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ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2005

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REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
1889 F St. N.W.
WASHINGTON, D.C. 20006
2006

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Dr. Eduardo Bertoni
Special Rapporteur for Freedom of Expression

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FOR FREEDOM OF EXPRESSION 2005**

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INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter “the Rapporteurship”) was created by the Inter-American Commission on Human Rights (IACHR) in October 1997, during its ninety-seventh regular session. Since then, the Rapporteurship has had backing, not only from the IACHR, but from states, civil society organizations in the Hemisphere, media, journalists, and above all, from the victims of violations of freedom of expression who see the Rapporteurship as offering important support to restore the guarantees needed in order to exercise their rights or to ensure fair settlement of their claims. In 2005, the OAS General Assembly passed Resolution 2149 (XXXV-O/05), reaffirming the right to freedom of expression, recognizing the important contributions made by the Rapporteurship’s 2004 annual report, and urging follow up on the issues addressed in that report.¹

2. During 2005, the Rapporteurship had a demanding agenda, carrying out more than a dozen journeys to promote freedom of expression and taking part in a similar number of conferences and seminars. Furthermore, in accordance with its mandate, the Rapporteurship assisted the Commission with some of the major petitions and difficult cases it processed. During 2005, the Rapporteurship also published “Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia,” a report based on information gathered during an official visit to Colombia.² Additionally, the Rapporteurship carried out important new initiatives in the English-speaking Caribbean states, holding a seminar in Antigua for journalists from the region, participating in a seminar in Belize, and hosting journalism fellows from Jamaica and Barbados at the Rapporteurship’s headquarters. These achievements would not have been possible but for the dedication of office staff and the support of a number of talented interns.³

3. The present Annual Report maintains the basic structure of previous years and is in line with the terms of reference established by the IACHR for the work of the Rapporteurship. The report begins with a general introductory chapter. As usual, Chapter II evaluates the status of freedom of expression in the Hemisphere. The third chapter reviews comparative jurisprudence, while the fourth chapter deals with access to information. Chapters V and VI are theoretical studies of specific issues relating to the interpretation of Article 13 of the American Convention on Human Rights.

4. Since its creation, the Rapporteurship has received information from many sources regarding situations that potentially affect the full exercise of freedom of

¹ See Annex 5.

² See: <http://www.cidh.org/relatoria>.

³ The Rapporteurship would like to thank all the interns of 2005 for their hard work and important contributions to the promotion and defense of freedom of expression: Mariela Aisenstein, Katrina Bend, Nicholas Devereux, Ludmilla Duarte, Margarita Garcia Ripa, Javiera Gomez, Eleonora Rabinovich, David Rondon, Susan Smith, and Carolina Valdivia. The Rapporteurship also wishes to thank Alexandra Amiel, Heather Lynn Carney, Fermin Fontanes, and Navid Mehrjou, all law students in the International Human Rights Clinic at the George Washington University Law School, who participated in a joint project with the Rapporteurship during 2005.

expression, as well as progress made in guaranteeing the exercise of this right. Throughout 2005, the Rapporteurship constantly received all kinds of information and evaluated it within the context of the Declaration of Principles on Freedom of Expression, approved by the Commission in the year 2000 as an authoritative interpretation of Article 13 of the American Convention on Human Rights and an important instrument to help states confront problems and protect the right to freedom of expression. Chapter II of this report examines the situations reported to the Rapporteurship during 2005. The methodology used to produce this chapter remains essentially the same as in previous years and, as in 2004, it has been presented and organized in order to highlight how the reported situations relate to the principles in the Declaration.

5. Throughout its existence, the Rapporteurship has used the situations reported across the Hemisphere to highlight the challenges facing those wishing to exercise their freedom of expression: aggression against journalists, murders of journalists, censorship, the absence or inadequacy of laws to guarantee access to information, and the existence in many states in the region of *desacato*, or insult, laws. These problems continue to exist in the region. The Rapporteurship also considers it important to bring attention to other threats to freedom of expression in the Americas, such as the use of official publicity funds in some countries to influence media coverage, which can indirectly limit the freedom to disseminate information and the public's freedom to receive it. Additionally, limitations on the journalist's right to maintain the confidentiality of his or her sources may impede newsgathering in some countries.

6. Chapter III of the current report resumes the Rapporteurship's practice of conducting comparative law studies, with backing from the Heads of State and Government at the Third Summit of the Americas, when they agreed to commit themselves to disseminate comparative jurisprudence.⁴ The first part of the chapter summarizes jurisprudence of the African Commission on Human and Peoples' Rights relating to freedom of expression, which contributes to the interpretation of this right within the inter-American system, and is also a useful tool for professionals and other interested parties. The second part of the chapter covers the judgments issued under States' domestic laws during 2005, which either tacitly or explicitly incorporate international laws to protect freedom of expression. The publication of these cases might be useful in helping other judges to issue similar judgments with the backing of comparative jurisprudence from Member States.

7. Chapter IV complies with the mandate assigned to the Rapporteurship by OAS General Assembly Resolution 1932 (XXXIII-O/03), repeated in 2004 in Resolution 2057 (XXXIV-O/04) and in 2005 in Resolution 2121 (XXXV-O/05), to continue reporting, in its annual report, on the state of access to public information in the region. This chapter provides an update on developments regarding access to public information that have occurred in the region over the past year.

⁴ Action Plan, Secretariat for Summit Process, OAS, 7 (April 22, 2001), which can be accessed on <http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/plan-e.pdf>.

8. The Inter-American Court of Human Rights and the IACHR maintain that freedom of expression is an indispensable requisite for the very existence of a democratic society. It is not only a fundamental right in and of itself, it is also an important means by which members of society can ensure the protection of all other rights. By exercising the right to freedom of expression, individuals have the opportunity to influence public policies related to issues that affect them directly. However, not all individuals are able to access means of communication equally. This is particularly true of the mass media, including television, radio, and newspapers, which are generally accessible to only the wealthier sectors of the population. Those who do not have access to the mass media must find other ways to express their opinions if they are to be able to exert influence on public issues that affect them. One important way such individuals and groups can let their voices be heard is by means of public demonstrations. The Rapporteurship considers that public demonstrations are an essential tool for the exercise of the right to freedom of expression. At the same time, limitations may be necessary under some circumstances to ensure that such demonstrations are peaceful and do not cause undue safety and public order problems.

9. Unfortunately, the Rapporteurship finds that, in many circumstances, the limitations placed on this form of expression are excessive. For this reason, the Rapporteurship has decided to include Chapter V, on "Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly," in this year's report. This chapter considers the legal standards and jurisprudence of the United Nations, European, and African human rights systems for balancing the rights to freedom of expression and assembly with public safety and public order concerns. It then proposes some guidelines for the inter-American system.

10. Chapter VI addresses another important issue related to freedom of expression: the regulation and use of opinion polls and exit polls during elections. While the Rapporteurship has recognized on many occasions that elections by themselves do not guarantee a true democracy, elections that are free and fair are a key element of such a democracy. Elections cannot be free and fair if voters do not have sufficient information to debate the issues involved in the election, to make decisions, and to monitor the behavior of elected officials. Opinion polls and exit polls are an important part of the free exchange of opinions and information that is essential for free and fair elections. However, many argue that polls carried out in an irresponsible or manipulative manner, or carried out too close to the election time, may actually distort election results unfairly. For this reason, many states have place time, place, and manner restrictions on election polls. Chapter VI considers the risks and benefits of election polls and the way in which restrictions on such polls have been treated in the European human rights system and in the domestic jurisprudence of some OAS Member States. It then assesses the validity of such restrictions in light of the freedom of expression guarantees of Article 13 and suggests standards for the Member States with regard to this issue.

11. The present report thus summarizes the dedicated work throughout the year of the staff, the interns, and the partners of the Rapporteurship. This hard work by the Rapporteurship has consolidated its role within the Organization of American States as the

office for promoting and monitoring respect for freedom of expression in the Hemisphere. This enhanced role is, in turn, generating substantially increased expectations within the Hemisphere regarding the work and performance of the Rapporteurship. Those who work and collaborate with the Rapporteurship are responding to this challenge with dedication and commitment. To meet this demand, we need not only the institutional and political backing that the Rapporteurship has received since its inception, but also financial support because without it, the range and execution of the activities required by its mandate will be impossible. The Rapporteurship does not directly receive funding from the Regular Fund of the OAS and therefore depends to a great extent on voluntary contributions from some states and on contributions from foundations and cooperation agencies for specific projects. Therefore, we must once more exhort all States in the region to follow in the footsteps of those countries that have responded to the appeal from hemispheric summits to support the Rapporteurship. The Plan of Action approved by the Heads of State and of Government at the Third Summit in Quebec City, Canada in April 2001, states that "to strengthen democracy, create prosperity and realize human potential, our Governments will support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR."

12. The Rapporteurship acknowledges with thanks the financial contributions received in 2005 from Costa Rica and the United States. The Rapporteurship urges the other states once again to contribute their much-needed support. Donations were also received from the McCormick Tribune Foundation, the Swedish International Development Cooperation Agency (SIDA), and the Spanish Agency for International Cooperation (AECI).

13. The aim of our work continues to be to enhance the environment in which freedom of expression may be exercised, and so strengthen democracy, and ensure the wellbeing and progress of those who live in the Americas. However, for the work of the Office of the Special Rapporteur for Freedom of Expression to succeed in this aim, there must be a response at the local level in each of the countries in the Americas from states, civil society, social communicators, and each individual, for whom, in the final instance, these pages are written.

14. Finally, the Rapporteurship announces the resignation of the current Special Rapporteur for Freedom of Expression, Eduardo Bertoni, as of the end of 2005. In his letter informing the IACHR of his decision, Mr. Bertoni stated:

In March 2002, I had the honor of being appointed Special Rapporteur for Freedom of Expression by the Inter-American Commission on Human Rights. Thanks to that appointment, I was able to work during all these years for the promotion of freedom of expression. I will always be grateful for that. I am now interested in facing new challenges and pursuing other professional interests.

[...]

When leaving the office, almost four years will have passed since my appointment as Special Rapporteur. I will have the satisfaction of having contributed to the consolidation of the Rapporteurship as a hemispheric reference in freedom of expression issues. I want to highlight the support received from former OAS Secretary General Cesar Gaviria and from current

Secretary General Jose Miguel Insulza, who recently expressed publicly his support. I would also like to highlight the support received from civil society, including journalists, and from most of the Commission's members in critical moments during the transition between General Secretariat authorities. When leaving the office, I will feel untroubled since it will have enough funds to continue its activities without major limitations. And, I will also have collaborated in advancing many of the Commission's goals, established before my arrival to the OAS. It is evident that much work still has to be done. Many people in our Hemisphere cannot express themselves freely without fear of retaliation. Intolerance and violence against those who express certain opinions is increasing in many places of our region. Impunity of attacks against journalists and human right defenders is alarming in many countries. Progress in some legislations in some countries is contrasted by retrogress in others.

Without any doubts, for the consolidation of freedom of expression, it will be very important to continue paying attention to these issues. At the same time, I believe that the major challenge for the next years will be to promote amongst broad sectors of civil society that freedom of expression is a right of every individual. Thus, it must be defended by everybody and not just by a few sectors of civil society. The possibilities that new technologies provide for freedom of expression should also be included in any future agenda.

The Office of the Special Rapporteur for Freedom of Expression, which in 2007 will have existed for ten years, has demonstrated that it is an important instrument to face these challenges. I am leaving the office with great satisfaction for the work carried out, and I thank you once again for having trusted me with this responsibility.

CHAPTER I

GENERAL REPORTS

A. Mandate and competence of the Office of the Special Rapporteur for Freedom of Expression

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter “the Rapporteurship”) is a permanent office, with functional autonomy and its own budget. The Inter-American Commission on Human Rights created the Office in exercise of its authority and competence. The Rapporteurship operates within the legal framework of the Commission.¹

2. The Inter-American Commission on Human Rights (IACHR) is an organ of the Organization of American States (OAS) whose principal function is to promote the observance and defense of human rights and to serve as an advisory body to the Organization on this subject. The Commission’s authority derives mainly from the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States. The Commission investigates and rules on complaints of human rights violations, conducts on-site visits, prepares draft treaties and declarations on human rights and prepares reports on the human rights situation in countries in the region.

