica Arzate** was assaulted by officials of the National Institute of Migration (hereinafter, "INM") in Soltepec, in the state of Puebla.<sup>883</sup> According to the information compiled by the CNDH, the events took place in the community of San Antonio Xicotenco during an operation involving the arrest of Central American migrants. Mújica Arzate was travelling in the train, and when he realized that the operation was taking place he began filming it. This upset the INM personnel who assaulted him and took away his video camera. Mújica was taken to a clinic located in the municipality of San Salvador El Seco. After leaving the medical clinic, the journalist decided to stage a peaceful protest in front of the INM offices in the City of Puebla, to request the return of his video camera.<sup>884</sup> The journalist continued

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<sup>878</sup> International Freedom of Expression Exchange (IFEX). July 23, 2010. *Police officers kidnap, attempt to kill journalist in Veracruz*. Available at: [http://www.ifex.org/mexico/2010/07/23/lopez\\_hernandez\\_kidnapped/](http://www.ifex.org/mexico/2010/07/23/lopez_hernandez_kidnapped/). CEPET. July 20, 2010. *Policías secuestran y atenta contra la vida de periodista en Veracruz*. Available at: <http://libexmexico.wordpress.com/2010/07/20/policias-secuestran-y-atentan-contra-la-vida-de-periodista-en-veracruz/>

<sup>879</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>880</sup> CNDH. Press release CGCP/194/10, July 14, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0194.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0194.pdf)

<sup>881</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>882</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>883</sup> CNDH. Press release CGCP/198/10, July 19, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0198\\_1.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0198_1.pdf)

<sup>884</sup> CNDH. Press release CGCP/198/10, July 19, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0198\\_1.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0198_1.pdf)

his hunger strike for 17 days but ended it upon the return of his belongings by the state of Puebla's INM regional director.<sup>885</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.<sup>886</sup> In a reply received on November 12, 2010, the State reported that both the CNDH and the Public Security Ministry, through its Human Rights Office and the Federal Police's Internal Affairs Unit, had begun the corresponding investigations which were still awaiting conclusion.<sup>887</sup> The Public Security Ministry reported that according to its investigation, "there is no suggestion that any member of the Federal Police (PF) committed any assault on Mr. Mújica or violated his human rights."<sup>888</sup>

608. According to the information received, on July 27, 2010, **Martín López Castro**, a reporter for *Canal 44* in Ciudad Juárez, in the state of Chihuahua, received death threats from alleged drug traffickers and decided to seek refuge in the United States of America. The threats had been spray-painted on the façade of an electronic goods store in Ciudad Juárez, and read: "Journalist Martín López from 44 we're going to cut off you and your brother's heads for supporting *patas cortas*." According to the information available the reporter had not been threatened before. Faced with this situation, López Castro decided to leave Mexico and move to Texas, United States.<sup>889</sup>

609. According to the information received, on August 7, 2010, the reporter **Abenamar López** of the newspaper *Cuarto Poder* of the state of Chiapas, was assaulted and his equipment seized while he reported on the eviction of residents from unauthorized housing on the borders of the municipalities of Tuxtla Gutiérrez and Chiapa de Corzo, in the state of Chiapas. The journalist reported the incident to the Office of the Special Prosecutor for Crimes against Journalists.<sup>890</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case<sup>891</sup>. In a reply received on November 12, 2010, the State reported that the Ministry for National Defense had no record of the case.<sup>892</sup>

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<sup>885</sup> CENCOS. August 12, 2010. *Irineo Mújica presentó videos que prueban la agresión que sufrió por agentes del INM*. Available at: <http://www.cencos.org/es/node/24503>. Federal District Human Rights Commission, Press Release 226/2010, August 11, 2010, Available at: <http://www.cdhd.org.mx/index.php/boletines/540-boletin-2262010>

<sup>886</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>887</sup> Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>888</sup> Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>889</sup> International Freedom of Expression Exchange (IFEX). August 3, 2010. *Journalist flees to Texas after receiving death threats*. Available at: [http://www.ifex.org/mexico/2010/08/03/lopez\\_castro\\_flees/](http://www.ifex.org/mexico/2010/08/03/lopez_castro_flees/); CNN Mexico. August 3, 2010. *Desaparecido desde el jueves un periodista de un semanario de Zacatecas*. Available at: <http://mexico.cnn.com/nacional/2010/08/03/desaparecido-desde-el-jueves-un-periodista-de-un-semanario-de-zacatecas>

<sup>890</sup> Campaña Permanente de Protección a Periodistas. August 16, 2010. *Elementos Policiacos agreden y despojan a reportero de Cuarto Poder en Chiapas*. Available at: <http://www.libertad-expression.org.mx/noticias/elementos-policiacos-agreden-y-despojan-a-reportero-de-cuarto-poder-en-chiapas/>. International Freedom of Expression Exchange (IFEX). August 11, 2010. *Elementos policiacos agreden y despojan a reportero de "Cuarto Poder" en Chiapas*. Available at: [http://www.ifex.org/mexico/2010/08/12/lopez\\_agredido/es/](http://www.ifex.org/mexico/2010/08/12/lopez_agredido/es/)

<sup>891</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>892</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

610. According to the information received, on August 18, 2010, the newspapers *La Jornada Zacatecas* and *Imagen* printed threats they had received at different times from alleged members of the criminal organization “Los Zetas” in Zacatecas, in the state of Zacatecas. The newspapers had been pressured to reveal information about civil society’s alleged repudiation of the Army as a result of the actions taken against organized crime in the state of Zacatecas. The directors, by refusing to print the articles, had received threats by telephone. The state of Zacatecas’ Public Prosecutor’s Office offered to provide protection for the newspapers’ offices.<sup>893</sup>

611. According to the information received, on August 31, 2010, the director of the newspaper *Puebla sin Fronteras* of the state of Puebla was the victim of extortion and telephone threats from a man who identified himself as the new area boss of the criminal organization “Los Zetas.” The director reported the case to the state of Puebla’s Public Prosecutor’s Office.<sup>894</sup>

612. On September 2, 2010, one day after an armed assault on the newspaper *Noroeste* that involved the use of high-powered guns (see *infra*), the same newspaper again received a threat. According to the information received, three telephone calls were made to the newspaper offices demanding two hundred thousand pesos (approx. US\$16,500) to avoid their premises being blown up. Following the threat the offices were evacuated but the printing and senior management personnel remained to carry on working. According to the Public Prosecutor’s Office, the call appeared to come from the same person who had extorted the newspaper hours before an attack with high-powered weapons on September 1, 2010.<sup>895</sup> Also, according to the information received, on the same September 2, newspaper staff were threatened by subjects traveling in a vehicle. Finally, at midday, men in a vehicle approached the delivery personnel showing them their high-powered weapons in an act of intimidation.<sup>896</sup>

613. According to the information received, on September 14, 2010, **Jaime Ferrera**, a reporter for the newspaper *El Mexicano*, observed a group of people eating in a restaurant in Villa Ahumada, in the state of Chihuahua, under the protection of a group of people who appeared to be federal police officers. Upon noticing this, the police in the restaurant verbally assaulted him, seized his equipment, and threatened him.<sup>897</sup>

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<sup>893</sup> CEPET. August 20, 2010. *Crimen organizado presiona y amenaza a periodistas de Zacatecas*. Available at: <http://libexmexico.wordpress.com/2010/08/20/el-crimen-organizado-amenaza-a-periodistas-de-zacatecas/>. International Freedom of Expression Exchange (IFEX). September 9, 2010. *IAPA concerned over rise in violence in Zacatecas state and its impact on the press*. Available at: <http://www.ifex.org/mexico/2010/09/13/zacatecas-violence/>. CNN Mexico. August 20, 2010. *El crimen organizado amenaza a periodistas de Zacatecas*. Available at: <http://mexico.cnn.com/nacional/2010/08/20/el-crimen-organizado-amenaza-a-periodistas-de-zacatecas>. La Jornada. 19 de agosto de 2010. *Exigen Zetas a periódicos de Zacatecas publicar carta contra Ejército Mexicano*. Disponible en: <http://www.jornada.unam.mx/2010/08/19/index.php?section=politica&article=018n2pol>

<sup>894</sup> International Freedom of Expression Exchange (IFEX). September 9, 2010. *Presuntos narcotraficantes exigen cuota de protección a diario en Puebla*. Available at: <http://www.ifex.org/mexico/2010/09/09/puebla-sin-fronteras-extorsion/es>. CEPET. September 2, 2010. *Presuntos narcotraficantes exigen cuota de protección a diario en Puebla*. Available at: <http://libexmexico.wordpress.com/2010/09/02/presuntos-narcotraficantes-exigen-cuota-de-protección-a-diario-en-puebla/>

<sup>895</sup> International Freedom of Expression Exchange (IFEX). September 3, 2010. *“Noroeste” newspaper threatened yet again*. Available at: <http://www.ifex.org/mexico/2010/09/03/noroeste-extortion/>. La Jornada. September 3, 2010. *Nuevas amenazas a directivos y trabajadores de Noroeste*. Available at: <http://www.jornada.unam.mx/2010/09/03/index.php?section=politica&article=010n1pol>

<sup>896</sup> International Freedom of Expression Exchange (IFEX). September 3, 2010. *“Noroeste” newspaper threatened yet again*. Available at: <http://www.ifex.org/mexico/2010/09/03/noroeste-extortion/>. El Universal. September 3, 2010. *Newspaper “Noroeste” recibe más amenazas*. Available at: <http://www.eluniversal.com.mx/states/77712.html>

<sup>897</sup> International Freedom of Expression Exchange (IFEX). September 30, 2010. *Elementos de la policía federal amenazan a reportero en Villa Ahumada, Chihuahua*. Available at:

614. According to the information received, on October 16, 2010, **Miguel Jaramillo**, a cameraman for the newspaper *El Pulso* of San Luis Potosí, arrived to report on a gun battle between federal police and alleged criminals. The federal agents, on noticing his presence, seized his photographic equipment, and knocked him to the ground. The assault was impeded following the intervention of rescue workers who were looking after those injured in the confrontation. The journalist reported the assault to the Public Prosecutor's Office and filed a complaint with the San Luis Potosí State Human Rights Commission.<sup>898</sup>

615. According to the information received, on October 21, 2010, journalist **Pedro Morales González** was taking photographs of a house presumably owned by Alex Ortiz Zamora, municipal president of Apizaco, as part of an investigation of alleged misappropriation of public funds, when some policemen arrested him and took him to the Public Security Offices of Apizaco. According to the complaint filed by the journalist, in these offices the municipal president hit him, threatened him, and sent him to the State Public Prosecutor's Office where he was accused of breaking and entering and robbery. The accusations were deemed groundless, but the journalist was deprived of his liberty for approximately eight hours. Morales gained his freedom by paying a fine for an alleged administrative violation. The journalist reported the case to the National and State Public Prosecutor's Offices. The state of Tlaxcala congress officially requested that the Public Prosecutor's Office and the local Human Rights Commission to investigate.<sup>899</sup>

616. According to the information received, on October 24, 2010, in the municipality of La Huerta, state of Jalisco, state police beat and used pepper spray on a group of journalists from various media outlets. The reporters assaulted included: **Lourdes Mireles** and **José Luis Valle**, reporter and cameraman for *TV Azteca*; **José Mendoza Navarro** and **Fabiola Rosales Calderón**, reporter and photographer for *El Occidental*; as well as **Susana Carreño** and **Analy S. Nuño**, reporters for *La Explosiva 590 AM* and *La Jornada*, respectively. According to the information received by the Office of the Special Rapporteur, the journalists were reporting on the protests of a group allegedly under the leadership of federal members of Congress. When the protestors tried to remove the road barrier that blocked the route to Tenacatita beach, the police attacked both the protestors and the journalists using pepper spray and their police batons.<sup>900</sup>

617. According to the information received, on October 25, 2010, **Marta Chan Dzul**, a reporter for *Grupo Megamedia*, was assaulted by a group of people while reporting on abuses allegedly committed by a local agrarian leader (*comisario ejidal* or communal land commissioner) in San Diego Tixcacal, in the state of Yucatán. According to the information received, the assailants

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[http://www.ifex.org/mexico/2010/09/30/farrera\\_amenazas/es/](http://www.ifex.org/mexico/2010/09/30/farrera_amenazas/es/). CEPET. September 27, 2010. *Elementos federales amenazan a reportero en Villa Ahumada*. Available at: <http://libexmexico.wordpress.com/2010/09/27/elementos-federales-amenazan-a-reporter-en-villa-ahumada-chihuahua/>

<sup>898</sup> International Freedom of Expression Exchange (IFEX). October 18, 2010. *Photographer assaulted by police officers*. Available at: [http://www.ifex.org/mexico/2010/10/21/jaramillo\\_assaulted/](http://www.ifex.org/mexico/2010/10/21/jaramillo_assaulted/). *El Universal*. October 17, 2010. *Federales golpean a fotógrafo en SLP*. Available at: <http://www.eluniversal.com.mx/nacion/181229.html>

<sup>899</sup> International Freedom of Expression Exchange (IFEX). October 29, 2010. *Alcalde golpea y ordena detener a periodista por publicar presuntos desvíos de recursos públicos*. Available at: [http://www.ifex.org/mexico/2010/10/29/morales\\_detained/es/](http://www.ifex.org/mexico/2010/10/29/morales_detained/es/)

<sup>900</sup> International Freedom of Expression Exchange (IFEX). November 12, 2010. *Elementos policiacos agreden a siete periodistas que cubrían protesta*. Available at: [http://www.ifex.org/mexico/2010/11/12/periodistas\\_agredidos/es/](http://www.ifex.org/mexico/2010/11/12/periodistas_agredidos/es/). *Diario Milenio*. October 25, 2010. *Policías estatales agreden a diputados en Tenacatita*. Available at: <http://www.milenio.com/node/561989>.

were family members of the commissioner, and they beat and harassed her until the journalist was rescued by state police.<sup>901</sup>

618. According to the information received, on October 27, 2010, **Félix García**, a reporter for *Radio ORO*, was beaten and threatened, allegedly by officers of the State Investigation Agency in the city of Oaxaca, state of Oaxaca. According to the information available, Félix García was reporting on the looting carried out by a group of people at the former offices of the state of Oaxaca's Public Prosecutor's Office. Noticing the reporter's presence, three of the group approached him, and assaulted and threatened him. The journalist reported the assault to Oaxaca's Public Prosecutor's Office. Oaxaca's Human Rights Commission opened a file to monitor the investigations.<sup>902</sup>

619. On October 30, 2010 the reporter **Adriana Luna** was intimidated by the Secretary of Public Security for the state of Jalisco. According to the information received, on October 30, 2010 the correspondent for the newspapers *Excelsior* and *Grupo Imagen* in the state of Jalisco had approached Secretary Carlos Nájera at the end of a ceremony to mourn the deaths of nine state police gunned down in Jilotlán de los Dolores, in the state of Jalisco, to ask him about versions of events according to which the convoy of state police was ambushed by a group of hit-men who were allegedly guarding the successor of the drug-trafficker Ignacio "Nacho" Coronel, killed shortly before. The secretary did not reply to the questions, and accused the media of giving more say to criminals than to the authorities, before putting an end to the interview. According to the information received, the reporter approached Nájera soon afterwards to explain the reasons behind her questions but the latter warned that he would take measures against Moisés Mora, the reporter's husband. The reporter filed a complaint with the state of Jalisco's Human Rights Commission, which provided her and her family with measures of protection.<sup>903</sup>

620. According to the information received, on October 31, 2010, the journalist **Jorge Alejandro Medellín** received death threats in relation to the publication of a report in the weekly magazine *Milenio*, which alleged links between criminal organizations and government authorities in the state of Chihuahua. Medellín filed a complaint with the National Human Rights Commission for it to monitor the investigation.<sup>904</sup>

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<sup>901</sup> International Freedom of Expression Exchange (IFEX). November 2, 2010. *Agreden físicamente a reportera por atender denuncias de supuestos actos de corrupción*. Available at: [http://ifex.org/mexico/2010/11/02/chan\\_dzul\\_attacked/es/](http://ifex.org/mexico/2010/11/02/chan_dzul_attacked/es/). Diario de Yucatán. October 27, 2010. *La agresión a una reportera del grupo Megamedia llega al Congreso de la Unión*. Available at: <http://www.yucatan.com.mx/20101027/nota-9/24824-la-agresion-a-una-reportera-de-grupo-megamedia-llega-al-congreso-de-la-union.htm>.

<sup>902</sup> CEPET. October 29, 2010. *Presuntos agentes estatales agreden y lesionan a periodista radiofónico en Oaxaca*. Available at: <http://libexmexico.wordpress.com/2010/10/30/presuntos-agentes-estatales-agreden-y-lesionan-a-periodista-radiofonico-en-oaxaca/>. Grupo Fórmula. October 28, 2010. *Denuncia reportero de Oaxaca a presuntos agentes de investigación por agresión*. Available at: <http://www.grupoformula.com/notas.asp?Idn=138389>

<sup>903</sup> International Freedom of Expression Exchange (IFEX). November 4, 2010. *Secretario de Seguridad Pública de Jalisco intimida a reportera*. Available at: [http://www.ifex.org/mexico/2010/11/04/luna\\_amenazas/es/](http://www.ifex.org/mexico/2010/11/04/luna_amenazas/es/). La Jornada Jalisco. November 2, 2010. *Medidas cautelares para proteger a la reportera Adriana Luna CEDHJ*. Available at: <http://www.lajornadajalisco.com.mx/2010/11/02/index.php?section=politica&article=004n2pol>. Excelsior. November 1, 2010. *Intimida SSP de Jalisco a reportera de Excelsior*. Available at: [http://www.excelsior.com.mx/index.php?m=nota&id\\_nota=680645](http://www.excelsior.com.mx/index.php?m=nota&id_nota=680645)

<sup>904</sup> International Freedom of Expression Exchange (IFEX). November 3, 2010. *Journalist receives death threat after writing article on drug trafficking*. Available at: [http://www.ifex.org/mexico/2010/11/04/medellin\\_death\\_threats/](http://www.ifex.org/mexico/2010/11/04/medellin_death_threats/). Milenio. November 3, 2010. *Piden organizaciones civiles a PGR investigar amenazas a periodista*. Available at: <http://www.milenio.com/node/570038>; El Universal. November 3, 2010. *CNDH abre expediente por amenaza a periodista*. Available at: <http://www.eluniversal.com.mx/notas/720972.html>

621. According to the information received, on November 8, 2010, **two reporters, whose names were withheld, for *El Diario* in Chihuahua**, state of Chihuahua, received death threats which led them to leave Mexico. The threats were made after the journalists covered a car accident in which one person died. The threats were revealed to the journalists by the policemen who had been working at the scene of the accident, who sought out the reporters to tell them that family members of the deceased had threatened to kill them and were already looking for them. Both journalists left the city with the support of the Chihuahua Journalists' Association.<sup>905</sup>

622. According to the information received, on November 14, 2010, **reporters from various media outlets** were assaulted while they reported on the story of an explosion in the Grand Rivera Princess hotel in Playa del Carmen, state of Quintana Roo. **Verónica Alfonso** of *El Quintanarroense* and **Matías Hau** of *Diario Respuesta* were hospitalized as a result of the assault. According to the information received by the Office of the Special Rapporteur, the hotel employees had used sticks, steel bars and fire extinguishers to attack the journalists who had come to the hotel to report on the incident, as those in charge of the hotel administration ordered them to prevent the journalists from entering. Three employees were arrested and handed over to the Public Prosecutor's Office as part of the investigation.<sup>906</sup>

623. According to the information received, on November 19, 2010, the reporter **Rebeca Luna Jiménez** of *Radio Mil México* was assaulted in the city of Oaxaca, state of Oaxaca. According to the information from the Federal District Human Rights Commission, the reporter was traveling on her motorcycle when unknown men on a similar vehicle approached her, tried to pull her off her motorcycle, and attacked with a knife, cutting her forehead and arm. After the attack, the reporter was treated in a Red Cross hospital. According to the information available, Rebeca Luna had received a telephone call after the assault asking whether she had liked "the governor's little present." The journalist reported the incident to the Public Prosecutor's Office of Oaxaca.<sup>907</sup>

624. According to the information received, on November 28, 2010, the photographer **Marco Ugarte** was assaulted by the security personnel of a shopping mall in Mexico City. According to the information received, the Associated Press photographer was assaulted by security guards while reporting on a fashion show staged outside a shopping mall by the animal rights group "Anima Naturalis" in protest against the use of animal fur in clothes. The assault was stopped by other reporters at the scene. The assailants were arrested by the police. Ugarte reported the incident to the Public Prosecutor's Office for the Federal District.<sup>908</sup>

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<sup>905</sup> International Freedom of Expression Exchange (IFEX). November 15, 2010. *Two reporters flee the country after receiving death threats*. Available at: [http://www.ifex.org/mexico/2010/11/15/journalists\\_leave\\_mexico/](http://www.ifex.org/mexico/2010/11/15/journalists_leave_mexico/). El Universal. November 12, 2010. *Dos periodistas dejan el país por amenazas*. Available at: <http://www.eluniversal.com.mx/primer/35859.html>

<sup>906</sup> CEPET. November 16, 2010. *Agreden a periodistas para impedirles cubrir explosión en hotel*. Available at: <http://libexmexico.wordpress.com/2010/11/16/atacan-a-periodistas-para-impedirles-cubrir-explosion-en-hotel/>. Milenio. November 15, 2010. *Condena CDH de Q. Roo agresión a periodistas que cubrían explosión*. Available at: <http://www.milenio.com/node/578879>. La Crónica de Hoy. November 15, 2010. *Personal de hotel golpea y "gasea" a reporteros*. Available at: [http://www.cronica.com.mx/nota.php?id\\_notas=544170](http://www.cronica.com.mx/nota.php?id_notas=544170)

<sup>907</sup> Federal District Human Rights Commission. Press Release 365/2010, November 23, 2010. Available at: <http://www.cd hdf.org.mx/index.php/boletines/460-boletin-3652010>. CENCOS. November 25, 2010. *Agreden a reportera en Oaxaca*. Available at: <http://www.cencos.org/en/node/25687>. El Universal. November 23, 2010. *CDHDF pide investigar agresión a reportera*. Available at: <http://www.eluniversal.com.mx/notas/725521.html>

<sup>908</sup> CEPET. November 30, 2010. *Agreden a fotógrafo de AP durante protesta de grupo pro defensa de los animales*. Available at: <http://libexmexico.wordpress.com/2010/12/01/agreden-a-fotografo-de-ap-durante-protesta-de-grupo-pro-defensa-de-los-animales/>. Milenio. November 29, 2010. *Agreden a fotógrafo de AP durante protesta contra comercio de pieles*. Available at: <http://www.milenio.com/node/588780>

625. According to the information received, on November 24, 2010, **Selene Ríos Andraca**, a reporter for the newspaper *Cambio*, was threatened by the press coordinator of the governor-elect of the state of Puebla and beaten by a bodyguard of the same. According to the information received by the Office of the Special Rapporteur, the threat was made on the morning of November 24 in Izúcar de Matamoros, state of Puebla, when the journalist, in an attempt to interview the governor, crossed over the line established for the press, and the press coordinator threatened to attack her with her own equipment. The same afternoon in the city of Puebla, state of Puebla, the physical assault occurred at the end of an event when the journalist tried to approach the governor and one of his bodyguards took her by the arm and punched her in the abdomen and chest to prevent her approaching the governor.<sup>909</sup>

626. According to the information received, on December 18, 2010, unknown subjects in two moving vehicles fired shots at the home of **José Rosario Olán Hernández**, editor of the magazine *Veredicto Popular*, in Cárdenas, state of Tabasco. The shots damaged the sides and bodywork of the journalist's car. According to the information received, criticism had been expressed in *Veredicto Popular*—and particularly in Olán Hernández' column "*El verdugo*" ("The Executioner")—at the performance of some officials and *regidores* (town council members) from Cárdenas town hall.<sup>910</sup>

#### d. Attacks on media outlets

627. According to the information received, on April 12, 2010 the offices of the magazine *Contralínea* in Mexico City were robbed. According to the information received, financial and fiscal documents and the computer of the magazine's editor were removed from the administrative and editorial offices of the magazine. The theft was reported to the Public Prosecutor's Office of the Federal District.<sup>911</sup>

628. On May 17, 2010, according to information from the CNDH, the offices of the *Canal 2* television channel in Tepic, state of Nayarit, were attacked with over 100 bullet rounds and three grenades. At around 1:30 a.m. a grenade exploded, while two more failed to detonate. There were no victims, though property damage did occur. It appears that a message attributed to drug trafficking groups was found after the attack. The message read: "Regards, the New People, Chapo Guzmán and Nacho Coronel."<sup>912</sup>

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<sup>909</sup> CEPET. November 29, 2010. *Escortas del gobernador electo de Puebla golpean a reportera*. Available at: <http://libexmexico.wordpress.com/2010/11/29/escortas-del-gobernador-electo-de-puebla-golpean-a-reporteras/>. Noticias MVS. November 25, 2010. *Agreden guaruras de Moreno Valle a reportera*. Available at: <http://www.noticiasmvs.com/Agreden-guaruras-de-Moreno-Valle-a-reportera.html>

<sup>910</sup> CEPET/IFEX. December 23, 2010. *Journalist's house, car shot at in Cárdenas, Tabasco*. Available at: [http://www.ifex.org/mexico/2010/12/23/olan\\_hernandez/](http://www.ifex.org/mexico/2010/12/23/olan_hernandez/). El Independiente del Sureste. December 19, 2010. *Atentan contra el periodista José Rosario Olán en Cárdenas*. Available at: [http://www.elindependiente.mx/sitio/index.php?option=com\\_content&view=article&id=5447:atentan-contra-el-periodista-jose-rosario-olan-en-cardenas&catid=13:agenda&Itemid=5](http://www.elindependiente.mx/sitio/index.php?option=com_content&view=article&id=5447:atentan-contra-el-periodista-jose-rosario-olan-en-cardenas&catid=13:agenda&Itemid=5)

<sup>911</sup> Campaña Permanente de Protección a Periodistas en México. June 3, 2010. *El peligroso periodismo a Contralínea*. Available at: <http://www.libertad-expresion.org.mx/noticias/el-peligroso-periodismo-a-contralinea/-more-4849>. Asociación Mundial de Radios Comunitarias (AMARC). April 14, 2010. *Allanan y Roban Instalaciones de Contralínea*. Available at: <http://www.amarcMexico.org/Communications/3096.html>

<sup>912</sup> CNDH. Press release CGCP/133/10, May 17, 2010. Available at: <http://www.cndh.org.mx/comsoc/compre/2010/133.pdf>. Campaña Permanente de Protección a Periodistas. May 19, 2010. *Atacan con armas de fuego y granadas instalaciones de televisora en Nayarit*. Available at: <http://www.libertad-expresion.org.mx/noticias/atacan-con-armas-de-fuego-y-granadas-instalaciones-de-televisora-en-nayarit/-more-4727>. El Universal. May 18, 2010. *Comando lanza granadas contra televisora en Tepic*. Available at: <http://www.eluniversal.com.mx/primer/34955.html>

629. According to the information received, at around 11:45 p.m. on June 17 a fragmentation grenade was thrown at the offices of the newspaper **Zócalo**, in Piedras Negras, in the state of Coahuila, which caused damage to windows, doors and parked cars upon exploding.<sup>913</sup>

630. On June 22, 2010, according to the CNDH the newspaper **Noticias de El Sol de la Laguna**, in Torreón, Coahuila, was attacked by a group bearing high-caliber weapons who opened fire on the building, breaking windows in the entrance door and some of the vehicles in the parking lot. The receptionist for the newspaper was injured by shrapnel from the bullets.<sup>914</sup>

631. On June 25, 2010, according to information from the CNDH, the headquarters of **Televisa** in Torreón, Coahuila, was attacked with high-caliber weapons, causing property damage, including to the electric installations, taking the channel off the air. There were no victims.<sup>915</sup>

632. On July 6, 2010, according to information confirmed by Mexican and international press organizations, unidentified persons entered the offices of the **El Día de Michoacán** newspaper in the early morning. Here the journalist Hugo Alfredo Olivera Cartas, who turned up dead on the same day, worked as an editor. Computers and memory devices were stolen.<sup>916</sup>

633. According to the information received, on July 9, 2010, unknown subjects threw a grenade, which failed to detonate, at the offices of the broadcaster **AW Noticias (XEAW 1280 AM)**, belonging to the Multimédios company, in Monterrey, state of Nuevo León. The projectile smashed the glass of the building's front door. According to the information received, 1,000 staff worked in the building, including journalists and personnel who worked for the company.<sup>917</sup>

634. On July 30, 2010, the offices of the Televisa media company's **Canal 57** in Nuevo Laredo, state of Tamaulipas, were attacked. According to the information received a group of

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<sup>913</sup> International Freedom of Expression Exchange (IFEX). July 2, 2010. *Grenade launched against newspaper building*. Available at: [http://www.ifex.org/mexico/2010/07/06/zocalo\\_grenade\\_attack/](http://www.ifex.org/mexico/2010/07/06/zocalo_grenade_attack/); Noticias MVS. June 18, 2010. *Atacan diario Zócalo en Coahuila*, Available at: <http://www.noticiasmvs.com/Atacan-diario-Zocalo-en-Coahuila.html>

<sup>914</sup> CNDH. Press release CGCP/171/10, June 23, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0171.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0171.pdf). International Freedom of Expression Exchange (IFEX). June 23, 2010. *Shots fired at "noticias de el Sol de la Laguna" offices in Torreón*. Available at: [http://www.ifex.org/mexico/2010/06/23/noticias\\_de\\_el\\_sol/](http://www.ifex.org/mexico/2010/06/23/noticias_de_el_sol/). La Jornada. June 23, 2010. *Atacan con metralletas la sede del Diario Noticias Del Sol de la Laguna*. Available at: <http://www.jornada.unam.mx/2010/06/23/index.php?section=politica&article=015n1pol>

<sup>915</sup> CNDH. Press release CGCP/174/10, June 25, 2010. Available at: [http://www.cndh.org.mx/comsoc/compre/2010/COM\\_2010\\_0174.pdf](http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0174.pdf). CENCOS. June 25, 2010. *Atacan instalaciones de transmisión de televisora en Coahuila*. Available at: <http://www.cencos.org/es/node/24037>; La Jornada. July 26, 2010. *Atacan sede de Televisa in Torreón*. Available at: <http://www.jornada.unam.mx/2010/06/26/index.php?section=politica&article=010n2pol>

<sup>916</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 8, 2010. Press release No. R67/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=804&IID=1>; Milenio. July 6, 2010. *Ejecutan al periodista Hugo Olivera, colaborador de Quadratín*. Available at: <http://www.milenio.com/node/481004>; El Universal. July 6, 2010. *Matan a periodista en Michoacán*. Available at: [http://www.eluniversal.com.mx/notas/vi\\_693419.html](http://www.eluniversal.com.mx/notas/vi_693419.html)

<sup>917</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&IID=2>. Campaña Permanente de Protección a Periodistas en México. July 14, 2010. *Nuevo León, ambiente de inseguridad and violence inhibe flujo de información*. Available at: <http://www.libertad-expresion.org.mx/noticias/nuevo-leon-ambiente-de-inseguridad-y-violence-inhibe-flujo-de-informacion/>; International Freedom of Expression Exchange (IFEX). July 14, 2010. *Five journalists and media workers killed in two weeks*. Available at: [http://www.ifex.org/mexico/2010/07/14/journalists\\_slain/](http://www.ifex.org/mexico/2010/07/14/journalists_slain/). CNN Mexico. July 10, 2010. *Nueve empresarios con signos de tortura fueron rescatados en Nuevo León*. Available at: <http://mexico.cnn.com/nacional/2010/07/10/nueve-microempresarios-estaban-secuestrados-en-un-taller-mecanico>

people traveling in a moving vehicle launched a grenade against the façade of the building, which upon exploding caused property damage, but no deaths or injuries.<sup>918</sup>

635. According to the information received, on August 14 and 15, 2010, the offices of the **Televisa** media company in Matamoros, state of Tamaulipas and Monterrey, state of Nuevo León, were attacked with grenades.<sup>919</sup> The PGR appears to be carrying out an investigation into the case.<sup>920</sup>

636. According to the information received, in the early morning of August 27, 2010, a car bomb exploded outside the offices of the **Televisa** media company, in Ciudad Victoria, state of Tamaulipas. The TV company staff had left the building just a few minutes before the attack. This was the third and largest in a series of attacks against the company in the course of a single month.<sup>921</sup>

637. According to the information received, in the early morning of September 1, 2010, armed individuals opened fire with high-powered weapons on the offices of the newspaper **Noroeste** in Mazatlán in the state of Sinaloa, causing property damage but no victims. The newspaper reported just hours previously receiving telephone calls from persons identifying themselves as members of the criminal organization “La Línea”, demanding the publication of certain information and making threats. The Deputy Prosecutor General for the state of Sinaloa declared that the attacks may have been the consequence of the newspaper’s refusal to publish a certain type of information.<sup>922</sup>

638. On October 3, 2010, unidentified individuals armed with high-powered weapons attacked the offices of the newspaper **El Debate** in Mazatlán, state of Sinaloa. According to the information received on the morning of Sunday October 3, 2010, individuals traveling in a vehicle opened fire on the façade and the entrance to the parking lot, causing property damage but no

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<sup>918</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=815&IID=1>. CEPET. August 2, 2010. *Atacan con granada televisora en Nuevo Laredo, otro medio recibe amenazas en Ciudad Juárez*. Available at: <http://libexmexico.wordpress.com/2010/08/02/atacan-con-granada-televisora-en-nuevo-laredo-otro-medio-recibe-amenaza-en-ciudad-juarez/>. CNN Mexico. July 30, 2010. *En Nuevo Laredo arrojan granada a instalaciones de la empresa Televisa*. Available at: <http://mexico.cnn.com/nacional/2010/07/30/en-nuevo-laredo-arrojan-granada-a-instalaciones-de-la-empresa-televisa>

<sup>919</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=815&IID=1>. *CNN Latinoamérica*, August 15, 2010, *Granada lanzada a una estación de televisión mexicana, no hubo heridos*. Available at: <http://www.cnn.com/2010/WORLD/americas/08/15/mexico.station.grenade/>

<sup>920</sup> Committee for the Protection of Journalists (CPJ). *CPJ condena ataques con granadas contra Televisa*, August 16, 2010. Available at: <http://cpj.org/es/2010/08/cpj-condena-ataques-con-granadas-contra-televisa.php>. Reporters without Borders. August 17, 2010. *La cadena nacional Televisa fue atacada dos veces en una sola noche en Monterrey y Matamoros*. Available at: [http://es.rsf.org/mexico-una-desaparicion-y-un-exilio-03-08-2010\\_38088.html](http://es.rsf.org/mexico-una-desaparicion-y-un-exilio-03-08-2010_38088.html). *El Universal*. August 15, 2010. *PGR abre dos actas por ataques contra Televisa*. Available at: <http://www.eluniversal.com.mx/notas/701814.html>

<sup>921</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=815&IID=1>. International Freedom of Expression Exchange (IFEX). September 1, 2010, *Drugs cartels terrorize media with car bombs and grenades*. Available at: [http://www.ifex.org/mexico/2010/09/01/car\\_bomb/](http://www.ifex.org/mexico/2010/09/01/car_bomb/). *El Universal*. August 27, 2010. *SIP repudia atentado con coche bomba a Televisa*. Available at: <http://www.eluniversal.com.mx/notas/704721.html>

<sup>922</sup> International Freedom of Expression Exchange (IFEX). September 2, 2010. *“Noroeste” newspaper facilities in Sinaloa attacked by armed men*. Available at: [http://www.ifex.org/mexico/2010/09/02/atentado\\_noroeste\\_mazatlan/](http://www.ifex.org/mexico/2010/09/02/atentado_noroeste_mazatlan/). *El Universal*. September 2, 2010. *Disparan contra diario “Noroeste”*. Available at: <http://www.eluniversal.com.mx/primer/35481.html>. *La Jornada*. September 2, 2010. *Ataque al Noroeste de Mazatlán, por negarse a publicar “cierta información”*. Available at: <http://www.jornada.unam.mx/2010/09/02/index.php?section=politica&article=016n2pol>

injuries. The newspaper staff who were in the building at the time, took refuge after the first shots.<sup>923</sup>

639. According to the information received, on Wednesday November 10, 2010, an unknown group of armed individuals opened fire on the offices of the newspaper *El Sur* in Acapulco, and subsequently burst into the editing room where they fired their weapons, cut telephone lines and poured gasoline around, threatening to start a fire. The staff who were in the building at the time of the attack were able to take refuge, meaning there were no injuries. *El Sur* regularly covers local politics, violence and organized crime.<sup>924</sup>

#### e. Detentions

640. According to the information received, on May 5, 2010, **Carlos Alberto Salazar Ortiz**, **Carlos Ferrer González** and **Marcos Flores Aguilar**, who work as cameraman, photographer and driver, respectively, for the multimedia publication *Reporte Índigo*, were arrested at approximately 1.00 p.m. near the headquarters of the Federal Public Security Ministry. According to the information received by the Office of the Special Rapporteur, the reporters were taking photographs and video of the building as part of a journalistic investigation. The three individuals were freed on May 6 at around 11.00 a.m. after being detained for around 20 hours in the Camarones Metropolitan Sub-Office of the PGR where, according to the information received, the material they had collected was confiscated.<sup>925</sup>

641. Within the framework of its visit, the Office of the Special Rapporteur requested that the Mexican State provide detailed information about this case.<sup>926</sup> In a reply received on November 12, 2010, the State indicated that both the CNDH and the Public Security Ministry, through the Human Rights Department and the Internal Affairs Department of the Federal Police, had begun the corresponding investigations, which remain open.<sup>927</sup> The Public Security Ministry indicated that, according to its investigations, "the complainants did not identify themselves as journalists and [...] merely stated they were undertaking confidential research, which led to doubts concerning the authenticity of the identifications which they subsequently presented." It also stated that the

<sup>923</sup> International Freedom of Expression Exchange (IFEX). October 4, 2010. *Shots fired at "El Debate" newspaper building in Mazatlán*. Available at: [http://www.ifex.org/mexico/2010/10/05/el\\_debate\\_shots\\_fired/](http://www.ifex.org/mexico/2010/10/05/el_debate_shots_fired/). Inter-American Press Society (IAPA). October 4, 2010. *Condena SIP ataque a diario mexicano El Debate de Mazatlán*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_Communications&seccion=detalles&id=4452&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_Communications&seccion=detalles&id=4452&idioma=sp)

<sup>924</sup> Committee to Protect Journalists (CPJ). November 12, 2010. *Sujetos armados atacan diario en Acapulco*. Available at: <http://cpj.org/es/2010/11/sujetos-armados-atacan-periodico-en-acapulco.php>. El Economista. November 11, 2010. *Balean al diario El Sur en Acapulco*. Available at: <http://eleconomista.com.mx/states/2010/11/11/atacan-periodico-sur-querrero>. Proceso. November 10, 2010. *Rafaguean el diario El Sur de Acapulco*. Available at: <http://www.proceso.com.mx/rv/modHome/detalleExclusiva/85277>

<sup>925</sup> Campaña Permanente de Protección a Periodistas en México. May 7, 2010. *Urgente que las autoridades se responsabilicen de promover y defender la libertad de prensa*. Available at: <http://www.libertad-expresion.org.mx/noticias/urgente-que-las-autoridades-se-responsabilicen-de-promover-y-defender-la-libertad-de-prensa/#more-4696>. La Jornada. May 7, 2010. *Empleados de Reporte Índigo quedan libres*. Available at: <http://www.jornada.unam.mx/2010/05/07/index.php?section=politica&article=008n2pol>. CNN Mexico. 6 May 6, 2010. *Tres periodistas detenidos frente a la casa del Secretario de Seguridad*. Available at: <http://mexico.cnn.com/nacional/2010/05/06/tres-periodistas-detenidos-frente-a-la-casa-del-secretario-de-seguridad>

<sup>926</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>927</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

journalists “were at no time deprived of their liberty but were detained and taken to where they were presented before the ministerial authority as subject to investigation.”<sup>928</sup>

**f. Other incidents**

642. According to the information received, on April 5, 2010 unidentified persons bought from the distributor almost all copies of the weekly magazine *Proceso* intended for public sale in the state of Sinaloa. According to the information received, only 200 of the 1779 copies were distributed. The issue of *Proceso* published an interview with Ismael “El Mayo” Zambada, one of the leaders of the Sinaloa Cartel, and articles which made allegations about the drug trafficking *capo*’s relationship with a local politician in Sinaloa.<sup>929</sup>

**3. Illustrative cases of violence and impunity 1988-2009**

643. As a complement to the previous section regarding acts of violence that occurred during 2010, in the following section the Office of the Special Rapporteur analyzes a number of cases of violence against journalists from prior years about which it received information within the framework of its on-site visit to Mexico. These cases, which to date have gone unpunished, were chosen for their representative nature with regard both to the nature of the crime itself as well as to the obstacles that have been observed in the judicial process. As has been stated, the Office of the Special Rapporteur does not intend to award greater significance to these cases over others, but rather to use them to explain and provide evidence for some of the patterns that it has observed with regard to the violence carried out against journalists in Mexico and the impunity that characterizes the majority of these acts.

**a. Murder**

**Felicitas Martínez Sánchez and Teresa Bautista Merino**

644. On April 7, 2008, Felicitas Martínez Sánchez and Teresa Bautista Merino, community radio presenters for *La Voz que Rompe el Silencio* of the Triqui Indigenous community in the state of Oaxaca, were murdered in an ambush by unidentified individuals who opened fire on the vehicle they were traveling in with automatic weapons. A further four people were wounded.<sup>930</sup>

<sup>928</sup> Mexican State, “Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010”, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>929</sup> International Freedom of Expression Exchange (IFEX). April 13, 2010. *Realizan en Sinaloa compra masiva de ejemplares de “Proceso”; impiden su circulación normal.* Available at: [http://www.ifex.org/mexico/2010/04/13/el\\_proceso/es/](http://www.ifex.org/mexico/2010/04/13/el_proceso/es/). BBC Mundo. April 18, 2010. *México: crece la polémica por entrevista a capo del narcotráfico.* Available at: [http://www.bbc.co.uk/mundo/america\\_latina/2010/04/100408\\_mexico\\_revista\\_proceso\\_entrevista\\_cartel\\_jp.shtml](http://www.bbc.co.uk/mundo/america_latina/2010/04/100408_mexico_revista_proceso_entrevista_cartel_jp.shtml)

<sup>930</sup> IACHR. *Annual Report 2008*. OEA/Ser.L/V/II.134, February 25, 2009. Vol. III, *Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. 2, par. 157. Available at: [http://www.cidh.oas.org/annualrep/2008eng/Annual\\_Report\\_2008- RELE - version\\_final.pdf](http://www.cidh.oas.org/annualrep/2008eng/Annual_Report_2008- RELE - version_final.pdf). See Office of the Special Rapporteur for Freedom of Expression – IACHR. April 18, 2008. Press release No. 190/08. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=729&IID=1>. CENCOS/Article 19. April 8, 2008. *Asesinan a dos locutoras de radio comunitaria en Oaxaca.* Available at: <http://cencos.org/es/node/18232>. Reporters without Borders. April 9, 2008. *Asesinadas a disparos dos jóvenes periodistas de una radio comunitaria indígena, el estado de Oaxaca.* Available at: [http://www.rsf.org/article.php3?id\\_article=26514](http://www.rsf.org/article.php3?id_article=26514). Committee to Protect Journalists (CPJ). 10 de April de 2008. *Dos locutoras de una radio comunitaria asesinadas.* Available at: <http://cpj.org/es/2008/04/dos-locutoras-de-una-radio-comunitaria-asesinadas.php>. Office in Mexico of the United Nations High Commissioner for Human Rights. April 17, 2008. *Press release: La OACNUDH condena los asesinatos y agresiones de periodistas y comunicadores/as sociales.* Available at: <http://www.hchr.org.mx/documentos/Communications/Communicationprensa7abril2008.pdf>

645. The radio station *La voz que rompe el silencio* forms part of the project for greater autonomy of the municipality of San Juan Copala and belongs to the Network of Community Radio and Television Stations of Southeastern Mexico, as well as the Network of Indigenous Media Workers of the Mixteca-Triqui Region.<sup>931</sup> According to the information received, since its creation the radio sought to be an instrument to make calls for unity, to overcome conflicts and to promote communication. It began transmission on January 20, 2008.<sup>932</sup> According to the information received, the journalists Martínez and Bautista worked as presenters and reporters at the community radio station and often presented information on subjects relating to the autonomous indigenous government, health, education and the culture of their community, thereby complying with a duty assigned to them by their community.<sup>933</sup> After the murders, the station reduced its coverage of delicate political issues.<sup>934</sup>

646. The two media workers were murdered on April 7, 2008, in the course of an ambush in the locality of Llano Juárez, on the highway that leads from Joya del Mamey to Putla de Guerrero, when they were traveling together with other individuals in a private vehicle. According to the information received, the investigations undertaken have shed no light on information that might identify the responsible party.<sup>935</sup>

647. Both the Commission for the Defense of Human Rights of Oaxaca (hereinafter, “CEDHOAX”) and the CNDH monitored the case and the measures taken by the judicial authorities. The analysis carried out by these autonomous bodies allow some of the obstacles facing investigation of the crime to be understood.

648. On April 16 and 17, 2008, the CEDHOAX requested protective measures be taken in favor of the survivors of the attack in which the journalists died, as well as the children of the victims and the new presenters of the community radio station, considering there to be a risk to the

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<sup>931</sup> Luís Hernández Navarro, “México: Once retratos de la impunidad”. *El Cotidiano* (Mexico D.F.) July/August 2008. Available at: <http://redalyc.uaemex.mx/pdf/325/32515014.pdf>. Fr. Francisco de Vitoria Center for Human Rights. April 11, 2008. *Asesinato de dos radialistas indígenas*, CACTUS. Available at: <http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=806>

<sup>932</sup> Luís Hernández Navarro, “Mexico: Once retratos de la impunidad”. *El Cotidiano* (Mexico D.F.) July/August 2008. Available at: <http://redalyc.uaemex.mx/pdf/325/32515014.pdf>

<sup>933</sup> IACHR. *Annual Report 2008*. OEA/Ser.L/V/II.134, February 25, 2009. Vol. III, *Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. 2, par. 157. Available at: [http://www.cidh.oas.org/annualrep/2008eng/Annual\\_Report\\_2008- RELE - version final.pdf](http://www.cidh.oas.org/annualrep/2008eng/Annual_Report_2008- RELE - version final.pdf). See Office of the Special Rapporteur for Freedom of Expression – IACHR. April 18, 2008. Press release No. 190/08. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=729&IID=1>. CENCOS/Article 19. April 8, 2008. *Asesinan a dos locutoras de radio comunitaria en Oaxaca*. Available at: <http://cencos.org/es/node/18232>. Reporters without Borders. April 9, 2008. *Asesinadas a disparos dos jóvenes periodistas de una radio comunitaria indígena, el estado de Oaxaca*. Available at: [http://www.rsf.org/article.php3?id\\_article=26514](http://www.rsf.org/article.php3?id_article=26514). Committee to Protect Journalists (CPJ). April 10, 2008. *Dos locutoras de una radio comunitaria asesinadas*. Available at: <http://cpj.org/es/2008/04/dos-locutoras-de-una-radio-comunitaria-asesinadas.php>. Office in Mexico of the United Nations High Commissioner for Human Rights. April 17, 2008. *Press release: La OACNUDH condena los asesinatos y agresiones de periodistas y comunicadores/as sociales*. Available at: <http://www.hchr.org.mx/documentos/comunicados/comunicadoprensa7abril2008.pdf>. Centro de Derechos Humanos Fr. Francisco de Victoria O.P.A.C. April 11, 2008. *Asesinato de dos radialistas indígenas*, CACTUS. Available at: <http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=806>

<sup>934</sup> Committee to Protect Journalists (CPJ). September, 2010. *Silence or Death in Mexico’s Press*, (New York: CPJ, 2010), appendix 1. Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>935</sup> Office in Mexico of the United Nations High Commissioner for Human Rights. *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las and los Defensores*, p. 39. Available at: <http://www.hchr.org.mx/documentos/informes/informepdf.pdf>

lives of these people.<sup>936</sup> The requests for protective measures were accepted by the corresponding authorities.<sup>937</sup> On May 15, 2008, the CNDH also requested protective measures be taken in favor of the survivors, the radio staff, the relatives of the murdered women and the human rights workers who filed the complaint and requested investigation of the crimes.<sup>938</sup> The Office of the Special Rapporteur notes that, according to the CEDHOAX, the atmosphere of violence and hostility that held sway led to distrust and fear among those who might help to clarify what occurred, and even among the local police force.<sup>939</sup>

649. Meanwhile, both the CEDHOAX and the CNDH identified various obstacles and irregularities in the investigation. In the first place, as the analysis by the CNDH shows, there was no clarity about the jurisdiction responsible for the investigation, since it was begun by the Public Prosecutor's Office of the state of Oaxaca, and then taken up by the PGR.<sup>940</sup>

650. The CEDHOAX and the CNDH identified a number of deficiencies in the investigation begun by the state judicial authorities. For example, on April 15, 2008, eight days after the attack, the Public Prosecutor's Office had still not visited the site of the attack nor interviewed the police officers who were the first to reach the location of the crime.<sup>941</sup> Further, it failed to make use of police investigation techniques and avoid the loss, destruction, or alteration of tracks or clues; nor did it even cordon off and safeguard the crime scene; nor did it seek the involvement of forensic experts.<sup>942</sup> In the view of the CNDH, the actions of the Public Prosecutor's Office of the state of Oaxaca "lacked any real intention to investigate the offense, insofar as it failed to carry out procedures that would identify the parties likely to be responsible for the crime."<sup>943</sup>

651. As for the investigations undertaken by the PGR, the CNDH considered that while forensic tests in a number of areas were requested, the ministerial authority did not respond in timely fashion to the requirements set out by specialists from the same government body, with regard to the need to carry out a visual inspection and reconstruction of the events, as well as guaranteeing the security of the personnel involved in these procedures.<sup>944</sup>

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<sup>936</sup> Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felicitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: <http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf>

<sup>937</sup> Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felicitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: <http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf>

<sup>938</sup> CNDH. Press release CGCP/081/08, May 15, 2008. Available at: <http://www.cndh.org.mx/comsoc/compre/2008/081.htm>

<sup>939</sup> Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felicitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: <http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf>

<sup>940</sup> CNDH. General Recommendation 17, August 19, 2009. Available at: <http://www.cndh.org.mx/recomen/general/O17.htm>

<sup>941</sup> Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felicitas Martínez Sánchez* (Oaxaca: April 23, 2008), p. 7, Available at: <http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf>

<sup>942</sup> CNDH. General Recommendation 17, August 19, 2009. Available at: <http://www.cndh.org.mx/recomen/general/O17.htm>

<sup>943</sup> CNDH. General Recommendation 17, August 19, 2009. Available at: <http://www.cndh.org.mx/recomen/general/O17.htm>

<sup>944</sup> CNDH. General Recommendation 17, August 19, 2009. Available at: <http://www.cndh.org.mx/recomen/general/O17.htm>

652. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Teresa Bautista and Felicitas Martínez.<sup>945</sup> In a reply received on November 12, 2010, the State sent a number of documents relating to the investigation. These documents included a letter from the then Special Prosecutor's Office for Crimes against Journalists (hereinafter "FEADP") dated April 25, 2008, in which it affirmed that "neither woman engaged in activity as a media worker, reporter or presenter for the radio station", such that the "Special Prosecutor is not the competent authority to follow up this case."<sup>946</sup> However, a letter dated May 21, 2008, also from the FEADP, states that "as of May 17 of the present year, this Special Prosecutor for Offenses Committed against Journalists of the PGR exercised its authority to assert jurisdiction and is now in charge of this investigation at its Oaxaca State office."<sup>947</sup> Indeed, the information provided indicates that the criminal investigation is currently being processed by the FEADLE.<sup>948</sup> The available information indicates that those responsible for the deaths of the journalists Teresa Bautista Merino and Felicitas Martínez Sánchez have yet to be identified.

### **Armando Rodríguez Carreón**

653. Armando Rodríguez Carreón, a journalist at the newspaper *El Diario* in Ciudad Juárez in the state of Chihuahua, was murdered on November 13, 2008. That morning Rodríguez Carreón was in his car, outside his home with his daughter, who he was about to take to school, when unidentified individuals shot at him with a firearm. The reporter died at the scene. In early 2008, the journalist had received threats, which had led him to leave the city for two months, according to information published at the time by the local press and by NGOs.<sup>949</sup> According to *El Diario*, Rodríguez Carreón had been covering public security issues for more than ten years for the newspaper, and was the author of several analyses and statistics that showed the scale of the rise in violence in Ciudad Juárez.<sup>950</sup> Two weeks before his death, he had published an article that linked family members of a high official at the state Public Prosecutor's office with drug trafficking.<sup>951</sup>

654. According to the press, the then-FEADP immediately exercised its authority to assert its jurisdiction over the homicide of journalist Armando Rodríguez.<sup>952</sup> The state governor announced, however, that the crime would be investigated jointly with the state Public Prosecutor's Office.<sup>953</sup>

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<sup>945</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>946</sup> FEADP, Memo No. SDHAVSC/FEADP/0420/08 of April 25, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>947</sup> FEADP, Memo No. SDHAVSC/FEADP/0513/08 of May 21, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>948</sup> FEADLE, Memo No. 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>949</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. November 14, 2008. Press release No. R50/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=734&IID=2>. See also *El Diario*. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb>

<sup>950</sup> *El Diario*. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb>

<sup>951</sup> *El Diario*. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb>

<sup>952</sup> *El Universal*. November 14, 2008. *Atrae PGR el homicidio de periodista en Chihuahua*. Available at: [http://www.eluniversal.com.mx/notas/vi\\_555641.html](http://www.eluniversal.com.mx/notas/vi_555641.html)

<sup>953</sup> *El Universal*. November 14, 2008. *Atrae PGR el homicidio de periodista en Chihuahua*. Available at: [http://www.eluniversal.com.mx/notas/vi\\_555641.html](http://www.eluniversal.com.mx/notas/vi_555641.html)

Indeed, the information available indicates that two investigations were undertaken, one at the federal level and the other at state level, into the murder of Armando Rodríguez.<sup>954</sup> While the authorities claimed that the two investigations were coordinated,<sup>955</sup> the information available raises doubts about this, as detailed below.

655. According to press reports, federal authorities claimed that the Public Prosecutor's Office of the state of Chihuahua had direct responsibility for carrying out the investigation.<sup>956</sup> In fact, the authorities of the state Public Prosecutor's Office provided information that at a given moment the Special Prosecutor's Office had renounced its competence over the case, finding no proof that the murder of Armando Rodríguez was motivated by his profession.<sup>957</sup> According to information *El Diario* claims to have received from the Public Prosecutor's Office for the state of Chihuahua, the investigation carried out by the state Public Prosecutor's office pointed to the perpetrator being Juan Gabriel Dávila Antillón.<sup>958</sup>

656. Notwithstanding the foregoing, on September 23, 2010, the PGR announced the arrest by the federal authorities of a suspect involved in the murder of Armando Rodríguez, and stated that the motive for the murder was his having written "many journalistic articles against one of the criminal organizations that dispute control of the drugs corridor."<sup>959</sup> The detainee, according to press reports, was an individual identified by the nickname *El 7*, who was alleged to have driven the vehicle used by the journalist's murderers.<sup>960</sup> The PGR later informed that it had also detained Hugo Valenzuela Castañeda, known as *El 3*<sup>961</sup>. According to declarations made by the Prosecutor General reported in the press, the information provided by *El 7* allowed identification of the perpetrator as a person known as *El 6* or *El Junior*, and identification of the mastermind as José Antonio Acosta Hernández, *Diego*, who had been killed in 2009.<sup>962</sup>

<sup>954</sup> Reporters without Borders. *México: Los entresijos de la impunidad* (Paris: RSF, September, 2009), p. 9. Available at: [http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF\\_Informe\\_Mexico\\_Impunidad\\_sept09.pdf](http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf). *El Diario*. September 24, 2010. *Chocan versiones en expedientes de las Procuradurías estatal y federal*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=4df9d5ab3a977336988078701e342141>. See also Memo 0000144/FEADLE/2010, Communication from the FEADLE to the Office of the Special Rapporteur received October 20, 2010, in response to the information request of September 2, 2010.

<sup>955</sup> See *El Diario*. September 26, 2010. *Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'*. Available at: <http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=EI%20State&IDREPORTERO=Elena%20Balti%E9rrez>

<sup>956</sup> *El Diario*. September 24, 2010. *Chocan versiones en expedientes de las Procuradurías estatal and federal*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=4df9d5ab3a977336988078701e342141>

<sup>957</sup> See *El Diario*. September 24, 2010. *'Fiscalía federal regresó el caso al no hallar pruebas de que profesión fuera el móvil'*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=11779a8e8be92631ed449781f0368937#>

<sup>958</sup> See *El Diario*. September 26, 2010. *Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'*. Available at: <http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=EI Estado&IDREPORTERO=ElenaBalti%E9rrez>

<sup>959</sup> PGR, Boletín 1108/10, September 23, 2010. Available at: <http://www.pgr.gob.mx/prensa/2007/bol10/Sep/b110810.shtm>

<sup>960</sup> *La Jornada*. September 24, 2010. *El homicidio de Rodríguez Carreón, de El Diario, "por hacer notas" sobre La Línea*. Available at: <http://www.jornada.unam.mx/2010/09/24/index.php?section=politica&article=015n1pol>

<sup>961</sup> *El Diario*. September 24, 2010. *Fue estrangulado en su celda, recluso que PGR presenta como detenido*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=4fc5da8c086fbc158430cd13986cda30>

<sup>962</sup> *La Jornada*. September 24, 2010. *El homicidio de Rodríguez Carreón, de El Diario, "por hacer notas" sobre La Línea*. Available at: <http://www.jornada.unam.mx/2010/09/24/index.php?section=politica&article=015n1pol>. Committee to Protect Journalists (CPJ). September 24, 2010. *Doubt cast on confession in Rodríguez murder*. Available at: <http://cpj.org/blog/2010/09/doubt-cast-on-confession-in-rodriguez-murder.php>

657. However, *El Diario* and the Committee to Protect Journalists have expressed a series of doubts about these advances in the investigation.<sup>963</sup> As well as the lack of consistency between the line of enquiry taken by the state Public Prosecutor's office and the results presented by the PGR, *El Diario* reported that Hugo Valenzuela Castañeda, *El 3*, had been strangled in a cell of the state correctional facility on July 8, 2010, making it impossible for him to have been detained at the end of September, 2010, as part of the investigation of the murder of Armando Rodríguez.<sup>964</sup> It also reported that the alias "*El 7*" corresponds to Juan Alfredo Soto Arias, who was arrested in March, 2010, and who had filed a complaint with the CNDH alleging that he was tortured.<sup>965</sup> *El Diario* claims to have access to the information that indicates that one of the offenses that Soto Arias had been forced to confess to, was the murder of Armando Rodríguez.<sup>966</sup>

658. As of the date on which this report was completed, the murder of Armando Rodríguez remains unpunished, given that not one of those responsible has been prosecuted or sentenced. There is no clarity, either, about the course taken by the legal proceedings following the progress in the inquiry announced by the PGR in September, 2010, and the subsequent public doubts that were raised in the press and in civil society about these advances. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Armando Rodríguez.<sup>967</sup> In a reply received on November 12, 2010, the State forwarded a FEADLE report that indicates that the investigation is currently "being processed by the state of Chihuahua Public Prosecutor's Office."<sup>968</sup>

### **Bradley Roland Will**

659. On October 27, 2006, the American journalist Brad Will lost his life while he was filming a confrontation between sympathizers of the Popular Assembly of the Peoples of Oaxaca (*Asamblea Popular de los Pueblos de Oaxaca*, hereinafter "APPO") and the local police in Santa Lucia del Camino, Oaxaca state. The documentary maker and photojournalist, who was covering the conflict between the state government and a coalition of organizations and labor unions grouped together in the APPO for the independent media organization *Indymedia*, died from the bullet wounds he received. The information received by the Office of the Special Rapporteur at the time of the events indicated that the shots may have come from municipal police dressed as civilians and personnel from the mayor's office, who had opened fire against an APPO barricade near where Brad Will was standing.<sup>969</sup>

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<sup>963</sup> *El Diario*. September 26, 2010. Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'. Available at: [http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=El\\_Estado&IDREPORTERO=Elena\\_Balti%E9rrez](http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=El_Estado&IDREPORTERO=Elena_Balti%E9rrez). Committee to Protect Journalists (CPJ). September 24, 2010. Doubt cast on confession in Rodríguez murder. Available at: <http://cpj.org/blog/2010/09/doubt-cast-on-confession-in-rodriguez-murder.php>

<sup>964</sup> *El Diario*. September 24, 2010. *Fue estrangulado in su celda, recluso que PGR presenta como detenido*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=4fc5da8c086fbc158430cd13986cda30>

<sup>965</sup> *El Diario*. September 24, 2010. *Ponen a torturado and a 2 muertos como asesinos de El Choco*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb>

<sup>966</sup> *El Diario*. September 24, 2010. *Ponen a torturado and a 2 muertos como asesinos de El Choco*. Available at: <http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb>

<sup>967</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>968</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>969</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. October 31, 2006. Press release No. 156/06. Available at: <http://www.cidh.oas.org/relatoria/artListCat.asp?year=2006&countryID=1&IID=1&catID=1>

660. The investigation into the homicide of the journalist Brad Will was initially assumed by the Oaxaca State Public Prosecutor's Office. On November 2, 2006, the State Public Prosecutor's Office opened a prosecution against two municipal police officers identified as suspects in the homicide. However, on November 28, 2006, the criminal judge of the district court in Etla, Oaxaca released the detained officers due to the annulment of the evidence to be used to try them. On March 22, 2007 the state Public Prosecutor's office declined its competence and referred the inquest to the PGR.<sup>970</sup>

661. The PGR accepted competence with regard to the case of Brad Will on April 4, 2007, and on October 22, 2007—almost a year after the murder—the then-Special Prosecutor's Office for Crimes against Journalists assumed competence over the case.<sup>971</sup> After a year of enquiries the Special Prosecutor decided to prosecute Juan Manuel Martínez Moreno, an APPO sympathizer, as the perpetrator of the homicide of Brad Will, and against a further two people for the offense of accessory after the fact.<sup>972</sup> On February 18, 2010, after spending 16 months in detention, Juan Manuel Martínez Moreno had the charges against him quashed by order of a federal tribunal.<sup>973</sup> The legal representation of the family of Brad Will informed the Office of the Special Rapporteur that the PGR had not advised the reporter's family if it would continue with the investigation following the liberation of Mr. Martínez.<sup>974</sup>

662. The investigations undertaken in the case of Brad Will have been repeatedly questioned by the CNDH and international organizations such as the CPJ. The CNDH carried out a detailed study of the judicial process in its Recommendation 50/2008, identifying a series of irregularities. With regard to the investigation carried out by the state Public Prosecutor's Office, the CNDH detected a number of significant omissions, including the failure to immediately arrive at and secure the crime scene. In addition, according to the CNDH, the state Public Prosecutor's Office did not interrogate the two individuals who were first detained and presented as probable perpetrators of the homicide, and failed to identify, locate or interrogate the armed individuals who appear in the video stills and photographs of the death of the reporter, which were widely circulated in the media. The CNDH also criticized failures on the part of the state Public Prosecutor's Office in the examination of the weapons the municipal police were carrying on the day of the incident. Finally, the CNDH concluded on the basis of independent forensic analysis that the state Public Prosecutor's Office was wrong to determine that the shot that killed the journalist Brad Will was fired from a close distance, at a different time and place from where the initial incident occurred. On the contrary, according to the analysis of the CNDH, Brad Will was killed by shots fired in close succession from a distance of approximately 35 to 50 meters (115 to 164 feet), from a single weapon fired by the same person.<sup>975</sup>

663. The investigation carried out by the PGR's Special Prosecutor's Office was still in process when the CNDH issued its Recommendation 50/08, and Juan Manuel Martínez Moreno had not yet been accused of the crime. Nonetheless, the CNDH observed that said investigation had

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<sup>970</sup> CNDH, Recommendation 50 of 2008, September 26, 2008.

<sup>971</sup> CNDH, Recommendation 50 of 2008, September 26, 2008.

<sup>972</sup> PGR, Memo No. SDHAVSC/FEADP/1058/08, communication from the Special Prosecutor for Crimes against Journalists to the CPJ of October 28, 2008, Available at: <http://cpj.org/blog/Mexico.Brad%20Will%5BEspa%C3%B1ol%5D.PDF>

<sup>973</sup> Committee to Protect Journalists (CPJ). February 24, 2010. *Only man accused in Brad Will murder goes free*. Available at: <http://cpj.org/blog/2010/02/only-man-accused-in-brad-will-murder-goes-free.php>

<sup>974</sup> Letter from Miguel Ángel de los Santos Cruz to the Office of the Special Rapporteurs of the IACHR and the United Nations, August 10, 2010, document provided to the Office of the Special Rapporteur during the on-site visit.

<sup>975</sup> CNDH, Recommendation 50 of 2008, September 26, 2008.

“failed to put principles of criminology into effect” and recommended “the inclusion of a group of forensic experts, who work together, in order to analyze the clues, evidence and elements of proof that have been recorded in the criminal investigation.”<sup>976</sup> The PGR did not accept the CNDH’s Recommendation 50/08.<sup>977</sup> In a detailed response to the Recommendation issued by the CNDH, the PGR defended the conclusions of its investigation, noting in the first place that “it is the case that some of the actions requested are being undertaken, have already been carried out, or were of no relevance.”<sup>978</sup> It also clarified that the PGR “chose not to be influenced by the rulings at work in the criminal investigation, by requesting a forensic analysis that dissipated the doubts and established the circumstances of the actions that led to the death of the journalist Bradley Roland Will [...] which was delivered on March 18, 2008, and to which forensic experts in criminology, chemistry, ballistics, planimetry, photography, video, audio and forensic medicine contributed.”<sup>979</sup> The PGR argued that the “CNDH should give total credibility to the report made by the forensic expert’s office of this national body”, and insisted on giving greater credibility to the conclusions of its own experts, noting that “the conclusions issued by the forensic experts provide elements to establish the circumstances of the manner, time and place in which Mr. Will lost his life.”<sup>980</sup> The conclusions of the PGR’s forensic analysis, to the effect that “the killer fired from a distance of approximately 2 meters (6.5 feet) from the victim for the first shot and for the second shot was located at an approximate distance of between 2 and 8 meters (6.5-26 feet),”<sup>981</sup> was the basis for the prosecution of Juan Manuel Martínez Moreno.

664. On October 21, 2008, Mr. Martínez Moreno was put on trial for the murder of Brad Will. The CPJ questioned the investigation undertaken by the PGR that led to this decision, observing that “the prosecution had failed to present forensic evidence, witness statements or clear and convincing motives in the accusation against Martínez and the other suspects in the murder. At the same time, they appear to have discarded evidence – ballistic, photographic and medical – that would implicate sympathizers with the Oaxaca state government.”<sup>982</sup> Similarly, CNDH authorities publicly questioned the forensic analysis that led the PGR to conclude that the murder was committed by an APPO sympathizer standing a short distance from the victim, and not further away, where the police agents were located.<sup>983</sup> As mentioned above, the accused, Martínez, had the charges against him quashed in February, 2010.

665. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Brad Will.<sup>984</sup> In a reply received on November 12, 2010, the State sent a number of relevant documents concerning the investigation,

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<sup>976</sup> CNDH, Recommendation 50 of 2008, September 26, 2008.

<sup>977</sup> PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>978</sup> PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>979</sup> PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>980</sup> PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>981</sup> PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>982</sup> Committee to Protect Journalists (CPJ). Letter to Prosecutor General Eduardo Medina Mora, October 24, 2008. Available at: <http://cpj.org/es/2008/10/el-cpj-preocupado-por-investigacion-en-el-caso-wil.php>

<sup>983</sup> Milenio. August 6, 2009. *PGR miente en el caso Brad Will*. Available at: <http://www.milenio.com/node/262566>

<sup>984</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

including the PGR's responses to a letter from the CPJ and to the CNDH's Recommendation 50/08.<sup>985</sup> The FEADLE report forwarded by the State indicates that the investigation is in the hands of a judge of the state of Oaxaca.<sup>986</sup> As of the date on which this report was completed the murder of Brad Will remains unpunished and the current direction of the investigation following the release of Juan Manuel Martínez Moreno is unclear. On November 3, 2010, the IACHR granted protective measures to protect the life and integrity of Juan Manuel Martínez Moreno and his family, in response to the harassment they received during and after the detention of Mr. Martínez.

### **José Bladimir Antuna García**

666. On November 2, 2009 the journalist José Bladimir Antuna García was murdered in the city of Durango, Durango State. García, who covered police and court news for *El Tiempo de Durango* and *La Voz de Durango*, was taken from his car and kidnapped by armed men on a city street on the morning of November 2, and his body was found with signs of torture the same night. A note left beside his body warned others not to give information to the army.<sup>987</sup>

667. The journalist García had suffered threats and acts of violence during the year prior to his murder. In October 2008 he began to receive the first threatening calls to his cell phone. On April 28, 2009, as he left his house to go to work, he was the victim of an attack when a person emerged from a vehicle and opened fire. García managed to take refuge in his house and emerged unscathed.<sup>988</sup> García also received threats following the murder of the journalist Eliseo Barrón,<sup>989</sup> which occurred on May 26, 2009.<sup>990</sup> García, who had worked with Barrón on reports about police corruption and organized crime, said that in the threats he received after the death of the reporter he was told that he would be the next to die.<sup>991</sup> García publicly denounced the threats and the attack in an interview with the magazine *Buzos* published in August 2009, and also informed the organization Center for Journalism and Public Ethics (*Centro de Periodismo y Ética Pública*,

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<sup>985</sup> PGR, Memo No. SDHAVSC/FEADP/1058/08 October 28, 2008 and Memo PGR/669/08 October 16, 2008, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>986</sup> PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>987</sup> Office of the Special Rapporteur for Freedom of Expression – IACHR. November 4, 2009. Press release R76/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=772&IID=1>; Committee to Protect Journalists (CPJ), *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>988</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). *Buzos. Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

<sup>989</sup> Sobre el murder de Eliseo Barrón see IACHR, Office of the Special Rapporteur for Freedom of Expression, Press release R34/09, May 29, 2009.

<sup>990</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). *Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

<sup>991</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). *Buzos. Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

<sup>991</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). *Buzos. Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

hereinafter “CEPET”).<sup>992</sup> Furthermore, he formally reported the attack on him to the state Public Prosecutor’s Office, as the CPJ was able to verify.<sup>993</sup> Despite these denunciations, no progress was made in the investigation and García received no protection from the authorities, such that, his friends informed the CPJ, in the months prior to his death he barely left his house and appeared resigned to being murdered.<sup>994</sup>

668. There is scant information available about the investigation into the homicide of García. The investigation was opened by the Public Prosecutor’s Office of Durango State and the available information indicates that, save for a brief period during which the PGR assumed responsibility for the investigation, the state Public Prosecutor’s Office has been responsible for investigating the murder.<sup>995</sup> In March 2010 the CPJ undertook a review of the investigation, interviewing the highest-ranking prosecutor with responsibility for cases of offenses against journalists in the Durango Public Prosecutor’s Office office.<sup>996</sup> The CPJ identified a series of major omissions in the investigation, in particular that:

The authorities did not even take the most basic steps to solve the homicide. The investigators did not question his friends, or his enemies, his sources or his colleagues. They did not analyze the close links that Antuna García had with the police or with the gangs that controlled the drugs business in the mountainous region of the state. The investigators did not read news stories that Antuna had written to see whom he could have angered, or check into his pending investigation into police corruption. They never bothered to check Antuna’s statement that phone threats had been made by members of the Zetas criminal gang, as he told the Center for Journalism and Public Ethics. State investigators never contacted the center or retrieved telephone records that could have traced the calls.<sup>997</sup>

669. On November 1, 2010, a year after the murder of José Bladimir Antuna García, one of the newspapers where he worked, *La Voz de Durango*, denounced the “lack of progress in the investigation and the unsolved case.”<sup>998</sup> Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of José Bladimir Antuna García<sup>999</sup>. In a reply received on November 12, 2010, the State sent some documents relating to the investigation, which indicate that the PGR opened a criminal investigation into the case of Antuna García, which was referred to the Public Prosecutor’s Office of the state of Durango

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<sup>992</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). *Buzos. Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

<sup>993</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf). See also *Buzos. Con el miedo a flor de piel*. Available at: [http://www.buzos.com.mx/360/reporte\\_especial.html](http://www.buzos.com.mx/360/reporte_especial.html)

<sup>994</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>995</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>996</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>997</sup> Committee to Protect Journalists (CPJ). *Silence or Death in Mexico’s Press* (New York: CPJ, 2010), chapter 3 “Murder in Durango”, Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>998</sup> *La Voz de Durango*. November 1, 2010. *Bladimir Antuna, un año de un crimen sin resolver*. Available at: <http://www.lavozdedurango.com/noticias/durango/bladimir-antuna-un-ano-de-un-crimen-sin-resolver>

<sup>999</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

on November 26, 2009, for jurisdictional reasons, where the investigation is currently in process.<sup>1000</sup>

**Cases 11.739 (Héctor Félix Miranda)<sup>1001</sup> and 11.740 (Víctor Manuel Oropeza)<sup>1002</sup>**

670. Below, the Office of the Special Rapporteur summarizes the relevant conclusions of the IACHR in two cases decided by the Inter-American Commission on Human Rights in 1999: the cases of Mexican journalists Héctor Félix Miranda, murdered in 1988, and Víctor Manuel Oropeza, murdered in 1991. The Office of the Special Rapporteur includes these cases in light of their historical and symbolic importance for the Mexican press and for the IACHR itself, the fact that compliance with the recommendations of the Commission in both cases remains pending, and the fact that they reveal causes of violence and impunity that remain relevant despite being crimes that occurred almost two decades ago.