3. The Commission has addressed issues pertaining to freedom of expression through its system of individual petitions, ruling on cases of censorship,² crimes against journalists and other direct or indirect restrictions on freedom of expression. It has spoken out about threats against journalists and restrictions placed on the media in its special reports, such as the Report on Contempt (*Desacato*) Laws.³ The Commission has also studied the status of freedom of expression and information through on-site visits and in its general reports.⁴ Lastly, the Commission has requested precautionary measures for urgent action to prevent irreparable harm to individuals.⁵ In several cases, such measures were adopted to ensure full enjoyment of freedom of expression and to protect journalists.

¹ See Articles 40 and 41 of the American Convention on Human Rights and Article 18 of the Statute of the Inter-American Commission on Human Rights.

² See Inter-American Court on Human Rights, “The Last Temptation of Christ” Case (Olmedo Bustos *et al.* v. Chile). Judgment of February 5, 2001, VII Article 13: Freedom of Expression; Francisco Martorell v. Chile in the Annual Report of the IACHR (1996).

³ IACHR, *Annual Report 1994*, Report on the Compatibility of “*desacato*” laws with the American Convention on Human Rights, OEA/Ser.L/V/II.88, Doc. 9 Rev (1995).

⁴ See, *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100 Doc.7 rev., September 24, 1998 and *Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/II. 102 Doc.9 rev.1, February 1996, and more recently, *Justice and Social Inclusion: The Challenges facing Democracy in Guatemala*, OAS/Ser.L/V/II.118 Doc.5 rev.1, December 29, 2003, and *Report on the Situation of Human Rights in Venezuela*, OAS/Ser.L/V.118 Doc.4 rev.1, October 24, 2003.

⁵ Article 25(1) of the Statute of the Commission states that: “In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.”

4. At its 97th regular session in October 1997, and in exercise of its authority under the Convention and its own Rules of Procedure, the Commission decided, by unanimous vote, to create the Office of the Special Rapporteur for Freedom of Expression. It was created as a permanent unit that is functionally autonomous and has its own operating structure. In part, the Office of the Special Rapporteur was created in response to the recommendations of broad sectors of society in different States throughout the Hemisphere who shared a deep concern over the constant restriction of freedom of expression and information. Moreover, through its own observations regarding the situation of freedom of expression and information, the IACHR perceived serious threats and obstacles to the full and effective enjoyment of this right, which is so vital for the consolidation and advancement of the rule of law. At its 98th special session in March of 1998, the Commission determined what the general characteristics and functions of the Office of the Special Rapporteur would be and decided to establish a voluntary fund for economic assistance for the Rapporteurship. In 1998, the Commission announced a public competition for the position of Special Rapporteur for Freedom of Expression in the Americas. After evaluating all the applications and interviewing several candidates, the Commission decided to appoint Argentine attorney Santiago Alejandro Canton as Special Rapporteur. He began his work on November 2, 1998. On March 22, after evaluating the applicants in a public competition, the Inter-American Commission on Human Rights (IACHR) appointed Mr. Eduardo A. Bertoni as Special Rapporteur for Freedom of Expression of the IACHR. Mr. Bertoni took office in May 2002, replacing Mr. Santiago Canton, who is currently the Executive Secretary of the IACHR.

5. In creating the Office of the Special Rapporteur, the Commission sought to stimulate awareness of the importance of the full observance of freedom of expression and information in the Hemisphere, given the fundamental role it plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected and violations reported; to make specific recommendations on freedom of expression and information to Member States to promote adoption of progressive measures to strengthen this right; to prepare specialized reports and studies on the subject; and to respond quickly to petitions and other reports of violations of this right in an OAS member State.

6. In general terms, the Commission stated that the duties and mandates of the Office of the Special Rapporteur should include, among others: 1. Prepare an annual report on the status of freedom of expression in the Americas and submit it to the Commission for consideration and inclusion in the IACHR's Annual Report to the General Assembly of the OAS. 2. Prepare thematic reports. 3. Gather the information necessary to write the reports. 4. Organize promotional activities recommended by the Commission including, but not limited to, presenting papers at relevant conferences and seminars, educating government officials, professionals and students about the work of the Commission in this area and preparing other promotional materials. 5. Immediately notify the Commission about emergency situations that warrant the Commission's request for precautionary measures or provisional measures that the Commission can request from the Inter-American Court, in order to prevent serious and irreparable harm to human rights. 6.

Provide information to the Commission about the processing of individual cases pertaining to freedom of expression.

7. The Commission's initiative in creating a permanent Office of the Special Rapporteur for Freedom of Expression enjoyed the full support of OAS Member States at the Second Summit of the Americas. At the Summit, the Heads of State and Government of the Americas recognized the fundamental role that freedom of expression and information plays in human rights and in a democratic system and expressed their satisfaction at the creation of this Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government expressly stated that:

We agree that a free press plays a fundamental role [in the area of human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.⁶

8. At the same Summit, the Heads of State and Government of the Americas also expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. The Plan of Action from the Summit contains the following recommendation:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.⁷

9. At the Third Summit of the Americas held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression and added the following:

[Our Governments will] Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.⁸

B. The Office of the Special Rapporteur's principal activities

10. Since taking office in November 1998, the Special Rapporteur has participated in numerous events aimed at publicizing the creation and objectives of the Rapporteurship. Widespread awareness of the existence of the Office of the Special Rapporteur will contribute to its ability to successfully carry out its assigned tasks.

⁶ Santiago Declaration, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Process of the Summits from Miami to Santiago", Volume I, Office of the Summit Follow-up, Organization of American States.

⁷ Action Plan, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Process of the Summits from Miami to Santiago", Volume I, Office of the Summit Follow-up, Organization of American States.

⁸ Third Summit of the Americas, April 20-22, 2001, Quebec, Canada.

Activities to promote and publicize the Rapporteurship's work mainly consisted of participating in international forums, coordinating activities with non-governmental organizations, advising states on proposing legislation related to freedom of expression and informing the public about the Office of the Special Rapporteur through the press. The main objectives of these activities were to increase the awareness among various sectors of society regarding the importance of the inter-American system for the protection of human rights, international standards governing freedom of expression, comparative jurisprudence on the subject and the importance of freedom of expression for the development of a democratic society.

11. The Office of the Special Rapporteur has become a strong proponent of legislative reform in the area of freedom of expression. Through its relationships with Member States and civil society organizations, the Rapporteurship has launched a collaborative effort in support of initiatives to amend laws restricting the right to freedom of expression and to adopt legislation that will enhance people's right to participate actively in the democratic process through access to information.

12. The Office of the Special Rapporteur employs various means to protect freedom of expression. In the course of its daily work, the Rapporteurship: analyzes complaints of violations of freedom of expression received by the Commission and conveys to the Commission its opinions and recommendations with regard to opening cases; follows up on cases open before the Commission pertaining to violations of this right; requests that the Commission solicit precautionary measures from the Member States to protect the personal integrity of journalists and media correspondents who are facing threats or the risk of irreparable harm; makes recommendations to the Commission regarding hearings to be granted during regular sessions and participates with the Commission in hearings having to do with alleged violations of freedom of expression; and works with the parties to achieve friendly settlements within the framework of the Inter-American Commission on Human Rights.

13. Since its creation, the Office of the Special Rapporteur has carried out advisory studies and made recommendations to some Member States regarding the modification of existing laws and Articles that impinge on freedom of expression. The objective in these situations is to make domestic legislation compatible with international standards to more fully protect enjoyment of this right. While preparing its thematic and annual reports, the Office of the Special Rapporteur corresponds with Member States to request information on specific subjects related to freedom of expression.

14. The Office of the Special Rapporteur receives information through its informal hemispheric network on the status of freedom of expression in Member States. Information is submitted by various organizations monitoring this right, journalists and other sources. In cases considered to involve a serious violation of freedom of expression, the Office of the Special Rapporteur issues press releases about the information it has received, expresses its concern to the authorities, and makes recommendations for reinstating this right. In other cases, the Office of the Special Rapporteur directly contacts government authorities to obtain further information and/or to request that the government

take measures to rectify the harm that has been inflicted. The Office of the Special Rapporteur has set up a database comprising numerous press agencies, freedom of expression and human rights monitoring organizations, attorneys specializing in the field and universities, among others, for the dissemination of releases and/or any other information considered relevant.

15. Due to the Office of the Special Rapporteur's efforts to publicize its activities and mandate, diverse sectors of civil society have been able to approach the Office to protect their right to impart, disseminate and receive information.

1. Promotion and dissemination activities

16. The following is a description of the main promotion and dissemination activities carried out by the Office of the Special Rapporteur during 2005.

17. On January 20 and 21, 2005, the Special Rapporteur traveled to the city of Lima to present a paper during the Regional Forum of the Andean Community of Nations called "Access to Public Information: Challenges to the Right to Information in the Continent."

18. On February 9, 2005, the Special Rapporteur made a presentation at a meeting of the World Bank in Washington, D.C. on the importance of access to information at the regional and global levels. The Special Rapporteur referred to his Annual Report and argued that in the future, international organizations should make this right a priority.

19. On February 21, 2005, the Special Rapporteur traveled to the city of Cancun to take part in the Third International Conference of Information Commissioners. The main subject of the conference was access to information and the impact of this right on public and private life. The Special Rapporteur took part in a round table discussion on the subject "Access to Information: A Global View."

20. From February 28 through March 4, 2005, the Office of the Special Rapporteur received an official visit from Mr. Andrew Chigovera, the Special Rapporteur for Freedom of Expression for the African Commission on Human and Peoples' Rights (ACHPR). The visit was an opportunity for the two rapporteurs to discuss common problems facing freedom of expression in both Africa and the Americas, consider ways in which the two mandates can cooperate to address some of these problems, and exchange information about strategies to carry out their individual mandates. At the conclusion of the visit, the two Rapporteurs approved a joint declaration addressing some of the issues they discussed during their meetings.⁹ Additionally, other joint declarations issued during 2005 are included in the annexes to this report.

⁹ The Joint Declaration is included as Annex 6 to this report.

21. On March 24, 2005, the Special Rapporteur traveled to the city of Montreal to present a lecture at the Centre for the Study of International Law and Globalization at the University of Quebec at Montreal. This event was organized by the Centre in partnership with the NGO *Droits et Démocratie*. The Special Rapporteur described the work of the Rapporteurship and discussed the recent decisions of the Inter-American Court of Human Rights concerning freedom of expression.

22. From April 4 to 5, 2005, the Office of the Special Rapporteur collaborated with the Inter-American Dialogue in the organization of a workshop called "Freedom of Expression and the Application of Insult [*desacato*] and Criminal Defamation Laws in Latin America." The objective of the meeting was to share ideas with a view to developing a strategy to disseminate recent judgments by the Inter-American Court of Human Rights, and on the basis of those judgments, to create mechanisms that would have an impact in the legislative and judicial arenas in the countries. The workshop took place in the headquarters of Inter-American Dialogue in Washington, D.C., and participants included representatives from the main organizations working to protect freedom of expression in the Americas, as well as distinguished academics, jurists, and journalists. An important topic at the meeting was the need to encourage the effective implementation in national judicial systems of the norms and jurisprudence of the inter-American system for the protection of human rights. The participants resolved to build communication and action networks in order to bring about change at the national level and to support the ongoing development of inter-American jurisprudence in the area of freedom of expression.

23. Between April 20 and 22, 2005, the Special Rapporteur traveled to the city of Bogotá to present a lecture at the invitation of the Constitutional Court of Colombia and its president, Jaime Araújo Rentería, at the Third Meeting on Constitutional Jurisprudence. Judges from the constitutional courts of Colombia, Bolivia, Guatemala, and Peru also took part, as did other distinguished Latin American and international jurists. The Special Rapporteur gave a lecture called "International Law and Constitutional Control," which was one of the highlights at the end of the event on April 22.

24. On May 9, the Special Rapporteur traveled to Asunción, Paraguay, as part of the Twenty-sixth Special Session of the Inter-American Court of Human Rights. The Special Rapporteur represented the Commission at the proceedings where the final oral presentations were heard in the *Humberto Palamara vs. Chile* case.