**Héctor Félix Miranda**

671. On April 20, 1988, the journalist Héctor Félix Miranda was murdered in the city of Tijuana, Baja California State. That day, the journalist was driving his car towards his office at the weekly *Zeta* when two vehicles began to follow him. An individual got out of one of them and shot him at close range with a 12 mm rifle, causing his death. Victoriano Medina Moreno, a former judicial police officer from the state of Baja California and his former boss, Antonio Vera Palestina, responsible for security at the Agua Caliente racetrack in Tijuana were accused and prosecuted as perpetrators of the crime.<sup>1003</sup>

672. Héctor Félix Miranda was co-editor of the weekly *Zeta*, for which he wrote a column entitled "*Un poco de algo*" ("A bit of something") with stories from the political sphere and sarcastic comments about government officials. The petitioners (the Inter-American Press Association) made allegations to the IACHR that his murder was directly linked to the publication of his column, for which reason they believed it necessary to investigate who was behind the crime. In this regard, they highlighted the fact that on the day of the murder, Vera Palestina had received a payment equivalent to \$10,000 dollars, a fact that was not investigated by state judicial bodies. When the IACHR published its report, the investigation into the murder remained open, in order for the identity of the mastermind to be determined, but the petitioners alleged that this investigation was stalled, due to a lack of will on the part of the Mexican State.<sup>1004</sup> The petitioners did not question the trial and sentencing of the direct perpetrators, but the lack of inquiry into the masterminds behind the murder. They considered that the crime was the direct consequence of the publication of the column "*Un poco de algo*", in which the journalist "in a harsh and at times sarcastic vein, criticized and denounced private and public matters in connection with acts of corruption, crimes in general and drug trafficking."<sup>1005</sup> The petitioners added that the businessman Jorge Hank Rhon—who they described as "the son of one of the wealthiest and most powerful men in Mexico"—had been attacked several times by Félix Miranda in his *Zeta* column in the months before the murder. This

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<sup>1000</sup> PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>1001</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999.

<sup>1002</sup> IACHR. Report No. 130/99. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999.

<sup>1003</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 2.

<sup>1004</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 3.

<sup>1005</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 19.

fact was of relevance to the petitioners since both Medina Romero and Vera Palestina were employees at the Tijuana racetrack, the property of the Hank Rhon family. Finally, evidence was found of the payment of a large sum of money to Vera Palestina, traced to the racetrack.<sup>1006</sup>

673. In its report, the IACHR considered that the evidence provided by the petitioners contained numerous elements that pointed to the existence of a mastermind: the payment to the assassins, the inconsistencies in the confessions of the perpetrators, the failure to question the then co-editor of the weekly *Zeta*, Jesús Blancornelas, and the abrupt closure of the police investigation, among others.<sup>1007</sup> The Commission established that the Mexican State was responsible for an unreasonable delay in the investigation of the murder of Héctor Félix Miranda<sup>1008</sup> and that the behavior of the authorities responsible was defined by inactivity in the investigation, interrupted solely by a few procedures of a bureaucratic nature, of no significance and with no concrete outcome whatsoever.<sup>1009</sup> The IACHR concluded that despite its exercise of a monopoly on criminal proceedings, the State had declined to conduct the complete and serious investigation of the crime befalling the journalist as its own juridical duty, so that the judicial remedy available in Mexico had not been simple, rapid or effective.<sup>1010</sup>

674. The Commission determined that the Mexican State violated articles 13, 8 and 25, in relation to article 1.1 of the American Convention on Human Rights in the case of Héctor Félix Miranda, and ordered the State:

1. To conduct a serious, exhaustive and impartial investigation to determine the punitive responsibility of all the perpetrators of Héctor Félix Miranda's assassination.

2. To conduct a serious, exhaustive and impartial investigation to determine whether there have been instances of concealment and crimes against the administration of justice which have impeded a complete investigation of the incidents which give rise to the present report; and, if so, that it apply such pertinent penal, administrative and/or disciplinary measures which may be pertinent.

3. To provide members of Héctor Félix Miranda's family with adequate reparation and compensation for the human rights violations established in this document.<sup>1011</sup>

675. Following the publication of its Report No. 50/99, on October 20, 2003, the IACHR called a hearing to follow up on its recommendations in the Héctor Félix Miranda case. At this meeting the State declared that the Prosecutor General was prepared to meet with the petitioners and that an agreement had been reached between the state and federal governments to proceed with the investigation.<sup>1012</sup> At this meeting the parties also agreed to work on a timetable for following up on the recommendations of the Commission.<sup>1013</sup> In effect, on March 13, 2004, the petitioners and the Mexican State signed a document entitled "Terms of Reference: Working Group for Reviewing the Case Files of Héctor Félix Miranda and Víctor Manuel Oropeza," by which they

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<sup>1006</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 20.

<sup>1007</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 29.

<sup>1008</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 40.

<sup>1009</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 38.

<sup>1010</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 40.

<sup>1011</sup> IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 67.

<sup>1012</sup> IACHR, Summary of Meeting No. 43, Follow-up of the Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

<sup>1013</sup> IACHR, Summary of Meeting No. 43, Follow-up of the Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

agreed to, among other things, set up a Working Group to review and analyze the criminal investigations and judicial processes in the two cases, with a view to reopening and restarting the investigations and judicial proceedings.<sup>1014</sup>

676. To this effect, on April 23, 2004, the petitioners, the Foreign Ministry and the Public Prosecutor's Office of the state of Baja California signed an agreement that ordered the creation of a Technical Group to review the initial criminal investigations and judicial processes in the case of Héctor Félix Miranda; each of the three parties designated a representative for the Technical Group.<sup>1015</sup> On May 13, 2004, the Technical Group met for the first time, analyzed the legal file in the case, and agreed to request a series of actions from the judicial authorities.<sup>1016</sup>

677. On June 22, 2004, the representative of the petitioners on the Technical Group, Francisco Ortiz Franco, was murdered; Ortiz Franco was editor and, together with Héctor Félix Miranda, co-founder of the weekly *Zeta*.<sup>1017</sup> The information provided to the Commission by the parties indicates that the Technical Group met again on March 17-18, 2005, and on September 26-27 of the same year.<sup>1018</sup> Since then, the information available indicates that the Technical Group has not met again, nor has any significant progress been made in the investigation into the murder of Héctor Félix Miranda.

678. Within the framework of its visit, the Office of the Special Rapporteur requested up-to-date information from the Mexican State on the investigation into the murder of Héctor Félix Miranda.<sup>1019</sup> In a reply received on November 12, 2010, the State indicated that the FEADLE had been charged with the task of documenting cases of homicides and disappearances of journalists that had occurred since the year 2000, and that, once this first stage was complete, it would proceed with the task of documenting those cases which occurred prior to 2000, including the murder of Héctor Félix Miranda. The information sent by the State also indicates that a criminal investigation into the case remains open with the Deputy Attorney General's Office for Special Investigation into Organized Crime.<sup>1020</sup>

679. The Office of the Special Rapporteur expresses its extreme concern about the fact that the recommendations of the IACHR in the case of Héctor Félix Miranda remain pending 11

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<sup>1014</sup> "Terms of Reference: Working Group for Reviewing the Case Files of Héctor Félix Miranda and Víctor Manuel Oropeza", March 13, 2004, on file with the IACHR.

<sup>1015</sup> "Agreement signed between the Inter-American Press Association (IAPA), the Ministry of Foreign Affairs (SRE) and the Public Prosecutor's Office of the state of Baja California (PFJE) in compliance with the recommendation included in Report 50-99 issued by the Inter-American Commission for Human Rights (IACHR) on the case 11.739 Héctor Félix Miranda, April 23, 2004 in the city of Tijuana, Baja California", on file with the IACHR.

<sup>1016</sup> Minutes of the Working Meeting of the Technical Group on the Death of Mr. Héctor Félix Miranda, May 13, 2004, on file with the IACHR.

<sup>1017</sup> *Washington Post*. 23 de June de 2004. *Gunmen Kill Editor of Tijuana Newspaper*. Available at: <http://www.washingtonpost.com/wp-dyn/articles/A61807-2004Jun22.html>. UNESCO. June 25, 2004. *El Director General Condena el Asesinato del Periodista Mexicano Francisco Ortiz Franco*. Available at: [http://portal.unesco.org/es/ev.php-URL\\_ID=21346&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/es/ev.php-URL_ID=21346&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>1018</sup> Working Meeting on the Héctor Félix Case, March 17-18, 2005, on file with the IACHR. Working Meeting on the Héctor Félix Case, September 26-27, 2005, on file with the IACHR.

<sup>1019</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>1020</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" and PGR, Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

years after the publication of the decision in the case, and urges the Mexican State to reactivate the investigations into the murder of the journalist in order to comply with these recommendations.

### **Víctor Manuel Oropeza**

680. Víctor Manuel Oropeza was murdered on July 3, 1991, in Ciudad Juárez, state of Chihuahua. That day, the journalist was in his consulting room when, according to information from witnesses, two individuals entered and after a struggle, inflicted 14 stab wounds in his torso. Víctor Manuel Oropeza was a doctor by profession, and since 1984 had written a column entitled "*A mi manera*" ("My way") for the *Diario de Juárez*, of Ciudad Juárez. Oropeza used this space to lay out criticisms of the authorities and to denounce the "close ties between police forces and drug traffickers" in the region. The judicial investigation took a number of turns and at the time of the publication of the IACHR's report the only suspect was in prison in the United States on an unrelated matter. The petitioners (the Inter-American Press Association) considered that his murder was committed with the intention of silencing his allegations and that as a result the investigation had been deliberately stalled by the authorities he had implicated.<sup>1021</sup>

681. The IACHR noted in its report that over eight years had passed since the murder of the journalist Víctor Manuel Oropeza and the investigation remained open, but not a single person responsible for planning or carrying out the murder had been identified, nor had reparations been made for the consequences of the murder.<sup>1022</sup> Marco Arturo Salas Sánchez and Sergio Aguirre Torres were initially tried for the murder, but they were freed once the CNDH had established that their confessions had been produced under torture.<sup>1023</sup> With regard to the legal process set out before the IACHR the State itself provided numerous details about the punishment of various officials for serious irregularities in this investigation that, as mentioned, went as far as the torture of two people to force them to incriminate themselves. Indeed, the Commission observed that six government employees were accused of abuse of authority, obstruction of justice, and torture; that they were neither tried nor indicted for these acts, due to irregularities in the investigations by the agents responsible from the Public Prosecutor's Office; and that one of these agents was "punished" with dismissal and the other with a written warning.<sup>1024</sup>

682. The IACHR observed that the only person accused was one Samuel de la Rosa Reyes, who was in prison in Texas, U.S.A., on a matter unrelated to the homicide of Oropeza. According to the documentation supplied by the State, on November 14, 1997, officials from the consulate and the Public Prosecutor's Office of Chihuahua traveled to the high-security penitentiary in the city of Livingston, Texas, in order to take a statement from Samuel Reyes. The same documentation indicates that the detainee refused to give a statement, despite the insistence of the Mexican officials; and that, in consequence, they drew up the corresponding report and treated the matter as closed.<sup>1025</sup> At no time was the Commission informed about the motive for which this person was considered the "probable culprit" for the murder, or the reasons why they lacked any other clue that might lead to the identification of the other perpetrators, given it was clear several people were involved in the murder of the journalist, as a number of witnesses at the scene had declared.<sup>1026</sup>

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<sup>1021</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 2.

<sup>1022</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 30.

<sup>1023</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 31.

<sup>1024</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 38.

<sup>1025</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 40.

<sup>1026</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 41.

683. The Commission established that the Mexican State was responsible for an unreasonable delay in the investigation of the murder of Víctor Manuel Oropeza. It concluded that despite its exercise of a monopoly on criminal proceedings, the State had declined to conduct the complete and serious investigation of the crime befalling the journalist as its own juridical duty, so that the judicial remedy available in Mexico had not been simple, rapid or effective.<sup>1027</sup>

684. The Commission determined that the Mexican State violated articles 13, 8 and 25, in relation to article 1.1 of the American Convention on Human Rights in the case of Víctor Manuel Oropeza, and ordered the State to:

1. Investigate in a complete, impartial, and effective manner in order to determine the criminal responsibility of all of the perpetrators of Víctor Manuel Oropeza's assassination.
2. Investigate in a complete, impartial, and effective manner in order to determine whether cover-up actions were taken and crimes were committed against the Administration of Justice, including the possible participation of judicial personnel, which impeded the complete investigation of the facts addressed in this report; and, as appropriate, apply criminal, administrative, and/or disciplinary sanctions.
3. Provide redress and proper compensation to the family members of Víctor Manuel Oropeza for the violations established herein<sup>1028</sup>.

685. Following the publication of its Report No. 130/99, on October 20, 2003, the IACHR called a meeting to follow up on its recommendations in the Víctor Manuel Oropeza case. At this meeting the State declared that the Prosecutor General was prepared to meet with the petitioners and that an agreement had been reached between the state and federal governments to proceed with the investigation.<sup>1029</sup> At this meeting the parties also agreed to work on a timetable for following up on the recommendations of the Commission.<sup>1030</sup> In effect, on March 13, 2004, the petitioners and the Mexican State signed a document entitled "Terms of Reference: Working Group for the Review of the Case Files on Héctor Félix Miranda and Víctor Manuel Oropeza", by which they agreed to, among other things, set up a Working Group to review and analyze the criminal investigations and judicial processes in the two cases, with a view to reopening and restarting the investigations and judicial processes.<sup>1031</sup>

686. On February 9 and 10, 2005, a meeting of the Working Group for Joint Review of the Oropeza Case was held, at which representatives of the petitioners, the Public Prosecutor's Office of the state of Chihuahua and the Foreign Ministry were all present.<sup>1032</sup> At this meeting of the Working Group it was established, after reviewing the legal file of the case, that "significant failings were detected in the inquiry and judicial processes," and that "the ministerial authority failed to consider in its investigation whether the motive was connected to his activity as a journalist."<sup>1033</sup>

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<sup>1027</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 44.

<sup>1028</sup> IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 77.

<sup>1029</sup> IACHR, Summary of Meeting No. 43, Follow-up of Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

<sup>1030</sup> IACHR, Summary of Meeting No. 43, Follow-up of Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

<sup>1031</sup> "Terms of Reference: Working Group for the Revision of the Case Files on Héctor Félix Miranda and Víctor Manuel Oropeza", March 13, 2004, on file with the IACHR.

<sup>1032</sup> Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

<sup>1033</sup> Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

Based on these conclusions, the State Public Prosecutor's Office committed itself to reactivating the case.<sup>1034</sup> On September 27 and 28, 2005, the Working Group met again. At this meeting "the progress that has been made [...] on lines of enquiry that had not previously been exhausted was noted", and the Office of the state Public Prosecutor "reaffirmed its commitment to continue to examine as much evidence as is necessary to clarify the events."<sup>1035</sup> Since then, the information available indicates that the Working Group has not met again, nor has any significant progress been made in the investigation of the murder of Víctor Manuel Oropeza.

687. Within the framework of its visit, the Office of the Special Rapporteur requested additional information from the State about the investigation of these events, both in writing and at its meeting with the authorities from the Public Prosecutor's Office of the state of Chihuahua. At this meeting the authorities expressed their opinion that the real perpetrators of the crime were freed as a result of the CNDH report that concluded they had been forced to incriminate themselves, and that as far as the state Public Prosecutor's Office was concerned the investigation was closed.<sup>1036</sup> Meanwhile, in a written reply received November 12, 2010, the State indicated that the FEADLE had been charged with the task of documenting cases of homicides and disappearances of journalists that had occurred since the year 2000, and that, once this first stage was complete, it would proceed with the task of documenting those cases which occurred prior to 2000, including the murder of Víctor Manuel Oropeza.<sup>1037</sup>

688. The Office of the Special Rapporteur expresses its extreme concern about the fact that the recommendations of the IACHR in the case of Víctor Manuel Oropeza remain pending 11 years after the publication of the decision in the case, and urges the Mexican State to reactivate the investigations into the murder of the journalist in order to comply with these recommendations.

## **b. Disappearance**

### **María Esther Aguilar Cansimbe**

689. On November 11, 2009, in the city of Zamora, state of Michoacán, the journalist María Esther Aguilar Cansimbe was seen for the last time. Aguilar was a reporter at the local newspaper *El Diario de Zamora* and correspondent for the regional newspaper *Cambio de Michoacán*. According to the information received, on the morning of November 11 Aguilar left her house to cover a disaster training simulation at a kindergarten, but after leaving this place she was never seen again. Her family made fruitless attempts to contact her by telephone during the day of November 11. Since then there has been no contact with her, and her whereabouts remain unknown.<sup>1038</sup>

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<sup>1034</sup> Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

<sup>1035</sup> Working Meeting on the Case of Víctor Manuel Oropeza, September 27-28, 2005, on file with the IACHR.

<sup>1036</sup> Meeting between the Office of the Special Rapporteur and authorities from the Chihuahua State executive during the on-site visit, August 16, 2010.

<sup>1037</sup> Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" and PGR, Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>1038</sup> Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: [http://www.ifex.org/mexico/2009/11/20/reporter\\_vanishes](http://www.ifex.org/mexico/2009/11/20/reporter_vanishes). *Cambio de Michoacán*. November 29, 2009. *María Esther Aguilar, tres semanas desaparecida*. Available at: <http://www.cambiodemichoacan.com.mx/vernota.php?id=113726>

690. Aguilar, a reporter specializing in issues of security and justice, had ten years' experience at several regional media outlets. Her most recent articles before her disappearance, none of which were signed by her for fear of reprisals, covered issues of local corruption and organized crime. On October 22, 2009, she covered a military operation where at least three individuals, including the son of a local politician, were arrested on suspicion of involvement in organized crime groups.<sup>1039</sup> On October 27, 2009, she published an article about police abuses, following which a high-ranking officer in the local police force was obliged to resign.<sup>1040</sup> On October 30, 2009, she reported on the arrest of a suspected leader of the drugs cartel known as *La Familia Michoacana*.<sup>1041</sup> Further, according to *Cambio de Michoacán*, at the time of her disappearance she was in the middle of three investigations into similar issues. The first concerned legal action taken and complaints made against agents from the federal police and the army regarding property and personal searches made without a warrant. The second dealt with the resources and strategies of the local police in the highest-crime areas of the municipality of Zamora. The third was a joint preparation for an interview with the mayor of Ecuandureo, Michoacán on issues such as the handling of public finances, the completion of public works, the effects of the financial crisis, migration and public security.<sup>1042</sup>

691. One month after the disappearance of Aguilar, the organization Reporters Without Borders expressed its fear that the "investigation seemed to be going nowhere."<sup>1043</sup> According to the RSF report, though the Public Prosecutor's Office of the state of Michoacán claimed at the time to have carried out 19 procedural steps, "the official investigation has not progressed."<sup>1044</sup> In November, 2010, a year after the disappearance of the journalist, RSF once again lamented the lack of progress in the investigation.<sup>1045</sup>

692. RSF has stated that "there are reasons for thinking her disappearance was linked to her reporting and that drug traffickers were involved." Along with the absence of a ransom request,<sup>1046</sup> and the delicate issues Aguilar reported on prior to and right up to the time of her disappearance, a report by the Woodrow Wilson International Center for Scholars reveals that Aguilar had refused to accept bribes from drug traffickers.<sup>1047</sup> According to an editor from Michoacán, speaking to the Center, Aguilar had told him before her disappearance of a meeting with other reporters from Zamora at which a reporter who represented one of the cartels told those

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<sup>1039</sup> Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: [http://www.ifex.org/mexico/2009/11/20/reporter\\_vanishes/](http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/)

<sup>1040</sup> Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: [http://www.ifex.org/mexico/2009/11/20/reporter\\_vanishes/](http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/)

<sup>1041</sup> Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: [http://www.ifex.org/mexico/2009/11/20/reporter\\_vanishes/](http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/)

<sup>1042</sup> *Cambio de Michoacán*. November 29, 2009. *María Esther Aguilar, tres semanas desaparecida*. Available at: <http://www.cambiodemichoacan.com.mx/vernota.php?id=113726>

<sup>1043</sup> Reporters without Borders. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere*. Available at: <http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html>

<sup>1044</sup> Reporters without Borders. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere*. Available at: <http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html>

<sup>1045</sup> Reporters without Borders. November 19, 2009. *Disappearances of four journalists in Michoacán state all still unsolved*. Available at: <http://en.rsf.org/mexico-disappearances-of-four-journalists-19-11-2010,38853.html>

<sup>1046</sup> RSF. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere*. Available at: <http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html>

<sup>1047</sup> Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: <http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf>

present how much money each of them would receive in exchange for slanting their coverage in favor of the cartel.<sup>1048</sup> Aguilar had refused to accept this and had tried to leave the meeting, but the other reporters obliged her to stay. Even so, Aguilar had not accepted the money.<sup>1049</sup>

693. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of María Esther Aguilar Cansimbe.<sup>1050</sup> In a reply received on November 12, 2010, the State indicated that the PGR had opened a criminal investigation for the offense of illegal deprivation of liberty, and that the investigation is currently in the hands of the FEADLE.<sup>1051</sup>

### c. Detention and Aggression

#### Lydia Cacho Ribeiro

694. As detailed in another section of this report (see paragraph 257, *infra*), the journalist Lydia Cacho was criminally prosecuted under defamation laws after having published an article on child pornography that, along with other claims, implicated a textiles businessman and leading politicians.<sup>1052</sup> In the context of these legal proceedings, on October 12, 2005, a judge issued a warrant for the arrest of the journalist. On December 16, 2005, agents of the judicial police of the states of Puebla and Quintana Roo detained Cacho in fulfillment of this arrest warrant, with the aim of taking her to the offices of the Public Prosecutor's Office of the state of Quintana Roo and, subsequently, to the city of Puebla, state of Puebla, where she was confined to the local penitentiary on December 17, 2005.<sup>1053</sup>

695. Examining the circumstances of the detention and transfer of the journalist Lydia Cacho on December 16 and 17, 2005, the CNDH concluded that "the journalist was subject to physical and psychological suffering of a highly traumatic nature, equivalent to torture."<sup>1054</sup> The CNDH verified that the journalist was "subjected to a journey of approximately 1,472 kilometers (915 miles) by land, lasting around 20 hours", and that "the lack of warm clothing and medicine, the presence of unknown male personnel, the solitary confinement she was held in for over four hours, the absence of food or water, the cramped space, the lack of time and place necessary for bodily needs, the insinuations, malevolent hints and the humiliation which she was directly or indirectly subject to during this transfer by the agents who were in charge of her transfer caused her uncertainty and led her to fear for her life, her physical and psychological safety and integrity."<sup>1055</sup>

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<sup>1048</sup> Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: <http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf>

<sup>1049</sup> Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: <http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf>

<sup>1050</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>1051</sup> PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

<sup>1052</sup> *La Jornada*. January 3, 2007. *Pierde Kamel Nacif demanda contra Lydia Cacho*. Available at: <http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n2pol>

<sup>1053</sup> CNDH, Recommendation 16, March 6, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/016.pdf>

<sup>1054</sup> CNDH, Recommendation 16, March 6, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/016.pdf>

<sup>1055</sup> CNDH, Recommendation 16, March 6, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/016.pdf>

696. With regard to these events, on February 5, 2008, the PGR decided to open a case against the officers from the Public Prosecutor's Office of the state of Puebla who detained and transferred Lydia Cacho, on suspicion of torture. On May 6, 2008, the second criminal judge of the first instance of the court in Cancun, Quintana Roo refused to issue an arrest warrant, a decision confirmed on January 8, 2009 by the Criminal Division of the High Court of Justice of the state of Quintana Roo.<sup>1056</sup>

697. Meanwhile, the Supreme Court, exercising its investigative faculties set out in article 97 of the Constitution,<sup>1057</sup> opened proceedings on April 18, 2006, in order to determine if there had been serious violations of individual rights against the journalist Lydia Cacho.<sup>1058</sup> On November 29, 2009, the Supreme Court determined that: "The existence of serious violations of the individual rights of the journalist, in the terms of the second paragraph of article 97 of the Political Constitution of the United Mexican States, is not proven."<sup>1059</sup> In reaching this conclusion, the Supreme Court did not take into account a recording that was widely circulated in the media that implicates the governor of the state of Puebla in the arrest of Cacho, as it considered that the recording had been made illegally.<sup>1060</sup> However, the Supreme Court clarified that "the outcome of the present investigation in no way impedes or may be understood as an obstacle to the competent authorities acting in exercise of the faculties that have been conferred upon them constitutionally or legally, whether these be of a political, administrative or legal nature, and whether of state or federal jurisdiction."<sup>1061</sup> In his individual dissenting vote, Supreme Court Justice José Ramón Cossío Díaz stated: "As was concluded in the preliminary report, there was a conspiracy on the part of authorities from the governments of the states of Puebla and Quintana Roo to violate the fundamental rights of Lydia María Cacho Ribeiro, and there is no doubt that their agents engaged in a strategy to achieve this, thus violating the principles of the division of the branches of government and of federalism."<sup>1062</sup>

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<sup>1056</sup> CNDH, Recommendation 16, March 6, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/016.pdf>

<sup>1057</sup> Article 97 of the Mexican Constitution establishes that, "The Supreme Court of the Nation may appoint one or more of its members, when deemed advisable, or if the federal Executive, one of the chambers of Congress, or the governor of a state so requests, solely to investigate the conduct of any federal judge or magistrate or any act or acts which may constitute a violation of any individual guarantee".

<sup>1058</sup> Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 5. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc>

<sup>1059</sup> Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 262. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc>

<sup>1060</sup> Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, pp. 159-60. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc>

<sup>1061</sup> Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 261. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc>

<sup>1062</sup> Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, Individual vote of Justice José Ramón Cossío Díaz, p. 72. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc>

698. As of the date on which this report was completed, no person has been prosecuted or sentenced for the treatment suffered by the journalist Lydia Cacho while she was in the custody of state agents between December 16 and 17, 2005. According to the information received by the legal representatives of Ms. Cacho, the PGR reopened the criminal investigation relating to these events in February, 2010.<sup>1063</sup> Within the framework of its visit, the Office of the Special Rapporteur asked the State for full information on the case of Lydia Cacho,<sup>1064</sup> but received no reply to this request. According to information made known to the Office of the Special Rapporteur, the journalist has continued to be subject to threats and intimidation, despite benefiting from precautionary measures issued by the IACHR.

#### 4. "What do you want from us?" Violence, intimidation and self-censorship

699. As the Office of the Special Rapporteur has stated on previous occasions, acts of violence and intimidation against journalists, particularly the murders and physical attacks detailed in the previous sections, limit freedom of expression and produce a chilling effect on the free flow of information.<sup>1065</sup>

700. According to the information received by the Office of the Special Rapporteur, there are now areas of Mexico in which journalists are subject to serious intimidation originating principally from criminal groups who seek to suppress certain information in the media and promote the dissemination of that which furthers their criminal interests. In this high-risk situation, it is extremely difficult for journalists to carry out research and publish material on issues such as organized crime, corruption, public security and similar matters. Self-censorship or the impossibility of undertaking investigative journalism in these areas affects all of Mexican society, which remains in the dark about what goes on in these places, and reduces the ability of the authorities and indeed of society to take action, as they are deprived of information essential to combating criminal activity such as corruption or organized crime. According to the information received from numerous sources, in some states where there is a major organized crime presence such as Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa, and Tamaulipas, self-censorship has reached such serious levels that the local press has been reduced to silence, and does not report on events of extreme violence that occur in their locality, which, if they are reported at all, appear in the national or international press.

701. While it is difficult, owing to its very nature, to measure the level of self-censorship that prevails in Mexico, indicators do exist of the seriousness of the silencing phenomenon in areas where there is a major presence of organized crime. During 2010, U.S. newspapers the *Dallas Morning News*, the *Los Angeles Times*, the *New York Times* and the *Washington Post* reported acts of violence occurring in the cities of Nuevo Laredo and Reynosa, both in the border state of Tamaulipas, which, they indicated, were not reported in the local press due to the fear of organized crime.<sup>1066</sup> In March, 2010, for example, the *Dallas Morning News* reported that at least eight

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<sup>1063</sup> Information provided to the Office of the Special Rapporteur by Article 19 during the on-site visit.

<sup>1064</sup> Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

<sup>1065</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 179. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

<sup>1066</sup> Dallas Morning News. March 8, 2010. *Cartels use intimidation campaign to stifle news coverage in Mexico*. Available at: [http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout\\_08int.ART.State.Edition2.4b84845.html](http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout_08int.ART.State.Edition2.4b84845.html). New York Times. March 13, 2010. *Fearing Drug Cartels, Reporters in Mexico Retreat*. Available at: <http://www.nytimes.com/2010/03/14/world/americas/14mexico.html?emc=eta1>. Washington Post. August 2, 2010. *In Mexico's Nuevo Laredo, drug cartels dictate media coverage*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html>. Los Angeles Times. August

Mexican journalists had been kidnapped in Reynosa, a fact that was not reported in the local press.<sup>1067</sup> Similarly, the *Washington Post* reported that at the end of July, 2010, the Mexican authorities confronted drug traffickers in the streets of Nuevo Laredo in an armed battle that lasted five hours and which left at least twelve people dead; the incident was not reported on local television, radio or in the print media.<sup>1068</sup> The *Los Angeles Times* reported a similar case in Reynosa a few weeks later.<sup>1069</sup>

702. Declarations made by journalists and editors confirm the silencing effect of the explicit or implicit threats made by criminal organizations. According to a *New York Times* report, a journalist from Reynosa interviewed by the newspaper said, "I censure myself, there is no other way of saying it, but everyone does the same."<sup>1070</sup> Ciro Gómez Leyva, editor of the national newspaper *Milenio*, declared with respect to this city that, "journalism is dead in Reynosa."<sup>1071</sup> An international mission to document attacks against journalists and media outlets undertaken in 2008 documented the use of self-censorship as a means of self-protection by the media in the north of Mexico.<sup>1072</sup> The deputy editor of Michoacán's *La Opinión*, for example, declared to the mission that "we engage in self-censorship, it is a chronic survival strategy."<sup>1073</sup> Perhaps the most dramatic example of this phenomenon occurred in September, 2010, when *El Diario* of Ciudad Juárez, Chihuahua, responded to the murder of its photographer Luis Carlos Santiago Orozco with an editorial entitled, "What do you want from us?", aimed at the organized crime groups operating in this city.<sup>1074</sup> In this editorial, the newspaper asked, "as information workers we want you to explain what you want from us, what you want us to publish or not to publish, so we know what line to take."<sup>1075</sup>

703. In some particularly extreme cases, the information received by the Office of the Special Rapporteur, including in interviews with journalists, indicates that drug trafficking

...continuation

16, 2010. *Under threat from Mexican drug cartels, reporters go silent.* Available at: <http://articles.latimes.com/2010/aug/16/world/la-fg-mexico-narco-censorship-20100816>

<sup>1067</sup> Dallas Morning News. March 8, 2010. *Cartels use intimidation campaign to stifle news coverage in Mexico.* Available at: [http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout\\_08int.ART.State.Edition2.4b84845.html](http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout_08int.ART.State.Edition2.4b84845.html). See also Committee to Protect Journalists (CPJ), "Silence or Death in Mexico's Press", (New York: CPJ, 2010), chapter 2, "A nation in crisis", available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>1068</sup> Washington Post. August 2, 2010. *In Mexico's Nuevo Laredo, drug cartels dictate media coverage.* Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html>

<sup>1069</sup> Los Angeles Times. August 16, 2010. *Under threat from Mexican drug cartels, reporters go silent.* Available at: <http://articles.latimes.com/2010/aug/16/world/la-fg-mexico-narco-censorship-20100816>. See also Committee to Protect Journalists (CPJ), *Silence or Death in Mexico's Press*, (New York: CPJ, 2010), chapter 4 "Cartel city", Available at: [http://cpj.org/reports/cpj\\_mexico\\_english.pdf](http://cpj.org/reports/cpj_mexico_english.pdf)

<sup>1070</sup> New York Times. March 13, 2010. *Fearing Drug Cartels, Reporters in Mexico Retreat.* Available at: <http://www.nytimes.com/2010/03/14/world/americas/14mexico.html?emc=eta1>

<sup>1071</sup> Milenio. March 4, 2010. *Dos periodistas de Milenio: el día que el periodismo murió.* Available at: <http://impreso.milenio.com/node/8729203>

<sup>1072</sup> Misión internacional de documentación sobre ataques en contra de periodistas y medios de comunicación, August 2008, *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, pp. 20-22, Available at: [http://www.i-m-s.dk/files/publications/1340%20Mexico%20E\\_NEW.pdf](http://www.i-m-s.dk/files/publications/1340%20Mexico%20E_NEW.pdf)

<sup>1073</sup> Misión internacional de documentación sobre ataques en contra de periodistas y medios de comunicación, August 2008, *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, pp. 20-22, Available at: [http://www.i-m-s.dk/files/publications/1340%20Mexico%20E\\_NEW.pdf](http://www.i-m-s.dk/files/publications/1340%20Mexico%20E_NEW.pdf)

<sup>1074</sup> El Diario. September 19, 2010. *¿Qué quieren de nosotros?* Available at: <http://www.diario.com.mx/notas.php?f=2010%2F09%2F19&id=ce557112f34b187454d7b6d117a76cb5>

<sup>1075</sup> El Diario. September 19, 2010. *¿Qué quieren de nosotros?* Available at: <http://www.diario.com.mx/notas.php?f=2010%2F09%2F19&id=ce557112f34b187454d7b6d117a76cb5>

organizations have tried to actively influence media output.<sup>1076</sup> On the other hand, the Office of the Special Rapporteur noted the armed attack on the newspaper *Noroeste* in Mazatlán, state of Sinaloa, on September 1, 2010, presumably in reprisal for refusing to publish certain information demanded by the criminal organization known as “La Línea.”<sup>1077</sup> On September 2, *Noroeste* once again received threatening calls, and the same day, in two separate incidents, journalists from the newspaper were intimidated in the street with firearms and death threats.<sup>1078</sup> In response to the attacks, on September 2 *Noroeste* published an editorial entitled “We won’t give in!” reassuring state residents of their right to be informed and demanding that the state and federal authorities investigate the acts of violence and combat organized crime “to the core.”<sup>1079</sup>

704. Finally, the magazine *Proceso* and the organization *Periodistas de a Pie* reported in December, 2010, that in recent years seven Mexican journalists had had to take the extreme step of seeking refuge in other countries out of fear for their lives or those of their families. According to the report, these journalists, some of whose cases are detailed in the previous section, were: Horacio Nájera, correspondent for *Reforma* in Ciudad Juárez, Chihuahua; Jorge Luis Aguirre, editor of *lapolaka.com*; Alejandro Hernández Pacheco, *Televisa* cameraman in Durango; Emilio Gutiérrez Solo, of *El Diario* in Ascensión, Chihuahua; Ricardo Chavez Aldana, of *Radio Cañon* in Ciudad Juárez, Chihuahua; and two photographers from Ciudad Juárez whose names were not made public.<sup>1080</sup>

705. These serious trends, which previously only affected local media in locations with a strong organized crime presence, are now beginning to affect national media. To mention just two examples detailed above, in March, 2010, two journalists from the national broadcaster *Multimedios Milenio* were temporarily kidnapped in Reynosa, Tamaulipas and later forced to leave the city, and in July, 2010, journalists from the national broadcaster *Televisa* were kidnapped by an organized crime group in the state of Durango.

## B. The Mexican State’s Response

706. The right to express one’s own opinion, to disseminate available information and to be able to debate issues of concern to all openly and without inhibition is a basic condition for the consolidation, adequate functioning and preservation of democratic governments and the rule of law.<sup>1081</sup> For this reason, the Office of the Special Rapporteur has urgently called upon the Mexican State to implement, as soon as possible, a comprehensive policy of prevention, protection and prosecution in response to the critical situation of violence facing journalists in the country. In

<sup>1076</sup> See e.g. Washington Post. August 2, 2010. *In Mexico’s Nuevo Laredo, drug cartels dictate media coverage*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html>

<sup>1077</sup> *Noroeste*. September 1, 2010. *Atacan a Noroeste*. Available at: [http://www.noroeste.com.mx/publicaciones.php?id=615000&id\\_seccion](http://www.noroeste.com.mx/publicaciones.php?id=615000&id_seccion). *La Jornada*. September 2, 2010. *Ataque a Noroeste de Mazatlán, por negarse a publicar “cierta información”*. Available at: <http://www.jornada.unam.mx/2010/09/02/index.php?section=politica&article=016n2pol>

<sup>1078</sup> *Noroeste*. September 3, 2010. *Recibe Noroeste nuevas amenazas*. Available at: <http://www.noroeste.com.mx/publicaciones.php?id=615568>

<sup>1079</sup> *Noroeste*. September 2, 2010. *Editorial: ¡No vamos a ceder!* Available at: <http://www.noroeste.com.mx/publicaciones.php?id=615243>

<sup>1080</sup> *Proceso*. December 15, 2010. *Periodistas en el olvido*. Available at: <http://www.proceso.com.mx/rv/modHome/detalleExclusiva/86410>. *Periodistas de a Pie*. December 15, 2010. *Colecta navideña para apoyar a nuestros colegas en el exilio*. Available at: <http://periodistasdeapie.wordpress.com/2010/12/>

<sup>1081</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 8. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

formulating and implementing public policies in this area, it is essential to have the active participation of all relevant sectors, including journalists and social organizations that defend human rights and freedom of expression. In the Federal District, for example, a Multisectoral Working Group on the Right to Freedom of Expression has been set up to coordinate the implementation of public policies focused on guaranteeing the right to freedom of expression in Mexico City.<sup>1082</sup> Participants in this Working Group include government authorities, journalists, civil society organizations, academics, and the Federal District Human Rights Commission. The Office of the Special Rapporteur believes that the proper implementation of this Working Group, once its effectiveness and continuity is assured, could serve as a model at the federal level and in the other states.