25. On May 16, 2005, the Special Rapporteur gave testimony before the Permanent Committee on Human Rights of the Canadian Senate. The distinguished senators Raynell Andreychuk, George Baker, Sharon Carstairs, Marisa Ferretti Barth, Donald H. Oliver, Landon Pearson, Vivienne Poy, and Terrance Stanton attended the meeting. The Special Rapporteur described the work of his Office and its dealings with countries in the Americas.

26. On May 17, 2005, the Special Rapporteur gave a lecture on the work of his Office in the Washington Office on Latin America (WOLA) in Washington, D.C.. He also discussed the findings of his recent visit to Colombia.

27. On May 26, 2005, the Special Rapporteur traveled to the city of Montevideo to take part in a seminar organized by UNESCO-Montevideo, UNESCO-Quito, and the World Association of Community Radio Broadcasters (AMARC). The seminar which was called "Freedom of Expression, Media, and Democratic Governance," was held as part of the celebration of World Press Freedom Day. The Special Rapporteur took part in one of four round tables during the seminar. While he was in Uruguay, the Special Rapporteur met members of the government, parliament, and civil society organizations.

28. On June 20, 2005 Lisa Yagel, a staff attorney in the Office of the Special Rapporteur, participated on a panel on international human rights at the Washington Council of Lawyers' Summer Pro Bono/Public Interest Forum. She spoke about the work of the office and ways in which private attorneys could be come involved in human rights work in the inter-American system.

29. On June 24, 2005, the Special Rapporteur took part in the Sixth Lecture Series of the Americas organized by the OAS and held at the headquarters of the organization in Washington, D.C.. The subject of the Lecture was the relationship between journalism and good governance. Dr. Alejandro Miró Quesada, President of the Inter-American Press Association, and editor of the Peruvian daily *El Comercio*, gave the main presentation. When the presentation was finished, the Special Rapporteur moderated a round table discussion of the issues raised by Dr. Miró Quesada.

30. Between July 5 and 9, 2005, the Special Rapporteur traveled Guatemala City at the invitation of the government to take part in activities with senior state representatives relating to the situation of community radio in the country.

31. On July 14, 2005, the Special Rapporteur presented a paper at an Inter-American Development Bank conference called "Development, Accountability, and Access to Information." At this event, which was held at the IDB headquarters in Washington, D.C., the Special Rapporteur presented a report into access to public information that was part of the 2004 Annual Report of the Office of the Special Rapporteur, and then took questions from those present.

32. On July 15, 2005, the Special Rapporteur traveled Belize City to take part as a special guest in a seminar run by the Belize Centre for Human Rights Studies, on the media and international human rights law. Representatives of the different media in Belize took part in the seminar. The Special Rapporteur made a presentation on the work of the Rapporteurship Office and the standards of the Inter-American System in the area of freedom of expression.

33. On August 10 and 11, 2005, the Office of the Special Rapporteur held a seminar in Antigua for journalists from the Caribbean region. The goal of the seminar was to give participants the basic knowledge that would help them to understand the OAS human rights system as an important tool to protect freedom of expression. The seminar was organized in cooperation with the Trust for the Americas with financial support from the McCormick Tribune Foundation. In conjunction with this project, the Rapporteurship

also hosted two journalists from the Caribbean region for two-month fellowships at the Rapporteurship's headquarters. The purpose of the fellowship was to give the journalists a deeper understanding about the inter-American human rights system and to strengthen the Rapporteurship's network in the Caribbean region. The fellows, Katrina Bend, of Barbados, and Susan Smith, of Jamaica, worked with the Rapporteurship during the months of October and November.

34. Between August 16 and 18, 2005, the Special Rapporteur traveled to Santiago, Chile in order to take part in a panel during the Meeting of Government Spokespersons of the OAS Member States. The meeting took place in the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC), and focused on transparency and access to information. As a member of the panel, the Special Rapporteur discussed these issues.

35. On August 30, 2005, the Special Rapporteur traveled to Mexico City as a special guest of the *Universidad Iberoamericana* to inaugurate the first "Meeting for Quality Journalism: ethics and professionalization in Mexico." This meeting was organized by the Department of Communication in the University, the Trust for the Americas of the OAS, the *Red Periodismo de Calidad*, and the *Fundación Prensa y Democracia*.

36. The Special Rapporteur was invited to take part in the 61st General Assembly of the Inter-American Press Association (IAPA), which was held in the city of Indianapolis, USA. One of the main speakers at this meeting was the Secretary General of the OAS, Dr. José Miguel Insulza, who urged Member States to protect freedom of expression in the Americas. He also highlighted the OAS General Secretariat's support for the Office of the Special Rapporteur for Freedom of Expression of the IACHR.

37. On October 13, 2005, the Special Rapporteur made a presentation in the headquarters of the World Bank in Washington, D.C., the title of which was "Development, Accountability, and Access to Information: Recent Research in Latin America." The presentation was sponsored by the Group for Public Sector Governance in Latin America and the Caribbean, and by the World Bank Institute, both of which organizations are affiliated with the World Bank.

38. On October 22, 2005, the Special Rapporteur traveled to New York to appear as a panelist and lecturer in the International Law Weekend 2005, organized by the International Law Association, US Section. The main theme of the conference was "International Norms in the 21st Century: Development and Compliance Revisited." The Special Rapporteur was a panelist discussing the issue "Freedom of Expression during times of War." Participants in the meeting comprised practicing lawyers, distinguished academics, and specialists in different areas of international law.

39. On October 28, 2005, staff attorney Lisa Yagel participated on a panel on careers in international law at the Equal Justice Works Conference and Career Fair. Equal Justice Works is a national organization in the U.S. that organizes, trains, and supports

public service-minded law students and creates summer and postgraduate public interest jobs.

40. On November 17 and 18, 2005, the Special Rapporteur participated in an event on access to information in the Southern Cone. The event was held in Montevideo, Uruguay with the cosponsorship of the Inter-American Dialogue and the Press Association of Uruguay (*Asociación de la Prensa Uruguaya*, APU). The Special Rapporteur spoke on principles for access to information and the recent resolutions of the OAS General Assembly on this issue.

41. On December 8 and 9, 2005, the Special Rapporteur participated as a speaker in the 7th Annual EU NGO Forum on Human Rights in London, England. The Forum, which focused on freedom of expression issues, brought together NGOs active in the field of freedom of expression, representatives of the Member States of the European Union (EU), and other EU institutions.

2. Official visits to countries

42. Between April 25 and 29, 2005, a delegation from the Office of the Special Rapporteur carried out an on site visit to Colombia at the invitation of the Colombian government. The delegation was headed by the Special Rapporteur and made up of the lawyer of the Office of the Special Rapporteur, Carlos J. Zeleda, and consultant Monserrat Solano. The visit took place in response to requests from different sectors of Colombian society to evaluate the status of freedom of expression in their country. During the visit, the delegation traveled to the cities of Bogotá and Arauca, and completed a full agenda. This agenda included holding meetings with senior government figures, representatives of state organizations that are running programs to protect journalists who are under threat from participants in the armed conflict, directors and editors of mass media, and civil society organizations. In addition, during the visit, interviews were held with approximately 60 journalists, human rights activists, social leaders, and individuals in different areas of the country, particularly in those areas most affected by the armed conflict, many of whom traveled to Bogotá and Arauca to meet the delegation from the Office of the Special Rapporteur. At the end of the visit, the Office of the Special Rapporteur issued a press release providing preliminary analysis of the information collected.

3. Publications

43. During 2005, the Office of the Special Rapporteur published a number of materials and books to promote freedom of expression in the Americas.

44. In August 2005, with financial support from the Spanish International Cooperation Agency (AECI), the Office of the Special Rapporteur published a report called *Impunity, Self-censorship, and Armed Internal Conflict: An Analysis of the Status of Freedom of Expression in Colombia*. This report was produced following an official visit by the Office of the Special Rapporteur to the country and was an attempt to provide a conceptual framework for the complicated status of freedom of expression in Colombia. In

the report, the Office of the Special Rapporteur expressed its concern at the ongoing impunity that exists with regard to serious violations of the right to freedom of expression. On the one hand, the report recognized the progress made by the Colombian government in protecting journalists, who have frequently been the targets of threats and reprisals in the country. On the other, the report registered the concern felt by the Office of the Special Rapporteur at the prevailing climate of intense self-censorship, a situation that, according to the report, is partly encouraged by the government. The report also indicated that the internal armed conflict continues to claim victims and creates an environment that is not conducive to the effective exercise of freedom of expression.

45. The Office of the Special Rapporteur, again with backing from AECI, produced a poster on the Declaration of Principles on Freedom of Expression for promotional and educational purposes. This declaration was produced by the Office of the Special Rapporteur and adopted by the Inter-American Commission on Human Rights in October 2000.

CHAPTER II

THE SITUATION OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction and methodology

1. This chapter describes some aspects related to the situation of freedom of expression in the countries of the Hemisphere.

2. This year, the Office of the Special Rapporteur continue the way in which it sets forth the specific situation of each country, starting with the Declaration of Principles on Freedom of Expression, prepared by the Office of the Special Rapporteur for Freedom of Expression and adopted by the Inter-American Commission on Human Rights.¹ Where relevant, positive actions are treated in a separate section on progress, so as to get a clearer view of the countries in which there was progress, such as the adoption of laws for access to information consistent with the Declaration, draft legislation, and judicial decisions favorable to the full exercise of the freedom of expression. The facts that could be related to Principles 10² and 11³ of the Declaration of Principles on Freedom of Expression were compiled together, considering that in more than a few cases—and as the Office of the Special Rapporteur has indicated—defamation laws are generally invoked for the same purposes as *desacato* laws.⁴

3. This chapter reflects information corresponding to 2005. The Office of the Special Rapporteur for Freedom of Expression receives information from various sources⁵ that describes the situation related to the freedom of expression in the States of the Hemisphere. Once the information is received, and mindful of the importance of the

¹ The idea of developing a Declaration of Principles on Freedom of Expression was born out of recognition of the need to set forth a legal framework to regulate the effective protection of the freedom of expression in the Hemisphere, incorporating the leading doctrines recognized in the various international instruments. The Inter-American Commission on Human Rights approved the Declaration prepared by the Office of the Special Rapporteur during its 108th session in October 2000. That declaration is fundamental for interpreting Article 13 of the American Convention on Human Rights. Its approval is not only an acknowledgement of the importance of protecting the freedom of expression in the Americas, but it also incorporates into the inter-American system the international standards for the more effective exercise of this right (see <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=25&IID=1>).

² Principle 10. 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.

³ Principle 11. 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.

⁴ IACHR, *Annual Report 2002*, OEA/Ser.L/V/II.117, Doc. 5 rev. 1, March 7, 2003, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V.

⁵ The Office of the Special Rapporteur receives information sent by independent human rights organizations and organizations for the defense and protection of the freedom of expression, independent journalists directly affected, and information request by the Office of the Special Rapporteur of the representatives of the Member States of the OAS, among others.

matter, it is analyzed and checked. Once this task is completed, it is grouped based on the principles, and the Office of the Special Rapporteur, for the purposes of this Report, reduces the information to a series of emblematic examples to reflect the situation of each country in relation to respect for and the exercise of the freedom of expression. In most of the cases cited, the sources of the information are given. The omission of some states indicates that no information has been received; their omission should be interpreted only in this light.

4. Finally, the Office of the Special Rapporteur would like to thank each of the States and civil society in the Americas as a whole for sending information on the situation of the freedom of expression. The Office of the Special Rapporteur urges them to continue and expand on these practices for the benefit of future reports.