707. The following section details some of the measures adopted by the Mexican State as well as the challenges that persist with regard to prevention, protection and criminal prosecution, recalling that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

### **1. Prevention and protection**

708. During its on-site visit the Office of the Special Rapporteur received information about discussions between the federal government and civil society organizations relating to the creation of a mechanism for the protection of journalists and human rights workers. In particular, the Office of the Special Rapporteur had the opportunity to observe a meeting to discuss this issue between the Sub-committee for Civil and Political Rights of the Governmental Policy Commission on Human Rights and freedom of expression and human rights organizations. According to the information received, in the context of these discussions a number of proposals were put forward by freedom of expression and human rights organizations, and by the CNDH and the FEADLE. In addition, in its observations on the preliminary version of this report, the Mexican State recalled that the promotion of institutional and interinstitutional mechanisms to ensure journalists' safety responds to one of the lines of action under the 2008-2012 National Human Rights Program.<sup>1083</sup> At the end of its visit, the Office of the Special Rapporteur highlighted the "the urgent need to make this process a reality and put [the] protection mechanism into operation as soon as possible. In particular, the Rapporteurs consider it essential that [the] mechanism be implemented through a high-level official and inter-institutional committee; be led by a federal authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation."<sup>1084</sup>

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<sup>1082</sup> See Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1083</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1084</sup> Office of the Special Rapporteur for Freedom of Expression - IACHR, United Nations Office of the Special Rapporteurship on Freedom of Opinion and Expression, "Joint Official Visit to Mexico, Preliminary Report", August 24, 2010. An Executive Summary is available in English at: <http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf>

709. During its visit the Office of the Special Rapporteur also received information about the efforts made by some states to adopt measures of protection for journalists at risk. The government of the Federal District, for example, has provided funding for the creation of a *Casa de los Derechos de los Periodistas* ("Journalists' Rights House") which, with the participation of journalists, will among other things provide a place of refuge for journalists from different states who are in high-risk situations.<sup>1085</sup> The Office of the Special Rapporteur applauds this effort and hopes that the project will begin operating in the near future. In addition, in the state of Chihuahua, the Office of the Special Rapporteur was informed of the adoption, beginning in August, 2010, of a "Security Protocol for Journalists in High-Risk Situations." The product of discussions between state authorities and journalists and promoted by the State Commission on Human Rights, the Protocol includes recommendations for journalists to protect themselves as well as a proposal for creating a formal mechanism with the ability to evaluate the risks faced by journalists and authorize the necessary protective measures.<sup>1086</sup> In its observations on the preliminary version of this report, the Mexican State reported that on September 8, 2009, the "Implementation Agreement for the Comprehensive Security System to Protect Journalists in the State of Chihuahua" was published in the state of Chihuahua's Official Gazette.<sup>1087</sup> The Office of the Special Rapporteur notes that this agreement obligates the state of Chihuahua to create a "Precautionary Protection Procedure for Journalists in Situations of Risk"<sup>1088</sup>; however, the Office of the Special Rapporteur does not have any information regarding the effective implementation of this procedure.

710. Following the on-site visit, the Office of the Special Rapporteur learned that on November 3, 2010, a "Coordination agreement for the implementation of preventive and protective actions for journalists"<sup>1089</sup> was signed by the Ministry of the Interior, the Foreign Ministry, the Public Security Ministry, the PGR, and the CNDH. On November 11, 2010, the Office of the Special Rapporteur received a communication from the Mexican State formally informing it that this Agreement had been signed, which, in the State's view, represents "the first step towards establishing a mechanism for the protection of journalists and media workers" and "complies with one of the recommendations made by the Special Rapporteurs...in their joint official visit made between August 9 and 24, 2010."<sup>1090</sup>

711. The Coordination agreement for the implementation of preventative and protective actions for journalists creates two bodies with responsibilities relating to the protection of journalists. First, an Advisory Committee was created, with responsibility for receiving requests for protection, determining and monitoring preventive and protective measures for journalists, and facilitating the implementation of these measures at a federal and local level. Second, an Evaluation

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<sup>1085</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1086</sup> State of Chihuahua, "Protocol de Seguridad para Periodistas", Available at: [http://www.cedhchihuahua.org.mx/index.php?option=com\\_content&task=view&id=57&Itemid=57](http://www.cedhchihuahua.org.mx/index.php?option=com_content&task=view&id=57&Itemid=57)

<sup>1087</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1088</sup> Implementation Agreement for the Comprehensive Security System to Protect Journalists in the State of Chihuahua, p. 12, available at: <http://www.cedhchihuahua.org.mx/Periodistas/Periodico-oficial.pdf>

<sup>1089</sup> Coordination agreement for the implementation of preventative and protective actions for journalists, Available at: <http://www.cencos.org/documentos/021110ConvenioPeriodistas.pdf>

<sup>1090</sup> Communication OEA-02547 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 11, 2010.

Sub-committee was created and charged with analyzing requests for protection and making the corresponding recommendations to the Advisory Committee. The agreement establishes a limit of 30 days for the setting up of the Advisory Committee and a limit of a further 30 days for this Committee to set out its Operational and Implementation Guidelines to define, among other issues, "the criteria for the adoption, implementation, preservation, modification or termination of preventive and protective measures for journalists."<sup>1091</sup> According to the information received, the Advisory Committee was in fact set up on December 3, 2010.<sup>1092</sup>

712. On November 10, 2010, the Office of the Special Rapporteur wrote to the Mexican State to express its satisfaction with the signing of the coordination agreement for the implementation of preventive and protective actions for journalists. On this occasion, the Office of the Special Rapporteur set out a series of recommendations for the implementation of the Agreement and the development of the Operational and Implementation Guidelines. These recommendations related to five points: 1) the need to guarantee the necessary financial and personnel resources for the effective implementation of the mechanism; 2) the need to guarantee an effective coordination between the bodies responsible for the implementation of preventive and protective measures; 3) the need to adequately define the protective measures contemplated by the mechanism and the procedures for their adoption; 4) the need to guarantee the full participation of journalists, civil society and its beneficiaries in the implementation and functioning of the mechanism; and 5) the expediency of seeking the support of the international community in terms of the implementation of the mechanism.<sup>1093</sup> In its observations regarding the preliminary version of this report, the Mexican State provided information about the steps taken with regard to each of the recommendations provided.<sup>1094</sup> The Office of the Special Rapporteur expresses its satisfaction over the State's attention to its recommendations and will closely follow the development of the Operational and Implementation Guidelines as well as the practical implementation of the agreement.

713. Finally, the Office of the Special Rapporteur observes that a simple but highly effective protective measure consists in the highest authorities of the Mexican State recognizing in a constant, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government. Similarly, it is essential that the authorities vigorously condemn the attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.

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<sup>1091</sup> Coordination agreement for the implementation of preventative and protective actions for journalists, Available at: <http://www.cencos.org/documentos/021110ConvenioPeriodistas.pdf>

<sup>1092</sup> Ministry of the Interior. December 3, 2010. *Boletín 602: Instalación del Comité Consultivo para la Implementación de Acciones de Prevención y Protección a Periodistas*. Available at: [http://www.segob.gob.mx/es/SEGOB/Sintesis\\_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress\\_Content%3A2572&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress\\_Category%3A1](http://www.segob.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A2572&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1)

<sup>1093</sup> Communication from the Office of the Special Rapporteur to the Mexican State with reference to the "creation of a mechanism for the protection of journalists," November 10, 2010.

<sup>1094</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

## 2. Criminal prosecution

### a. General considerations: impunity and its consequences

714. During its visit, the Office of the Special Rapporteur did not receive enough concrete information about legal and administrative sanctions in cases of violence against journalists. As such, it calls attention once more to the absence of systematic information about criminal prosecution and administrative proceedings relating to these acts.

715. The principal source of information about sentencing in cases of violence against journalists comes from the CNDH. In its General Recommendation 17 of 2009, titled "On the cases of attacks on journalists and the prevailing impunity," the CNDH reported that of 65 cases of homicides, forced disappearances and attacks with explosives on media offices between 2000 and the date of its report, only in nine cases (13%) had a conviction been handed down.<sup>1095</sup> The Office of the Special Rapporteur requested additional information about these cases, but did not receive a response that provided details about the convictions.<sup>1096</sup> The Office of the Special Rapporteur was able to identify only five of the cases mentioned by the CNDH and observed that in several of these case the motives for the crimes and the identity of those who planned the crimes remains unknown.<sup>1097</sup>

716. Despite the absence of systematic information, the interviews held and the information gathered make it possible to affirm that there exists a climate of generalized impunity with regard to the cases of violence against journalists, even when it comes to the most serious acts such as murders, disappearances and kidnappings. The Office of the Special Rapporteur is certain that, just as the Inter-American Court for Human Rights has stated, impunity fosters the chronic repetition of human right violations and the total defenselessness of victims and their relatives.<sup>1098</sup> Moreover, the murder of a journalist and the absence of investigation and legal punishment of those responsible by the State has major repercussions both on other journalists and on the rest of society, as it generates a fear of reporting violations, abuses and illicit acts of all kinds. This effect can only be avoided through decisive action by the State to punish those responsible.<sup>1099</sup>

<sup>1095</sup> CNDH, General Recommendation 17, August 19, 2009.

<sup>1096</sup> Meeting held with the CNDH on August 11, 2010, and written communication from the CNDH to the Office of the Special Rapporteur, August 18, 2010.

<sup>1097</sup> The five cases mentioned are the murders of: 1) Humberto Méndez Rendón. See *El Siglo de Durango*. December 13, 2008. *Pasará 19 años en la prisión el presunto homicida de periodista*. Available at: <http://www.elsiglodedurango.com.mx/noticia/193431.pasara-19-anos-en-la-prision-el-presunto-homi.html>. 2) Roberto Javier Mora García. See International Freedom of Expression Exchange (IFEX). June 8, 2009. *Journalist's alleged assassin sentenced following judicial process plagued with irregularities*. Available at: [http://www.ifex.org/mexico/2009/06/08/alleged\\_murderer\\_sentenced/](http://www.ifex.org/mexico/2009/06/08/alleged_murderer_sentenced/). 3) Gregorio Rodríguez Hernández. See Crimes Against Journalists Impunity Project. *Case: Gregorio Rodríguez Hernández*. Available at: <http://www.impunidad.com/index.php?procesos=61&idioma=us>. 4) Adolfo Sánchez Guzmán. See *Contralinea*. May 16, 2010. *Adolfo Sánchez, asesinato impunidad*. Available at: <http://www.estudiod3.com/alianza/index.php/home/3091-televisa-desconoce-a-reportero-suyo-asesinado>. 5) Amado Ramírez Dillanes. See *Noticieros Televisa*. March 24, 2009. *Dan 38 años de prisión a homicida de Amado Ramírez*. Available at: <http://www2.esmas.com/noticierostelevisa/mexico/estados/051088/dan-38-anos-prision-homicida-amado-ramirez>. See also information from the Committee to Protect Journalists (CPJ), Available at: <http://cpj.org/reports/2010/09/silence-death-mexico-press-appendix-1.php>

<sup>1098</sup> See IACHR. *Case Bámaca Velásquez Vs. Guatemala*. Verdict of November 25, 2000. Series C No. 70, par. 211.

<sup>1099</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, par. 190. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

**b. Observations on the legal prosecution of crimes against journalists**

717. The Office of the Special Rapporteur considers of great concern the impunity which exists in the great majority of cases of violence against journalists in Mexico. As the CNDH is right to note, the State's failures with regard to its obligations to carry out effective and complete investigations into the attacks against media workers creates impunity, discourages crime reporting, generates a climate of fear and anxiety, encourages self-censorship and leads to a decline in the quality of democratic life.<sup>1100</sup>

718. The CNDH has identified various factors which contribute to the lack of results in these cases. These include: the failure to exhaust relevant lines of inquiry, including that relating to the possibility that the attack was motivated by the victim's exercise of freedom of expression; the failure to apply effective police investigation techniques; judicial agents' failure to collect witness statements, locate witnesses, emit summons or search warrants, and to carry out other relevant procedures; lengthy periods of inactivity in the investigation; the failure to seek the participation of forensic experts; the delays that occur when the agents or attorneys from the Public Prosecutor's office who began the investigation are replaced; and the confusion and delay generated when a controversy arises over whether the case corresponds to federal or state jurisdiction.<sup>1101</sup> The CNDH has called particular attention to what it considers a "general tendency to disregard *a priori* that the motive for the attacks on media workers is connected to their journalistic activities."<sup>1102</sup> In a number of the meetings held by the Office of the Special Rapporteur with state judicial bodies, this tendency was evident.

719. The Office of the Special Rapporteur recognizes that the Mexican Federation has reacted to the situation of general impunity that holds sway with regard to crimes against journalists with the creation of a Special Prosecutor's Office within the structure of the PGR.<sup>1103</sup> The Mexican government, through an agreement with the Prosecutor General of the Republic,<sup>1104</sup> dated February 15, 2006, created the Special Prosecutor's Office for Crimes against Journalists (FEADP), as an administrative body of Office of the Prosecutor General of the Republic's specialized in dealing with matters relating to criminal acts committed against journalists.<sup>1105</sup>

720. The FEADP was subsequently modified in a new agreement of July 5, 2010, becoming the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE).<sup>1106</sup> In the agreement that established the FEADLE, the Prosecutor General stated that "the federal government has shown signs of political will and undertaken steps to deal adequately with the issue of attacks on journalists. However, there remains a persistent and deeply-felt demand on the part of society as a whole with regard to the improvement and reinforcement of government actions which

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<sup>1100</sup> See CNDH, General Recommendation 17, August 19, 2009.

<sup>1101</sup> See CNDH, General Recommendation 17, August 19, 2009.

<sup>1102</sup> See CNDH, General Recommendation 17, August 19, 2009.

<sup>1103</sup> It is currently known as the Special Prosecutor for Crimes against Freedom of Expression.

<sup>1104</sup> Agreement A/ 031/06 of the PGR, February 15, 2006, Available at: <http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Delitos%20Federales/FPeriodistas/Quienes%20Somos.asp#>

<sup>1105</sup> Document provided to the Inter-American Commission for Human Rights by the Special Prosecutor for Crimes against Journalists on March 22, 2010.

<sup>1106</sup> Agreement A/145/10 of the PGR, July 5, 2010, Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5150640&fecha=05/07/2010](http://dof.gob.mx/nota_detalle.php?codigo=5150640&fecha=05/07/2010)

guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico, in order that these may carry out this essential function."<sup>1107</sup>

721. The FEADLE is empowered to prosecute crimes committed against those who engage in journalistic activities if and when: the victim of the crime is a practicing journalist; the crime in question was committed as a result of the exercise of the right to information or of press freedom or was motivated by either of these; the crime is of federal or common law jurisdiction, when the acts are connected to federal crimes; and when the crime concerned is punishable by a prison sentence.<sup>1108</sup> Although the agreement that created the FEADLE introduced for the first time a definition of "journalistic activities" for jurisdictional purposes, it does not significantly modify the jurisdictional scope that the previous agreement had assigned to the FEADP.<sup>1109</sup> Similarly, the FEADLE agreement establishes, as did the FEADP agreement, that when in the course of an investigation there are indications that the perpetrators of the crime are members of criminal organizations, the criminal investigation "must" be referred to SIEDO, and this entity will take charge of the inquiry.<sup>1110</sup>

722. Over the course of the on-site visit the Office of the Special Rapporteur twice had the opportunity to meet with the current head of the FEADLE to hear about and discuss the Office's working plan as well as the resources currently assigned to the special prosecutor. According to the information received, the FEADLE is currently making progress in a number of areas, including the investigation and criminal prosecution of crimes falling under its jurisdiction, collaboration with the state Public Prosecutor's Offices in the investigation of attacks on journalists, the creation of a centralized archive of criminal investigations into homicides and disappearances of journalists, the development of security protocols, and the holding of meetings with public bodies and civil society organizations.<sup>1111</sup>

723. Nevertheless, the Office of the Special Rapporteur observes that to date the office has not made any impact on reducing the generalized impunity that holds sway in cases of violence against journalists, if we consider that according to information provided in the course of the on-site visit, since its creation in 2006 the FEADLE had not achieved a single conviction, and had brought only four cases to trial.<sup>1112</sup> Its tendency to decline responsibility for cases referred to its jurisdiction also reveals a lack of political will that went uncorrected until the designation in 2010 of a new Special Prosecutor who has shown the will to assume the pertinent cases. In its observations on the preliminary version of this report, the Mexican State reported that from February 15 to December 31, 2010, the FEADLE brought to trial seven preliminary investigations involving 17 potentially responsible individuals.<sup>1113</sup> This information is encouraging, inasmuch as it indicates that the will observed by the Office of the Special Rapporteur during its visit is beginning to be reflected in

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<sup>1107</sup> Agreement A/145/10 of the PGR, July 5, 2010, considering #3.

<sup>1108</sup> Agreement A/145/10 of the PGR, July 5, 2010, arts. 2 and 5.

<sup>1109</sup> Agreement A/145/10 of the PGR, July 5, 2010, art. 5.

<sup>1110</sup> Agreement A/145/10 of the PGR, July 5, 2010, art. 6. Cf. Agreement A/031/06 of the PGR, February 15, 2006, art. 4.

<sup>1111</sup> See the information delivered to the Office of the Special Rapporteur by the Special Prosecutor for Crimes against Freedom of Expression during the on-site visit.

<sup>1112</sup> Special Prosecutor for Crimes Against Journalists, 2009 Report; interview with the Special Prosecutor for Crimes against Freedom of Expression, August 12, 2010.

<sup>1113</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

significant progress in legal proceedings, even though convictions of those responsible have not yet taken place.

724. The Office of the Special Rapporteur considers that the meager results obtained by the Special Prosecutor's Office are attributable, in part, to a lack of will on the part of the previous prosecutors to deal with cases and to implement an appropriate working program, but also to a lack of autonomy and resources, and the inadequate definition of its jurisdiction. As such, it urgently calls upon the Mexican State to strengthen the Special Prosecutor's Office, granting it greater autonomy and its own budget, and making the necessary reforms to allow the federal jurisdiction to exercise competence over crimes against freedom of expression. To this effect, the Office of the Special Rapporteur considers that the working plan shown to it by the Special Prosecutor during the on-site visit reveals, for the first time, a seriousness consistent with the gravity and urgency of the situation it confronts. The Office of the Special Rapporteur hopes that this working plan will translate into concrete results in the near future.

725. Even so, resolution of the existing ambiguity with regard to jurisdiction over crimes against freedom of expression remains an urgent matter, in order to permit the exercise of federal jurisdiction over the crimes against freedom of expression when circumstances so demand. In particular, state-level authorities may not have the capacity to adequately resolve crimes in which powerful local actors with the ability to intimidate or infiltrate the judicial system are implicated. For the same reasons, the Office of the Special Rapporteur considers it to be of greatest importance that the necessary reforms be advanced to allow federal judges jurisdiction over these kinds of crimes.

726. It is worth recalling in this regard that as a federal State—a form of government explicitly contemplated by the American Convention<sup>1114</sup>—in Mexico there exist two kinds of legal jurisdiction applicable to crimes: on one hand, state jurisdiction or "*fuero común*" which deals with all crimes that fall under the jurisdiction of each state and which are detailed in the state criminal codes; and on the other hand, federal jurisdiction or "*fuero federal*" which covers crimes included in the Federal Criminal Code given that they are seen to affect or damage legally-protected interests of the community or the nation. Article 73, subparagraph XXI of the Political Constitution of Mexico assigns to Congress the faculty of setting out crimes and offenses against the Federation, as well as legislating with regard to kidnapping and organized crime. Felonies falling under the federal jurisdiction are detailed in article 50 of the Organic Law of the Federal Judiciary.<sup>1115</sup>

727. Meanwhile, crimes falling under state jurisdiction are defined in an exclusive manner with regard to federal crimes, that is to say, all those crimes not explicitly included within federal jurisdiction automatically fall under state jurisdiction. The 1994 federal penal procedure reform incorporated the model of "*ancillary jurisdiction*" ("*competencia por conexidad*"), established in article 10 of the Federal Code of Criminal Procedure (hereinafter "CFPP")<sup>1116</sup> and later, in 1996,

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<sup>1114</sup> American Convention on Human Rights, art. 28.

<sup>1115</sup> These crimes correspond in a general manner to those provided for in federal laws and international treaties, crimes committed abroad by a Mexican citizen, diplomatic employee, consul or staff member, those committed in embassies or offices abroad, those committed against a public servant or federal employee in the course of their work, those related to the duties of a federal public servant or when the federation is the injured party. See Constitutional Law of the Federal Judiciary, art. 50.

<sup>1116</sup> Federal Code of Criminal Procedures, art. 10: Any court is competent to hear recurring or permanent offences when they have produced effects in its territorial jurisdiction or been planned there. In the case of offenses treated jointly, the Federal Public Prosecutor's Office will have the competence to indict crimes falling under state jurisdiction when connected to federal crimes, and federal judges will have competence to judge them.

elevated to constitutional level by article 73, subparagraph XXI.<sup>1117</sup> Thus, the CFPP indicates that “in the case of offenses treated jointly, the Public Prosecutor’s Office will have the competence to prosecute crimes falling under state jurisdiction which are connected to federal crimes, and federal judges will have competence to judge them.”

728. In principle, the fact that a crime has been committed to silence a journalist, or owing to his or her exercise of freedom of expression, has no relevance to the definition of jurisdiction. In consequence, in principle, the homicides, kidnappings and other attacks committed against journalists are judged under state jurisdiction, save when one of the abovementioned factors is present. In other words, with regard to crimes committed against journalists, jurisdiction in principle corresponds to state law as expressly established in the governing legal regime. However, there have been attempts—by way of so-called *federalization*—to establish federal jurisdiction to investigate and punish all crimes committed against journalists as a result of the exercise of their profession.

729. Indeed, there have been a number of initiatives in Mexico aimed at federalizing crimes committed against freedom of expression, seeking to grant jurisdiction to the PGR and federal criminal judges to investigate and judge these crimes, through modifications to the Federal Criminal Code, the Federal Code of Criminal Procedure and the Organic Law of the Federal Judiciary.<sup>1118</sup>

730. In April 2009<sup>1119</sup> the Chamber of Deputies approved a reform of the Federal Criminal Code which treats as aggravating circumstances the fact that a crime is committed “with the purpose of impeding, interfering with, limiting or attacking journalistic activity.”<sup>1120</sup> However, the

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<sup>1117</sup> Article 73 XXI of the Mexican Constitution establishes that: “federal authorities may also hear crimes falling under state jurisdictions, when they are connected to federal crimes”. See also Luís Raúl González Pérez. “Federalización de los delitos contra periodistas”, *Revista Mexicana de Comunicación*, November 2007. Available at: [http://www.mexicanadecomunicacion.com.mx/rmc107\\_8.htm](http://www.mexicanadecomunicacion.com.mx/rmc107_8.htm)

<sup>1118</sup> According to an initiative presented in the Chamber of Deputies on November 28, 2008, for example, article 430 of the Federal Penal Code would state the following: “Between one and five years of prison and between 100 and 500 days minimum daily wage equivalent fine would be imposed on the one who, with the aim of restricting a person’s right to free expression and circulation of his thoughts, ideas, opinions or information, commits against him any act defined as an offense in this code”; article 116 of the Federal Code of Criminal Procedures indicates the following: “When they are offenses mentioned in article 430 of the Federal Penal Code that probably involve attacks on freedom of speech, the authority hearing the matter shall immediately make it known to the Ministry of the Interior”; and article 50 of the Constitutional Law of the Federal Judiciary indicates the following: “Crimes of a federal order [...] are all those mentioned in article 430 of the Penal Code”. The initiative is available at: <http://gaceta.diputados.gob.mx/Gaceta/60/2008/nov/20081128.html#Initiatives>

<sup>1119</sup> Gaceta Parlamentaria, LX Legislature, Chamber of Deputies, of April 2, 2009. Available at: <http://gaceta.diputados.gob.mx/Gaceta/Votaciones/60/tabla3or2-61.php3>

<sup>1120</sup> Gaceta Parlamentaria, Chamber of Deputies, no. 2728-IV, of Tuesday March 31, 2009, ruling of the Justice Commission for a proposed decree to add the Twenty-seventh Title to the Federal Criminal Code, on Crimes Committed against Freedom of Speech.

Article 430. Whoever commits an illegal act covered in the penal laws, with the purpose of impeding, interfering with, limiting or attacking journalistic activity, will be punished with between one and five years of prison and between 100 and 500 days minimum daily wage equivalent fine.

The penalty indicated in the previous paragraph may be increased by one half if the crime is committed by a public servant in the course of his or her duties or motivated by them.

The penalties considered in this article will be imposed without regard for any penalty corresponding to the commission of any other action or actions.

Article 431. For the purposes of this Title, journalistic activity shall be understood to mean the practice of seeking, gathering, photographing, investigating, summarizing, writing up, ranking, editing, printing, circulating, publishing or disseminating information, news, ideas or opinions for to the general public, by any means of communication, as well as their

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reform of the Organic Law of the Federal Judiciary was not approved, nor was the reform of the Federal Code of Criminal Proceedings.<sup>1121</sup>

731. Although the Chamber of Deputies approved the initiative that adds crimes against journalistic activity to the Federal Criminal Code, it remains under consideration in the Senate.<sup>1122</sup> In addition, some freedom of expression NGOs believe that the reform approved by the Chamber of Deputies only protects in a partial and insufficient manner the right to freedom of expression, as it does not empower the federation to investigate and punish such crimes either by way of federalization or by way of ancillary jurisdiction, because it does not take into account the appropriate procedural reforms, meaning the federal authorities can intervene only under the same circumstances already in effect today.<sup>1123</sup>

732. Following its visit to the country, the Office of the Special Rapporteur was informed by the Mexican State that President Felipe Calderón Hinojosa “reaffirmed his commitment to the federalization of offenses committed against journalists,” at a meeting held on September 22, 2010, with the Inter-American Press Association and the Committee to Protect Journalists.<sup>1124</sup>

733. Meanwhile, and notwithstanding any possible reform that permits the federal jurisdiction to assume competence over crimes against freedom of expression, where appropriate, the Office of the Special Rapporteur considers that the struggle against impunity for crimes against freedom of expression also demands an effort on the part of the individual states in order to endow their law enforcement agencies and their judges with more and better operational guarantees, including greater autonomy, resources and technical strengthening. In the absence of a legislative reform that federalizes crimes against freedom of expression, the great majority of cases of violence against journalists in Mexico continue to be processed within the state jurisdictions, that is to say, within the legal systems of the individual states. To this effect, the Office of the Special Rapporteur met with those in charge of the public prosecutor’s offices and supreme courts of the states it visited in the course of the on-site visit.

734. During its visit to the country, the Office of the Special Rapporteur observed a broad consensus with respect to the need to continue strengthening the independence and technical capacity of the state legal systems. In this regard, the Office of the Special Rapporteur noted the fact that in June 2008 Mexico adopted a series of significant reforms of its judicial system, both at federal and state levels, which are to be implemented over a period of eight years, ending in

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distribution. This activity may be carried out in a regular or sporadic manner, may be paid or unpaid, and regardless of whether a working relationship exists with a media organization. Available at: <http://gaceta.diputados.gob.mx/Gaceta/60/2009/mar/20090331-IV.html#Dicta20090331-1>

<sup>1121</sup> Gaceta Parlamentaria, Chamber of Deputies, no. 2728-IV, of Tuesday March 31, 2009, ruling of the Justice Commission, considerations four and six. Available at: <http://gaceta.diputados.gob.mx/Gaceta/60/2009/mar/20090331-IV.html#Dicta20090331-1>

<sup>1122</sup> In February, 2010, Senator Ludivina Menchaca Castellanos presented a motion for the President of the Senate to order monitoring of the work of the Justice and Legislative Studies Commissions for the ruling relating to the Penal Code reform to be resolved immediately; however, no news has been received on the progress of the mentioned reform. Gaceta del Senado no. 78 of Tuesday February 9, 2010. Available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=2046>

<sup>1123</sup> Article 19 and CENCOS, *Entre la violencia y la indiferencia, Report de agresiones contra la libertad de expresión en México 2009* (Mexico D.F.: CENCOS/Article 19, February, 2010), p. 40. Available at: [http://www.ifex.org/mexico/2010/02/18/informe\\_2009\\_entre\\_la\\_violencia\\_y\\_la\\_indiferencia\\_article19\\_cencos.pdf](http://www.ifex.org/mexico/2010/02/18/informe_2009_entre_la_violencia_y_la_indiferencia_article19_cencos.pdf)

<sup>1124</sup> Communication OEA-02199 from the Permanent Mission of Mexico to the OAS to the IACHR, September 24, 2010, annex, Foreign Ministry, Informative Bulletin on Human Rights: the Agenda International of Mexico, No. 199, September 24, 2010.

2016.<sup>1125</sup> Among other elements, the reforms introduce oral trials to Mexican legal proceedings as well as an adversarial system.<sup>1126</sup> In the state of Chihuahua in particular, where it observed an oral trial in process, the Office of the Special Rapporteur was able to verify the commitment of the authorities and personnel of the legal system to the judicial reform underway.

735. The Office of the Special Rapporteur was also informed of the adoption, by the Federal District Public Prosecutor's Office, of an "Investigation Protocol for Dealing with Crimes Committed against Journalists Exercising their Profession."<sup>1127</sup> The Protocol awards jurisdiction over such offenses to the Specialized Agency for the Attention to Offenses Committed against Journalists in the Exercise of their Profession, establishes guidelines for the investigation of offenses against journalists that make reference to the line of inquiry relating to the journalistic activity of the victim, and considers the adoption of protective measures for victims and witnesses.<sup>1128</sup> In cases of violence against journalists, the Office of the Special Rapporteur considers that all public prosecutor's offices should also consider the creation of specialized investigation groups as well as special investigation protocols according to which the hypothesis that the crime was committed due to the victim's professional activities must be exhausted. In its observations regarding the preliminary version of this report, the Mexican State reported that the FEADLE has prepared a "Homicide Investigation Guide" which "awaits presentation to the state public prosecutor's offices."<sup>1129</sup> The Office of the Special Rapporteur believes it is essential that this guide contain the necessary elements to ensure that in cases involving violence against journalists, the hypothesis that the crime was committed due to the journalist's professional activities is exhausted.

736. Information received by the Office of the Special Rapporteur also indicates that in some cases of violations of journalists' human rights presumably committed by the military, the investigation of the events has been carried out by the military criminal justice system.<sup>1130</sup>

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<sup>1125</sup> Diario Oficial, June 18, 2008, Available at: [http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89\\_CPEUM\\_18jun08.doc](http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89_CPEUM_18jun08.doc)

<sup>1126</sup> See Diario Oficial, June 18, 2008, Available at: [http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89\\_CPEUM\\_18jun08.doc](http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89_CPEUM_18jun08.doc). See also, David A. Shirk, "Justice Reform in Mexico: Change and Challenges in the Judicial Sector", April, 2010, Available at: <http://wilsoncenter.org/topics/pubs/Shirk.pdf>

<sup>1127</sup> Gaceta Oficial del Distrito Federal, Agreement A/011/2010 of the Public Prosecutor's Office of the Federal District, May 14, 2010, Available at: <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo48403.pdf>

<sup>1128</sup> Gaceta Oficial del Distrito Federal, Agreement A/011/2010 of the Public Prosecutor's Office of the Federal District, May 14, 2010, Available at: <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo48403.pdf>

<sup>1129</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

<sup>1130</sup> In the course of its visit, for example, the Office of the Special Rapporteur received information about the case of journalist Ernesto Reyes Martínez of *Noticias Voz e Imagen* in the state of Oaxaca, who together with his wife was detained and held incommunicado, had his belongings taken, and was threatened by a group of soldiers on June 20, 2009, in the municipality of San Pablo Etla in Oaxaca. According to information received from the organization Article 19, the Oaxaca State Office of the PGR rejected its competence to investigate these events in favor of the Military Justice Attorney in May, 2010, and the Fifth District Court of the State of Oaxaca dismissed the injunction request that prevented the referral of the case to the military penal jurisdiction. The Office of the Special Rapporteur requested additional information from the State on this case. In its response, the State did not refer to the legal process but indicated that "The CNDH, in conformity with article 125 fraction VIII of its Internal Regulations, determined the complaint to be closed, there being no evidence to continue hearing the matter". Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

737. The Political Constitution of Mexico considers military or war jurisdiction to apply exclusively “to those offenses and faults against military discipline”, that is to say, those committed by soldiers in the military sphere, whether to fulfill a mission or order received, or in carrying out operational or administrative functions they are in charge of.<sup>1131</sup>

738. According to article 13 of the Constitution military jurisdiction should only be applied to offenses that affect military discipline, such as insubordination or desertion. By contrast, when an offense occurs that affects human rights or when faults in military discipline and violations to human rights arise from the same acts, competence over the violation to human rights should correspond to civil jurisdiction. Article 13 also establishes that military jurisdiction cannot be extended to a civilian.<sup>1132</sup>

739. However, Article 57.II of the Military Justice Code establishes that offenses against military discipline include, among others, all those “that are committed by soldiers when in service or in the pursuit of service-related actions.”

740. The Inter-American Court of Human Rights has observed in this regard that among the characteristic features of Mexican military legal jurisdiction there may be found “[a]n extensive realm of material competence, which surpasses the framework of strictly military crimes”, and that “[t]hrough the figure of the crime of duty or with occasion of the service enshrined by Article 57 of the Code of Military Justice, the Mexican criminal jurisdiction has the characteristics of a personal jurisdiction linked to the defendant’s condition of soldier and not to the nature of the crime.”<sup>1133</sup> The Inter-American Court found that Article 57 of the Military Justice Code is incompatible with the American Convention on Human Rights, and resolved that “the State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision [Article 57] compatible with the international standards of the field.”<sup>1134</sup>

741. In the framework of its visit, the Office of the Special Rapporteur learned of an initiative presented by the President of Mexico to Congress, which will exclude from the competence of the military penal jurisdiction the offenses of forced disappearance, torture and rape.<sup>1135</sup> In this regard the Office in Mexico of the United Nations High Commissioner for Human Rights indicated that the initiative represents a “necessary step”, but that “the path now open for bringing the Military Justice Code into line with international standards for the protection of Human Rights presents obvious challenges, given the insufficiency—among other issues—of the very limited list of exclusions that are incorporated into the initiative.”<sup>1136</sup> Likewise, the Inter-American Court

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<sup>1131</sup> United Nations. *Report of the Working Group on the Universal Examination of Journalism: Mexico*. Addition. Opinions on the conclusions and/or recommendations, voluntary commitments and responses presented by the state examined, p. 6. Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A\\_HRC\\_11\\_27\\_Add1\\_MEX\\_S.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_Add1_MEX_S.pdf)

<sup>1132</sup> Montaña Tlachinollan Human Rights Center, Miguel Agustín Pro Juárez Human Rights Center, and the Center for Justice and International Law. *La impunidad militar a juicio* (Mexico: 2010), p. 26. Available at: [http://cejil.org/sites/default/files/la\\_impunidad\\_militar\\_a\\_juicio\\_casos\\_0.pdf](http://cejil.org/sites/default/files/la_impunidad_militar_a_juicio_casos_0.pdf)

<sup>1133</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 2009. Series C No. 209, par. 276.

<sup>1134</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, par. 342.

<sup>1135</sup> Ministry of the Interior, Bulletin 530, October 21, 2010, Available at: [http://www.gobernacion.gob.mx/es/SEGOB/Sintesis\\_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress\\_Content%3A2482&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress\\_Category%3A1](http://www.gobernacion.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A2482&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1)

<sup>1136</sup> Office in Mexico of the United Nations High Commissioner for Human Rights, October 19, 2010, *ONU-DH señala que la iniciativa del Ejecutivo para acotar el fuero militar abre una ruta que debe ser ampliada por el Congreso*. Available at: <http://www.cinu.mx/comunicados/2010/10/onu-dh-senala-que-la-iniciativ/>

observed in a recent decision that "in the *Case of Radilla-Pacheco*, the Court deemed that the provision contained in the aforementioned Article 57 operates as a rule and not as an exception, the latter characteristic being essential for the military jurisdiction to meet the standards established by this Court. In this regard, the Court emphasizes that these standards are met when all human rights violations are investigated under civilian criminal jurisdiction, and thus their scope of application cannot be limited to specific violations such as torture, forced disappearance, or rape."<sup>1137</sup>

742. The Office of the Special Rapporteur reminds the State that: allegations of human rights violations, including those that refer to the right to freedom of expression, must in no case be processed under military legal jurisdiction, in accordance with the jurisprudence of the Inter-American Court of Human Rights.<sup>1138</sup> At the same time, both the military and the various police bodies must openly collaborate with investigations carried out by public human rights bodies and internal control bodies. The Office of the Special Rapporteur recognizes the State's legitimate right to combat organized crime and its efforts to train police and military personnel in human rights issues. However, it reiterates its appeal to the State to bolster measures aimed at ensuring that the battle against organized crime be consistent with democratic principles, including active respect for the control and criticism function that is exercised through the right to freedom of expression. The Office of the Special Rapporteur considers that the press should be seen as an ally of the State and society in strengthening democracy and the rule of law.

743. Finally, the Office of the Special Rapporteur considers that the struggle against impunity for crimes against journalists demands that the Mexican State continue to reinforce complementary control mechanisms. The Office of the Special Rapporteur was informed by the CNDH that of the 19 recommendations relating to freedom of expression issued by this institution since 2005, only six have been fully complied with.<sup>1139</sup> In this regard, it considers it essential that the Chamber of Deputies give priority to approving constitutional reform in human rights to reinforce the ability of public human rights bodies to act. It also considers opportune the existing proposal for the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets to become a regular Commission, and to create an equivalent commission in the Senate and in the legislative bodies of those states where violence against journalists is most severe.

### III. FREEDOM, PLURALISM AND DIVERSITY IN DEMOCRATIC DEBATE

744. Mindful that one of the basic requirements for the right to freedom of expression is that a broad diversity of information be available, during its visit to Mexico the Office of the Special Rapporteur evaluated the degree of pluralism and diversity in broadcasting.<sup>1140</sup> Among other issues, the Office of the Special Rapporteur studied regulation of the radio and television frequency spectrum, the status of community broadcasting, and the regulation and allocation of government advertising.

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<sup>1137</sup> I/A Court H.R. *Case of Cabrera-García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 206. Unofficial translation.

<sup>1138</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 342. See also United Nations Human Rights Commission, Final observations of the Human Rights Commission, Mexico, CCPR/C/MEX/CO/5, April 7, 2010, par. 18.

<sup>1139</sup> Information sent by the CNDH to the Office of the Special Rapporteur on August 18, 2010.

<sup>1140</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 30 December 2009, paras. 225, 231. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

## A. Regulation of the broadcast frequency spectrum and implementation of provisions governing broadcasting

### 1. Legal framework

745. As the IACHR has noted, the regulation of broadcasting should have the goal of ensuring predictability and legal certainty to those who own or acquire a license, so that they can exercise their right to expression freely and without fear of negative consequences in reprisal for broadcasting information. Consequently, regulations must be designed in such a way that they grant sufficient guarantees against any possible arbitrary act by the State. Meeting this objective requires: (1) that the provisions establishing rights and obligations are clear and precise; (2) the inclusion of procedures that are transparent and respect due process—allowing for, among other things, judicial review of any administrative decisions; (3) granting sufficient time for the use of a frequency to allow for the development of the communication project or for recouping the investment made, plus profit; (4) ensuring that while the frequency is in use, no additional demands will be imposed beyond those established by law; and (5) ensuring that no decisions that affect the exercise of freedom of expression will be made as a consequence of editorial stance.<sup>1141</sup>

746. In particular, the allocation of radio and television licenses has a definitive impact on the right to freedom of expression in its two dimensions: the right to freely express oneself and society's right to receive diverse ideas and opinions.<sup>1142</sup> Therefore, this process must serve two objectives: 1) to ensure greater security so that people can freely express themselves without fear of being punished or stigmatized, and 2) to ensure equality in the conditions of access to frequencies and greater diversity in the communications media.<sup>1143</sup> The process of allocating frequencies must be strictly regulated by law, characterized by transparency and guided by objective, clear, public-spirited and democratic criteria.<sup>1144</sup>

747. The Office of the Special Rapporteur notes that the regulatory framework governing the broadcast spectrum and the implementation of provisions covering broadcasting in Mexico are principally set forth in the Federal Telecommunications Law,<sup>1145</sup> and the Federal Law on Radio and Television.<sup>1146</sup>

748. The Federal Telecommunications Law states that the Ministry of Communications and Transportation shall “plan, formulate and manage policies and programs, as well as regulate the

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<sup>1141</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1142</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 60. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1143</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 25-26 Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1144</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 61. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1145</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, final amendment published on November 30, 2010, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1146</sup> Ley Federal de Radio y Televisión, published in the *Diario Oficial de la Federación* January 19, 1960, last amendment published June 19, 2009, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf>.

development of telecommunications.”<sup>1147</sup> This law also establishes that the Federal Telecommunications Commission (hereinafter “COFETEL”) is the “Ministry of Communications and Transportation’s decentralized administrative body [...] in charge of regulating, promoting and overseeing the efficient development and broad-based public coverage of telecommunications and broadcasting in Mexico.”<sup>1148</sup> Among the powers assigned to COFETEL are the power to “opine on applications for granting, modifying, renewing and terminating telecommunications-related concessions and permits” and “exclusively, the faculties in the area of radio and television granted to it by the Ministry of Communications and Transportation.”<sup>1149</sup> In this regard, the Supreme Court of Justice of the Nation (hereinafter “Supreme Court”) has established that “the Federal Telecommunications Commission’s exclusive jurisdiction over radio and television does not impinge upon the powers of any other branch of government, specifically the regulatory powers of the Office of the Presidency”, since COFETEL “is subordinate to [the Ministry of Communications and Transportation] and the head of the Executive Branch.”<sup>1150</sup> This notwithstanding the fact that the Supreme Court has also ruled that “the Federal Executive acts through said Commission to address matters related to broadcasting.”<sup>1151</sup> The COFETEL Commissioners are appointed by the head of the Executive Branch,<sup>1152</sup> the Supreme Court having struck down an amendment that empowered the Senate to challenge these appointments.<sup>1153</sup>

749. In 2006, a set of amendments to the Federal Telecommunications Law and the Law on Radio and Television were adopted.<sup>1154</sup> Later, in June 2007, the Supreme Court declared several of these amendments unconstitutional.<sup>1155</sup> For example, the Court invalidated the automatic renewal of radio and television concessions without requiring the bidding process set forth in Federal Telecommunications Law Article 16. The Supreme Court considered that direct granting of concessions “fosters situations of concentration with regard to broadcasting concessions, instead of the free and healthy competition that allows equitable access to communications media for all those interested in using bandwidth on the broadcast spectrum.”<sup>1156</sup> The Supreme Court also struck down Article 17-G of the Federal Law on Radio and Television, which established the granting of concessions by public auction, because “anything that favors economic interests in granting concessions to frequencies for providing broadcast services favors the monopolization by economically powerful groups of mass communications media, thereby impeding pluralistic participation and the entry of new agents or entities into the sector.”<sup>1157</sup> Finally, among many other

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<sup>1147</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 7(I) available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1148</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 9-A available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1149</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 9-A(IV) and 9-A(XVI) available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1150</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, pp. 68-69.

<sup>1151</sup> Supreme Court, *Constitutional Dispute 7/2009*, verdict of November 24, 2009, pp. 66, 68.

<sup>1152</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Art. 9-C, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1153</sup> Supreme Court, *Inconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 109.

<sup>1154</sup> Diario Oficial, April 11, 2006, Ministry of Communications and Transportation, *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y de la Ley Federal de Radio y Televisión*, available at: [http://www.diputados.gob.mx/LeyesBiblio/ref/lfrt/LFRT\\_ref07\\_11abr06.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lfrt/LFRT_ref07_11abr06.pdf)

<sup>1155</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

<sup>1156</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 167.

<sup>1157</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

aspects, the Supreme Court ruling declared unconstitutional several of the discretionary powers related to granting permits that Article 20 of the Federal Law on Radio and Television attributed to the Ministry of Communications and Transportation, because these placed “those applying for permits in a serious state of legal uncertainty.”<sup>1158</sup>

750. The Office of the Special Rapporteur considered this Supreme Court ruling to be extremely important, since it invalidated various aspects of the procedures for acquiring broadcast and telecommunications concessions (licenses) and permits that the Court deemed could jeopardize freedom of expression, legal certainty and the prohibition of monopolies.<sup>1159</sup> However, the Office of the Special Rapporteur notes that the Mexican Congress and the Federal Executive had not created a proper regulatory framework for resolving problems the Supreme Court warned of or the gaps in the law that currently exist. Resolution of these problems and endowing the sector with a reasonable framework of legal certainty that allows broadcasters the free exercise of the right to freedom of expression are fundamental to ensuring the appropriate exercise of the freedom of expression.

751. By the same token, the Office of the Special Rapporteur believes that the State must encourage media autonomy, as well as diversity and pluralism in the media by adopting structural measures, such as setting up a regulatory body for broadcasting that is independent of the government.<sup>1160</sup> As previously mentioned, although COFETEL has “technical, operating, spending and management”<sup>1161</sup> autonomy, and exercises exclusive Executive Branch powers with regard to radio and television, the Commission is politically and administratively subject to the Federal Executive’s control, and the President of Mexico has total discretion in appointing all its members.

## 2. Concentration of communications media property ownership and control

752. The Office of the Special Rapporteur observes that a high degree of concentration in ownership and control continues to exist in Mexico’s communications media that are licensed to use broadcast frequencies. Data provided to the Office of the Special Rapporteur by the President of the Senate Radio, Television and Film Commission indicates that more than 90% of television licenses are in the hands of just two companies.<sup>1162</sup> Information provided by civil society organizations coincides in pointing to a high degree of concentration.<sup>1163</sup> The Chair of the Senate Radio, Television and Film Commission also informed the Office of the Special Rapporteur that 76% of the commercial radio stations in the sector are in the hands of 14 families, and that 47.8% of stations belong to four major chains.<sup>1164</sup>

<sup>1158</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 76.

<sup>1159</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

<sup>1160</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 50-53. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1161</sup> Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published on November 30, 2010, Art. 9-A, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf>

<sup>1162</sup> Senator Carlos Sotelo García, “*Diagnóstico sobre Libertad de Expresión en México*”, document provided to the Office of the Special Rapporteur on August 12, 2010, par. 3.

<sup>1163</sup> See *Asociación Mexicana de Derecho a la Información (AMEDI)*, “*Report sobre Derecho a la Información 2010: Concentración, Medios de Communicationy Obstáculos para un Nuevo marco jurídico*”, p. 1. See also *Asociación Mundial de Radios Comunitarias (AMARC)*. *Diversidad y Pluralismo en la Radiodifusión: Informe Anual 2009 sobre la Diversidad y el Pluralismo de la Radiodifusión en ALC*, p. 44. Available at: [http://legislaciones.amarc.org/Informe2009\\_Diversidad\\_y\\_Pluralismo.pdf](http://legislaciones.amarc.org/Informe2009_Diversidad_y_Pluralismo.pdf)

<sup>1164</sup> Senator Carlos Sotelo García, “*Diagnostico sobre Libertad de Expresión en México*”, document provided to the Office of the Special Rapporteur on August 12, 2010, par. 5.

753. The Office of the Special Rapporteur pointed out that the IACHR Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of communications media must be subject to anti-trust laws to prevent them from conspiring against democracy by limiting the pluralism and diversity than ensures the full exercise of the public’s right to information.” In this regard, and it has done in the past,<sup>1165</sup> the Office of the Special Rapporteur encourages the Mexican Congress and the Federal Executive to pass legislation that responds to the requirements set forth by the Supreme Court and international organizations for reducing concentration in this sector and for contributing to creating a pluralistic media environment accessible to all sectors of the population. Similarly, the State must ensure the existence of public media that are genuinely independent of the government, in order to promote diversity and guarantee that society receives certain educational and cultural services. As the Mexican Supreme Court itself has stated, “radio and television are mass communications media that have transcendent importance in people’s daily lives, such that the State, in regulating use for the public good in that activity, must ensure equality of opportunity for access and foster pluralism that safeguards for society respect for the right to information and the free expression of ideas.”<sup>1166</sup>

754. Furthermore, after its visit to Mexico the Office of the Special Rapporteur was informed that on September 2, 2010, the President of Mexico issued a decree “to set forth the actions the Federal Public Administration must take to complete the transition to Digital Terrestrial Television.”<sup>1167</sup> Among other things, the decree moves the shut-off of analog television in favor of digital television forward from 2021 to 2015, and it creates an Inter-Ministerial Commission for the Digital Transition.<sup>1168</sup> According to the information provided, both chambers of the Mexican Congress have filed claims of unconstitutionality against the decree before the Supreme Court, alleging that the President overstepped the limits of his powers.<sup>1169</sup> In October 2010, a Supreme Court judge suspended the decree until the Court could resolve the constitutional challenge,<sup>1170</sup> and the Supreme Court later formally agreed to hear the case.<sup>1171</sup> In addition, some civil society organizations expressed their concern that without the appropriate regulatory and institutional

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<sup>1165</sup> Letter from the IACHR Chair to the Chair of the Senate’s Board of Directors regarding “*Proyecto de Ley Federal de Radio y Televisión*”, May 15, 2008.

<sup>1166</sup> *Supreme Court, Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 167.

<sup>1167</sup> *Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre*. September 2, 2010. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5157568&fecha=02/09/2010](http://dof.gob.mx/nota_detalle.php?codigo=5157568&fecha=02/09/2010)

<sup>1168</sup> *Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre*. September 2, 2010. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5157568&fecha=02/09/2010](http://dof.gob.mx/nota_detalle.php?codigo=5157568&fecha=02/09/2010)

<sup>1169</sup> El Universal. October 7, 2010. *Diputados van contra decreto de TV digital*. <http://www.eluniversal.com.mx/notas/714515.html>. Observatorio de Medios. October 21, 2010. *Raúl Trejo Delabre: Suspenden apagón analógico*. Available at: <http://culturadelalegalidad.wordpress.com/2010/10/21/21oct10-raul-trejo-delabre-suspenden-apagon-analogico/>

<sup>1170</sup> CNN. October 21, 2010. *Suprema Corte ‘apaga’ la TV digital*. Available at: <http://www.cnnexpansion.com/economia/2010/10/21/tv-digital-suspension-decreto-analogico>. Observatorio de Medios. October 21, 2010. *Raúl Trejo Delabre: Suspenden apagón analógico*. Available at: <http://culturadelalegalidad.wordpress.com/2010/10/21/21oct10-raul-trejo-delabre-suspenden-apagon-analogico/>.

<sup>1171</sup> CNN. December 1, 2010. *Corte admite controversia por TV digital*. Available at: <http://www.cnnexpansion.com/economia/2010/12/01/apagon-analogico-decreto-oficial-corte>. Diario de Palanque. December 1, 2010. *Suprema Corte admite controversia por TV digital*. Available at: <http://www.diariodepalanque.com/nota.php?nld=23148>.

measures in place, the transition to digital television would not give rise to greater diversity and pluralism among those participating in Mexican television.<sup>1172</sup>

755. The Office of the Special Rapporteur recalls in this regard that the technological transformation in broadcasting should be designed to ensure optimal use of the spectrum such that it guarantees the greatest pluralism and diversity possible. To achieve this, states should establish specific legal mechanisms to appropriately manage the transition to digital broadcast services. This regulation should encompass a switch-over program that takes into account the needs and capacities of the various participants involved in the process, as well as the new technologies' level of application. In particular, states should evaluate the potential use of the digital dividend, considering this technological change an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media. At the same time, states should adopt measures to prevent the cost of the transition from analog to digital from limiting the communications media's capacity, given the financial costs.<sup>1173</sup>

### 3. The status of community radio broadcasting

756. As regards community radio stations, the Office of the Special Rapporteur and the IACHR have recognized that these communications media play a fundamental role in the exercise of the freedom of expression for different sectors of society.<sup>1174</sup> The right of Indigenous peoples, in particular, to establish their own communications media is enshrined in Article 2 of the Mexican Constitution.<sup>1175</sup> Nevertheless, it is these same communities that have been frustrated in their efforts to create stations that contribute – among other things – to reflecting the ethno-cultural diversity of Indigenous peoples, and to disseminating, preserving and fostering their cultures and history.

757. The Office of the Special Rapporteur notes that the State must recognize the unique existence of community stations and provide for reserving parts of the spectrum for this type of media, as well as for maintaining equitable conditions for access to licenses that differentiate among the varied circumstances under which private non-commercial media operate.<sup>1176</sup> As this office has indicated, states must have a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community radio broadcasting and that includes simple, accessible procedures for obtaining licenses that do not impose excessive technological requirements, that allow the possibility of using advertising as a means of financing, and that do not

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<sup>1172</sup> See, for example, *AMEDI*. September 23, 2010. *Más corporativismo electrónico, o camino a la diversidad y calidad audiovisuales*. Available at: [http://www.amedi.org.mx/index.php?option=com\\_content&view=article&id=534:television-digital-mas-corporativismo-electronico-o-camino-a-la-diversidad-y-calidad-audiovisuales&catid=59:comunicados&Itemid=105](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=534:television-digital-mas-corporativismo-electronico-o-camino-a-la-diversidad-y-calidad-audiovisuales&catid=59:comunicados&Itemid=105)

<sup>1173</sup> See IACHR. *2009 Annual Report*. OEA/Ser.L/V/II, December 30, 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, chap. 6, par. 80. Available at: [http://www.cidh.org/pdf\\_files/Annual\\_Report\\_2009.pdf](http://www.cidh.org/pdf_files/Annual_Report_2009.pdf)

<sup>1174</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 30, 97. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

<sup>1175</sup> Article 2, section B, subsection VI of the Mexican Constitution sets forth the obligation of the federal, state and municipal governments "To establish conditions that enable Indigenous peoples and communities to acquire, operate and manage communications media under the terms of the laws on this subject set forth".

<sup>1176</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 30, 97. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Broadcasting.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Broadcasting.pdf)

impose discriminatory limits on their financing and reach.<sup>1177</sup> The Office of the Special Rapporteur also noted that community stations must operate within the law.

758. The Office of the Special Rapporteur observed that Mexican law, and specifically the Federal Law on Radio and Television, does not explicitly recognize community broadcasting, although it does make reference to “cultural” stations.<sup>1178</sup> As noted above, the aforementioned ruling of the Supreme Court declared the procedure for granting permits to non-commercial radio and television stations unconstitutional owing to the discretionary powers granted to government authorities in that process.<sup>1179</sup> Nonetheless, clear, precise and equitable procedures have not been adopted since that time by which community radio stations can apply for and obtain bandwidth for operation. The information received indicates that the absence of these procedures is creating serious practical obstacles for bringing Mexico’s community radio stations into compliance with the law.

759. The Office of the Special Rapporteur points to the progress represented by COFETEL’s granting of six permits to community radio stations in January 2010.<sup>1180</sup> It is fundamental, however, to create a standard process for spectrum allocation by designing clear and simple rules that enable radio station applicants to have certainty about the procedure, requirements and the time periods in which their application will be approved or denied.

760. Furthermore, the Office of the Special Rapporteur received information on some measures that could be disproportionate owing not only to their specific content, but also because they occur in the context of the legal framework described above. Some of these situations are described in the paragraphs that follow.

761. According to the information received by the Office of the Special Rapporteur, the *Radio Diversidad* community station in the Paso del Macho municipality in Veracruz State has been closed down on two occasions, once by a COFETEL operation in December 2008, and again by an operation of the PGR on March 11, 2009.<sup>1181</sup> In relation to this second incident, arrest warrants were issued for three of *Radio Diversidad*’s staff. According to the information received, on March 26, 2010, a District Court judge handed down a formal detention order against one of them, Mr. Juan José Hernández Andrade, for the alleged crime of using, benefiting from and exploiting property belonging to the nation without a state permit or license.<sup>1182</sup>

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<sup>1177</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 234, 235. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

<sup>1178</sup> *Ley Federal de Radio y Televisión*, published in the *Diario Oficial de la Federación* January 19, 1960, last amendment published June 19, 2009, Art. 13, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf>

<sup>1179</sup> Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of September 7, 2007.

<sup>1180</sup> See COFETEL, Press Release No. 05/2010, January 27, 2010.

<sup>1181</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym), “*Caso Radio Diversidad. Paso del Macho, Veracruz*”, document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

<sup>1181</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym), “*Caso Radio Diversidad. Paso del Macho, Veracruz*”, document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

<sup>1182</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym), “*Caso Radio Diversidad. Paso del Macho, Veracruz*”, document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

762. The Office of the Special Rapporteur also received information regarding *Radio Ñomndaa, La Palabra del Agua* in Xochistlahuaca, in the state of Guerrero, which was created in 2004 as part of an effort to promote autonomy among the Nanncue Ñomndaa (Amuzgo) people of this municipality.<sup>1183</sup> According to the information received, on different occasions in 2005 agents of the Armed Forces, the Ministry of Communications and Transportation and the PGR arrived at the radio station and harassed the radio operators.<sup>1184</sup> In addition, also according to the information received, on July 10, 2008, about 30 police officers arrived at the radio station and tried to dismantle it, disconnecting cables and transmission equipment.<sup>1185</sup> Furthermore, since 2004 a criminal case charging several members of the community with kidnapping has been open. In the context of this case, as the State informed the Office of the Special Rapporteur in its observations regarding the preliminary version of this report, on September 10, 2010, the Judge of First Instance in Criminal Matters of the Abasolo Judicial District convicted Genaro Cruz Apóstol, Silverio Matías Domínguez, and David Valtierra Arango, founding members of the autonomous municipality of Suljaa´ de Xochistlahuaca and members of *Radio Ñomndaa*, and sentenced them to three years in prison and payment of a fine.<sup>1186</sup> An appeal of the conviction has reportedly been filed and is still pending.<sup>1187</sup>

763. Also, the Office of the Special Rapporteur received information about the case of Rosa Cruz, a member of the Purépecha Indigenous group in Michoacan State, who participated in the *Uékakua de Ocumicho* community radio station. According to the information received, this station had five watts of power, was the only station transmitting in Purépecha in the Ocumicho community, and had been applying for an operating permit since 2002.<sup>1188</sup> According to the

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<sup>1183</sup> Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, "La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa". Received by the Office of the Special Rapporteur October 7, 2010. *Fundación para el Debido Proceso Legal, Criminalización de los defensores de derechos humanos y de la protesta social en México*, pp. 39-40. Available at: <http://www.dplf.org/uploads/1279728364.pdf>

<sup>1184</sup> Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, "La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa". Received by the Office of the Special Rapporteur October 7, 2010. *Fundación para el Debido Proceso Legal, Criminalización de los defensores de derechos humanos y de la protesta social en México*, pp. 39-40. Available at: <http://www.dplf.org/uploads/1279728364.pdf>

<sup>1185</sup> Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, "La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa". Received by the Office of the Special Rapporteur October 7, 2010. *Fundación para el Debido Proceso Legal, Criminalización de los defensores de derechos humanos y de la protesta social en México*, pp. 39-40. Available at: <http://www.dplf.org/uploads/1279728364.pdf>

<sup>1186</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011. See also Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, "La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa". Received by the Office of the Special Rapporteur October 7, 2010. Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, pp. 39-40. Available at: <http://www.dplf.org/uploads/1279728364.pdf>

<sup>1187</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

<sup>1188</sup> Information delivered to the Office of the Special Rapporteur by staff at the *Uékakua de Ocumicho* radio station, August 10, 2010. See also Reporters without Borders, *México: Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 5. Available at: <http://www.dplf.org/uploads/1279728364.pdf>, [http://files.reporterosinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF\\_Informe\\_Mexico\\_Impunidad\\_sept09.pdf](http://files.reporterosinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf). AMEDÍ. August 28, 2009. *Rosa Cruz, indígena, amenazada con cárcel por participar en una radio comunitaria*. Continued...

information received, on January 29, 2009, dozens of Federal Investigation Agency agents burst into the station's facilities in order to seize radio equipment. Later the PGR initiated criminal proceedings against Ms. Cruz, charging her with the crime of using, benefiting from and exploiting the broadcast spectrum without COFETEL's permission, which is punishable under Article 150 of the General Law on National Goods.<sup>1189</sup>

764. The Office of the Special Rapporteur was also informed that on October 12, 2010, a group of armed people wearing hoods who were employees of the Chiapas State Public Prosecutor's Office and the Chiapas Sectoral Police Special Forces Unit entered *Radio Proletaria* facilities in the city of Tuxtla Gutierrez, the state capital.<sup>1190</sup> According to the information received, these officers took the radio transmission equipment and an antenna and arrested six people, including a minor who was making a live broadcast of a music program.<sup>1191</sup> The Office of the Special Rapporteur was also told that *Radio Proletaria* works in favor of the community's human rights, and is an enterprise created and operated primarily by the youth of the 12 de Noviembre neighborhood in Tuxtla Gutierrez.<sup>1192</sup> In its observations regarding the preliminary version of this report, the Mexican State confirmed that "the minor child Carlos Ernesto Martínez Ruíz was arrested" in this operation and that "a seizure of assets of a precautionary nature was carried out."<sup>1193</sup> The State also reported that "the Public Prosecutor's Office of the state of Chiapas conducted the preliminary investigation...as relates to the events. That inquiry was transferred for lack of jurisdiction to the PGR on October 13, 2010, as it involved the commission of the crime of theft of electromagnetic energy established in subparagraph II of Article 368 of the Federal Criminal Code...the investigation is currently undergoing preparation and legal fine-tuning."<sup>1194</sup>

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...continuation

[http://www.amedi.org.mx/index.php?option=com\\_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas)

<sup>1189</sup> See Reporters without Borders, *México: Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 5. Available at: [http://files.reporterosinfrenteras.webnode.es/200000142-a5a9ca6a3f/RsF\\_Informe\\_Mexico\\_Impunidad\\_sept09.pdf](http://files.reporterosinfrenteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf). AMEDI. August 28, 2009. *Rosa Cruz, indígena, amenazada con cárcel por participar en una radio comunitaria*. Available at: [http://www.amedi.org.mx/index.php?option=com\\_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas).

<sup>1190</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010. *Community radio station in Chiapas forcibly shut down*. Available at: [http://www.ifex.org/mexico/2010/10/14/radio\\_proletaria\\_raided/](http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/). Fray Bartolomé de Las Casas Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

<sup>1191</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010. *Community radio station in Chiapas forcibly shut down*. Available at: [http://www.ifex.org/mexico/2010/10/14/radio\\_proletaria\\_raided/](http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/). Fray Bartolomé de Las Casas Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

<sup>1192</sup> World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010. *Community radio station in Chiapas forcibly shut down*. Available at: [http://www.ifex.org/mexico/2010/10/14/radio\\_proletaria\\_raided/](http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/). Fray Bartolomé de Las Casas Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

<sup>1193</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1194</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

765. Finally, the Office of the Special Rapporteur received information indicating that Hector Camero, a staff member of the *Tierra y Libertad* community radio station was notified on November 3, 2010, that he had been sentenced to two years in prison, fined more than 15,000 pesos and his civil and political rights had been restricted for the crime of using, benefiting from and exploiting the broadcast spectrum without prior authorization.<sup>1195</sup> According to the information received, *Tierra y Libertad* radio was started in 2001 to give voice to the residents of the *Tierra y Libertad* neighborhood of Monterrey in the state of Nuevo León, and that despite having applied for a permit to operate in 2002, they had only received it in 2009.<sup>1196</sup> The charges against Hector Camero, a medic and teacher training professional who supports poor communities in Monterrey, arose out of the events of June 6, 2008, when, according to what the Office of the Special Rapporteur has been told, dozens of federal police officers entered the radio station and confiscated transmission equipment.<sup>1197</sup>

766. The Office of the Special Rapporteur insists on the urgent necessity of approving legislation that responds to the Supreme Court ruling and international standards, so that community broadcasters receive authorization to operate, and so that a clear legal framework is established for their operation. The Office of the Special Rapporteur again observes that community broadcasters have the obligation to operate in a manner consistent with the laws, but insists that these laws should conform to international standards and that they should be enforced using proportionate administrative sanctions and not by resorting to criminal law.<sup>1198</sup> In its observations on the preliminary version of this report, the Mexican State noted regarding this topic that "radio and television [broadcasting] is an activity of public interest, and thus the State should protect it and watch over it to see that it duly fulfills its social function. In this regard, the [Federal Telecommunications] Commission, in accordance with its authority and jurisdiction as fully established in laws governing this area, exercises its powers in the administrative arena with respect to these types of stations, under the terms provided for in Article 104 Bis. of the Federal Radio and Television Law. That is, once a station operating at a frequency not authorized by this agency is detected, the seizure of its facilities and all assets related to its operations takes place, with the alleged violator being granted a hearing as established in our Magna Carta.... The exercise of a criminal action against these types of stations is not within the jurisdiction of the Federal Telecommunications Commission, but falls to the Office of the Prosecutor General of the Republic, who carries out such actions based on the complaints presented by broadcasting station concession holders who are affected by the operation of these stations."<sup>1199</sup>

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<sup>1195</sup> International Freedom of Expression Exchange (IFEX). November 5, 2010. *Community radio journalist sentenced to two years in jail*. Available at: [http://www.ifex.org/mexico/2010/11/05/camero\\_prison/](http://www.ifex.org/mexico/2010/11/05/camero_prison/). Reporters without Borders. November 8, 2010. *Prisión para un representante de una radio comunitaria; asesinan a otro periodista, el octavo en lo que va del año*. Available at: [http://es.rsf.org/spip.php?page=impression&id\\_article=38756](http://es.rsf.org/spip.php?page=impression&id_article=38756)

<sup>1196</sup> International Freedom of Expression Exchange (IFEX). November 5, 2010. *Community radio journalist sentenced to two years in jail*. Available at: [http://www.ifex.org/mexico/2010/11/05/camero\\_prison/](http://www.ifex.org/mexico/2010/11/05/camero_prison/). Reporters without Borders. November 8, 2010. *Prisión para un representante de una radio comunitaria; asesinan a otro periodista, el octavo en lo que va del año*. Available at: [http://es.rsf.org/spip.php?page=impression&id\\_article=38756](http://es.rsf.org/spip.php?page=impression&id_article=38756). See also *La Jornada*. August 15, 2009. *Radio comunitaria Tierra y Libertad*. Available at: <http://www.jornada.unam.mx/2009/08/15/index.php?section=opinion&article=016a1pol>

<sup>1197</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25, 41. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Boadcating.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Boadcating.pdf)

<sup>1198</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25, 41. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Boadcating.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Boadcating.pdf)

<sup>1199</sup> Communication OEA-00262 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received on February 11, 2011.

## B. Government advertising

767. With regard to government advertising, the IACHR has indicated that the State must ensure that official advertising is not used as a means of punishing communications media that are independent or critical of the government, or as a disguised subsidy that directly or indirectly benefits the communications media that are sympathetic to or compliant with the authorities.<sup>1200</sup> States should decide what they will communicate and where they will communicate their messages to the public on the basis of objective criteria considering the best means of transmitting that information in the most effective way, and absolutely independently from the informative or editorial content of the media that they must contract for that purpose.<sup>1201</sup> It is essential that states have specific regulations that expressly establish the prerequisites and objectives of the official guidelines for license allocation, and that these regulations be written in a clear and precise way so that both the state's obligations and the rules for broadcasters can be seen in advance.<sup>1202</sup>

768. The information received by the Office of the Special Rapporteur indicates that Mexican government expenditure on government advertising is high and getting higher. According to information provided by the State, in 2009 the Federal Executive spent MX\$5,371,418,470 pesos, the equivalent of US\$410,580,429<sup>1203</sup> on government advertising, an increase of more than 60% on the amount spent in 2006.<sup>1204</sup> Such significant spending on government advertising makes the requirement for clear and objective rules for allocation even more important.

769. According to the information received, Mexico does not have specific legislation clearly establishing the criteria that must be used in allocating government advertising. Article 134 of the Constitution sets forth certain restrictions on the content of government advertising by prohibiting the inclusion of "names, images, voices or symbols that imply the individualized promotion of any public servant." Also, the Ministry of the Interior annually issues public guidelines designed to regulate the federal government's public communication processes for that year. The 2010 version of these guidelines includes some parameters for allocating this publicity; for example, they state that "the purchase of radio and television time should be based on criteria of quality that ensure consistency among the content of the message, the target audience and programming."<sup>1205</sup> Furthermore, in its observations on the preliminary version of this report, the Mexican State reported that the guidelines published for 2011 included several relevant additions.<sup>1206</sup> Indeed, the Office of

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<sup>1200</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 122. Available at: <http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf>

<sup>1201</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 128. Available at: <http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf>

<sup>1202</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 130. Available at: <http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf>

<sup>1203</sup> Amount calculated using the exchange rate as of December 31, 2009.

<sup>1204</sup> "Histórico de Recursos Ejercidos por Tipo de Medio: ejercicio Fiscales 2006 a 2010", document provided by the Ministry of the Interior during the on-site visit.

<sup>1205</sup> *Diario Oficial*, December 28, 2009, Ministry of the Interior. Agreement establishing general guidelines for orienting, planning, authorizing, coordinating, overseeing and evaluating the strategies, programs and public communications campaigns of Federal Public Administration agencies and entities for Fiscal Year 2010, Article 4 (X).

<sup>1206</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

the Special Rapporteur notes that these additions include the requirement that "the selection of media outlets must be made impartially, with greater weight given to their objective characteristics."<sup>1207</sup>

770. Notwithstanding the above, it is necessary to point out that the CNDH itself has noted that these guidelines do not adequately define the procedure and objective, clear, transparent and nondiscriminatory criteria for contracting government advertising.<sup>1208</sup> The guidelines apply only to the Federal Executive, and fail to address the other branches of government and autonomous bodies, or the states, where the allocation of government advertising is often even less transparent. According to the information received, this includes, for example, the fact that the state of Veracruz considers the amount spent on public communications and government publicity to be confidential information, not available to the public.<sup>1209</sup>

771. In the context of this legal framework, the Office of the Special Rapporteur received information regarding cases in which government advertising had been allocated on the basis of the communications media's news reporting. For example, the CNDH established that after *Contralinea* magazine published a series of stories critical of the state oil company, PEMEX, this public entity stopped advertising in the magazine.<sup>1210</sup> Mexico's National Human Rights Commission recommended that the Director of PEMEX "disseminate instructions to the appropriate people to equip the company with objective, clear, transparent and non-discriminatory procedures and criteria for placing and distributing government advertising."<sup>1211</sup> Information from the CNDH indicates that this recommendation was not accepted by the Director General of PEMEX.<sup>1212</sup>

772. Similarly, the CNDH verified that the Guanajuato State government suppressed and cut back the government advertising that it placed in the *A.M.* and *Al Día* daily newspapers as an indirect way of limiting their freedom of expression.<sup>1213</sup> The CNDH confirmed the recommendation issued by the Human Rights Ombudsman's Office of the State of Guanajuato to the governor of the state that he "make necessary provisions so that the State Executive agencies and entities, each within its sphere of authority, establish clear, fair, objective and non-discriminatory criteria to

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<sup>1207</sup> Agreement establishing general guidelines for orienting, planning, authorizing, coordinating, overseeing and evaluating the strategies, programs and public communications campaigns of Federal Public Administration agencies and entities for Fiscal Year 2010, Art. 4, published in the *Diario Oficial* on December 30, 2010. Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, Annex III, received on February 3, 2011.

<sup>1208</sup> See CNDH, *Recommendation 57*, September 14, 2009, p. 26. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1209</sup> State of Veracruz, *Dirección General de Comunicación Social*, Case No. DGCS/UAIP/037/2010, June 28, 2010.

<sup>1210</sup> See CNDH, *Recommendation 57*, September 14, 2009, pp. 21-25. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1211</sup> See CNDH, *Recommendation 57*, September 14, 2009, pp. 21-25. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1212</sup> CNDH, *Report de Actividades 2009*, p. 586. Available at: [http://www.cndh.org.mx/lacndh/informes/anales/Informe2009/Informe\\_2009.pdf](http://www.cndh.org.mx/lacndh/informes/anales/Informe2009/Informe_2009.pdf)

<sup>1213</sup> See CNDH, *Recommendation 60*, September 29, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/060.pdf>

determine the distribution of government advertising."<sup>1214</sup> According to the information received, the governor did not accept this recommendation.<sup>1215</sup>

773. Similarly, the Office of the Special Rapporteur received information indicating that *Proceso* magazine filed a complaint with the CNDH because the federal government had, for no apparent reason, stopped contracting for official advertising, despite the fact that the magazine has a broad and well-known circulation.<sup>1216</sup>

774. The existence of a legal framework that allows the allocation of government advertising in a discretionary manner makes the approval of clear, objective, transparent and non-discriminatory rules for contracting this service at both the federal and state levels all the more urgent. Within the context of the Office of the Special Rapporteur's on-site visit, the Federal Government recognized the need to pass legislation that establishes rules for managing government advertising that are applied consistently throughout the country and at all levels and in all spheres of government.<sup>1217</sup> The Office of the Special Rapporteur was told that in recent years several bills have been introduced in the Mexican Congress to regulate government advertising, but that none have been passed into law.<sup>1218</sup> The Office of the Special Rapporteur again urges the Congress to resume work on this important task.

#### IV. LEGAL ACTIONS RELATING TO THE EXERCISE OF FREEDOM OF EXPRESSION

##### A. Use of criminal law

775. The IACHR has repeatedly called on States not to criminalize the exercise of freedom of speech, especially with regard to matters of public interest.<sup>1219</sup> Principle 10 of the Declaration of Principles on Freedom of Speech establishes that "Protection of reputation should be guaranteed only through civil sanctions, in cases in which the offended person is a public official or public or private person who has voluntarily become involved in matters of public interest."

776. On the occasion of its last official visit to Mexico in 2003, the Office of the Special Rapporteur considered that "to ensure the adequate defense of freedom of expression, the Mexican State, at both the federal and local levels, should amend its defamation laws such that only civil

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<sup>1214</sup> See CNDH, *Recommendation 60*, September 29, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/060.pdf>. Guanajuato State Public Prosecutor's Office, Office for Human Rights, Case 280/07-O, April 17, 2008, available at: [http://www.derechoshumanosgto.org.mx/images/stories/pdheg/documentos/gaceta2008\\_1.pdf](http://www.derechoshumanosgto.org.mx/images/stories/pdheg/documentos/gaceta2008_1.pdf).