B. Situation of the freedom of expression in the Member States

ANTIGUA AND BARBUDA

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

5. Journalist Lennox Linton faces criminal defamation charges in connection with a September 16, 2005 radio broadcast about the Director of Public Prosecutions (DPP). In his morning talk program "Wake Up Call," Linton reportedly said he would not be provoked into making comments about the suitability of DPP Gene Pestaina for his job. The DPP complained that Linton had recklessly published a defamatory statement about Pestaina contrary to the nation's libel and slander laws. Linton could face up to 19 months in prison or a fine of \$7,000. Magistrate Maureen Payne-Hyman adjourned the case until December 8 after a first hearing in September.⁶

PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Indirect violations of freedom of expression)

6. In October 2005, the leader of Antigua's Labour Party (ALP), Lester Bird, complained that the party had been denied its right to petition the government by way of peaceful demonstration. The party said it wrote to Commissioner of Police Delano Christopher on October 6 to request police presence and protection for the national demonstration planned for October 27. Bird said that the party was verbally denied permission to hold the demonstration on October 17. The ALP called the denial an "assault on freedom" on the behalf of the ruling United Progressive Party. The party added that it considered the denial "as the most egregious of several anti-democratic decisions taken by the UPP regime to reverse freedom in Antigua & Barbuda," and resulted from a politicization of the police force by the current government.⁷

⁶ *The Daily Observer* (Antigua), October 27, 2005.

⁷ *The Antigua Sun*, October 24, 2005.

ARGENTINA

PRINCIPLE 4 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Access to information held by the state)

7. In 2005, an Argentine municipal government continued to refuse to provide information to a local newspaper that had been seeking details on the municipality's staff, administration and operations for more than a year. On October 21, 2004, the La Plata-based daily newspaper *El Día* filed a complaint against the La Plata municipal government which, since the previous May, had been refusing to hand over information on how many employees it had and its agencies and departments. On February 22, 2005, the court hearing the case ruled in favor of *El Día*. The city appealed the ruling, however, and it has still not provided access to the material.⁸

8. The Argentine national legislature failed to pass a Law on Access to Public Information during its session that ended November 30, 2005. The Chamber of Deputies had approved the bill in 2003, but the Senate made a number of amendment proposals that would jeopardize the law's original aims. In postponing the debate, the bill lost its parliamentary character, which means that it must be submitted again for consideration in the Argentine national Congress, which will begin its next session in March 2006. In addition, a bill introduced by four senators from the Justicialist Party would increase the areas that are subject to confidentiality, which now applies to defense and security matters.⁹

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

9. On March 12, 2005, Daniel Otero, co-producer of the investigative program "*Puntodoc*" on *Azul TV*, was the subject of an intimidation effort when his car windows were broken and a knife was placed on the seat in an apparent warning. The incident, which took place while his car was parked near his mother's house in Quilmes, in southeastern Buenos Aires, follows other threats and an attack on the journalist's son. The harassment appears to stem from a September 2004 report produced by Otero that revealed that school canteens in the Florencio Varela municipality, a southern suburb of Buenos Aires, either lacked food or were being supplied with spoiled food. The program blamed Mayor Julio Pereyra and former school council president Genaro Simioli. Otero received anonymous threats after the program was broadcast. In December 2004, his son, Juan Manuel Otero, was physically attacked by a gang of seven individuals, including the mayor's son, Daniel Pereyra. He sustained injuries to his nose and face. Otero's son sought help from the police but they dismissed his pleas. When he later filed a complaint over the

⁸ Inter-American Press Association, www.sipiapa.org.

⁹ Inter-American Press Association, www.sipiapa.org.

incident, it was not forwarded to a judge until 10 days later, instead of the mandatory 72 hours. The police also refused to describe the incident as an "assault" in the complaint, using the term "brawl" instead. Mario Lettieri, editor of the *Varela al Día* newspaper, who was interviewed in the original "Puntodoc" program, was also attacked on February 27 in similar fashion to Otero's son. In Lettieri's case, the assailants included the former school council president's son and the brother of a member of the council.¹⁰

10. On October 10, 2005, photographer Leandro López of the local daily *El Sol* was severely beaten by police officers on the grounds of the central police station in Concordia, a city in the eastern province of Entre Ríos. López sustained facial injuries and his hearing was damaged by blows to the head. As he left his newspaper's offices at around 6 a.m., López noticed that a road accident had just taken place about 100 meters from the main police station. He said that the police attempted to stop him from working by first firing a shot into the air, after which the officers pushed him and shouted at him. When López went to the police station a short time later to seek information about the accident, he was accosted by the same police officers. They shouted at him: "What shit are you getting into, you son of a bitch journalist?" Then they led him into a corridor and, in the presence of other police officers, hit him on the legs, stomach and head. The three officers who took part in the attack then locked him in a cell. He was left with bruises all over his face and a perforated eardrum, resulting in a 40 per cent loss of hearing.¹¹

11. Author and journalist Mariano Saravia has been the target of harassment and threats since the March 2005 release of his book exposing police abuses during the dictatorship (1976-1983). Saravia, of the daily *La Voz del Interior* in Córdoba, central Argentina, said he has faced threats and "judicial persecution" since his book, *La Sombra Azul (The Blue Shadow)*, probing police activity during the dictatorship, came out. On July 23, the journalist found a dozen .45 caliber bullets left outside his home. At the start of August, a swastika was painted on the walls of his house and in October he found a dead bird hanging by its claws inside his garage. A large pot of flowers was smashed in the courtyard of his home on November 6. Suspicious looking vehicles have also been parked outside his house on several occasions and he continues to regularly receive threatening phone calls involving insults, lengthy silence, funereal music, screams or dogs barking. His own dog is also missing, and he has reportedly been harassed by members of the military - Luis Alberto Manzanelli, Luis Gustavo Diedrich and Ricardo Lardone - who are referred to in the book and now in prison for crimes against humanity. They have all threatened lawsuits against him by letter. Another member of the military, José Hugo Herrera, has launched a civil suit against the journalist seeking 50,000 pesos in damages for libel.¹²

¹⁰ Reporters Without Borders, www.ifex.org/en/content/view/full/65549.

¹¹ Reporters without Borders, www.ifex.org/en/content/view/full/69852/.

¹² Reporters Without Borders, www.ifex.org/en/content/view/full/70569/.

**PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Indirect violations of freedom of expression)**

12. The placement of Argentine government advertising remained a key concern in 2005 as the government continued to use the award of government advertising as a tool for pressuring media and journalists and communications media. A study by the nongovernmental organization *Poder Ciudadano*, the local branch of Transparency International, found that no set of criteria exists to determine how spending on advertising is made. The report noted that the discretion “could favor [the media outlets] that are more friendly and be detrimental to those that are not.”¹³ Another study carried out in four provinces and at the national level by the Open Society Justice Initiative found “an entrenched culture of pervasive abuse by provincial government officials who manipulate the distribution of advertising for political and personal purposes[.]” This was particularly problematic at the provincial level because many regional media depend heavily on public sector advertising for their financial survival. The study found that national media were less reliant on government advertising revenues, but that, nevertheless, the national government exercised favoritism in allocating official advertising.¹⁴

13. Argentine journalists who criticize the government are suffering from mistreatment and intolerance, according to a report made by *El Foro de Periodismo Argentino* (FOPEA) to the Inter-American Press Association. Journalists who publish unfavorable reports on the government or who speak against the government’s position are habitually disqualified. The Inter-American Press Association also noted in its annual report that the federal government makes derogatory statements against journalists, as illustrated by President Nestor Kirchner’s repeated comments about journalists and media outlets. In particular, the president has accelerated his criticism against newspaper *La Nación*. “Certain sectors are taking aim at me,” said President Kirchner on August 5, noting that “they shield themselves by claiming to be independent.” He also referred to corruption in the media, but provided no details to support the accusation. Senator Cristina Fernandez de Kirchner, meanwhile, said in New York that “governments should be unbending. The government program is Argentina and this is government policy. To anyone who disagrees, the government will be unbending.”¹⁵

¹³ Inter-American Press Association, annual report on Argentina, www.sipiapa.org/publications/informe_argentina2005o.cfm.

¹⁴ Open Society Justice Initiative and Association for Civil Rights –Argentina-, *Buying the News: A Report on Financial and Indirect Censorship in Argentina*, 2005, www.adc.org.ar/home.php?iDOCUMENTO=404&iTIPODOCUMENTO=1&iCAMPOACCION=4.

¹⁵ Fopea, *Situación de la libertad de expresión en la Argentina*, www.fopea.org/contenido/comunicados/situacion_de_la_libertad_de_expresion_en_la_argentina; see also Inter-American Press Association, Annual Report on Argentina, www.sipiapa.org/publications/informe_argentina2005o.cfm.

BOLIVIA

PRINCIPLE 4 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Access to information held by the state)

14. According to the most recently available information, journalist Rodolfo Bluske has received no response to a letter sent to the Presidential Anti-Corruption Delegation (*Delegación Presidencial Anticorrupción*), requesting information needed for an analysis of corruption cases reported in the Department of Tarija and the counter-measures taken by the Delegation there. The journalist's right to a response is guaranteed by Decree 28168 of May 17, 2005, regarding access to information. According to the decree, institutions must provide the information requested within a maximum of 15 days. According to the information received, Bluske's request was officially received on May 31, 2005 and he later went to the Tarija Delegation office, where he was told that his request had been sent to the La Paz office for a response, which the Tarija officials had so far not received. Bluske then filed a complaint with the Ombudsman's Office regarding the violation of the right to information, guaranteed under the Constitution.¹⁶

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

15. On April 19, 2005, a military policeman and an officer assaulted cameraman José Luis Conde, of *Bolivisión* television station, during a ceremony at the military academy in La Paz. Conde was filming a ceremony at the military academy when a military policeman suddenly stopped him. Conde said that the soldier, named Daniel Castro Revollo, ordered him to stop because it was forbidden to film what he was shooting, although the journalist said he was filming the same events as other journalists present. A lieutenant who witnessed the exchange then sided with the soldier and threatened Conde, saying "piece of shit, do you know who we are?" They forced Conde into a nearby barracks, where they grabbed his camera, pulled out the cassette and broke it. The lieutenant struck the journalist four or five times in the face, according to Conde. He reported the incident to the armed forces high command. Commander-in-chief Luis Aranda Graneros promised sanctions.¹⁷

PROGRESS

16. On May 17, 2005, then-President Carlos Mesa signed a decree guaranteeing journalists the right to a response when they request information from government institutions. Decree 28168 recognizes that the right to access information is a fundamental element for the full exercise of citizenship and the strengthening of democracy, and provides that all natural and legal persons have the right to solicit and receive full and

¹⁶ Probidad, www.ifex.org/en/content/view/full/67795/).

¹⁷ Reporters Without Borders, www.ifex.org/en/content/view/full/66295/.

adequate information for the executive branch, and the information must be provided within 15 working days. The decree also provides that requests for information can only be denied in exceptional circumstances.

BRAZIL

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

17. On May 4, 2005, a Brazilian district judge ordered the seizure of all copies of a nonfiction book by journalist and author Fernando Moraes. Judge Jeová Sardinha de Moraes, of the 7th Civil District of Goiânia, the capital of the central state of Goiás, granted an injunction ordering the withdrawal of all copies of Moraes's book *Na Toca dos Leões (In the Lions' Den)* from circulation in Brazil, according to local news reports. The injunction was granted on behalf of federal parliamentary deputy Ronaldo Caiado. Caiado reportedly filed civil and criminal defamation complaints against Moraes and a civil complaint against the *Editora Planeta do Brasil* publishing house, which was given 20 days to withdraw the books from bookstores nationwide. *Editora Planeta do Brasil*, which printed around 50,000 copies of the book, contested the injunction. Moraes's book, which was published in early April, tells the history of the advertising agency W/Brasil and contains interviews with its main business partners. The book quotes one business partner as saying that while running for president in 1989, Caiado told the partner that sterilizing women could solve overpopulation in Brazil's Northeast. Caiado claims he never made that statement. Judge Sardinha's May 4 decision reinforced his earlier April 13 decision, which ordered the seizure of all copies of the book at the *Editora Planeta do Brasil* offices in the city of São Paulo. In addition, he banned the author and his publisher from making statements about the book to any media outlet and set a 5,000 reais (approximately \$2000) fine for any breach of this order. On October 21, 2005, a Brazilian civil chamber ruled unanimously to overturn the order that withdrew the book from circulation.¹⁸

18. On May 15, 2005, a judge banned TV station *Rede Amazônica de Televisão*, the affiliate of television network *Rede Globo* in central-west Rondônia state, from broadcasting a report on corruption involving state legislators and the governor. Around 7:50 p.m., just minutes before *Rede Globo*'s news show "*Fantástico*" was to air a report on alleged corruption among state legislators, justice officials arrived at *Rede Amazônica de Televisão*'s studios and served an injunction prohibiting the broadcast nationwide. *Rede Amazônica de Televisão* was then forced to cancel the story and instead broadcast a message on a blank screen saying the Rondônia State Court of Justice had ordered the report's cancellation. In Rondônia, only those with a satellite dish were able to see the report. Claiming it did not receive a copy of the injunction in time, *Rede Globo* broadcast the report in its entirety through its other affiliates in Brazil. The report was based on several videotapes made by Rondônia governor Ivo Cassol, who faces impeachment on

¹⁸ Committee to Protect Journalists, www.ifex.org/en/content/view/full/66605/, *Folha do Brasil*, www1.folha.uol.com.br/folha/brasil/ult96u73382.shtml.

charges of conspiracy to commit crimes and fraud in connection with the awarding of public contracts. The tapes, reportedly shot in Cassol's house in late 2003, allegedly show state legislators asking for money in return for dropping their support for his impeachment. Earlier in the day, 19 of the 24 state legislators, saying that the tapes could be a fabrication that could injure their reputation, requested an injunction. Around 7:45 p.m. that evening, Judge Gabriel Marques ordered that broadcasting of the tapes be banned. In a short, hand-written decision, he said that airing the tapes without giving the legislators a chance to defend themselves would cause damage to their privacy, honor, and reputation, and would cause damage to Rondônia and its people. He set a daily fine of 200,000 Brazilian reais (US\$87,000) for failure to comply with his order. On May 16, claiming that *Rede Globo* had already aired the content of the tapes throughout Brazil, the state legislators behind the injunction asked Judge Marques to revoke it. On May 17, *Rede Amazônica de Televisão* was able to broadcast the full report in Rondônia.¹⁹

19. On June 24, 2005, a Sao Paulo court prevented *ProTeste* magazine from distributing a publication containing an article about the results of their tests evaluating blood pressure-stabilizing medications. The action against the magazine, which is published by the Brazilian Association for Defense of the Consumer (*Associação Brasileira de Defesa do Consumidor*), came in response to a legal action by two drug manufacturers, who were unhappy with the results. The association's spokesperson, Vera Lúcia Ramos, said the Sao Paulo court prohibited *ProTeste* from revealing the names of the two firms involved. As a result of the court order, the magazine had to delay distribution of the issue, remove the story, and reprint the 155,000 copy run. Lúcia stated that *ProTeste* would appeal the decision. She added that the legal action was unnecessary since the magazine "always offers manufacturers a chance to defend their products." The consumer's association that issues *ProTeste* is a civil-society organization that acts in the public interest and has published the results of over 60 comparative tests on different products since 2002. The magazine is distributed to the association's members.²⁰

20. On September 1, 2005, Judge José Alonso Beltrame Júnior, of the Tenth Santos Civil Court in Sao Paulo state, issued an order prohibiting *A Tribuna* newspaper from reporting on a court case involving the misappropriation of public funds. The local paper faces a fine of 50,000 reais (approx. US\$21,000) each time it defies the order. In August, *A Tribuna* reported on an investigation by the Special Audit Committee into the diversion of funds by the Santos Prefecture. As a result of the investigation, Sonia Maria Precioso de Moura, a government official at the prefecture, was accused of having embezzled more than US\$700,000 by diverting it into phantom accounts. Precioso's lawyer subsequently argued that the legal proceedings should be kept confidential and asked Judge Beltrame Júnior to place restrictions on the press. Judge Beltrame Júnior's order was condemned by the National Newspaper Association (*Associação Nacional de Jornais*, ANJ). *A Tribuna* plans to appeal the decision.²¹

¹⁹ Committee to Protect Journalists, www.cpj.org/cases05/americas_cases05/brazil.html.

²⁰ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/68317/.

²¹ *Instituto Prensa y Sociedad*, with the Brazilian Investigative Journalism Association (*Associação Brasileira de Jornalismo Investigativo*, ABRAJI), www.ifex.org/en/content/view/full/69068/.

**PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Murder, kidnapping, intimidation of and/or threats to social communicators and the
material destruction of communications media)**

21. In March 2005, a Brazilian newspaper editor who denounced political corruption was attacked by gunmen. Two unidentified assailants shot Maurício Melato Barth, owner and editor of the bimonthly newspaper *Info-Bairros*, twice in the legs at the editor's home in the southern city of Itapema. Barth faces up to 15 months of recovery before he can walk again, and because he and his family went into hiding, the newspaper has stopped publishing. The attack came after he published a series of articles denouncing government corruption in Itapema, a city of about 30,000 in the state of Santa Catarina. Barth said that he received anonymous phone threats before the shooting. Barth said he believes his newspaper's work prompted the attack. André Gobbo, editor with the Itapema newspaper *Jornal Independente*, also said that he believes the attack stemmed from *Info-Bairros'* coverage of local corruption.²²

22. On May 4, 2005, André Lima, a photographer with the daily *Diário do Nordeste* was harassed by military police in Fortaleza, Ceará State. Lima was covering a protest against the construction of a high-tension electricity line in the Zizi Gavião and Conjunto São Miguel neighborhoods. Lima said the military police were being violent with the protesters. When three of the officers noticed Lima was taking pictures, they threatened him. He said one of the officers stepped on his foot, and then two others came over and grabbed his equipment. They threatened to break his camera and demanded the film, but Lima explained it was a digital camera. The police then held him until he showed them the images. The police refused to comment, saying the case was still under investigation. On May 9, the newspaper published a story on the incident, with photos. The owners of the newspaper say they will not press charges against the police, but Lima has contacted the journalists' union in Ceará and intends to sue for moral and material damages.²³

23. Journalist Fernando de Santis reported receiving anonymous death threats on April 9 and 13 over his home telephone in Ilhabela, a small town near the north coast of São Paulo state. The caller also threatened to kill his one-year-old son. Since 2003, Santis has investigated corruption stories involving local Mayor Marco de Jesus Ferreira's administration. The journalist linked the recent threats to the mayor, and said that while he has no proof connecting the threats to the mayor, they began after he first started publishing corruption stories. Santis asked for assistance from the São Paulo Journalists' Union, which sent a formal complaint to the São Paulo State Public Security Office. Although Santis was approached by the town's deputy, no protection has been offered yet and the journalist said he does not feel safe and plans to leave Ilhabela.²⁴

²² Committee to Protect Journalists, www.ifex.org/en/content/view/full/65915/.

²³ *Instituto Prensa y Sociedad*, with information provided by the Brazilian Investigative Journalism Association (*Associação Brasileira de Jornalismo Investigativo*, ABRAJI), www.ifex.org/en/content/view/full/66984/.

²⁴ *Instituto Prensa y Sociedad*, with information provided by the Brazilian Investigative Journalism Association (*Associação Brasileira de Jornalismo Investigativo*, ABRAJI), www.ifex.org/en/content/view/full/66765/.

24. On May 17, 2005, unidentified persons set fire to journalist Sandra Miranda's house in Palmas, capital of Tocantins State. Miranda edits the independent newspaper *Primeira Página* and has been working as a journalist for 22 years. Police said the fire, which affected only a back room, was set deliberately. Sandra Miranda said the attacks were probably a response to *Primeira Página's* independent editorial line and its frequent investigation and criticism of the administration of Tocantins State Governor Marcelo Miranda, including suggestions in December 2004 that the governor and his wife had "mysterious relatives" and that the state payroll was padded with non-existent employees. She has filed a legal complaint against Governor Miranda. According to the most recent available information, Sandra Miranda has not been able to publish *Primeira Página* since the fire. She asked the police for protection for herself and her two children, but has received no assistance to date. The incident is still under investigation. Additionally, her husband, Reynaldo Soares de Oliveira Silva, has been trailed by a suspicious van while walking near their home. On August 30, 2005, Governor Miranda made threats against Sandra Miranda, warning the journalist's brother, José Valdemir Miranda, who is also a journalist, at an official ceremony that he would "not allow publication of any more news attacking my family" and that "if the law does not stop it, I will take steps of my own to do so."²⁵

25. On May 20, 2005, Joacir Goncalves da Silva, editor of the regional newspaper *Enfoque Social* of Itaquaquecetuba, said he received death threats from the mayor, Armando Tavares Filho, better known as "Armando of the drug store." The journalist published information showing that the mayor had problems with the Audit Court because of the acquisition of school lunches with a no-bid contract valued at more than 7 million reais.²⁶

26. On June 16, 2005, reporter Efrém Ribeiro of the newspaper *Meio Norte* of Teresina in Piauí was attacked by state legislator Homero Castelo Branco (PFL-PI) in a corridor of the Petrônio Portela site of the state legislature. The reason for the attack was an article published the day before saying that the regional federal prosecutor, Carlos Eduardo Oliveira Vasconcelos had accused the legislator in the regional federal court of fraud, falsifying a public document, and a tax offense.²⁷

27. On June 21, 2005, a team from *TV Globo* presented a complaint with the São Paulo police accusing three men of assault. Assistant Marçal Queiroz, reporter Lúcio Sturm and cameraman Gilmário Batista were beaten while filming a report on the crisis in the Workers Party in front of the party's headquarters in downtown São Paulo. Batista was

²⁵ Reporters Without Borders, www.ifex.org/en/content/view/full/69362/, *Instituto Prensa y Sociedad*, with information provided by the Brazilian Investigative Journalism Association (*Associação Brasileira de Jornalismo Investigativo*, ABRAJI), www.ifex.org/en/content/view/full/67180/.

²⁶ Inter-American Press Association, Annual Report on Brazil, www.sipiapa.org/publications/informe_brasil2005o.cfm.

²⁷ Inter-American Press Association, Annual Report on Brazil, www.sipiapa.org/publications/informe_brasil2005o.cfm.

able to film the faces of the attackers and gave the tape to police chief Mário Jordão, who said it proves the attack and death threat made by the three men.²⁸

28. On June 29, 2005, Legislator Raul Freixes (PTB) attacked Paulo Fernandes, a reporter of the newspaper *O Estado de São Paulo*, during a session of the Legislative Assembly. When Freixes was asked about the proceeding in which he is accused of administrative malfeasance by the state public prosecutor's office in Aquidauana, the legislator got angry, pushed the reporter, took his tape recorder and threw it on the floor.²⁹

29. City councilman and radio reporter José Cândido de Amorim Filho, 45, was murdered on July 1, 2005 as he was arriving at the *Radio Alternativa FM* radio station in Carpina, 40 miles from Recife, Pernambuco state, Brazil. Witnesses said four men riding on two motorcycles shot at Amorim's car, hitting him 10 times in the chest and head. His son, who was inside the radio station building at the time, rushed his father to the hospital, where he later died. Amorim was host of the program "*Jota Cândido*" in which he exposed corruption. He was also a member of the Carpina city council for the Democratic Workers Party (PDT) and had been one of the authors of a local ordinance outlawing nepotism in the local municipal government. He had been the victim of an assault on May 21 but escaped uninjured.³⁰

30. Several cases of attacks and intimidation occurred during the month of August 2005, including three in the central state of Tocantins. Salomão Aguiar of *TV Palmas* was attacked during the first week of August by a local judicial official as he was covering a noise control operation by police in the state capital of Palmas. The official, who did not want his car filmed, punched Aguiar in the face, bruising him. On August 11, police tried to stop television crews and journalists from *TV Palmas*, *TV Anhanguera* and the *Jornal do Tocantins* newspaper from covering a news conference at the state prosecutor's office in Palmas at which prosecutors brought forth two police officers accused of extortion. On August 17, local parliamentarian Fábio Martins assaulted Edson Rodrigues, editor of the weekly *Paralelo 13*, during a meeting of the Tocantins regional council. Elsewhere in Brazil, Amélia Denardin, chief of staff for the mayor of Altamira (in the northern state of Pará), assaulted Odair Oliveira of the television station SBT during the Pará Indigenous Games on August 14 and tried to stop him from filming, according to SBT executives, who later filed a complaint.³¹

31. Vandals damaged photojournalist Leandro Nunes's car in the early morning hours of September 5, 2005, breaking the windows and leaving a note that said "I've got

²⁸ Inter-American Press Association, Annual Report on Brazil, www.sipiapa.org/publications/informe_brasil2005o.cfm.