<sup>1215</sup> Meeting held with the CNDH on August 11, 2010, and information sent by the CNDH to the Office of the Special Rapporteur on August 18, 2010.

<sup>1216</sup> International Freedom of Expression Exchange (IFEX). May 19, 2009. *CNDH investigates anomaly in allocation of federal government advertising contracts*. Available at: [http://www.ifex.org/mexico/2009/05/19/proceso\\_advertising\\_allegation/](http://www.ifex.org/mexico/2009/05/19/proceso_advertising_allegation/). CENCOS. May 11, 2009. *La CNDH investiga el castigo publicitario a Proceso*. Available at: <http://www.cencos.org/es/node/20747>

<sup>1217</sup> "Asignación de Publicidad Gubernamental Federal", document provided by the Ministry of the Interior during the Office of the Special Rapporteur's on-site visit.

<sup>1218</sup> See *Fundar*, "¿Cuánto cuesta la imagen del gobierno ejecutivo federal? Usos y costumbres del gasto en publicidad oficial en nuestro país", July 22, 2010.

<sup>1219</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression, *A Hemispheric Agenda for the Defense of Freedom of Expression*. OAS/Ser.L/V/II/IACHR/RELE/INF.4/09. February 25, 2009, par. 56. Available at: [http://www.cidh.org/pdf\\_files/RELEHemisphericAgenda.pdf](http://www.cidh.org/pdf_files/RELEHemisphericAgenda.pdf)

penalties could be applied in cases of insults to public officials related to the performance of their functions, public figures, or private figures involved voluntarily in matters of public interest.<sup>1220</sup>

777. The Office of the Special Rapporteur recognizes and applauds the fact that since 2007 the Mexican State effectively decriminalized defamation offenses.<sup>1221</sup> Similarly, the Office of the Special Rapporteur observes that a significant number of states have decriminalized these offenses in recent years, including the state of Veracruz in July 2010.<sup>1222</sup> At the same time, and notwithstanding the importance of these reforms, the Office of the Special Rapporteur observes that the Printing Offenses Law of 1917 remains in effect and provides for penalties involving imprisonment.

778. Likewise, the information received by the Office of the Special Rapporteur indicates that offenses against honor continue to be provided for in the penal codes of 16 states. These are the states of Baja California<sup>1223</sup>, Baja California Sur<sup>1224</sup>, Campeche,<sup>1225</sup> Colima<sup>1226</sup>, Guanajuato<sup>1227</sup>, Hidalgo<sup>1228</sup>, México<sup>1229</sup>, Nayarit<sup>1230</sup>, Nuevo León,<sup>1231</sup> Puebla,<sup>1232</sup> Querétaro,<sup>1233</sup> Sonora,<sup>1234</sup>

<sup>1220</sup> IACHR. *Annual Report 2003*. OAS/Ser.L/V/II.118, December 29, 2003. Vol. III, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. 2, paras. 198-99. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>

<sup>1221</sup> IACHR. *Annual Report 2007*. OAS/Ser.L/V/II.130, December 29, 2007. Vol. II, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. 2, par. 138. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual\\_Report\\_2007.VOL.II.ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II.ENG.pdf)

<sup>1222</sup> International Freedom of Expression Exchange (IFEX). July 26, 2010. *State of Veracruz decriminalises defamation*. Available at: [http://www.ifex.org/mexico/2010/07/27/defamation\\_decriminalised/](http://www.ifex.org/mexico/2010/07/27/defamation_decriminalised/); Penal Code of Veracruz, last amended September 8, 2010, available at: <http://www.legisver.gob.mx/leyes/LeyesPDF/PENAL080910.pdf>

<sup>1223</sup> Defamation laws are established in articles 185 and 191 of the Penal Code of Baja California, available at: [http://www.congresobc.gob.mx/legislacion/Parlamentarias/TomosPDF/Leyes/TOMO\\_V/Codpenal\\_10SEP2010.pdf](http://www.congresobc.gob.mx/legislacion/Parlamentarias/TomosPDF/Leyes/TOMO_V/Codpenal_10SEP2010.pdf)

<sup>1224</sup> Defamation laws are established in articles 336, 338 and 342 of the Penal Code of the state of Baja California Sur, available at: [http://www.cbcs.gob.mx/marco\\_juridico/D1525-4.doc](http://www.cbcs.gob.mx/marco_juridico/D1525-4.doc)

<sup>1225</sup> Defamation laws are established in articles 313, 315, and 321 of the Penal Code of the state of Campeche, available at: [http://www.congresocam.gob.mx/LX/index.php?option=com\\_jdownloads&Itemid=0&task=finish&cid=2614&catid=5](http://www.congresocam.gob.mx/LX/index.php?option=com_jdownloads&Itemid=0&task=finish&cid=2614&catid=5)

<sup>1226</sup> Defamation laws are established in articles 218 and 221 of the Penal Code of the state of Colima, available at: [http://www.congresocol.gob.mx/leyes/codigo\\_penal.pdf](http://www.congresocol.gob.mx/leyes/codigo_penal.pdf)

<sup>1227</sup> Defamation laws are established in articles 188 and 189 of the Penal Code of the state of Guanajuato, available at: <http://www.congresogto.gob.mx/legislacion/codigos/acrobat/Penal.pdf>

<sup>1228</sup> Defamation laws are established in articles 191 and 194 of the Penal Code of the state of Hidalgo, available at: <http://www.congreso-hidalgo.gob.mx/Contenido/Leyes/08.doc>

<sup>1229</sup> Defamation laws are established in articles 275, 278, and 282 of the Penal Code of the State of Mexico, available at: <http://www.cddiputados.gob.mx/POLEMEX/POLEMEX.HTML>.

<sup>1230</sup> Defamation laws are established in articles 294, 295, and 297 of the Penal Code of the state of Nayarit, available at: <http://www.congreso-nayarit.gob.mx/files/1248925540.pdf>

<sup>1231</sup> Defamation laws are established in articles 342, 344, and 235, of the Penal Code of the state of Nuevo León, available at: [http://www.congreso-nl.gob.mx/potentiaweb/portal/genera/VistasV2\\_1/PlantillasV2/2010.asp?Portal=17&MenuActivo=8&View=1&Origen=http://189.209.243.82/potentiaweb/portal/Genera/filtros/index.asp](http://www.congreso-nl.gob.mx/potentiaweb/portal/genera/VistasV2_1/PlantillasV2/2010.asp?Portal=17&MenuActivo=8&View=1&Origen=http://189.209.243.82/potentiaweb/portal/Genera/filtros/index.asp)

<sup>1232</sup> Defamation laws are established in articles 357 and 362 of the Social Protection Code of the state of Puebla, available at: [http://www.congresopuebla.gob.mx/index.php?option=com\\_docman&task=doc\\_download&gid=3&Itemid=7](http://www.congresopuebla.gob.mx/index.php?option=com_docman&task=doc_download&gid=3&Itemid=7)

<sup>1233</sup> Defamation laws are established in articles 170 and 173 of the Penal Code of the state of Querétaro, available at: <http://www.legislaturaqro.gob.mx/files/codigos/Q2-Codigo-Penal-para-el-Estado-de-Queretaro.pdf>

<sup>1234</sup> Defamation laws are established in article 284 of the Penal Code of the state of Sonora, available at: [http://www.congresoson.gob.mx/Leyes\\_Archivos/doc\\_6.pdf](http://www.congresoson.gob.mx/Leyes_Archivos/doc_6.pdf)

Tabasco,<sup>1235</sup> Tlaxcala,<sup>1236</sup> Yucatán,<sup>1237</sup> and Zacatecas.<sup>1238</sup> The Office of the Special Rapporteur expresses its satisfaction with the decriminalization at federal level and in 16 states, and reiterates its call for all the states to follow the example of decriminalizing offenses against honor, especially with regard to matters of public interest. In this regard, the Office of the Special Rapporteur welcomes the fact that, as the Mexican State reported in its observations on the preliminary version of this report, the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets hopes in 2011 to meet the objective of "having 16 states decriminalize defamation offenses, known as offenses against honor."<sup>1239</sup>

779. According to the information received by the Office of the Special Rapporteur, the criminal laws for protection of the honor of public officials have permitted, in some cases, the initiation of criminal proceedings against journalists for expressing their opinion on matters of public interest. The IACHR has considered that the use of legal mechanisms to punish the discussion of matters of public interest or about public officials, candidates to public office or politicians in itself violates Article 13 of the American Convention and can also constitute a means of indirect censorship in view of its intimidatory effect, inhibiting the debate on matters of public interest.<sup>1240</sup> The simple threat of being criminally prosecuted for critical expressions on matters of public interest can give rise to self-censorship.<sup>1241</sup>

780. In June 2009, the Supreme Court had to was obliged to annul a decision by the Sole Criminal Judge of the Judicial District of Acámbaro, state of Guanajuato which, on the grounds of the right to honor and to private life, sentenced to imprisonment the editor of a newspaper that had published a report on the behavior of a high-ranking public official.<sup>1242</sup> The ruling of the Supreme Court, expressly citing the highest Inter-American standards, underscored the need to prevent criminal law from being used as a mechanism to silence democratic debate on matters of public interest and state officials. Similarly, the Supreme Court considered that the defamation offenses of the Print Law of the state of Guanajuato, owing to their extreme vagueness and imprecision, were incompatible with the Constitution and with the standards of the Inter-American system regarding freedom of speech.<sup>1243</sup>

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<sup>1235</sup> Defamation laws are established in articles 166 and 169 of the Penal Code of the state of Tabasco, available at: [http://www.congresotabasco.gob.mx/LX/trabajo\\_legislativo/pdfs/codigos/Codigo\\_Penal\\_Tabasco.pdf](http://www.congresotabasco.gob.mx/LX/trabajo_legislativo/pdfs/codigos/Codigo_Penal_Tabasco.pdf)

<sup>1236</sup> Defamation laws are established in articles 248, 249, and 251 of the Penal Code of the state of Tlaxcala, available at: <http://www.congresotlaxcala.gob.mx/congreso/paginas/leyes.php>

<sup>1237</sup> Defamation laws are established in articles 294, 295, and 299 of the Penal Code of the state of Yucatán, available at: [http://www.congresoyucatan.gob.mx/pdf/CODIGO\\_PENAL.pdf](http://www.congresoyucatan.gob.mx/pdf/CODIGO_PENAL.pdf)

<sup>1238</sup> Defamation laws are established in articles 272 and 274 of the Penal Code of the state of Zacatecas, available at: <http://www.congresozac.gob.mx/cgi-bin/coz2/mods/secciones/index.cgi?action=todojuridico&cat=CODIGO&az=3588>

<sup>1239</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1240</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 30, 97. Available at: [http://www.cidh.org/pdf\\_files/Standards\\_for\\_free\\_and\\_inclusive\\_Boadcating.pdf](http://www.cidh.org/pdf_files/Standards_for_free_and_inclusive_Boadcating.pdf)

<sup>1241</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 30 December 2009, par. 114. Available at: [http://www.cidh.org/pdf\\_files/Inter\\_American\\_Legal\\_Framework\\_english.pdf](http://www.cidh.org/pdf_files/Inter_American_Legal_Framework_english.pdf)

<sup>1242</sup> Supreme Court, *Direct Review Injunction 2044/2008*, verdict of June 17, 2009.

<sup>1243</sup> Supreme Court, *Direct Review Injunction 2044/2008*, verdict of June 17, 2009. See also Office of the Special Rapporteur – IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=2>; Supreme Court of Justice of Mexico. June 17, 2009.

781. The Office of the Special Rapporteur also received information on the case of journalist Lydia Cacho (see *supra*), who was criminally charged with defamation laws in the state of Puebla after having published an investigative book on the crime of child pornography in which, among other things, she made allegations about a textile entrepreneur and leading politicians.<sup>1244</sup> Although subsequently, in 2007, the case was resolved in favor of Ms. Cacho, the admission of the complain initially resulted in the arrest of the journalist in irregular circumstances that, according to the CNDH, included ill-treatment and psychological torture.<sup>1245</sup>

782. Furthermore, the Office of the Special Rapporteur received information according to which two officials of the government of the state of Yucatán had on separate occasions filed legal complaints against journalists at the *Diario de Yucatán*. According to the information received from the newspaper and from an opposition member of the state legislature in this state, in February 2010 the State Secretary for Agricultural Advancement filed a complaint for defamation offenses against the journalist Hernán Casares Cámara, who had published reports on alleged irregularities in this entity.<sup>1246</sup> Likewise, according to the information received, in August 2010 an advisor to the governor of Yucatán brought a criminal action against the reporter Hansel Vargas after he had attempted to cover a fashion show in which a clothing company participated which, according to allegations made by the newspaper, received exorbitant state support.<sup>1247</sup>

783. In the state of Guerrero, civil society organizations working in the state alleged that the authorities were using offenses such as “illegal deprivation of freedom”, “attacks on general communication routes”, “attacks on communication routes and means of transport”, “revolt” and “sedition and sabotage” to criminally prosecute human rights workers and suppress social dissent.<sup>1248</sup> The Office in Mexico of the United Nations High Commissioner for Human Rights also made reference to these types of criminal offenses by observing that “arbitrary use of the legal system has been repeatedly noted” against human rights workers in the country.<sup>1249</sup>

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*Injunction granted to man convicted of crime of attacks on private life.* Available at: <http://www.scjn.gob.mx/MediosPub/Noticias/2009/Paginas/17-Junio-2009.aspx>; CEPET. June 18, 2009. *Court grants injunction to journalist and sets limits on criminal complaints against media workers.* Available at: [http://libex.cepnet.org/index.php?option=com\\_content&view=article&id=616:ampara-la-corte-a-periodista-y-fija-limites-a-demandas-penales-contracomunicadoes&catid=36:alertas&Itemid=55](http://libex.cepnet.org/index.php?option=com_content&view=article&id=616:ampara-la-corte-a-periodista-y-fija-limites-a-demandas-penales-contracomunicadoes&catid=36:alertas&Itemid=55), in general, IACHR, Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework Regarding the Right to Access to Information. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, chapter on “National Incorporation of Inter-American Standards with regard to Freedom of Expression during 2009,” paras. 81-99. Available at: <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf>

<sup>1244</sup>La Jornada, January 3, 2007, *Kamel Nacif loses lawsuit against Lydia Cacho*, available at: <http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n2pol>

<sup>1245</sup> CNDH, Recommendation 16 of March 6, 2009. Available at: <http://www.cndh.org.mx/recomen/2009/016.pdf>

<sup>1246</sup> Letter from Deputy Alicia Magally Cruz Nucamendi to the Office of the Special Rapporteur, August 12, 2010. *Diario de Yucatán*. August 11, 2010. “*Coordinadora de logística*”: *Gabriela López admite su relación con un plan estatal*. Available at: [http://v6.yucatan.com.mx/noticia.asp?cx=11\\$0928010000\\$4362111&f=0811](http://v6.yucatan.com.mx/noticia.asp?cx=11$0928010000$4362111&f=0811)

<sup>1247</sup> Email from Pablo Cicero Alonzo, assistant editor of Grupo Megamedia, to the Office of the Special Rapporteur, August 10, 2010. Letter from Deputy Alicia Magally Cruz Nucamendi to the Office of the Special Rapporteur, August 12, 2010. *Diario de Yucatán*. August 10, 2010. *Mordaza encubierta: Atenta contra la libertad de prensa una denuncia, opinan*. Available at: [http://v6.yucatan.com.mx/noticia.asp?cx=11\\$0928010000\\$4361667&f=20100810](http://v6.yucatan.com.mx/noticia.asp?cx=11$0928010000$4361667&f=20100810)

<sup>1248</sup> Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, chap. 2. Available at: <http://www.dplf.org/uploads/1279728364.pdf> of *Montaña de Tlachinollan* Human Rights Center, *Report on the Criminalization of Social Protest in the State of Guerrero*, August 2010.

<sup>1249</sup> OUNHCHR. *Defending human rights: between commitment and risk. Report on the situation of human rights defenders in Mexico*. Available at: <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>

784. In Guerrero the Office of the Special Rapporteur had the opportunity to interview human rights defender Raúl Hernández, indigenous leader of the Me'phaa Indigenous People's Organization (hereinafter "OPIM"), who was in prison in Ayutla de los Libres. The Office of the Special Rapporteur expresses its satisfaction that shortly after the visit, on August 27, 2010, the Combined Jurisdiction Court of First Instance based in Ayutla acquitted and released Mr. Hernández.<sup>1250</sup> According to the information received, in April 2008 Mr. Hernández and four other members of OPIM had been accused of homicide and arrested; arrest warrants for the same offense were issued against another ten members of OPIM, including its president.<sup>1251</sup> In March 2009 all those arrested were released upon obtaining a federal injunction, except for Mr. Hernández who was tried for the crime of homicide.<sup>1252</sup> Among other activities, OPIM has promoted as petitioner the cases *Fernández Ortega vs. Mexico*<sup>1253</sup> and *Rosendo Cantú vs. Mexico*,<sup>1254</sup> in which the Inter-American Court found the Mexican State responsible for the rapes suffered by the respective victims and the subsequent denial of justice in their cases. In its observations on the preliminary version of this report, the Mexican State reported that the acquittal of Mr. Raúl Hernández had been appealed.<sup>1255</sup>

785. The Office of the Special Rapporteur recalls that social protest is important for the consolidation of democratic life and that, in general, this form of participation in public life, as an expression of freedom of speech, is of imperative social interest. Therefore, the State is subject to an even stricter framework to justify a limitation on the exercise of this right.<sup>1256</sup> In this regard, the Office of the Special Rapporteur takes note of the decision of June 30, 2010, by the First Chamber of the Supreme Court which released 12 persons held in relation to the demonstrations that took place in San Salvador Atenco, State of Mexico, in 2006. The Office of the Special Rapporteur agrees with the Supreme Court in the sense that the authorities should not act on the basis of a prejudice regarding the behavior of a person who demands, via social protest, that his interests be taken into account, and that there should be no stigmas associating protest with violence and subversion.<sup>1257</sup>

786. Finally, the Office of the Special Rapporteur reiterates the importance of protecting the right of journalists to protect their sources of information, as pointed out by the Office of the

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<sup>1250</sup> *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge.*

<sup>1251</sup> Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, pp. 31-32. Available at: <http://www.dplf.org/uploads/1279728364.pdf> *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge.*

<sup>1252</sup> Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, pp. 31-32. Available at: <http://www.dplf.org/uploads/1279728364.pdf> *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge.*

<sup>1253</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215.

<sup>1254</sup> I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31. Series C No. 216.

<sup>1255</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1256</sup> IACHR. *Annual Report 2002*. OEA/Ser.L/V/II.117, March 3, 2003. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. IV, par. 34. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>

<sup>1257</sup> First Division of the Supreme Court of Justice of the Nation, Direct Review Injunction 4/2010, June 30, 2010.

Special Rapporteur in its 2003 report, on the occasion of its previous visit to Mexico. In this regard, the Office of the Special Rapporteur welcomes the progress registered at federal level by reason of the reform of the Federal Code of Criminal Proceedings, which includes the above-mentioned right,<sup>1258</sup> as well as the Law on Professional Secrecy of Journalists in the Federal District, approved in 2006,<sup>1259</sup> and recommends that these advances be reflected in every state.

## B. Civil actions

787. The Office of the Special Rapporteur also received information on legal actions of a civil nature against journalists and media organizations. In this regard, the Office of the Special Rapporteur recalls that, as the Inter-American Court has indicated, opinions cannot be considered either true or false; therefore, opinion cannot be the object of punishment.<sup>1260</sup> Likewise, heightened standards should exist to assess the subsequent responsibility of those who disseminate information on matters of general interest or of political criticism, including the standard of “actual malice”, and the strict proportionality and reasonableness of sanctions.<sup>1261</sup> Finally, journalists who investigate cases of corruption or improper conduct should not be subject to judicial prosecution or other type of harassment in reprisal for their work.<sup>1262</sup> It should be recalled that, as the Inter-American Court has observed, fear of civil punishment can be equally or more intimidating and inhibiting to the exercise of freedom of expression than criminal punishment, and clearly leads to the harmful outcome of self-censorship, both for the affected party and for other potential critics.<sup>1263</sup>

788. The Office of the Special Rapporteur welcomes the decision handed down by the Supreme Court of Justice in October 2009 which, with reference to the aforementioned Inter-American standards, acquitted the magazine *Proceso* of the charges of moral prejudice for the publication of a report about the first divorce of the wife of an ex-President of the Republic.<sup>1264</sup> The Twelfth Civil Court of the Federal District had ruled in favor of the complainant in the first instance, a ruling partially confirmed by the First Civil Division of the High Court of Justice of the District. By adopting a decision to the contrary, the Supreme Court explained that the case involved “a public figure, who, while at the time of the contested publication did not hold public office, it is true that her personal situation and her political activities were of national and international scope.” It mentioned that this scope was of such a degree “that it led to greater interest in and public scrutiny of her actions or behavior, and therefore to a legitimate interest on the part of society in receiving

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<sup>1258</sup> Federal Code of Penal proceedings, Art. 243 Bis.

<sup>1259</sup> *Ley del Secreto Profesional del Periodista en el Distrito Federal* [Law for the Professional Secrecy of Journalists in the Federal District], published in the *Gaceta Oficial del Distrito Federal* on June 7, 2006, available at: <http://www.aldf.gob.mx/archivo-0c29824a7c3a8aa1ae66f58dad3110cb.pdf>

<sup>1260</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, par. 86.

<sup>1261</sup> IACHR. *Annual Report 2007*. OAS/Ser.L/V/II.130, December 29, 2007. Vol. II, Report of the Office of the Special Rapporteur for Freedom of Expression, chap. VII, par. 7. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual\\_Report\\_2007.VOL.II.ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II.ENG.pdf)

<sup>1262</sup> See Joint Declaration of the Rapporteurs for Freedom of Expression of the UN, OSCE and IACHR, 2003. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&ID=1>

<sup>1263</sup> I/A Court H.R., *Case of Tristán Donoso vs. Panama* Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, par. 129.

<sup>1264</sup> Supreme Court of Justice. Judgment of October 7, 2009. Direct injunction 6/2009. CEPET. October 9, 2009. *Weekly cleared of charges, but writer still required to pay damages*. Available at: [http://www.ifex.org/mexico/2009/10/09/wornat\\_owes\\_damages/](http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/)

certain information about it.”<sup>1265</sup> The Supreme Court, incorporating Inter-American standards, reiterated the need to apply specific rules for resolving the conflict between freedom of expression, information and honor in cases involving public officials and public figures.<sup>1266</sup>

789. Furthermore, the information received by the Office of the Special Rapporteur indicates that, in some cases, the civil actions were filed for the purpose of harassing journalists and critical media. The CNDH has characterized as “harassment,”<sup>1267</sup> for example, the civil actions initiated against journalists from the magazines *Contralínea* and *Fortuna, Negocios y Finanzas* by individuals and companies linked to a single business group who filed at least five civil lawsuits against them in three different states.<sup>1268</sup> According to the information received, in one of these cases, Judge 44 of the Civil Court of the Federal District, on May 30, 2008, ruled against the editor of the magazine *Contralínea*, Agustín Miguel Badillo Cruz, the journalist Ana Lilia Pérez Mendoza, and the company to which the above-mentioned magazines belong.<sup>1269</sup> The verdict concludes that the articles published about the chairman of the board of directors of a business consortium of over 80 companies, which included an interview agreed to by the complainant himself as well as documents he had voluntarily handed over, constituted an “abuse of the right to information and to freedom of expression, by which the honor of the plaintiff was harmed.”<sup>1270</sup> The judicial decision gives no importance to “the fact that the plaintiff had granted the interviews and handed over the documents”, or “the fact that some of the information is in the public domain both in the national territory and abroad.”<sup>1271</sup> The verdict orders the publication of the full text of the sentence in the magazines, and the removal of the articles in question from the Internet.<sup>1272</sup> According to the information received, the appeal heard by the Sixth Civil Court of the High Court of Justice of the Federal District on September 23, 2008 upheld the verdict, and the direct writ for constitutional protection presented by the defendants was refused on December 11, 2008 by the Seventh Collegiate Court for Civil Matters.<sup>1273</sup> In its observations on the preliminary version of this report, the Mexican State reported that “the High Court of Justice of the Federal District underscores in the strongest terms that in this matter, as is clear from the account itself, all instances—that is, the deciding judge who ruled against the defendants in exercise of his jurisdictional functions, as well as the respective judges who upheld the decision—were in agreement regarding the ruling, and even the writ filed by the defendants was denied. So then if two higher authorities have reviewed the

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<sup>1265</sup> Supreme Court of Justice. Judgment of October 7, 2009. Direct Injunction 6/2009. CEPET. October 9, 2009. *Court acquits weekly magazine “Proceso” for complaint from ex-first lady.* Available at: [http://www.ifex.org/mexico/2009/10/09/wornat\\_owes\\_damages/](http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/)

<sup>1266</sup> See, in general, IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, chapter on “National Incorporation of Inter-American Standards with regard to Freedom of Expression during 2009,” paras. 100-114. Available at: <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20English.pdf>

<sup>1267</sup> See CNDH, Recommendation 57 of September 14, 2009, pp. 12-14. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1268</sup> See CNDH, Recommendation 57 of September 14, 2009, pp. 12-14. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1269</sup> Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

<sup>1270</sup> Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

<sup>1271</sup> Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

<sup>1272</sup> Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

<sup>1273</sup> Information provided to the Office of the Special Rapporteur by the magazine *Contralínea* during the on-site visit.

decision by Judge 44 and upheld his reasoning and ruling, it is pointless to engage in excessive analysis or subjective assessments, as in the case before us."<sup>1274</sup>

790. The Office of the Special Rapporteur is also concerned that within the framework of the proceedings mentioned in the preceding paragraph, a civil judge issued a provisional sentence against the journalists and the company prohibiting them from referring to the plaintiffs "by way of insults" in their reports,<sup>1275</sup> a measure equivalent to prior censorship. In addition, according to the information received by the Office of the Special Rapporteur, as part of these civil proceedings, the editor of *Contralínea* was arrested in circumstances questioned by the CNDH.<sup>1276</sup> Likewise, according to information from the CNDH, personnel from the Public Security Ministry of the Federal District and several civilians who, according to information provided by the magazine, declared themselves to be representatives of the plaintiffs, raided the premises of the magazine on February 11, 2009.<sup>1277</sup> The Office of the Special Rapporteur expresses its concern over these events, which indicate an attempt to use the judicial system to harass and silence journalists.<sup>1278</sup>

791. In its comments regarding the preliminary version of this report, the Mexican State referred to the February 11, 2009 operation carried out by the Federal District Public Security Secretariat at the offices of *Contralínea* magazine, noting that the operation was headed by Atty. Javier Campos Cervantes, clerk of the Thirty-Ninth Civil Court of the Federal District, to carry out the request of a judicial authority as part of an action brought by Gas Licuado S.A. de C.V. against Corporativo Internacional de Medios de Comunicación, the company to which *Contralínea* magazine belongs.<sup>1279</sup> Nonetheless, Clerk Campos reportedly stated that "the visit was likely made to a mistaken location, since it was not in line with social grounds," and thus he decided not to carry out the operation but to withdraw the personnel of the Federal District Public Security Secretariat.<sup>1280</sup> The State also reported that with respect to these events, "the National and Federal District Human Rights Commissions...decided to close their investigations."<sup>1281</sup>

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<sup>1274</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1275</sup> Civil Court 54 Secretariat "B", File 492/09, decision of April 22, 2009.

<sup>1276</sup> See CNDH, Recommendation 57 of September 14, 2009, p. 16. Available at: <http://www.cndh.org.mx/recomen/2009/057.pdf>

<sup>1277</sup> CNDH, Press Release CGCP/020/09, February 12, 2009.

<sup>1278</sup> The Office of the Special Rapporteur requested information from the State about the appearance of unknown individuals on the premises of the magazine *Contralínea* which took place in February 2009, but no reply was received. Request for information from the Mexican State by the Office of the Special Rapporteur, September 2, 2010.

<sup>1279</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1280</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

<sup>1281</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

792. In the state of Guerrero, the Office of the Special Rapporteur also received information about the existence of a substantial civil suit initiated in 2007 against journalists from the newspaper *El Sur*, as a result of the publication of information of public interest about the awarding of state contracts.<sup>1282</sup>

### C. Other related information

793. Finally, the Office of the Special Rapporteur received information about other actions which, as alleged by the affected parties, illegitimately restrict freedom of expression.

794. The Office of the Special Rapporteur received information about a campaign launched by the organization Catholics for Choice, called "*Otra mirada católica del aborto*" ("A different Catholic view of abortion").<sup>1283</sup> According to the information received, in June 2010 censure stamps were placed on the billboards that were placed in the city of Querétaro, state of Querétaro as part of this campaign. According to the information received, the City Council of the city publicly stated that the billboards did not comply with the corresponding permits.<sup>1284</sup> The organization Catholics for Choice informed the Office of the Special Rapporteur, however, that it had complied with the required norms and that it had not received an official explanation of the reason for the censure; as a result, it considered that its freedom of expression had been censored.<sup>1285</sup> The Office of the Special Rapporteur recalls that Article 13.3 of the American Convention prohibits indirect restrictions on freedom of expression, "such as abuse of government controls."

795. The Office of the Special Rapporteur also received information about the case of journalist Jesús Lemus Barajas, editor of the newspaper *El Tiempo* in La Piedad, located on the border of the state of Michoacán with the states of Jalisco and Guanajuato. According to the information received, Mr. Lemus Barajas has been held since May 2008, accused of "organized crime" and "crimes against public health."<sup>1286</sup> The journalist denounced to the Office of the Special Rapporteur that the criminal proceedings against him are the result of having reported on the new drug trafficking routes in the south of Guanajuato and the links between the drug cartels and the authorities.<sup>1287</sup> His complaint has been backed by the organization Reporters Without Borders which

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<sup>1282</sup> Second Court of First Instance for Civil Matters, *Alberto Javier Torreblanca Galindo vs. Información del Sur, S.A. de C.V. and others*, File 656-3/2007.

<sup>1283</sup> Catholic Women for the Right to Decide, "Campaign 'Another Catholic look at abortion' Censorship of billboards in Querétaro: a violation of freedom of expression," document provided to the Office of the Special Rapporteur during the on-site visit. IFEX. June 24, 2010. *Censorship of billboards for the campaign "A Different Catholic View of Abortion" in Querétaro*. Available at: [http://www.ifex.org/mexico/2010/06/25/derecho\\_a\\_decidir\\_censurado/es/](http://www.ifex.org/mexico/2010/06/25/derecho_a_decidir_censurado/es/)

<sup>1284</sup> Catholic Women for the Right to Decide, "Campaign 'A Different Catholic View of Abortion' Censorship of billboards in Querétaro: a violation of freedom of expression," document provided to the Office of the Special Rapporteur during the visit on-site. IFEX. June 24, 2010. *Censorship of billboards for campaign 'Another Catholic look at abortion' in Querétaro*. Available at: [http://www.ifex.org/mexico/2010/06/25/derecho\\_a\\_decidir\\_censurado/es/](http://www.ifex.org/mexico/2010/06/25/derecho_a_decidir_censurado/es/)

<sup>1285</sup> Catholic Women for the Right to Decide, "Campaign 'A Different Catholic View of Abortion' Censorship of billboards in Querétaro: a violation of freedom of expression," document provided to the Office of the Special Rapporteur within the framework of the on-site visit.

<sup>1286</sup> Letter from J. Jesús Lemus Barajas to the Office of the Special Rapporteur, August 2010, received during the on-site visit. See also Reporters without Borders, "México: los entresijos de la impunidad," September 2009, p. 6.

<sup>1287</sup> Letter from J. Jesús Lemus Barajas to the Office of the Special Rapporteur, August 2010, received during the on-site visit.

had access to the case file and concluded that “the evidence against him is non-existent [...] and the procedures followed reveal appalling failings.”<sup>1288</sup>

796. Meanwhile, the Office of the Special Rapporteur received information about the application of the provisions of Article 41 of the Constitution and of the corresponding norms of the Federal Code of Electoral Institutions and Procedures. These norms establish a series of rules about the broadcasting of political party advertising on radio and television during electoral times. They also establish a system of allotment of broadcasting times distributed among the political parties by the Federal Electoral Institute, and prohibit political parties or individuals from buying or obtaining radio or television advertising aimed at influencing citizens’ electoral preferences outside of this system. The Office of the Special Rapporteur received information according to which the existence and application of these norms resulted in the imposition of sanctions against political actors and communications media for expressing themselves on electoral matters. The Office of the Special Rapporteur recognizes that the legitimate interest of the State in promoting free, accessible and equitable elections can justify the imposition of rules on the dissemination of party-political advertising during electoral times. At the same time, it recalls that the proper development of democracy requires the greatest possible circulation of information, opinions and ideas on matters of public interest,<sup>1289</sup> and that expressions about public officials or candidates for public office should enjoy an especially strong margin of openness.<sup>1290</sup> Both the design of the norms and their application or implementation should take into account the delicate balance that should exist between the principles of equity and electoral transparency on the one hand, and the right to freedom of expression on the other. Currently various petitions regarding the application of the above-mentioned provisions are pending before the IACHR, and as such these norms and their application in the specific cases presented will be analyzed in detail within the framework of the contentious proceedings before the Commission.

## V. ACCESS TO INFORMATION

### A. Legal framework and effective guarantee of law

797. The right of access to information is a fundamental right protected by Article 13 of the American Convention. It is a particularly important right for the consolidation, functioning and preservation of democratic systems.<sup>1291</sup>

798. With regard to access to information, the Office of the Special Rapporteur expresses its satisfaction with the notable advances achieved by the Mexican State in recent years, which have made the country a point of reference on the issue. While the right to information has been provided for in the Mexican Constitution since 1977,<sup>1292</sup> as of 2007 the Constitution enshrines the

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<sup>1288</sup> Reporters without Borders, *México: Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 6. Available at: [http://files.reporterosinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF\\_Informe\\_Mexico\\_Impunidad\\_sept09.pdf](http://files.reporterosinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf)

<sup>1289</sup> I/A Court H.R., *Case of Kimel vs. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, paras. 57 and 87.

<sup>1290</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right of Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 40. Available at: <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20English.pdf>

<sup>1291</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right of Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 1/09 December 30, 2009, par. 1. Available at: [http://www.cidh.org/pdf%20files/Access to information.pdf](http://www.cidh.org/pdf%20files/Access%20to%20information.pdf)

<sup>1292</sup> Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in

right of access to government information by establishing in Article 6, *inter alia*, that “[a]ny information in possession of any federal, state or municipal authority, entity, body or agency, is public and may only be temporarily reserved for reasons of the public interest for periods set out by law.”<sup>1293</sup>

799. The Office of the Special Rapporteur also recognizes the importance of the Federal Law on Transparency and Access to Public Government Information, published on June 11, 2002. In particular, this law created the Federal Institute for Access to Information and Protection of Data (hereinafter “IFAI”) as the agency in charge of promoting and disseminating the exercise of the right to access to information, adjudicating denials to requests for access to information and protecting personal data held by agencies and entities.<sup>1294</sup> With the coming into effect of the Federal Law on Transparency and Access to Public Government Information, all federal public administration departments had to establish a liaison unit and an information committee as part of their structure. The former is in charge of receiving and processing requests for information from all persons<sup>1295</sup> and providing the information requested.<sup>1296</sup> Should the information requested be classified, it is the agency’s information committee that decides whether to make it public or withhold it.<sup>1297</sup> Should the information be denied, be declared nonexistent, be considered incomplete or not match the information requested, the applicant may file an appeal for review before the IFAI.<sup>1298</sup> In such a case, the IFAI issues a resolution in which it decides to provide the information requested or withhold it.<sup>1299</sup> This resolution may not be appealed by the liable party (the public administration department) but may be appealed in court by the party making the request.<sup>1300</sup>

800. The Office of the Special Rapporteur considers that the IFAI has played an exemplary role in protecting the right of access to information of individuals and developing a culture of transparency in public institutions of the federal public administration. This is reflected by the fact that requests for information made to the Mexican federal public administration increased from 37,732 in 2004 to 117,597 in 2009.<sup>1301</sup> Furthermore, according to the information received, in only 2.7% of cases was delivery of the information denied in the first instance on the grounds it was withheld or secret information.<sup>1302</sup>

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...continuation

Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights,” received on February 3, 2011.

<sup>1293</sup> Political Constitution of the United Mexican States, Art. 6. See also the document “Reform of Article 6 of the Constitution” delivered to the Rapporteur by IFAI within the framework of the on-site visit.

<sup>1294</sup> *Federal Law on Transparency and Public Government Information*, Art. 33.

<sup>1295</sup> *Federal Law on Transparency and Public Government Information*, Article 28 subsection II. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1296</sup> *Federal Law on Transparency and Public Government Information*, Article 44. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1297</sup> *Federal Law on Transparency and Public Government Information*, Article 45. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1298</sup> *Federal Law on Transparency and Public Government Information*, Articles 49 and 50. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1299</sup> *Federal Law on Transparency and Public Government Information*, Article 56. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1300</sup> *Federal Law on Transparency and Public Government Information*, Article 59. Available at <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>

<sup>1301</sup> Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

<sup>1302</sup> The statistics correspond to requests for information to the federal public administration between June 12, 2003 and July 31, 2010. Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

801. The Office of the Special Rapporteur also gives special recognition to the Supreme Court of Justice and the Electoral Tribunal of the Federal Judiciary (hereinafter “Federal Electoral Tribunal”) for their decisions guaranteeing the right of access to information. The Supreme Court has established that access to information is a “right founded on one of the principal characteristics of republican government, which is the public nature of acts of government and the transparency of the administration.”<sup>1303</sup> The Federal Electoral Court, for its part, has applied the obligation to respect the right of access to information to political parties, since “the nature of the political parties as entities of public interest means they share in the obligation of the State to guarantee the right to timely and truthful information, and obliges them to safeguard observance of the principles of openness and transparency in their internal affairs.”<sup>1304</sup>

802. These courts also stand out thanks to their innovative transparency policies. The Supreme Court, for example, has adopted a series of measures aimed at improving the public’s access to information on its activities, among them publicity regarding the public sessions of the Plenary and Chambers of the court, the supply of a significant amount of information through its Internet portal, and the creation of a diploma course in legal journalism aimed at journalists who cover the Supreme Court’s activities.<sup>1305</sup> The Office of the Special Rapporteur calls upon the other courts in the country, particularly state courts, to follow these examples of transparency and accessibility to citizens. The Office of the Special Rapporteur was informed that in some states, such as the state of Sinaloa and the Federal District, the paragraphs setting forth the legal grounds on which a judgment is based in verdicts of first instance are withheld from the public until all the judicial instances of the corresponding proceedings have been exhausted, a practice that affects the right of access to information and hinders citizen control over the performance of the judicial authorities.

803. In addition to meeting with the IFAI, the Office of the Special Rapporteur had the opportunity to interview the institutes for access to information of the states of Chihuahua, Guerrero and Sinaloa and of the Federal District, all of which provided important information for assessing the exercise of the right of access to information in these entities. The Office of the Special Rapporteur was able to verify that in general terms these agencies play an important role in implementing the respective legislation for access to information in force at state and municipal level, which were approved by each state between the years 2002 and 2007.

## **B. Challenges for the consolidation of the right of access to information**

804. Notwithstanding the significant advances recognized above, the Office of the Special Rapporteur notes that challenges still exist with regard to the effective guarantee of the right of access to information in Mexico.

805. At the federal level, it is important to point out that the IFAI only supervises compliance with the Federal Law on Transparency and Access to Public Government Information in the federal public administration, while the judiciary and legislature, and autonomous bodies do not have an independent supervisory body.

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<sup>1303</sup> Supreme Court of Justice of the Nation. Thesis on Jurisprudence P./J. 54/2008.

<sup>1304</sup> Electoral Court of the Judicial Branch of the Federation, Thesis XII/2007, *Jaime Delgado Alcalde vs. National Commission on Party Justice of the Institutional Revolutionary Party*.

<sup>1305</sup> “Actions of transparency, Access to Public Information, Personal Data and their Dissemination in the Supreme Court of Justice of the Nation,” document delivered to the Office of the Special Rapporteur by the Supreme Court of Justice of the Nation during the on-site visit.

806. At the state level, the Office of the Special Rapporteur received information from various parties, including public servants, journalists and civil society organizations, indicating that the legal and institutional framework that guarantees the effective exercise of the right of access to information before the Federal Executive does not always exist at the state and municipal levels. In this regard, there are both normative and practical challenges for the effective guarantee of the right of access to information at the local level.

807. With regard to the normative challenges, according to the information received by the Office of the Special Rapporteur during the in loco visit, nine states – Baja California, Baja California Sur, Campeche, Guerrero, Oaxaca, Puebla, Querétaro, Sonora and Zacatecas – had still not adapted their laws on access to information to the amendments made to Article 6 of the Constitution in 2007.<sup>1306</sup> Furthermore, the Office of the Special Rapporteur was informed of a reform of the Law on Transparency and Access to Public Information in the state of Guerrero, published in June 2010, which would entitle the government entity obliged to comply with an information request to legally contest the decisions of the Institute of Transparency and Access to Public Information of this state.<sup>1307</sup> The Office of the Special Rapporteur considers that the possibility of government entities challenging by means of ordinary appeals the resolutions of the institutes for access to information leads to a denial of the right to obtain the information requested by way of a simple, expeditious and specialized process.<sup>1308</sup>

808. From a practical perspective, the Office of the Special Rapporteur first observes a major disparity in the exercise of the right of access to information among the different states. Taking as a reference point the places visited during the on-site visit, it was observed that in the Federal District one information request for every 95 persons was presented to the entity's institute for transparency during 2009,<sup>1309</sup> whereas in Chihuahua one request was presented for every 865 persons,<sup>1310</sup> in Guerrero one request was presented for every 1,014 persons,<sup>1311</sup> and in Sinaloa one request for every 412 persons was presented.<sup>1312</sup> This pattern is repeated at the federal level,

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<sup>1306</sup> See Institute for Access to Public Information of the Federal District, "Access to Information and Protection of Personal Data in the Federal District," document delivered to the Office of the Special Rapporteur during the on-site visit.

<sup>1307</sup> *Law No. 374 on Transparency and Access to Public Information of the State of Guerrero*, published on June 15, 2010, Art. 146.

<sup>1308</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 26. Available at: <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf>

<sup>1309</sup> In 2009 there were 93,195 requests for information out of a population of 8,841,916 persons in the Federal District. See Institute of Access to Public Information of the Federal District, "Access to Information and Protection of Personal Data in the Federal District," document delivered to the Office of the Special Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: [http://www.conapo.gob.mx/index.php?option=com\\_content&view=article&id=125&Itemid=203](http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203)

<sup>1310</sup> In 2009 there were 3,919 requests for information out of a population of 3,391,617 persons in Chihuahua. See Institute of Chihuahua for Transparency and Access to Public Information "Access to Public Information and Protection of Personal Data in the State of Chihuahua," document delivered to the Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: [http://www.conapo.gob.mx/index.php?option=com\\_content&view=article&id=125&Itemid=203](http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203)

<sup>1311</sup> In 2009 there were 3,097 requests for information out of a population of 3,140,529 persons in Guerrero. See Institute of Transparency and Access to Public Information of the State of Guerrero, "4 years of activities," document delivered to the Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: [http://www.conapo.gob.mx/index.php?option=com\\_content&view=article&id=125&Itemid=203](http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203)

<sup>1312</sup> In 2009 there were 6,441 requests for information out of a population of 2,652,451 persons in Sinaloa. See State Commission on Access to Public Information of the State of Sinaloa, "Annual Report on Activities and Results 2009," p. 7, available at: <http://www.ceaiques.org.mx/pdf/informe2009.pdf> See also data on population of the National Population Council, available at: [http://www.conapo.gob.mx/index.php?option=com\\_content&view=article&id=125&Itemid=203](http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203)

where more than half of the requests for information between 2003 and 2010 come from the Federal District and the State of Mexico alone.<sup>1313</sup> These statistics point to the need to expand and standardize knowledge and real access to the right of access to information throughout Mexico. In this regard, the Office of the Special Rapporteur considers it important to continue advancing in the incorporation of all the states into the Infomex platform, which allows the electronic submission of requests for access to public information. According to information from the IFAI, 21 states entities already have the system, while ten are in the process of implementing it.<sup>1314</sup> At the same time, the Office of the Special Rapporteur insists on the need to continue strengthening and extending other ways of exercising the right of access to information, bearing in mind that according to State figures only 26.4% of the Mexican population has access to the Internet.<sup>1315</sup>

809. Likewise, according to the information received, many state and municipal authorities are unaware of their obligations in relation to the right of access to information, and do not have established procedures to allow people to exercise this right in a real and effective manner. Thus, for example, the Commission for Access to Public Information of the State of Guerrero informed the Office of the Special Rapporteur that the challenges it faces for effectively guaranteeing the exercise of the right of access to information in this State include, among others, the “resistance and lack of interest” of some public officials, “mainly in city councils”; the “lack of appropriate training of personnel in information management and protection of personal data”; and the “insufficient operational infrastructure in the government entities obliged to comply with the law.”<sup>1316</sup>

810. The Office of the Special Rapporteur was also informed of the existence of lawsuits that seek to contest the definitive and unchallengeable nature of the resolutions by the IFAI<sup>1317</sup> and state transparency agencies that oblige government institutions to hand over the information in question.<sup>1318</sup> According to the information provided, while the courts had traditionally rejected attempts by public authorities to judicially challenge the resolutions of the IFAI, the Federal Court of Fiscal and Administrative Justice (hereinafter “TFJFA”) recently agreed to review two resolutions of the Institute.<sup>1319</sup> In one of those cases, according to the information received, it has already declared the partial nullity of an IFAI resolution that ordered the PGR to hand over the public versions of criminal investigations initiated against a former head of government in the Federal District.<sup>1320</sup> The other case, according to the information received, deals with a petition for nullity

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<sup>1313</sup> According to the information delivered to the Rapporteur by IFAI during the on-site visit, between June 12, 2003 and July 31, 2010, 560,148 requests for information were presented to the federal public administration, of which 249,295 came from the Federal District and 73,353 came from the State of Mexico.

<sup>1314</sup> IFAI, Press Release IFAI/133/10, October 9, 2010.

<sup>1315</sup> According to COFETEL, 28,439,250 people had access to Internet in Mexico in 2009. See information available at: [http://www.cft.gob.mx/en/Cofetel\\_2008/Cofe\\_usuarios\\_estimados\\_de\\_internet\\_en\\_mexico\\_2000](http://www.cft.gob.mx/en/Cofetel_2008/Cofe_usuarios_estimados_de_internet_en_mexico_2000) The population of Mexico in 2009 was 107,550,697. See data on population of the National Population Council, available at: [http://www.conapo.gob.mx/index.php?option=com\\_content&view=article&id=125&Itemid=203](http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203)

<sup>1316</sup> See Institute for Transparency and Access to Public Information of the State of Guerrero, “4 years of activities,” document delivered to the Rapporteur during the on-site visit. See also Institute of Transparency and Access to Public Information of the State of Guerrero, “Annual Report on Activities and Results 2009,” p. 40.

<sup>1317</sup> The *Federal Law on Transparency and Access to Public Government Information* establishes in Article 59 that “The resolutions of the Institute shall be definitive for agencies and entities.” Individuals may challenge them before the Judicial Branch of the Federation.

<sup>1318</sup> See, in general, Litiga OLE, “the Defense of the Right to Information in Mexico,” document delivered to the Office of the Special Rapporteur during the on-site visit.

<sup>1319</sup> Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico*. Available at: <http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf>

proceedings presented by the Tax Administration Service (hereinafter "SAT") against the IFAI resolution that ordered the SAT to reveal the names of taxpayers (559,000 persons and companies) who benefited from the cancellation or amnesty of fiscal credits in 2007 for a total of 74 billion pesos.<sup>1321</sup>

811. As of the date on which this report was completed the Supreme Court of Justice was analyzing an unconstitutionality suit against the Law of Transparency and Access to Public Information in the state of Campeche.<sup>1322</sup> This legislation allows liable public bodies to legally challenge the resolutions of the Commission on Transparency and Access to Public Information of this state.<sup>1323</sup> In this regard, the IFAI has expressed that this provision violates the Constitution, since "it not only slows down proceedings, but also complicates them, for the individual who does not possess technical knowledge in juridical matters will necessarily require legal advice to duly process the litigious proceedings and thus try to obtain a verdict favorable to his interests."<sup>1324</sup>

812. The Office of the Special Rapporteur expresses its concern over these developments since, as has been stated, the possibility of government entities challenging by means of ordinary appeals the resolutions of the IFAI and its equivalent state bodies risks denying the right to obtain the information requested by way of a simple, expeditious and specialized process, thus depriving the right of access to information of its purpose.<sup>1325</sup>

813. Finally, the Office of the Special Rapporteur received information on an constitutional challenge brought by the CNDH<sup>1326</sup> alleging the invalidity of Article 16 of the Federal Code of Criminal Procedure,<sup>1327</sup> which regulates access to the case files of preliminary criminal investigations. Based on the amendments made to this norm in January 2009, the PGR has refused

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<sup>1320</sup> Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico*. Available at: <http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf>

<sup>1321</sup> Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico*. Available at: <http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf>

<sup>1322</sup> Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit, including IFAI, *Report on Action of Unconstitutionality 56/2009*, Memo IFAI/SA/089/09, July 15, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

<sup>1323</sup> The State of Campeche Law on Transparency and Access to Public Information establishes in its Article 74: "Resolutions issued by the Commission may be challenged by individuals before the Administrative Division of the state High Court of Justice, through nullification proceedings provided for in the State Code of Contentious-Administrative Proceedings; and by the access units before the Plenary of the High Court, in accordance with the provisions established in the aforesaid Code for processing an appeal for review. In this last case, the Commission may not require that its resolution be executed or carried out unless and until it has been confirmed by the Plenary of the Court." Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex VIII, received on February 3, 2011.

<sup>1324</sup> IFAI, *Report on Action of Unconstitutionality 56/2009*, Memo IFAI/SA/089/09, July 15, 2009, document delivered to the Rapporteur by IFAI during the on-site visit, p. 16.

<sup>1325</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right of Access to Information in the*. OAS/Ser.L/V/II CIDH/RELE/INF. 1/09 December 30, 2009, par. 26. Available at: [http://www.cidh.org/pdf\\_files/Access\\_to\\_information.pdf](http://www.cidh.org/pdf_files/Access_to_information.pdf)

<sup>1326</sup> Petition for unconstitutionality suit brought by the National Commission on Human Rights, AC 26/09, February 5, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

<sup>1327</sup> Article 16 of the Federal Code of Criminal Procedures establishes, in the relevant part, that "For purposes of access to public government information, only a public version of the resolution of non-exercise of penal action should be provided, as long as a term equal to the prescription period of the offenses involved has elapsed, in accordance with the provisions of the Federal Criminal Code, with a minimum of three and maximum of twelve years, counted from the time the resolution was declared final."

to provide public versions of preliminary investigations that are concluded or inactive beyond a reasonable term, including with regard to serious violations of human rights or crimes against humanity, such as for example the investigations into the forced disappearances of Rosendo Radilla Pacheco and other persons.<sup>1328</sup> Like the CNDH, the IFAI has considered that permanent, indiscriminate restrictions on access to preliminary investigation files violates the guarantees of access to public information contained in Article 6 of the Political Constitution.<sup>1329</sup>

814. The Office of the Special Rapporteur recognizes the need to withhold open criminal investigations in order not to affect the investigation and to protect sensitive data. Nevertheless, the Office of the Special Rapporteur considers that delivery of a public version of information on investigations that have been concluded or inactive for years, with due regard for the protection of sensitive data and elements which it can be proven should be withheld to protect other legitimate interests, promotes the public nature of the proceedings and is a guarantee of appropriate inter-departmental and public oversight of the bodies of administration of justice. This is precisely the purpose of the right of access to information.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

815. Based on the information gathered on the occasion of the on-site visit to Mexico, and in view of the situation that holds sway with regard to freedom of expression in the country, which demands urgent action, the Office of the Special Rapporteur herewith takes the opportunity to reiterate many of the conclusions and recommendations issued on the completion of its official visit to the country in August 2010. The Office of the Special Rapporteur once again places itself at the disposal of the Mexican State and offers its assistance in order that the recommendations may be complied with as soon as possible.

### **A. Violence, impunity and self-censorship**

816. The Office of the Special Rapporteur finds that freedom of expression in Mexico faces grave obstacles, mainly due to the acts of violence and intimidation against journalists in the country. According to the information received, between the year 2000 and July, 2010, 64 journalists have been murdered and 11 have been disappeared, making Mexico the most dangerous country in the Americas in which to practice journalism. The security situation for journalists remains critical; in 2010 the Office of the Special Rapporteur recorded 13 murders of journalists in the country, as well as disappearances, kidnappings, armed attacks against media offices, and numerous instances of threats and harassment. The Office of the Special Rapporteur was able to verify that in recent years most of the murders, disappearances and kidnappings of journalists have occurred in states where organized crime has a strong presence, including the states of Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa and Tamaulipas. In some of these states there are communities that have been completely silenced by the chilling effect of the climate of violence and impunity.

817. Incomplete investigations in most of the cases prevent an exact determination of the causes and perpetrators of these crimes. However, the information received by the Office of the Special Rapporteur makes it possible to assert that in these places organized crime is the greatest threat to the lives and physical safety of journalists, especially those who cover local affairs such as government corruption, drug trafficking, organized crime, public safety, and related subjects.

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<sup>1328</sup> Litiga OLE, "the Defense of the Right to Information in Mexico," document delivered to the Office of the Special Rapporteur during the on-site visit.

<sup>1329</sup> IFAI, Report on Action of Unconstitutionality 26/2009, Memo IFAI/ALI/069/09, March 25, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

818. The Office of the Special Rapporteur is aware that the issue of violence in Mexico affects all sectors of the population. Nevertheless, it observes that the attacks against journalists and members of the media have multiplying effects that impact all other journalists and media workers, generate fear and self-censorship, deprive society in general of its right to be informed, and discourage reports or complaints, all of which increases impunity. As such it welcomes the adoption, in November, 2010, of the Coordination agreement for the implementation of preventive and protective actions for journalists, which represents the first step towards the creation of a national mechanism for the protection of journalists and media workers.

819. The Office of the Special Rapporteur is convinced that the protection of the right to freedom of expression must be a fundamental part of the citizen security agenda in Mexico. Accordingly, the Office commends the existence of a Special Prosecutor's Office to attend to crimes against freedom of expression, and the aforementioned adoption of an agreement that seeks to guarantee the protection of journalists. Nevertheless, the Office of the Special Rapporteur is seriously concerned to have verified the impunity that is typical of crimes against journalists in Mexico, a phenomenon that perversely encourages the recurrence of these types of crimes.

820. Without a comprehensive public policy aimed at guaranteeing the freedom to seek, receive and disseminate information by any means, it is impossible for Mexican society to contribute to the fight against crime and corruption, and for it to exercise active and informed oversight of the State's actions to deal with crime and protect the public.

821. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Recognize, at the highest levels of the State, the legitimacy and value of the work of journalists, and condemn attacks committed in reprisal for the exercise of freedom of expression.
- Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.
- Strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression of the PGR as well as the state criminal justice systems. It is especially recommended that the necessary reforms be made to facilitate the exercise of federal jurisdiction over crimes against freedom of expression.
- Endow the Special Prosecutor's Office and the local prosecutors' offices with greater autonomy and greater resources. In particular, adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity, and ensure that all possible violations of the right to freedom of expression are investigated by the civilian authorities.
- Strengthen the capacity of public human rights bodies to act by, among other things, approving the proposed constitutional reform on human rights that is currently pending.
- Implement the Coordination Agreement for the implementation of preventive and protective actions for journalists as a national mechanism for the protection of journalists and media workers. The application of the Agreement should take into account: 1) the need to guarantee the necessary financial and personnel resources for the effective implementation of the mechanism; 2) the need to guarantee effective coordination between the bodies responsible for the adoption of preventive and protective measures; 3) the need to adequately define the protective measures contemplated by the mechanism and the procedures for their adoption; 4) the need to guarantee the

full participation of journalists, civil society and beneficiaries in the implementation and functioning of the mechanism; and 5) the expediency of seeking the support of the international community in implementing the mechanism

- Provide training to members of the security forces on the subject of freedom of expression.

#### **B. Freedom, diversity and pluralism in democratic debate**

822. With respect to the regulation of the electromagnetic spectrum and the enforcement of broadcasting provisions, the Office of the Special Rapporteur observes a high degree of concentration in the ownership and control of the communications media to which television and radio frequencies are allocated.

823. In addition, it notes that there is no independent regulatory body, and that the legal framework currently in force does not provide guarantees of certainty, pluralism and diversity. In particular, there is no legal framework that recognizes community broadcasters and establishes clear, well-founded, and equitable procedures whereby such broadcasters can apply for and obtain operating frequencies.

824. With regard to government advertising, government spending is high and increasing. The absence of a regulatory framework has allowed government advertising to be used discretionally, and it can therefore be employed to pressure, punish, reward or favor communications media according to their editorial slants.

825. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Adopt a legal framework that provides legal certainty, promotes the diversification of radio and television, and contributes to the creation of a media market that is pluralistic and accessible to all sectors of the population, especially community broadcasting.
- Guarantee that the allocation of radio or television licenses be fully, clearly, and transparently regulated by law, based on criteria that are objective, clear, public, and democratic.
- Establish a public body to regulate radio and television that is independent of the government.
- Establish legal mechanisms to guarantee that the transition to digital broadcast services guarantees the greatest plurality and diversity possible in the use of the spectrum.
- Establish objective, clear, transparent and nondiscriminatory criteria in the allocation of government advertising for all levels and bodies of government.

#### **C. Legal actions relating to the exercise of freedom of expression**

826. The Office of the Special Rapporteur acknowledges the progress made at the federal level and in many states with regard to the decriminalization of defamation laws libel, slander and defamation. Nevertheless, there are still criminal law provisions that allow the criminalization of the exercise of freedom of expression. The Office of the Special Rapporteur is concerned about the use of criminal provisions against journalists who cover issues of public interest, individuals who work at community radio stations, and social activists in the context of social protest.

827. The Office of the Special Rapporteur is concerned about civil legal actions against journalists and media outlets in a legal environment lacking specific standards to evaluate the subsequent liability of individuals who disseminate information on matters of public interest or public affairs. Furthermore, the Office of the Special Rapporteur received information concerning civil actions that may be meant to harass and to silence criticism, and that have been filed against journalists and media outlets.

828. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act and in the state criminal codes, and refrain from using other criminal provisions to suppress the legitimate exercise of freedom of expression.
- Guarantee that journalists not be subjected to judicial harassment or other types of legal harassment in retaliation for their work. This entails establishing specific standards for evaluating subsequent civil liability, including the standard of actual malice and the strict proportionality and reasonableness of any subsequent sanctions.

#### **D. Access to information**

829. The Office of the Special Rapporteur acknowledges the notable progress made by the Mexican State in recent years, which has made the country a point of reference on the subject of access to information. At the same time, it observes that the institutional and legal framework to guarantee the effective exercise of the right to access to information before the federal executive branch does not always exist at the state and municipal levels. The Office of the Special Rapporteur also was informed of the existence of state legislation and legal actions which seek to reverse the final and unchallengeable nature of the decisions of the Federal Institute for Access to Information and Data Protection and of the state transparency bodies.

830. The Office of the Special Rapporteur was informed of practices that limit transparency in the justice system. Thus, for example, some state courts keep lower court judgments that have been appealed confidential until all corresponding remedies are exhausted in the case. Likewise, pretrial investigations are kept confidential until a period of time has elapsed equal to the one provided for in the statute of limitations for the offense in question. This is based on a recent amendment to Article 16 of the Federal Code of Criminal Procedure, which is under review by the Supreme Court.

831. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Preserve the advances made with respect to access to information, ensuring that the transparency bodies are autonomous, have appropriate and stable budgets, and that their decisions are final and unchallengeable.
- Continue to expand real access to the right of access to public information, strengthening the institutional capacity at every level of government so as to respond appropriately and in a timely manner to requests for information and establishing simple mechanisms (which include, but are not limited to, the Internet) to make such requests.
- Deepen transparency in the justice system, guaranteeing access to the judgments of the courts and to a public version of pretrial investigations that have either concluded or have been inactive for an unreasonable period of time.



## E. Final comments

832. The Office of the Special Rapporteur feels privileged to have witnessed an emerging sense of solidarity among journalists in Mexico. On August 7, 2010, the day before it arrived in the country to carry out its on-site visit, reporters, camera operators, photographers and columnists from numerous media outlets held public demonstrations in 14 cities to demand secure working conditions for the exercise of their professions and to protest against the kidnapping of four journalists in Gómez Palacio, state of Durango, by a group demanding the broadcast of videos in exchange for their freedom. The Office of the Special Rapporteur applauds these efforts and calls upon all journalists to continue and expand upon these solidarity and mutual support initiatives. It also expresses its admiration towards those journalists it met – and many it did not have the chance to meet – who exercise their profession with great dignity and dedication in spite of the difficult and perilous conditions to which they are subject. It also expresses its solidarity with those journalists who have been victims of violence, and their families.

833. In the course of its visit the Office of the Special Rapporteur received information about a number of initiatives undertaken by some communications media to improve working and security conditions for their staff. Following its visit it also received information about an initiative of the National Chamber for the Radio and Television Industry to draw up a security protocol for the protection of media workers against attacks and threats from criminal organizations.<sup>1330</sup> The Office of the Special Rapporteur invites all media company owners to provide appropriate support to journalists,<sup>1331</sup> including security protocols and the training required to minimize the risks. Similarly, journalists and their families should have access to social security benefits.

834. Further, the Office of the Special Rapporteur recognizes the fundamental importance of the work carried out by civil society organizations that monitor the state of freedom of expression in Mexico in all its aspects, including attacks on journalists. It considers it essential that these organizations continue to carry out this important work in safe conditions and urges Mexican society and the international community to continue to support their efforts.

835. Finally, the Office of the Special Rapporteur acknowledges once again the openness displayed by the Mexican State in inviting it to conduct an official visit to the country, and expresses its continued willingness to support all efforts by the State to strengthen the freedom of expression of all Mexicans. It respectfully urges the State to implement these recommendations as quickly as possible, and again offers to participate in the follow-up mechanism proposed by the State at the conclusion of the on-site visit. The urgent state of freedom of expression in Mexico requires immediate and effective actions such as those identified in this report.

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<sup>1330</sup> El Universal. October 12, 2010. *Anuncian protocolo para proteger a periodistas*. Available at: <http://www.eluniversal.com.mx/notas/715725.html>

<sup>1331</sup> See Joint Declaration by the Rapporteurs for Freedom of Expression of the UN, OSCE and IACHR, 2003. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>

**29. Proposed Categories and Standards for the Special Country Reports of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights**

**Introduction**

836. The purpose of this document is to propose a series of categories and standards on freedom of expression and access to information that can provide basic input for the preparation of the special reports of the Office of the Special Rapporteur for Freedom of Expression (hereinafter, the Office of the Rapporteur) of the Inter-American Commission on Human Rights, following an official visit or in special circumstances that may so warrant.

837. Over the years, the Office of the Rapporteur has varied the depth of its country reports and the type of facts it reported. At times it included all the information and cases it had received, while on other occasions it placed special emphasis on certain emblematic events.

838. The methodology for preparing these reports has essentially been the following: in direct meetings or through documents, sources provide different types of information, ranging from attacks on journalists to laws and government decisions that could affect freedom of expression. This information is confirmed to a reasonable degree and included in the report along with a series of recommendations.

839. Using the proposed input should serve the Office of the Rapporteur's aim that the special country reports that come out of official visits bring to light the main problems related to freedom of expression in the country, so as to generate recommendations and proposals that are relevant, viable, and feasible.

840. In the medium term, in accordance with technical possibilities, the Office of the Rapporteur will plan to develop thematic indicators based on these standards, as well as to implement these categories and standards in its annual reports. This effort will depend both on the Office of the Special Rapporteur's real operational and management capacity and on the information that the States and strategic actors are able to provide.

841. This series of standards is based on the development of the right to freedom of expression and the right of access to information carried out thus far by the Commission and the Inter-American Court of Human Rights. Thus, its formulation is primarily descriptive. To the extent that the inter-American system expands the scope of these rights, it will be necessary as well to expand the standards presented here.

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842. The categories were developed using different types of input and after going through several stages. The following documents were used as a basis: (i) the Office of the Rapporteur's country reports; (ii) the "2010 Methodology to Evaluate the Situation of the Right of Access to Public Information in the Americas," also by the Office of the Rapporteur; and (iii) "The Situation of Freedom of Expression in the Americas: An Analysis in Light of the Reports of the Office of the Special Rapporteur for Freedom of Expression," by the University of Palermo's Center for Studies on Freedom of Expression.

843. Also analyzed were monitoring and reporting protocols used by the region's civil society organizations that work to defend freedom of expression. Finally, in-person and virtual consultations were held with representatives of these organizations to discuss and validate this

document. A number of the suggestions made in these venues were incorporated into the final version.

844. This document is divided into two parts: (i) a preliminary explanation of the methodology used to develop this document; and (ii) the proposed categories and standards that have been developed. An additional document will develop subjects related to the validation and documentation of the standards for the preparation of the reports.

#### **Preliminary Explanation of the Methodology Used**

845. The proposed standards are divided into seven categories: 1. Infringement of the right to life and physical integrity, and omission of the guarantee obligation; 2. Censorship and other prior conditioning; 3. Detentions; 4. Imposition of subsequent liability; 5. Access to information; 6. Pluralism and diversity; and 7. Indirect censorship or abusive use of State power.

846. Each category, which is briefly defined, thematically groups together a number of standards, which vary depending on the subject matter. Both the definition of the categories as well as the formulation of the standards were done based on Article 13 of the American Convention on Human Rights; the "Declaration of Principles on Freedom of Expression" of the Inter-American Commission on Human Rights; and the doctrine and case law of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

847. The categories are written in such a way as to be able to identify whether a fact (or series of facts) or piece of information about the legal system (a legal or constitutional principle, a judicial decision, or an administrative ruling) negatively affects or ensures the right to freedom of expression.

848. This document understands the term standard as a piece of information that provides guidelines regarding compliance with a specific aspect of the right to freedom of expression and the right of access to information. It is differentiated from the term indicator in that the formulation of the standard is broader and does not aim to elicit quantitative facts in order to obtain comparative scales or values, but aims rather to guide the documentation of cases and lay the foundation for subsequent methodologies.

849. The standards are divided into two types: structural and dynamic. Structural standards refer to the States' adoption of basic laws, instruments, and mechanisms in the area of freedom of expression and access to information. Dynamic standards, for their part, refer to changing and actual conditions regarding the guarantee of this right.

850. Where necessary, the standards will be accompanied by their respective verification factors. These are supplementary descriptions that allow for a clearer definition of the scope of each standard. They are especially necessary to use when the standards are broad or are presented as negative formulations, representing the States' obligations "not to do."

851. It is important to clarify that the application of these standards will depend on how and when the information is received or captured, and on the Office of the Rapporteur's real capacity to evaluate and consider it. Thus, the intent is not that all these categories should necessarily be developed in depth in each country report, in response to each standard, but rather that the information that is received can be classified and grouped in such a way that it can later be analyzed according to the office's institutional capacity. In other words, the fact that a specific standard is not addressed in a report, with respect to a country or several countries, does not imply that that standard is being met.

## 2. Proposed Categories and Standards

### 1. Infringement of the Right to Life and Physical Integrity, and Omission of the Guarantee Obligation

Any kidnapping, intimidation, attack, or threat made against media workers (*comunicadores sociales*) or those who disseminate information or opinions, for reasons related to these activities, violates people's fundamental rights and severely restricts freedom of expression.

States have the obligation to prevent and investigate such acts, punish the perpetrators, and ensure appropriate redress for the victims. The authorities have the obligation to guarantee the conditions under which individuals can exercise freedom of expression without it costing them their lives or personal integrity.

The State has an obligation to guarantee freedom of expression, which it omits when it fails to take the steps within its power to prevent a real or immediate special risk, or when it fails to meet its obligation to punish third parties who have committed crimes to inhibit the exercise of freedom of expression or in reprisal for this right having been exercised.<sup>1332</sup>

### Structural Standards

1.1. Types of conduct that constitute attacks on life and physical integrity are established as crimes, through laws of either a general or specific nature, with regard to journalists or those who exercise freedom of expression.

#### Verification Factors

- Laws exist that criminally punish attacks on the life and integrity of all citizens.
- Laws exist that criminally punish attacks on the life and integrity of journalists or those who exercise freedom of expression.

1.2. In States in which special risks exist for those who exercise their right to freedom of expression, there are special mechanisms for protection.

#### Verification Factors

- In the State in question, there are special risks for those who practice journalism or exercise the right to freedom of expression.
- Special protection mechanisms exist for journalists or those who exercise freedom of expression who are at risk for practicing their profession.

1.3. In the investigation and prosecution of crimes committed to silence an expression or in reprisal for an expression, special investigative mechanisms exist to advance the fight against impunity for such crimes.

#### Verification Factors

- Special mechanisms exist for investigating murders and attacks carried out against journalists and those who exercise freedom of expression.
- The special mechanisms for investigating murders and attacks carried out against journalists and those who exercise freedom of expression contemplate measures to fight impunity for such crimes.

<sup>1332</sup> See *Ríos et al. v. Venezuela*, Inter-American Court of Human Rights, judgment of January 28, 2009, para. 137.

1.4. Murders. Journalists, media workers, and persons who exercise freedom of expression are not killed due to the occupation they practice or to the dissemination of opinions or information.

**Verification Factors**

- Murders, during the established time frame, of journalists, media workers, or those who exercise freedom of expression.
- Murders of such persons due to their occupation or to the exercise or dissemination of opinions or information, within the established time frame.

1.5. Disappearances. Journalists, media workers, and those who exercise freedom of expression are not disappeared due to the occupation they practice or to the dissemination of opinions or information. Forced disappearance is understood to mean the act of depriving a person or persons of freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.<sup>1333</sup>

**Verification Factors**

- Journalists, media workers, or those who exercise freedom of expression who have disappeared within the established time frame.
- Cases of disappearances of such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.6. Kidnappings. Journalists, media workers, and those who exercise freedom of expression are not kidnapped due to the practice of their profession or to the dissemination of opinions or information. Kidnapping shall be understood to mean the taking, holding, or hiding of a person.<sup>1334</sup>

**Verification Factors**

- Journalists, media workers, and those who exercise freedom of expression who are kidnapped within the established time frame.
- Cases of kidnappings of such persons due to their occupation or to the exercise or dissemination of opinions or information, within the established time frame.

1.7. Torture. Journalists, media workers, and those who exercise freedom of expression are not tortured due to the occupation they practice or to the dissemination of opinions or information. Torture shall be understood to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or

<sup>1333</sup> See Inter-American Convention on Forced Disappearance of Persons, Article II.

<sup>1334</sup> Cf., among others, Chilean Criminal Code: "Article 141. Anyone who wrongfully confines or detains another person, depriving that person of his or her liberty, commits the crime of kidnapping and shall be punished with the penalty of short-term imprisonment in the maximum degree...."

Colombian Criminal Code: "Article 168. Simple kidnapping. Anyone who, for purposes other than those provided for in the following article, snatches, abducts, holds, or hides a person, shall incur a prison sentence ranging from ten (10) to twenty (20) years and a fine of six hundred (600) to one thousand (1,000) times the current monthly minimum wage."

Federal Criminal Code of Mexico: "Article 366. To anyone who deprives another of liberty, the following shall apply...."

is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.<sup>1335</sup>

### Verification Factors

- Journalists, media workers, and those who exercise freedom of expression who are tortured within the established time frame.
- Cases of torture of such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

### 1.8. Cruel, inhuman, or degrading treatment. Journalists, media workers, and those who exercise

...continuation

<sup>1335</sup> Cf. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Rome Statute, Article 7, No. 2, para. (e): "'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions..."

<sup>1336</sup> See Committee against Torture, General Comment No. 2: Cruel, inhuman, and degrading treatment are referred to as "ill-treatment" by the Committee: "In comparison to torture, ill-treatment differs in the severity of pain and suffering and may not require proof of impermissible purposes."

<sup>1337</sup> Op. Cit. Inter-American Court of Human Rights, Case of Ríos et al. v. Venezuela, para. 277 and ff.

<sup>1338</sup> Cf., among others, Chilean Criminal Code: "Article 397. Anyone who injures, strikes, or mistreats another by deed shall be punished and tried for grievous bodily harm: 1.1. With the penalty of long-term imprisonment in the minimum degree, if as a result of the injuries the victim is left insane, unable to work, impotent, with a major limb disabled or significantly deformed...."

Colombian Criminal Code: "Article 111 - Injuries. Anyone who causes harm to the body or health of another shall incur the penalties established in the following Articles."

Peruvian Criminal Code: "Article 121. - Serious injury. Anyone who causes serious harm to the body or health of another shall be punished by deprivation of liberty for not less than three and not more than eight years."

Argentine Criminal Code: "Art. 89. Imprisonment of one month to one year shall be imposed on anyone who causes to the body or health of another a harm that is not contemplated in another provision of this Code..."

<sup>1339</sup> Cf., among others, Mexican Criminal Code: "Article 282. A sanction of three days to one year in prison or a fine of 180 to 360 days shall apply: To anyone who in any way threatens another with harm to his or her person, property, honor, or rights, or to the person, property, honor, or rights of someone to whom he or she has ties, and To anyone who uses threats of any kind to try to keep another from carrying out what he or she has the right to do."

Colombian Criminal Code: "Article 347 - Threats. Anyone who, by any suitable means used to impart thought, frightens or threatens a person, family, community, or institution for the purpose of causing alarm, anxiety, or terror in the population, or in any segment of such, shall incur, for this sole conduct, a prison sentence of one (1) to four (4) years and a fine of ten (10) to one hundred (100) times the current legal monthly minimum wage. If the threat or intimidation falls on a public servant who is a member of the judiciary or the Public Prosecutor's Office or his or her relatives, due to or on the occasion of his or her post or functions, the sentence shall be increased by one third."