²⁹ Inter-American Press Association, Annual Report on Brazil, www.sipiapa.org/publications/informe_brasil2005o.cfm.

³⁰ Inter-American Press Association, www.ifex.org/en/content/view/full/67970/.

³¹ Reporters without Borders, with information from the National Federation of Journalists (FENAJ), www.ifex.org/en/content/view/full/69039/.

you". Nunes works for the newspaper *Jornal de Rondônia*. His car had been parked inside the garage at his home, in the city of Ji-Paraná, Rondonia state. Nunes, who reports on police matters in the city, said he had not received any threats prior to the incident, but he suspected certain individuals, including Ibama Prosecutor José Magalhães. The prosecutor, who is Nunes's neighbor, was arrested during a police operation on August 18, but was later released. Nunes photographed the prosecutor while he was in prison. Nunes submitted a complaint for the damage to his car to the Ji-Paraná First Police Division, under the direction of Officer Alexandre Árabe. Because of the uncertainty over the incident's perpetrator, Nunes did not denounce the incident as a threat.³²

32. On September 9, 2005, three hooded gunmen set fire to a building housing the *Diário de Marília* daily newspaper and two radio stations, *Diário FM* and *Dirceu AM*, in Marília, in the southeastern state of São Paulo. The fire gutted most of the building. The building was the headquarters of the Central Marília Notícias media group, which owns the newspaper and the two radio stations. Night watchman Sérgio Silva de Araújo, who was alone in the building at the time, said a woman in her twenties appeared at about 3 a.m. local time, claiming to want to deliver a message to one of the radio stations. When the guard opened the door to take the message, three hooded men forced their way in and threatened him with their guns. Initially they asked to be taken to the company's safe, but then they poured gasoline and set it alight. The ensuing blaze destroyed nearly 80 per cent of the building. *Diário de Marília* editor-in-chief José Ursilio de Souza said he thought the attack was a deliberate reprisal against his newspaper, which had adopted a critical editorial line towards local politicians.³³

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

33. Brazilian sports commentator Jorge Kajuru was sentenced on April 28, 2005 to 18 months of overnight detention in connection with a criminal defamation conviction. Kajuru, whose real name is Jorge Reis da Costa, was ordered to stay at a prison dormitory in Goiânia, capital of central Goiás state, every night from 8 p.m. to 6 a.m. beginning May 28. He may not leave Goiânia at any time without a judge's approval. The restrictions will likely interfere with Kajuru's ability to work; he is based in São Paulo, where he lives and works for the television network SBT. The criminal defamation lawsuit against Kajuru stemmed from comments he made in January 2001 on the Goiânia-based *Rádio K*, which he then owned. Kajuru alleged that television station *TV Anhanguera*, the affiliate of television network *Rede Globo* in Goiás, had won the rights to broadcast the Goiás state soccer championship because of its close relationship to the state government. The media group *Organizações Jaime Câmara*, which owns *TV Anhanguera* as well as several newspapers and radio stations, and its president, Jaime Câmara Júnior, filed several

³² *Instituto Prensa y Sociedad*, with information provided by the Brazilian Investigative Journalism Association (*Associação Brasileira de Jornalismo Investigativo*, ABRAJI), www.ifex.org/en/content/view/full/69253/.

³³ Reporters Without Borders, www.ifex.org/en/content/view/full/69109/. See also press release of the Office of the Special Rapporteur for Freedom of Expression 128/05, Sept. 14, 2005, included in Annex 9 of this report.

criminal complaints against Kajuru claiming their honor and reputation had been damaged. Judge Alvarino Egídio da Silva Primo, of the 12th Criminal District of Goiânia, found Kajuru guilty of criminal defamation in June 2003. Kajuru's lawyers filed several appeals before the Goiás State Court of Justice and the Superior Court of Justice – Brazil's second highest court – but his conviction was upheld. In March, the Goiás State Court of Justice ordered that the sentence be carried out. Kajuru's lawyers said they would request that their client be allowed to serve his sentence in São Paulo, according to local news reports. Another judge would hear that request. Kajuru is known as an outspoken commentator whose views have sparked controversy. He faces scores of other civil and criminal defamation lawsuits stemming from his comments.³⁴

34. In July 2005, Ancelmo Gois, a columnist with the Rio de Janeiro daily *O Globo*, faced prosecution after his column revealed a dispute between two local judges. In a February 27, 2004 column titled "Clash of Titans," Gois wrote that Judge Francisco José de Asevedo had lost a civil lawsuit and been sentenced to pay damages of 170,000 reais (US\$74,000) to Judge Tereza Cristina Sobral Bittencourt. Sobral had filed the suit, Gois said, after Asevedo accused her of corruption and issued a warrant for her arrest. Judge Asevedo complained about Gois's column to the Rio de Janeiro Attorney General's Office, which in March 2004 opened an investigation, named Gois and the unidentified source for his column as co-defendants, and charged them with violating the secrecy of legal proceedings, according to local press reports. Prosecutors also asked Gois to disclose his source, but he refused. If convicted, Gois could have faced between two and six years in prison. According to local press reports, although a civil court initially ordered that the legal proceedings involving judges Asevedo and Sobral be conducted in secrecy, a higher court had revoked the order, thus allowing the court ruling against Asevedo to be published in the Rio de Janeiro State Court of Justice's official journal and on its Web site. On July 28, after Gois filed an injunction before a three-judge panel of the Rio de Janeiro State Court of Justice, the panel ordered the suspension of the criminal proceedings against him until it could gather more information. On August 11, the three-judge panel voted 2 to 1 to dismiss the case against Gois, ruling that his actions did not constitute a crime. The panel's ruling also recognized the journalist's right to maintain the confidentiality of his sources.³⁵

35. A leading Brazilian journalist is the target of legal harassment and must remain in the country to follow up on the 18 lawsuits pending against him. Lúcio Flávio Pinto, editor of semimonthly newspaper *Jornal Povo*, has been threatened, physically attacked, and targeted with dozens of criminal and civil defamation lawsuits. Pinto said he is being sued by powerful judges, media owners, politicians, and businessmen displeased by his reporting on drug trafficking, environmental devastation and political and corporate corruption. All of the suits are based on Brazil's 1967 press law adopted under the military dictatorship. The law provides for harsh penalties, including imprisonment.³⁶

³⁴ Committee to Protect Journalists, www.ifex.org/en/content/view/full/66716/.

³⁵ Committee to Protect Journalists, www.cpj.org/cases05/americas_cases05/brazil.html.

³⁶ Committee to Protect Journalists, www.ifex.org/en/content/view/full/70498/.

PROGRESS

36. On May 25, 2005, a jury in Rio de Janeiro sentenced Elias Pereira da Silva, a suspected drug lord, to 28 ½ years in prison for the brutal 2002 slaying of Brazilian investigative reporter Tim Lopes. Lopes, an award-winning reporter for *TV Globo*, was tortured and slain with a sword in June 2002 while investigating the proliferation of parties involving drugs and under-age sex in a Rio slum. Pereira da Silva was the first of seven defendants to stand trial in the murder of the renowned Brazilian journalist.³⁷ On June 14, 2005, Cláudio Orlando do Nascimento was found guilty of participating in the same crime and sentenced to 23 years and 6 months in prison. According to the most recent information received, the case against the remaining defendants is still pending.³⁸

37. On May 1, 2005, Célio Alves dos Santos was sentenced to 17 years and 6 months in prison for the murder of Brandão Lima Júnior of Folha do Estado on Sept. 30, 2002. On June 16, 2005, João Leite was sentenced to 15 years and 2 months in prison for the same crime. Hércules de Araújo Agostinho was convicted in December 2003 for the same murder and is serving an 18-year prison sentence.³⁹

38. On August 22, 2005, Brazil's highest court, the Supreme Federal Tribunal, ruled that the government cannot impose criminal penalties on journalistic criticism, saying that it is an implied right within the broader freedom of the press. The case involved a criminal suit for "subversion against national security" in the exercise of a profession against a publisher and two reporters from *Veja*. The Tribunal found that the government's charge posed a challenge to the right of journalistic criticism, which was a freedom of expression issue and therefore within its jurisdiction. On this question, the Tribunal ruled that the government cannot legitimately place criminal penalties on journalistic criticism, which is a constitutional right.⁴⁰

³⁷ Committee to Protect Journalists, www.ifex.org/en/content/view/full/66946/,

³⁸ Inter-American Press Association, <http://www.ifex.org/en/content/view/full/67518/>.

³⁹ Inter-American Press Association, www.ifex.org/en/content/view/full/67518/, www.ifex.org/en/content/view/full/67518/.

⁴⁰ For more about this case, see the section on domestic jurisprudence in Chapter III of this report.

CANADA⁴¹**PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)**

39. In June 2005 the Rapporteurship was informed that the council of the Montreal suburb Côte-St-Luc has attempted to restrict freedom of expression by removing some photos from an exhibit by Canadian Zahra Kazemi to be displayed in the community's library. Five of 23 photographs by the murdered photojournalist were removed from the posthumous exhibition at the Côte-St-Luc municipal library after complaints were lodged that they were pro-Palestinian. In response, Kazemi's son, Stéphan Hachemi, said that the collection of photographs, which has appeared in Paris and other cities, should be displayed in its entirety or not at all. Mayor Robert Libman claimed that some of the exhibit photos from Afghanistan, Iran, and the Palestinian uprising in the West Bank and Gaza were "too politically charged for our community."⁴²

⁴¹ Canada's government informed the Office of the Special Rapporteur of Freedom of Expression about a September 1, 2005 judicial decision that touched on freedom of speech issues. The Federal Court of Appeal ruled on September 1 to uphold the decision of the Canadian Radio-Television and Telecommunications Commission (CRTC) to deny the request by Genex Communications Inc. for the renewal of a broadcast license for CHOI-FM. The Canadian government noted that the Court's decision did not center on freedom of expression issues, but rather was about a discretionary decision of the CRTC. The CRTC decided not to renew the license because the station had violated a number of clauses of the Code of Ethics. The Court noted that under clause 2 of the Code, the station "undertook to make every effort to ensure that its programming is of high standard and not an instigation to contempt or hatred." Under clause 3, the Court said, the station vowed to uphold the right to privacy, and under clause 5, it "undertook that its hosts and journalists would not use the airwaves to launch personal attacks." Under clause 17, the Court added, the station agreed that "participants in an open-line or other program, public figures, listeners, and formal or informal groups are entitled to respect and should not be harassed, insulted or ridiculed." It also said that under clause 18, it "recognized that coarse or vulgar remarks have no place in programming." (*Choi-FM* decision, citing paragraph 218) The Court then went on to note the following:

The appellant makes much of the guarantee of freedom of expression in paragraph 2(b) of the Charter [Canadian Charter of Rights and Freedoms] and seems to want to treat it as unqualified, something that the courts have never recognized. I do not think I am mistaken in saying that freedom of expression, freedom of opinion and freedom of speech do not mean freedom of defamation, freedom of oppression and freedom of opprobrium. Nor do I think I am mistaken in saying that the right to freedom of expression under the Charter does not require that the State or the CRTC become accomplices in or promoters of defamatory language or violations of the rights to privacy, integrity, human dignity, and reputation by forcing them to issue a broadcasting license used for those purposes. To accept the appellant's proposition would mean using the Charter to make the State or its agencies an instrument of oppression or violation of the individual rights to human dignity, privacy, and integrity on behalf of the commercial profitability of a business. (*Choi-FM* decision, citing paragraphs 221)

The government noted that Genex Communications had a term of 60 days following the judgment to appeal its case to the Supreme Court of Canada.

⁴² PEN Canada, <http://www.ifex.org/en/content/view/full/67245/>.

CHILE

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

40. On May 4, 2005, Chilean radio reporter Paola Briceño Verdina was beaten and improperly detained by national police agents after covering a student protest in Santiago. Local press reports said a large number of university students gathered in Santiago on May 4 to protest a bill that would give private banks a role in the financing of higher education. The demonstration was peaceful at first, but students later clashed with police. Officers responded by firing tear gas and water canons to disperse the crowd. A national police agent detained Briceño Verdina shortly after she aired a report for private radio station Radio Bío-Bío. Although Briceño Verdina identified herself as a reporter and showed the agent her press credential, she was taken to a police vehicle, the Chilean press reported. While in the vehicle, Briceño Verdina said she was beaten with a police baton on the arms and legs. Three hours later, Briceño Verdina was taken to a police station, accused of disorderly conduct and resisting authorities, and jailed. A colonel with the national police soon ordered Briceño Verdina released and apologized. Briceño Verdina suffered extensive bruising.⁴³

PROGRESS

41. On August 26, 2005, a new constitutional article on freedom of information took effect in Chile. The new provides that actions and decisions of government entities belong in the public record.⁴⁴

42. Another constitutional reform that took effect on the same date effectively removed the offense of defamation from the Chilean Constitution by amending Article 19, a move that took effect on August 26, 2005 with the reform's publication in the *Diario Oficial*. The new version of the article states that "[t]he Constitution guarantees all people: 4) Respect for and protection of their private and public lives, as well as their individual honor and that of their families," and it removes joint and several liability that was explicitly imposed on owners, publishers, editors and managers of media outlets involved in such cases. Previously, item 4 went on to provide that "[a]ny infringement thereof that is committed through a media outlet, and which consists of a false accusation or unjustifiably harms or discredits a person or his or her family, shall constitute an offense and shall be punished according to the law." It then provided for liability for the owners, publishers, editors and managers.⁴⁵

⁴³ Committee to Protect Journalists, www.ifex.org/en/content/view/full/6658.

⁴⁴ For additional information, see Chapter IV of this report.

⁴⁵ Inter-American Press Association, annual report on Chile, www.sipiapa.org/publications/informe_chile2005o.cfm

43. On August 31, 2005, Chile passed an amendment to the Penal and Military Justice Codes that eliminates the crime of “*desacato*”, or “insult.” Articles 263 and 265 of the Penal Code, which established definitions of *desacato*, were repealed. Article 264 had described *desacato* as threatening and disturbing order in legislative sessions and in court, or as threatening members of Parliament for opinions expressed in session, judges for their rulings, or authorities in the course of their duties. This is now replaced by a new article that sanctions attacks on such authorities. Article 268, which provided for sanctions against anyone who causes a disturbance in the office of an authority, was removed. In the Military Justice Code, Article 276, which defined the offense of “improper sedition” in extremely broad and outdated terms, was replaced by a new article that provides for sanctions against anyone who “in any way induces or incites military personnel to disorder, indiscipline, or nonfulfillment of military duties.”⁴⁶

COLOMBIA

44. In April 2005, the Office of the Special Rapporteur for Freedom of Expression made an on-site visit to Colombia to analyze that country’s status of freedom of expression. At the end of this visit, the Office of the Special Rapporteur made a series of recommendations, and these recommendations and the report’s executive summary are both included here.⁴⁷

Executive Summary

45. Colombia’s armed internal conflict, now more than four decades old, is characterized by great complexity and high levels of violence. This, in turn, has had a pronounced effect on human rights, particularly freedom of expression. On numerous occasions, the Inter-American Commission on Human Rights and the Office of the Special Rapporteur for Freedom of Expression have expressed grave concern over the assassinations, threats, kidnappings, intimidation and other acts of violence occurring in Colombia, crimes whose victims have in recent years included a large number of journalists. It is within this context that the Office of the Special Rapporteur undertakes this analysis of freedom of expression in Colombia.

46. This work is the result of an analysis of the information the Office of the Special Rapporteur collected through its observation and monitoring of freedom of expression in Colombia, a process that culminated in an on-site country visit in April 2005. The present study aims to evaluate the government response to the violence and intimidation faced by journalists in Colombia and its policies designed to promote and protect freedom of expression.

47. Colombia’s legal framework includes both international norms and domestic laws protecting freedom of expression. But in spite of these norms, the Office of the

⁴⁶ Inter-American Press Association, annual report on Chile, www.sipiapa.org/publications/informe_chile2005o.cfm.

⁴⁷ The full report is available at www.cidh.oas.org/relatoria/listDocuments.asp?categoryID=1&IID=1.

Special Rapporteur observes that the accusations of aggression and violence against journalists, human rights defenders and members of civil society organizations persist.

48. The investigation of the Office of the Special Rapporteur also highlights that a state of impunity continues for those committing crimes against journalists. This report repeatedly emphasizes that the chilling effect produced by threats and violence against journalists is amplified when the crimes go unpunished. In this realm, the Office of the Special Rapporteur has analyzed the status of a number of investigations conducted by the *Fiscalía General de la Nación* (Office of the Public Prosecutor). The Office of the Special Rapporteur's evaluation of the Public Prosecutor's work – which is in line with that of a variety of civil society organizations and public interest groups – yields a number of concerns. The first stems from the weakening of the office in charge of investigating the assassinations of journalists. The second refers to the slow pace of the investigations in the majority of cases involving violations of freedom of expression, particularly assassinations. The investigations headed by the Public Prosecutor show no sign of advancement, which helps to generate a climate of profound mistrust with respect to the administration of justice.

49. This report also urges the Government to promote the incorporation of the international standards on freedom of expression at the judicial level. These standards constitute effective tools to protect and guarantee the legal norms on freedom of expression.

50. This investigation does take note of the marked decline in acts of violence against journalists in Colombia in recent years. The implementation of government programs to protect journalists has played a decisive role in strengthening this trend. In this sense, this report emphasizes the importance of the current Interior and Justice Ministry's Journalist Protection Program. The Office of the Special Rapporteur underscores that mechanisms of this sort, which have allowed for the physical protection of an important number of Colombian journalists, should be reinforced in order to make the implementation of these protective measures more effective.

51. At the same time, however, the Office of the Special Rapporteur has verified that the drop in the statistics on violence against journalists stems in part from self-censorship by journalists themselves. Colombia's climate of persistent violence and aggression contributes greatly to the silencing of journalists. During the visit, the Office of the Special Rapporteur also confirmed that in some regions, journalists are pressured by illegal groups—and even representatives of the government—to divulge or suppress certain types of information.

52. In the same realm, the Office of the Special Rapporteur manifests in this report its deep concern over the stigmatization of those who criticize the government. The report takes note of the complaints received regarding high government officials, who have made public statements against the work of non-governmental organizations – both international and domestic groups—that seek to protect human rights. These declarations

by government officials have undoubtedly fostered an increase in the tensions between the government and civil society.

53. The investigation also highlights the complaints that have been made in connection with the absence of transparency characterizing the process by which the government assigns official publicity. The Office of the Special Rapporteur is concerned that this lack of transparency could give rise to the use of official publicity as a tool to limit freedom of expression.

54. In the same way, the Office of the Special Rapporteur calls attention to a measure in the recently passed Code of Criminal Procedure allowing the Public Prosecutor to investigate cases of alleged slander or libel without prior judicial review, particularly if such investigations are undertaken at the behest of public officials.

55. The Office of the Special Rapporteur is aware of the advances made in freedom of expression in Colombia in recent years. Consequently, this report highlights the importance of the programs of protection, and at the same time commends the government's efforts to facilitate access to public information and its policies aimed at promoting community radio. In this investigation, the Office of the Special Rapporteur urges the government to continue with these efforts to strengthen democracy through policies designed to improve government transparency and to promote democratic participation by the population at large.

56. The Office of the Special Rapporteur concludes this report with a series of recommendations that call on the government to take measures necessary to protect both the physical integrity of journalists and the infrastructure of the media. At the same time, the Office of the Special Rapporteur admonishes the authorities to undertake a serious, impartial, and effective investigation against any acts of violence and intimidation committed against journalists.

57. Recommendations:

1. Take the necessary measures to protect the physical integrity of journalists and the infrastructure of communications media. In particular, the Government should strengthen the Journalist Protection Program of the Interior and Justice Ministry, and it should make a concrete effort to avoid the harassment and displacement of those who work as journalists.
2. Conduct a serious, impartial and effective investigation into the violence and intimidation waged against journalists and communications media, and then try and punish those responsible. The adoption of measures for the strengthening of the judicial system is a priority in order to put an end to the unjustified delays in these investigations. The Government must also make the fight against impunity with respect to these crimes a priority.

3. Continue to condemn from the highest levels of the Government attacks against journalists in order to prevent any fomentation of these crimes and to avoid the development of a climate of stigmatization toward those who take a critical line against the Government.
4. Adopt the appropriate domestic legislation to conform the law with the parameters established in the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression with respect to slander, libel and the investigatory powers of the Public Prosecutor's Office found in the Code of Criminal Procedure.
5. Continue to guarantee the right of access to information in the hands of the State in order to promote transparency in government and to bolster democracy.
6. Continue the implementation of policies that incorporate the principles of democracy and equal opportunity, as has been done in the area of community radio.
7. Promote the incorporation of international standards on freedom of expression by judicial bodies so that these standards constitute effective tools for the protection and guarantee of the existing legal framework on freedom of expression.
8. Undertake campaigns directed at State agents and Colombian society to promote awareness of the importance of protecting and respecting freedom of expression.

COSTA RICA

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

58. In March 2005, Costa Rican newspaper *La Nación* was the target of two gunfire attacks in March at its facilities in the nation's capital, San José. On March 23, three unidentified assailants fired several shots at the newspaper building from a moving vehicle at about 4 a.m., *La Nación* reported. No one was injured in the attack, which caused slight damage to the building. Two weeks earlier, an unidentified individual fired several shots at the paper's security post, where guards watch over the newspaper's parking lot and administrative offices. The attacker apparently got into a waiting car and fled after the shooting, which occurred on the night of March 8, *La Nación* said. Two guards were forced to take cover, but no injuries were reported. Armando González, *La Nación*'s managing editor, told the Committee to Protect Journalists that the paper had not received any threats before the attacks but said he was concerned that someone might be

trying to intimidate journalists. *La Nación* has broken major stories and taken an editorial position on hotly contested issues in recent years.⁴⁸

CUBA

59. During 2005, the Office of the Special Rapporteur continued to receive reports of repression and censorship of those wishing to express themselves freely in Cuba. Since its creation, the Office of the Special Rapporteur has noted that Cuba is the only country of the Hemisphere in which one can state categorically that there is no freedom of expression. This characterization still holds this year.

60. Cuba is the only country in the Hemisphere in which there is an evident and clear violation of Principle 1 of the Declaration of Principles on Freedom of Expression, which recognizes that "[f]reedom 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."

61. The prison conditions of dissidents who have been detained and placed on trial—including several journalists—continue to be the subject of concern to the international community. Detainees again began hunger strikes to protest their conditions of detention, including Victor Rolando Arroyo, who is serving a 26-year sentence for committing acts "aimed at subverting the internal order of the nation and destroying its political, economic, and social system."⁴⁹ Journalist Adolfo Fernández Saínz began a hunger strike in August to protest the mistreatment of another imprisoned dissident, Arnaldo Ramos Lauzurique, who was reportedly beaten by a prison officer in a punishment cell.

62. While 2004 saw the release of some imprisoned independent journalists, some two dozen are currently in jail.⁵⁰ In addition, the risk persisted that those released might go back to prison since they are subject to rules that keep them from expressing themselves freely. These circumstances highlight the structural reasons for the violation of freedom of expression persist in Cuba.

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

63. Imprisoned journalist Normando Hernández González reportedly contracted tuberculosis in prison. On 5 January 2005, Hernández González was reportedly transferred to the Pinar del Río provincial hospital for preventive treatment for tuberculosis. His wife, Yaraí Reyes Marín, was informed of the transfer by another political prisoner's wife. When she contacted the hospital, she was not allowed to talk to her husband. Hernández

⁴⁸ Committee to Protect Journalists, www.ifex.org/en/content/view/full/65634/.

⁴⁹ Committee to Protect Journalists, www.ifex.org/en/content/view/full/69409/.

⁵⁰ Reporters Without Borders, www.ifex.org/en/content/view/full/69669/.