Argentine Criminal Code: "Article 149 Bis. - Anyone who uses threats to alarm or intimidate one or more persons shall be punished by six months to two years in prison. In this case the sentence shall be from one to three years in prison if weapons are used or if the threats were anonymous. Anyone who uses threats for the purpose of forcing another to do, not to do, or to tolerate something against his or her will shall be punished by imprisonment or confinement of two to four years."

<sup>1340</sup> See "Declaration of Principles on Freedom of Expression," No. 5, of the Inter-American Commission on Human Rights (IACHR).

<sup>1341</sup> Ibid., No. 7.

freedom of expression do not receive inhuman, cruel, or degrading treatment due to the occupation they practice or to the dissemination of opinions or information. Cruel, inhuman, or degrading treatment is understood to mean the same types of conduct described as torture. These differ in the severity of pain and suffering and in the fact that they do not require proof of impermissible purposes.<sup>1336</sup>

**Verification Factors**

- Journalists, media workers, or those who exercise freedom of expression who received cruel, inhuman, or degrading treatment within the established time frame.
- Cases of cruel, inhuman, or degrading treatment inflicted on such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.9. Female journalists, female media workers, and women who exercise freedom of expression are not victims of sexual assaults or other acts of gender-based violence, nor are they the target of threats of such acts, as a consequence of the expressions or opinions they disseminate.<sup>1337</sup>

**Verification Factors**

- Female journalists, female media workers, or women who exercise freedom of expression who were victims of sexual assaults or other acts of gender-based violence within the established time frame.
- Cases of sexual assaults or other acts of gender-based violence that these women suffered due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.
- Other acts of gender-based violence.

1.10. Violation of personal integrity (assault). Journalists, media workers, and those who exercise freedom of expression are not assaulted due to the occupation they practice or to the dissemination of opinions or information. Assault shall be understood as injury to a person's body or health caused by the action of another.<sup>1338</sup>

**Verification Factors**

- Journalists, media workers, or those who exercise freedom of expression who have been assaulted within the established time frame.
- Cases of assaults that such persons received due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.11. Threats. Journalists, media workers, and those who exercise freedom of expression are not threatened or forced to move or to go into exile due to the occupation they practice or to the dissemination of opinions or information. A threat shall be understood as any external manifestation announcing a behavior capable of frightening a person, community, or institution for the purpose of causing alarm, anxiety, or terror.<sup>1339</sup>

**Verification Factors**

- Journalists, media workers, or those who exercise freedom of expression who have been threatened or forced to move or to go into exile within the established time frame.
- Cases in which such persons have been threatened, displaced, or exiled due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.12. Journalists, media workers, and those who exercise freedom of expression, and who are or could be at special risk due to the dissemination of information or opinions in the public interest, receive protection from the State.

**Verification Factors**

- Journalists, media workers, or those who exercise freedom of expression who are at special risk during the established time frame.
- Journalists, media workers, or those who exercise freedom of expression who are at special risk, and who have received protection from the State, during the established time frame.

1.13. The States' judicial systems investigate and appropriately punish those responsible for murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest.

**Verification Factors**

- Investigations launched by the judicial system as a result of murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest, within the established time frame.
- Sanctions imposed by the judicial system as a result of investigations into murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest, within the established time frame.

**2. Censorship and Other Prior Conditioning**

Limitations to freedom of expression may not constitute mechanisms for control of content. Censorship and prior conditioning are incompatible with the right to freedom of expression.

Censorship is understood as a ban on disseminating any expression, opinion, or information through any oral, written, artistic, visual, or electronic communication medium.<sup>1340</sup>

Prior conditioning of expressions by States on grounds such as truthfulness, timeliness, or impartiality; the imposition of degree requirements or compulsory membership in professional associations; and the imposition of prior requirements, such as the administrative registration of any communication medium as a condition to be able to exercise the right to freedom of expression, are incompatible with this right.<sup>1341</sup>

**Structural Standards**

2.1. Laws establish only subsequent liabilities and not mechanisms for prior censorship.<sup>1342</sup>

**Verification Factors**

- Subsequent liabilities established by law.
- Prior censorship mechanisms established by law.

2.2. No compulsory membership in a professional association or requirement of an appropriate degree exists for the practice of journalism or the dissemination of expressions or opinions.

**Verification Factors**

- Appropriate degrees or compulsory membership required for the practice of journalism or the dissemination of expressions or opinions.

<sup>1342</sup> See "Declaration of Principles on Freedom of Expression," No. 5.

2.3. No prior conditioning of expressions is imposed, whether legal or regulatory, such as whether information is truthful, timely, or impartial.

**Verification Factors**

- The existence of legal or regulatory prior conditioning, such as that information must be truthful, timely, or impartial.

2.4. Beyond the requirements involved in the process of obtaining broadcasting licenses and in regular commercial registrations, no special prerequisites are imposed on media outlets, such as administrative registration requirements.

**Verification Factors**

- Existence of special prerequisites that are different from those involved in the process of obtaining broadcasting licenses and in regular commercial registrations.

**Dynamic Standards**

2.5. No public official imposes prior restrictions for the circulation of information, ideas, or opinions.

**Verification Factors**

- Prior restrictions imposed by public officials for the circulation of information, ideas, or opinions.

2.6. Whenever journalists must receive accreditation from authorities to cover a public official's press conference or any other public event, this must be justified based on reasonable, public, clear, and nondiscriminatory criteria, and must be subject to the control of an independent government body.

**Verification Factors**

- The existence of an accreditation system for journalists for the coverage of press conference or other public events.  
- The degree to which the application of the accreditation system is reasonable, public, clear, and nondiscriminatory.

2.7. Any person, solely by virtue of being a person, may exercise the right to freedom of expression.

**Verification Factors**

- The existence of additional prerequisites, other than being a person, for someone to be able to exercise freedom of expression.

**3. Detentions**

Public authorities shall not arbitrarily detain anyone for the simple act of exercising freedom of expression. In no case shall a journalist be able to be detained for the simple act of covering an event of public interest.

**Structural Standards**

3.1. The legal system does not condone temporary or permanent arrests or detentions for the simple act of exercising freedom of expression. Any detention on the occasion of the collection or dissemination of information must be based on the alleged commission of a crime or an offense of such seriousness that it allows such a restriction, and full due process guarantees apply. At a minimum, the authorities must make known the reasons for the detention at the time it occurs; they must bring the person before a judge or an officer authorized by law to exercise judicial power; and the lawfulness of the arrest must be determined promptly. The arrest or detention of a person may

not be due solely to the fact that the person was exercising his or her right to freedom of expression.<sup>1343</sup>

#### **Verification Factors**

- Temporary or permanent arrests or detentions condoned under the legal system for the simple act of exercising freedom of expression.
- Requirement that a crime or serious offense has allegedly been committed for a detention to be permissible when the collection or dissemination of information is involved.
- Full applicability of due process guarantees in detentions in which the collection or dissemination of information is involved.
- Obligation of the authorities to make known the reasons for the detention at the time it occurs; bring the person before a judge or an officer authorized by law to exercise judicial power; and promptly make a determination as to the lawfulness of the arrest.
- Prohibition barring the arrest or detention of a person due solely to the fact that the person was exercising his or her right to freedom of expression.

#### **Dynamic Standards**

3.2. The authorities do not detain persons who are exercising the right to freedom of expression solely because they are exercising that right.<sup>1344</sup>

#### **Verification Factors**

- Detentions, within the established time frame, of persons who were exercising their right to freedom of expression.
- Detentions of these persons solely because they were exercising their right to freedom of expression, within the established time frame.

3.3. At a minimum, the authorities make known the reasons for the detention at the time it occurs; bring the person before a judge or an officer authorized by law to exercise judicial power; and promptly rule on the lawfulness of the arrest.

#### **Verification Factors**

- Reasons for the detention made known by the authorities at the time it occurred; the person's being brought before a judge or an officer authorized by law to exercise judicial power; and the time in which the lawfulness of the arrest was determined, all in cases involving detentions reported during the established time frame.

### **4. Imposition of Subsequent Liability**

Any limitation to the right to freedom of expression must meet the following three basic conditions for it to be admissible: (a) the limitation must have been defined precisely and clearly through a formal, actual law; (b) the limitation must be designed to achieve overriding purposes allowed under the American Convention; and (c) the limitation must be necessary in a democratic society to obtain the overriding purposes sought, namely, it must be strictly proportional to the purpose being sought

<sup>1343</sup> See American Convention on Human Rights, Article 7: "...4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. "5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. "6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful...."

<sup>1344</sup> Ibid.

and suitable to reach the overriding purpose it seeks to achieve. It is up to the authority imposing the limitations to prove that these conditions have been met.<sup>1345</sup>

The protection of privacy or reputation must be guaranteed only through civil sanctions, in cases in which the offended person is a public official or public person or a private citizen who has voluntarily become involved in matters of public interest.

In addition, in these cases it must be proved that in disseminating the information the person had the intent to inflict harm; was fully aware that false information was being disseminated; or acted with gross negligence in the search for information.<sup>1346</sup>

The imposition of any subsequent liability may be done only by independent and impartial judicial authorities, except in cases involving proportional administrative sanctions for the violation of conditions for a license or concession, imposed on media outlets that use electromagnetic frequencies. In these cases, the enforcing authority must be impartial and independent of the political or economic powers. In any case, any subsequent liability imposed must be proportional.

#### **A. Criminal proceedings for "desacato"**

The use of criminal law mechanisms to penalize offensive expressions directed at public officials ("desacato laws") violates the right to freedom of expression.<sup>1347</sup>

#### **Structural Standards**

4.1. The crime of "desacato" does not exist.

##### **Verification Factors**

- Existence of the crime of "desacato."

#### **Dynamic Standards**

4.2. Public officials do not bring criminal cases for "desacato."

##### **Verification Factors**

- Criminal cases brought by public officials for crimes involving "desacato."

4.3. Judges do not impose criminal convictions for the crime of "desacato."

##### **Verification Factors**

- Criminal convictions imposed by judges for the crime of "desacato."

#### **B. Criminal prosecutions for the offense of criminal defamation, to protect the honor or reputation of public officials, private persons involved in matters of public interest, or publicly recognized figures.**

The use of criminal law to ensure the protection of the reputations of public officials or private individuals who have voluntarily become involved in matters of public interest violates freedom of expression.<sup>1348</sup>

...continuation

<sup>1345</sup> See American Convention on Human Rights, Article 13.2. See also, Inter-American Court of Human Rights, Case of Usón Ramírez v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207, para. 86.

<sup>1346</sup> See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

<sup>1347</sup> Ibid., No. 11.

<sup>1348</sup> Ibid, No. 10. See also, Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Inter-American Commission on Human Rights, Chapter IV: "A Hemispheric Agenda for the Defense of Freedom of Expression," 2008, para. 54.

**Structural Standards**

4.4. No criminal offenses exist to protect the reputations or penalize criticism of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest.

**Verification Factors**

- Existence of criminal offenses to protect the reputations or penalize criticism of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest.

**Dynamic Standards**

4.5. Public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest do not seek the application of criminal sanctions to protect their reputation or to penalize criticisms of them.

**Verification Factors**

- Requests submitted during the established time frame by public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, seeking to have criminal sanctions applied to protect their reputation or to penalize criticisms of them.

4.6. Judges do not apply criminal sanctions to protect the reputation of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, or to penalize criticisms of them.

**Verification Factors**

Criminal sanctions applied during the established time frame to protect the reputation of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, or to penalize criticisms of them.

**C. Cases brought so journalists will reveal their sources**

Journalists and media workers have the right to keep their sources of information, notes, and personal or professional files confidential.<sup>1349</sup>

**Structural Standards**

4.7. Journalists and media workers are guaranteed the right to keep their sources confidential.

**Dynamic Standards**

4.8. Journalists are not required by the authorities to reveal the source of any information, notes, or personal or professional files containing facts related to the practice of their profession.

**Verification Factors**

- Demands made by the authorities, during the established time period, that journalists reveal the source of information, notes, or personal or professional files containing facts related to the practice of their profession.

4.9. The authorities do not make demands on third parties, such as telephone companies or companies that manage electronic mail, to learn the source of any information, notes, or personal or professional files containing facts related to journalists' practice of their profession.

<sup>1349</sup> See "Declaration of Principles on Freedom of Expression," No. 8, IACHR.

**Verification Factors**

- Demands made by the authorities on third parties, during the established time frame, to learn the source of information, notes, or personal or professional files containing facts related to journalists' practice of their profession.

4.10. Journalists who refuse to reveal their sources, notes, or personal or professional files containing facts related to the practice of their profession are not penalized.

**Verification Factors**

- Sanctions imposed on journalists, during the established time frame, for refusing to reveal their sources, notes, or personal or professional files containing facts related to the practice of their profession.

4.11. The authorities do not conduct searches or seizures involving journalists or media outlets or offices so as to obtain information about the source of any information, notes, or personal or professional files containing facts related to the practice of a journalist's profession.

**Verification Factors**

Searches or seizures involving journalists or media outlets or offices, conducted during the established time frame, to confiscate material so as to obtain information regarding the source of information, notes, or personal or professional files containing facts related to the practice of a journalist's profession.

**D. Insult to national symbols or public institutions and religious defamation**

The concept of defaming religions or any other belief or idea, or defaming public institutions, does not accord with international standards regarding defamation, which refer to protecting the reputation of individuals and not of ideas, beliefs, or public institutions, which cannot be said to have a right to reputation.

Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions or abstract notions, concepts, or beliefs.<sup>1350</sup>

**Structural Standards**

4.12. There are no criminal offenses designed to penalize insults to national symbols.

**Verification Factors**

- Existence of criminal offenses that penalize insults to national symbols.

4.13. There are no criminal offenses designed to penalize defamation of public institutions.

**Verification Factors**

- Existence of criminal offenses that penalize defamation of public institutions.

...continuation

<sup>1350</sup> See "Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation." Frank LaRue, United Nations Special Rapporteur on Freedom of Opinion and Expression; Miklos Haraszti, Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe; Catalina Botero Marino, Organization of American States Special Rapporteur on Freedom of Expression; and Faith Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights.

4.14. There are no criminal offenses designed to penalize expressions against religions or religious symbols.

**Verification Factors**

- Existence of criminal offenses that penalize expressions against religions or religious symbols.

### Dynamic Standards

4.15. The application of criminal sanctions is not sought to penalize insults to national symbols.

#### Verification Factors

- Requests submitted within the established time frame to apply criminal sanctions for insults to national symbols.

4.16. Judges do not apply criminal sanctions to penalize insults to national symbols.

#### Verification Factors

Criminal sanctions applied within the established time frame to penalize insults to national symbols.

4.17. The application of criminal sanctions is not sought to penalize defamation of public institutions.

#### Verification Factors

- Requests submitted within the established time frame to apply criminal sanctions for defamation of public institutions.

4.18. Judges do not apply criminal sanctions to penalize defamation of public institutions.

#### Verification Factors

- Criminal sanctions applied within the established time frame to penalize defamation of public institutions.

4.19. The application of criminal sanctions is not sought to penalize expressions against religions or religious symbols.

#### Verification Factors

- Requests submitted within the established time frame to apply criminal sanctions for expressions against religions or religious symbols.

4.20. Judges do not apply criminal sanctions to penalize expressions against religions or religious symbols.

#### Verification Factors

- Criminal sanctions applied within the established time frame to penalize expressions against religions or religious symbols.

### E. Criminal proceedings on other grounds

The disproportionate and arbitrary use of criminal law for the sole purpose of limiting the right to freedom of expression violates this right.<sup>1351</sup>

### Structural Standards

4.21. The category of offense that penalizes incitement to violence does not encompass so-called "crimes of opinion."

#### Verification Factors

<sup>1351</sup> See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

- Existence of a category of offense that penalizes incitement to violence.
- Inclusion of "crimes of opinion" in this category of offense.

4.22. No categories of offenses exist to penalize participation, in and of itself, in a public demonstration or social protest.

**Verification Factors**

- Existence of categories of offenses that penalize participation, in and of itself, in a public demonstration or social protest.

4.23. The specific crime of opinion does not exist.

**Verification Factors**

- Existence of specific crimes of opinion.

**Dynamic Standards**

4.24. Criminal sanctions for incitement to violence presuppose actual, certain, and objective proof that the person had the clear intent to commit a crime and had the actual and real possibility of achieving the proposed objective.

**Verification Factors**

- Existence of criminal sanctions for incitement to violence, within the established time frame.
- Within such sanctions, existence of actual, certain, and objective proof that the person had the clear intent to commit a crime and had the actual and real possibility of achieving the proposed objective.

4.25. Criminal sanctions are not imposed for the mere act of participating in a public protest or demonstration.

**Verification Factors**

- Criminal sanctions applied, within the established time frame, for the mere act of participating in a public protest or demonstration.

4.26. Existing categories of offenses designed to protect public order or property, among other things, are not applied to repress or penalize simple public protest.<sup>1352</sup>

**Verification Factors**

- Repression or punishment of participation in public protests through the application of categories of offenses designed to protect public order or property, occurring within the established time frame.

4.27. The crimes of terrorism, national treason, and related categories of offenses are not applied for the mere act of imparting opinions in opposition to those of the government, or positions critical of government policies.<sup>1353</sup>

**Verification Factors**

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<sup>1352</sup> See Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Inter-American Commission on Human Rights, Chapter IV: "A Hemispheric Agenda for the Defense of Freedom of Expression," 2008, para. 69.

<sup>1353</sup> Ibid, para. 65.

- Cases in which terrorism, national treason, and related categories of offenses were applied for the mere act of imparting opinions in opposition to those of the government, or positions critical of government policies, during the established time frame.

4.28. Sanctions are not imposed for the expression of ideas, as in crimes of opinion.

**Verification Factors**

- Cases in which crimes of opinion were applied to sanction the expression of ideas, during the established time frame.

**F. Civil proceedings involving protection of honor**

Privacy laws may not inhibit or restrict the investigation and dissemination of information of public interest. The protection of reputation should be guaranteed only through civil sanctions, in those cases in which the person offended is a public official, a public person, or a private individual who has voluntarily become involved in matters of public interest.<sup>1354</sup>

In addition, in these cases it must be proved that in disseminating the news, the journalist had the specific intent to inflict harm, was fully aware that false news was being disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news (actual malice standard). The sanctions imposed through this avenue must be proportional and not punitive, and may never be imposed for the expression of opinions.<sup>1355</sup>

**Structural Standards**

4.29. Civil actions involving protection of honor or reputation incorporate criteria to differentiate liability for publishing information about public officials and private individuals involved in matters of public interest, on the one hand, and private individuals not involved in such matters, on the other. At least in the first case, when information about public officials is involved, such civil actions contemplate the standard of actual malice.

**Verification Factors**

- Existence of civil actions to protect the honor or reputation of persons.
- Incorporation into these actions of criteria to differentiate liability for publishing information about public officials and private individuals involved in matters of public interest, on the one hand, and private individuals not involved in such matters, on the other.
- Incorporation of the actual malice standard into civil actions involving public officials.

**Dynamic Standards**

4.30. Judicial authorities apply the actual malice standard to impose civil sanctions for subsequent liability when it comes to protecting the honor of public officials, recognized public figures, or private individuals voluntarily involved in matters of public interest.

**Verification Factors**

- Within the established time frame, civil sanctions imposed by judicial authorities for subsequent liability to protect the honor of public officials, public figures, or private individuals voluntarily involved in matters of public interest.
- Civil sanctions imposed in these cases, during this period, in which the actual malice standard has been applied in imposing the sanctions.

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...continuation

<sup>1354</sup> See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

<sup>1355</sup> Ibid.

- Civil sanctions imposed in these cases, during this period, in which the actual malice standard has not been applied in imposing the sanctions.

4.31. When civil sanctions are applied, they are proportional and geared only toward repairing the harm.

**Verification Factors**

- Proportional civil sanctions applied, within the established time frame.
- Civil sanctions that impose the obligation to repair the harm, and civil sanctions that impose punitive penalties, applied within the established time frame.

4.32. Civil liabilities are not imposed for the expression of opinions.

**Verification Factors**

- Civil sanctions applied, during the established time frame, for the expression of opinions.

**G. Ratification mechanisms**

The strict necessity test demands that subsequent liabilities be the least costly for freedom of expression. Thus, when strictly personal rights have been injured due to false accusations that must be corrected, the mechanism of correction or reply under equal conditions applies. This frees the medium and the journalist from liability, except in cases in which actual malice is established. The arbitrary or disproportional burden to publish information violates freedom of expression.<sup>1356</sup>

**Structural Standards**

4.33. The law recognizes and regulates the right to correction or reply, under equal conditions, when it is strictly necessary and proportional to correct false information that injures a right of third parties, under the terms of Article 14 of the Convention.

**Verification Factors**

- Legal recognition and regulation of the right to correction or reply.
- Legal recognition of the right to correction or reply under equal conditions when it is strictly necessary and proportional to correct false information that injures a right of third parties.

4.34. Correction under equal conditions makes subsequent individual liability disappear, except when the existence of actual malice is demonstrated, in which case civil actions apply.

**Verification Factors**

- Existence of subsequent liability despite correction under equal conditions.
- Requirement that the existence of actual malice be established for subsequent liability to apply, after correction under equal conditions.

**Dynamic Standards**

4.35. Judicial authorities order the correction under equal conditions only when it has come to be clear that the published information is false and that it has caused unjustified harm.

...continuation

<sup>1356</sup> See American Convention on Human Rights, Article 14: "1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. "2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. "3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

**Verification Factors**

- Corrections ordered by judicial authorities during the established time frame.
- Disproportional corrections or those in which the issue of whether the published information was false or whether it had caused unjustified harm was not taken into account.

**5. Access to Information**

The right of access to information includes the right to seek and receive information, and protects the right that everyone has to access information under the State's control, with the exceptions permitted under the strict regime of restrictions established by law.<sup>1357</sup>

**Structural Standards**

5.1. The right of access to public information is constitutionally or legally guaranteed.

5.2. The right of access to information is binding on anyone who performs public duties, provides public services, or executes public resources on behalf of the State.

5.3. It is established that the right of access to information is the general rule and the withholding of information is the exception.

5.4. The law contemplates an appropriate and effective administrative recourse for requesting public information. It is not necessary to establish a direct interest to make a request, and implies only meeting basic requirements. A reasonable time limit is established for a response.

5.5. The law contemplates an appropriate and effective court appeal to challenge final administrative decisions that deny the right of access to information.

5.6. Limitations to the right of access to information are established previously and expressly by law in a formal and material sense.

5.7. A reasonable time limit exists for withholding information, after which the information becomes public.

5.8. Laws regulating secrecy or the withholding of information specify clearly which officials are authorized to make a decision and adopt criteria for classifying documents as secret or reserved.

5.9. No regulation exists establishing sanctions for journalists or civil society representatives for the simple act of disseminating information that has been withheld.

5.10. There are legal provisions to sanction officials who deliberately obstruct access to information.

5.11. The State has a legal obligation to preserve public archives.

5.12. The State has a legal obligation to allocate the resources, infrastructure, and budget to satisfy the right of access to public information.

5.13. The State has a legal obligation to publish information on the basic rules regarding its authority; the duties it is assigned; budgets for expenses and investment; steps and procedures

<sup>1357</sup> See AG/RES. 2607 (XL-O/10), *Model Inter-American Law on Access to Public Information*, approved at the fourth plenary session, held on June 8, 2010. Available at: [http://www.oas.org/dil/esp/CP-CAJP-2840-10\\_Corr1\\_esp.pdf](http://www.oas.org/dil/esp/CP-CAJP-2840-10_Corr1_esp.pdf)

under its control, especially those related to the allocation of goods or provision of services; the authorities or venues designated to carry out such procedures, how these procedures are carried out, and the way any required forms are handled; and the offices to which one can go to seek guidance or lodge complaints, ask questions, or make claims regarding the rendering of a service or the exercise of the functions or duties for which the entity or person in question is responsible.

5.14. Legal or regulatory provisions exist regarding e-government.

5.15. The State has the obligation to publish information on its structure, functions, and operating and investment budget.

5.16. The State has the obligation to publish information required for the exercise of other rights, such as the rights to pensions, health, or education.

5.17. The right of *habeas data* is recognized.

#### **Dynamic Standards**

5.18. The judicial or administrative authorities provide that the right of access to information is preeminent when it comes into conflict with other standards or when no regulation exists on a particular matter.

#### **Verification Factors**

- Judicial or administrative decisions, made within the time frame, in which the principle of maximum transparency is applied or no longer applied in any of its three derivations.

5.19. Public authorities, and those who are legally required to do so, respond in a timely manner to requests regarding access to information. If they deny such requests, they provide reasoned, justified grounds for their decisions.

#### **Verification Factors**

- Timely responses from public authorities to requests for access to information during the established time frame.
- Untimely responses from public authorities, and those legally obligated to do so, to requests for access to information during the established time frame.
- Negative responses to requests for information, during the established time frame, in which no grounds were given for the decision.
- Negative responses to requests for information, during the established time frame, in which reasoned, justified grounds were given for the decision.

5.20. The court appeal for challenging decisions denying the right of access to information is used, and is ruled on by judges within a reasonable period.

#### **Verification Factors**

- Court appeals for challenging decisions denying the right of access to information lodged during the established time frame.
- Court appeals for challenging decisions that deny the right of access to information ruled on by judges within a reasonable period, during the established time frame.

5.21. Only public officials authorized by law may classify documents as secret or reserved from disclosure.

#### **Verification Factors**

- There are trained officials who have been assigned this function.

- Documents that have been classified as secret or reserved by persons other than those public officials, or those authorized by law, during the established time frame.

5.22. Secrecy or confidentiality is not claimed as grounds for not turning over information related to human rights violations.

**Verification Factors**

- State agencies or situations in which information related to human rights violations was not turned over during the established time frame, based on a claim of secrecy or confidentiality.

5.23. The State publishes information on the structure, functions, and operating and investment budget of the corresponding entity.

**Verification Factors**

- Cases in which information on the State's structure, functions, and operating and investment budget has been published during the established time frame.

- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.24. The State publishes information that is required for the exercise of other rights, such as the rights to pensions, health, or education.

**Verification Factors**

- Cases in which the State has published information that is required for the exercise of other rights, such as the rights to pensions, health, or education, during the established time frame.

- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.25. The State publishes information on the provision of services, benefits, subsidies, or contracts of any kind.

**Verification Factors**

- Cases in which the State has published information regarding the provision of services, benefits, subsidies, or contracts of any kind, during the established time frame.

- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.26. Journalists or civil society representatives are not sanctioned for the mere act of disclosing confidential information.

**Verification Factors**

- Sanctions imposed on journalists or civil society representatives for disclosing confidential information, during the established time frame.

5.27. Officials who deliberately obstruct access to information are sanctioned.

**Verification Factors**

- Deliberate obstructions of access to information on the part of officials, during the established time frame.

- Sanctions imposed on officials for deliberately obstructing access to information, during the established time frame.

5.28. The State implements public policies regarding preservation of archives.

**Verification Factors**

- Public policies for preserving and managing archives implemented during the time period.

5.29. The State implements public policies regarding the dissemination of information. These take into account the segments of the population that do not have access to new technologies.

**Verification Factors**

- Public policies on the dissemination of information, implemented during the established time frame.  
- Public policies on the dissemination of information, implemented during the established time frame, which took into account segments of the population that do not have access to new technologies.

5.30. The State trains public officials, bodies, and agents who are involved in satisfying the right of access to public information.

**Verification Factors**

- Training of public officials, bodies, and agents involved in satisfying the right of access to public information, carried out by the State during the established time frame.

5.31. The State allocates a budget to be able to progressively satisfy the demands generated by the right of access to information.

**Verification Factors**

- Budget allocation carried out by the State during the established time frame to progressively satisfy the demands generated by the right of access to information.

**6. Pluralism and Diversity**

The participation of pluralistic and diverse ideas in the public debate is a legal imperative based on the principle of nondiscrimination and the obligation of inclusion.

Monopolies or oligopolies in the ownership and control of the media must be subject to antitrust laws, as they conspire against democracy by limiting the pluralism and diversity that ensure the full exercise of citizens' right to information. The allocation of radio and television frequencies should take into account democratic criteria that guarantee equal opportunity of access for all individuals.<sup>1358</sup>

**Structural Standards**

6.1. The right to express oneself in any language is guaranteed.

6.2. The right to establish mass communications outlets is guaranteed.

6.3. Laws exist that, clearly and precisely and following reasonable and appropriate criteria, transparently define the rules of the game for the allocation of radio and television broadcast frequencies and for the new digital dividend spectrum.

**Verification Factors**

<sup>1358</sup> See "Declaration of Principles on Freedom of Expression," No. 12, IACHR.

- Existence of laws establishing the rules of the game for the allocation of frequencies for radio and television and for the new digital dividend.
- Transparency, clarity, and precision of these rules of the game.
- Incorporation of reasonable and appropriate criteria into the rules of the game.

6.4. The authority in charge of enforcement and oversight of broadcasting activity is independent, both from government influence and from the financial interests of private groups linked to public, private, commercial, or community broadcasting, and is subject to clear and transparent procedures.

**Verification Factors**

- Existence of an authority in charge of enforcement and oversight of broadcasting activity.
- Independence of this authority from government influence and from the financial interests of private groups linked to public, private, commercial, or community broadcasting.
- Whether this authority is subject to clear and transparent procedures.

6.5. Administrative sanctions in the field of broadcasting are subject to judicial oversight.

6.6. Broadcasting laws guarantee conditions that are sufficient to ensure the independence and economic self-sufficiency of the communications media that are regulated by law.

6.7. States adopt antitrust laws that limit the concentration of ownership and control of broadcast media.

6.8. The regulation of broadcasting contemplates reserving part of the spectrum for a diverse system of media, including community radio stations.

6.9. Broadcasting laws do not include discriminatory differentiations between the various forms of broadcasting. Any differentiation must be based on reasonable and objective conditions.

**Verification Factors**

- Discriminatory differentiations between the various forms of broadcasting contemplated in broadcasting laws.
- Discriminatory differentiations between these forms of broadcasting based on reasonable and objective conditions.

6.10. Broadcasting license periods are established by law, are reasonable to ensure independence and sustainability, and respect equality of conditions for all sectors.

**Verification Factors**

- Establishment in the law of broadcasting license periods.
- Reasonableness of these periods to ensure independence and sustainability.
- Whether these periods respect equality of conditions for all sectors.

6.11. The allocation of broadcasting licenses is guided by criteria that are democratic and equitable and by procedures that are pre-established, public, and transparent.

6.12. Procedures for allocating licenses are subject to judicial oversight.

6.13. Sanctions for unauthorized broadcasting are found in civil or administrative regulations. The use of criminal law is not contemplated in these cases.

**Verification Factors**

- Existence of civil or administrative sanctions for unauthorized broadcasting.
- Existence of criminal sanctions for unauthorized broadcasting.

6.14. Laws regulating the spectrum do not delegate the definition of strategic policies to the authority responsible for enforcing them.

**Verification Factors**

- Existence of an authority responsible for enforcing strategic policies related to the spectrum.
- Delegation to this same authority of the duty to define these policies.

6.15. Public media are independent of the executive branch and have a mandate for public service, and access to their content is free of charge.

6.16. The news media are subject to rules of ethical conduct that are not imposed by the State but are the result of self-regulation.

**Verification Factors**

- Whether the media are subject to rules of ethical conduct imposed by the State.
- Whether the media are subject to rules of ethical conduct that they themselves have imposed (self-regulation schemes).

6.17. Laws exist that, clearly and precisely and following reasonable and appropriate criteria, transparently define the rules of the game for the allocation of official advertising or the distribution of any other state resource or benefit, so as to keep these from being used to reward or punish the media based on their news or editorial content.

**Verification Factors**

- Existence of transparent rules of the game to allocate official advertising or the distribution of any other state resource or benefit contemplated in the State's laws.
- Clarity and precision of these rules of the game.
- Incorporation into these rules of reasonable and appropriate criteria for the allocation of official advertising or other benefits.
- Prohibition on using these resources to reward or punish the media based on their news or editorial content, under the rules of the game.

**Dynamic Standards**

6.18. The States actively promote the inclusion of disadvantaged, minority, or currently marginalized groups in the communications process.

**Verification Factors**

- Actions taken by the State, during the established time frame, to promote the inclusion of disadvantaged, minority, or currently marginalized groups in the communications process.

6.19. Frequencies for radio and television and the new digital dividend spectrum are allocated according to the rules of the game established by law.

**Verification Factors**

- Allocations of frequencies for radio and television and the new digital dividend spectrum that ignored the rules of the game established by law.

6.20. Economic criteria are not the main factor in awarding radio or television frequencies.

**Verification Factors**

- Awarding of radio or television frequencies during the time frame.
- Awarding of radio or television frequencies, during the time frame, in which economic criteria were not the main factor.

6.21. The State offers guarantees so that those who operate broadcast licenses can do so without arbitrary interference related to content.

**Verification Factors**

- Arbitrary, content-related interference in the operation of broadcasting licenses that took place during the time frame.
- Guarantees offered by the State during the period to prevent this type of interference.

6.22. Antitrust laws are enforced to prevent the concentration of ownership and control of broadcast media.

**Verification Factors**

- Cases or decisions during the established time frame in which antitrust laws were enforced to prevent the concentration of ownership and control of broadcast media.

6.23. The authority for enforcement and oversight of broadcasting activity exercises its duties independently and carries out processes that are clear.

**Verification Factors**

- The authority for enforcement and oversight of broadcasting failed to exercise its duties independently during the established time frame.
- Situations in which the authority for enforcement and oversight of broadcasting carried out processes that were not subject to the principles of transparency and clarity, during the established time frame.

6.24. Procedures for the allocation of broadcasting licenses are controlled effectively by the judicial authorities.

**Verification Factors**

- Decisions taken by the judicial authorities in the framework of procedures to assign broadcasting licenses, during the established time frame.

6.25. Sanctions applied to penalize unauthorized broadcasting are of a civil and administrative nature, and in no case of a criminal nature.

**Verification Factors**

- Criminal procedures or sanctions applied to penalize unauthorized broadcasting, during the established time frame.

6.26. The public media are autonomous and independent of the government, are accountable, and have citizen participation.

**Verification Factors**

- The public media operating during the period in question acted in a way that was autonomous and independent of the government.
- The public media operating during the period were accountable and had citizen participation.

6.27. The various sectors of the media—commercial, public, community—have access to all available transmission platforms, as well as to new digital technologies.

**Verification Factors**

- Situations in which some sector of the media—commercial, public, community—has had its access restricted to available transmission platforms, new technologies, or the new digital dividend.

6.28. Public media programming is geared toward the public interest and toward reflecting society's political, social, geographic, religious, cultural, linguistic, and ethnic pluralism.

**Verification Factors**

- Public media programming during the established time frame was geared toward the public interest and toward reflecting society's political, social, geographic, religious, cultural, linguistic, and ethnic pluralism.

6.29. Public officials do not use official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to reward or penalize media outlets or journalists based on the content they report or their editorial stances.

**Verification Factors**

- Cases in which public officials used official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to reward media outlets or journalists based on the content they report or their editorial stances, during the established time frame.

- Cases in which public officials used official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to penalize media outlets or journalists based on the content they report or their editorial stances, during the established time frame.

**7. Indirect Censorship or Abusive Use of State Power**

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, 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.<sup>1359</sup>

**Dynamic Standards**

7.1. The State refrains from abusing public power in the control over newsprint, broadcasting frequencies, or equipment used in the dissemination of information, or in the use of other means tending to impede the communication and circulation of ideas and opinions.

**Verification Factors**

- Cases in which there was abuse of public power in the control over newsprint, broadcasting frequencies, or equipment used in the dissemination of information, or in the use of other means tending to impede the communication and circulation of ideas and opinions.

- Actions taken by the State and cases in which the State did not prevent such abuse, during the established time frame.

7.2. Agencies that regulate and oversee the media are independent of the executive branch and subject to due process and strict judicial control.

**Verification Factors**

<sup>1359</sup> See American Convention on Human Rights, Article 13.

- Agencies that regulate and oversee the media were independent of the executive branch during the established time frame.
- Agencies that regulate and oversee the media complied with due process during the established time frame.
- Agencies regulating or overseeing the media were subject to strict judicial control during the established time frame.

7.3. Beyond the scope of appropriate judicial settings, public officials do not publicly accuse critical media outlets or journalists of having committed crimes for simply expressing opposing ideas or opinions. Public officials do not make systematic and disproportionate statements that tend to create or increase a climate of hostility against particular media outlets or journalists that could lead to any infringement of their rights, due to their editorial stance or their coverage of the news.

**Verification Factors**

- Statements made by government officials—beyond the scope of appropriate judicial settings —accusing critical media outlets or journalists of having committed crimes, as a result of their simply having expressed opposing ideas or opinions, during the established time frame.
- Statements made by public officials that tended to create or increase a climate of hostility against particular media outlets or journalists that could lead to any infringement of their rights, due to their editorial stance or their coverage of the news, during the established time frame.

7.4. Public officials or public law enforcement agents do not arbitrarily confiscate or destroy the content or equipment of the news media or any content or equipment used to produce and disseminate information.

**Verification Factors**

- Arbitrary confiscation or destruction of the content or equipment of the news media or any content or equipment used to produce and disseminate information, carried out by public officials or public law enforcement agents within the period in question.

7.5. Public officials do not engage in sabotage, arbitrary searches, power shutdowns, or similar measures against media outlets.

**Verification Factors**

- Cases of sabotage, arbitrary searches, power shutdowns, or similar measures against media outlets.