González heads the *Colegio de Periodistas Independientes de Camagüey*, an independent news agency.⁵¹

64. On March 2, 2005, journalist Carlos Brizuela Yera, of the *Colegio de Periodistas Independientes de Camagüey*, an independent news agency in southwestern Cuba, was freed from prison after serving a three-year sentence. Brizuela was arrested and imprisoned one year before a major crackdown on the independent press in the spring of 2003. Brizuela and eight other people were arrested and detained at the Holguín provincial prison, in southeastern Cuba. On April 27, 2004, a court sentenced the journalist to three years in prison for "disobedience", "refusing to obey the authorities", "disturbing the peace" and "insulting the president".⁵²

65. On March 17, 2005, police reportedly attempted to implicate journalist María Elena Alpízar Ariosa, of the independent news agency *Grupo de Trabajo Decoro*, in an imaginary crime in Placetas, Santa Clara province, central Cuba. Cubanet⁵³ said that when Alpízar Ariosa arrived at her house at about 11:00 a.m. (local time) on March 17 and opened her door, she found a blood-spattered machete lying on the floor. Suspecting a trap by the political police, she did not enter the house. Instead she alerted her neighbors and phoned the local police, who failed to come to her house. A group of dissidents reported the case to the National Revolutionary Police's (*Policía Nacional Revolucionaria*, PNR) regional office and obtained an interview with a captain Julio of the State Security Department, who said he knew nothing about the incident. Bertha Antúnez, a member of the dissident group, phoned Santa Clara mayor Rubén Álvarez, who said he would order an investigation into the matter. The dissidents then went to Alpízar Ariosa's home, where a known PNR informer by the name of José Ramón Valdés Ortuela showed up and declared himself to be guilty of theft and of sacrificing a farm animal. Valdés Ortuela was subsequently arrested.⁵⁴

66. In March 2005, the Rapporteurship received information that José Luis García Paneque, 39, director of the independent news agency *Libertad*, was in a delicate state of health, having lost 40 kg during the past two years. His wife, Yamilé Llanes Labrada said that her husband weighed less than 40 kg, that he had a life-threatening intestinal condition, and that he suffered from diarrhea that had not been treated for the past 15 months. García Paneque, who is serving a 24-year sentence, has been hospitalized twice because of his condition.⁵⁵

67. On May 19, 2005, three Polish journalists and a human rights activist were detained in Cuba after they arrived in the country to report on a major opposition rally in

⁵¹ Reporters without Borders, www.ifex.org/en/content/view/full/63753/.

⁵² Reporters Without Borders, www.ifex.org/en/content/view/full/65156/.

⁵³ www.cubanet.org

⁵⁴ Reporters Without Borders, www.ifex.org/en/content/view/full/65627/.

⁵⁵ Reporters Without Borders, www.ifex.org/en/content/view/full/65488/.

Rio Verde. They were then taken to the airport and deported. Seweryn Blumsztajn, editor-in-chief of the Krakow edition of *Gazeta Wyborcza*, Jerzy Jurecki, publisher and journalist for *Tygodnik Podhalanski*, Wojciech Rogasin, a journalist for the Polish edition of *Newsweek*, and their interpreters Maciej Sarna and Marta Cichocka, as well as human rights activist Wojciech Modelski, were detained in the incident. Cuban police reportedly took Jurecki from his hotel to a detention center close to the airport on the night of May 19. He was able to conceal his mobile phone and sent a message, then called the Polish television news channel TVN24. The news channel played the recorded conversation during a broadcast. "We are being taken in, we need help," he wrote in a mobile phone text message to the station. *Gazeta Wyborcza*, a major Polish daily, reported that it feared that Blumsztajn had been detained along with Jurecki. Additionally, Francesco Battistini, an Italian journalist for *Corriere della Sera* who arrived in Cuba on May 19 to cover the rally, was detained on May 20, and was also reportedly deported. According to reports, several other Italian and Spanish journalists were not allowed to enter the country to cover the rally. According to media reports, the Cuban ambassador to Poland said the journalists had traveled to Cuba on tourist visas and were thus violating Cuban law.⁵⁶

68. In another incident on May 19, Czech Senator Karl Schwarzenberg, an aide to former president Vaclav Havel, and German lawmaker Arnold Vatz were expelled from Cuba. On May 17, two Polish members of the European Parliament, Boguslaw Sonik and Jacek Protasiewicz, were refused entry to Cuba when they arrived at Varadero airport, east of Havana. All four individuals had traveled to Cuba for an opposition rally organized by prominent Castro opponents Marta Beatriz Roque, Felix Bonne, and Rene Gomez. German politician Arnold Vaatz, who also wanted to attend the rally, was detained in his hotel, taken to the airport, and sent out of the country.⁵⁷

69. Albert Santiago Du Bouchet Hernández was arrested on August 6, 2005, tried three days later and handed a one-year jail term without the knowledge of his family, who found out about his detention only after he smuggled a note out of prison. He joins 24 independent Cuban journalists jailed for their work. He is director of the independent news agency *Havana Press*, which sends reports to the Miami-based Web site *Nueva Prensa Cubana*. Du Bouchet Hernández was detained while on a reporting trip in Artemisa, 38 miles (60 kilometers) from Havana, according to his wife, Bárbara Pérez Araya. He was charged with "disrespecting" the local chief of police and resisting arrest. According to Pérez Araya, her husband said he did not have access to a lawyer before or during the trial, that the charges were fabricated, and that his trial was "a sham." Like independent journalist Oscar Mario González, held without trial since July 22, 2005, Du Bouchet Hernández covered the congress of the Assembly to Promote Civil Society (APSC) in May 2005. The two-day gathering, unprecedented in Cuba, brought together 200 opposition activists and guests to discuss ways to create a democracy in Cuba. Pérez Araya said State Security agents warned Du Bouchet Hernández in May and July to stop work or face imprisonment. They ordered him to appear at a police station on the opening day of the

⁵⁶ International Press Institute, www.ifex.org/en/content/view/full/66843/.

⁵⁷ International Press Institute, www.ifex.org/en/content/view/full/66843/.

APSC meeting but he ignored the summons and covered the conference. He was fined for his action.⁵⁸

70. Independent journalist Lamasiel Gutiérrez Romero, of the *Nueva Prensa Cubana* news agency, was slated to be tried before a municipal court in Nueva Gerona (Isle of Youth) on August 9, 2005, on charges of "civil disobedience" and "resisting authorities." The charges relate to the events of July 14, when she was arbitrarily detained for seven hours by three state security agents. She was hit and offered some resistance when the agents began to photograph and film her and take her fingerprints. When she refused to sign a charge sheet, the police officer who was to be the main prosecution witness at her trial, Eliaves Hernández, told her, "It does not matter, you will⁵⁹ be tried all the same." While detained, Gutiérrez received a visit from the head of the intelligence services, who told her that since he could not try her for political reasons, he would find another pretext to bring her to trial. When Gutiérrez attempted to retain a lawyer, the state legal aid lawyer on duty that day told her that since the main prosecution witness was a member of the National Revolutionary Police, she had no chance of finding a lawyer to defend her and that there would be no point anyway. Gutiérrez faces a sentence ranging from a fine to one or two years' house arrest.⁶⁰

71. On August 11, 2005, physician and independent journalist Florencio Cruz Cruz was arrested in Aguado, Cienfuegos province. Cruz is deputy editor at the independent *Línea Sur Press* agency. He also works for *Nueva Prensa Cubana*. Cruz was arrested by Lt. Carlos Castillo Medina, a police officer identified as Junier, and two other policemen as he was going to the home of Bernardo Arévalo Padrón, the editor of *Línea*.

72. Independent journalist Oscar Mario González Pérez, of the *Grupo de Trabajo Decoro* news agency, was slated to be prosecuted under Law 88 protecting Cuba's "national independence and economy." An emergency law promulgated in March 1999, Law 88 has the stated aim of "responding to repeated attacks by the United States on Cuba's independence and sovereignty" by punishing "actions which, in accordance with imperialist interests, seek to subvert the nation's internal order and destroy its political, economic and social system." It overrides all preceding legislation and gives the regime a free hand to stifle all dissent on the pretext of resisting foreign aggression. González was arrested on July 22, 2005 in Havana and faces up to 20 years in prison, but as of September 12, 2005, he was still awaiting trial. González was reportedly held in four different police stations after his arrest. González was arrested at the same time as 33 other dissidents in Havana, just before a planned demonstration outside the French embassy to criticize the "normalization" of relations between Cuba and the European Union (EU). Nine of the 33 are still being held, including two others who are to be prosecuted under Law 88, lawyer René Gómez Manzano and political activist Julio César López. When González was summoned and questioned by two state security agents in Havana on March

⁵⁸ Committee to Protect Journalists, www.ifex.org/en/content/view/full/68869/.

⁵⁹ Reporters Without Borders, www.ifex.org/en/content/view/full/68600/.

⁶⁰ Reporters Without Borders, www.ifex.org/en/content/view/full/68534/.

24, he was threatened with never seeing his family again if he continued to work as a journalist. The guards attempted to blackmail him into ceasing his working as a journalist, offering him the chance to leave Cuba to visit his daughter, exiled in Sweden, if he stopped working.⁶¹

73. In October 2005, the Rapporteurship received information that imprisoned journalist Mario Enrique Mayo Hernández had attempted to commit suicide twice, and his wife and mother reported that he was still determined to end his life. He has been detained since March 2003 and is serving a 20-year prison sentence. Mayo's wife and mother were able to see him in Kilo 7 prison in Camagüey for about 30 minutes on October 12, 2005. His wife, Maidelin Guerra, said that he had deteriorated, both physically and psychologically, and is determined to take his life. Guerra also said that Alfredo Manuel Pulido López, another journalist held at Kilo 7 prison, is confined to his bed. He is suffering from acute depression and migraines for which he needs to undergo tests. Arrested in the "Black Spring" of 2003 like Mayo, he is serving a 14-year prison sentence.⁶²

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

74. On June 18 and 21, 2005, State Security agents harassed, intimidated and orchestrated blackmail against independent journalists Osmel Sánchez Lopez, Ernesto Roque, and Ana Rosa Veitía. Sánchez Lopez, an independent journalist who was once a *Radio Martí* correspondent, was summoned by the political police on 18 June, in Venezuela, Ciego de Ávila Province, central Cuba. He said he was questioned by an officer who said his name was Jesus, who told him to stop his activities and prohibited him from meeting with Juan Carlos González Leyva, head of the Cuban Human Rights Foundation. The officer said the journalist would otherwise be jailed for four years for "pre-delinquent social dangerousness." The journalist said he was not physically mistreated during his interrogation, but was yelled at, insulted, and threatened. He said the police later drove him, in the middle of the night, to the countryside near his home. Roque and his wife Veitía, both members of the Cuban Union of Independent Journalists and Writers (*Unión de Periodistas y Escritores Cubanos Independientes*, UPECI), were summoned and questioned separately on June 21 in Havana by six State Security agents, according to the Cubanet website. The couple were told to hand over documents relating to a planned June 25 meeting of the Latin American Federation of Rural Women (*Federación Latinoamericana de Mujeres Rurales*, FLAMUR), which Veitía chairs. Police then took the couple back to their home and carried out a lengthy search, seizing a video camera, a digital camera, medicine, money and even some food. One of the agents, who introduced himself to Roque as Reinier but told Veitía that his name was Carlos, warned the journalists that the "process"

⁶¹ Reporters Without Borders, www.ifex.org/en/content/view/full/69184, www.ifex.org/en/content/view/full/68388/, www.ifex.org/en/content/view/full/65732/.

⁶² Reporters Without Borders, www.ifex.org/en/content/view/full/69874/.

against them was merely getting underway and that the authorities would prevent the holding of the FLAMUR meeting.⁶³

75. On July 14, 2005, State Security and National Revolutionary Police on the Isle of Youth used violence to harass Lamasiel Gutiérrez Romero of the *Nueva Prensa Cubana* news agency. She was then held for seven hours and fined for resisting the authorities as she was about to travel to the Cuban mainland. A resident of the Isle of Youth, located off the western province of Pinar del Río, Gutiérrez had just bought a ticket to Havana when three State Security agents arrested her. She said they hit her in the chest and back, pinned her to the ground and then a National Revolutionary Police patrol car pulled up and took her to the police station. After she was interrogated, she was forced to pay two fines, of 30 and 20 pesos. She was accused of insubordination, disturbing the peace, and resisting the authorities, and was told she was harming the revolution and could get a prison sentence of one to two years. Gutiérrez said she thought her arrest was prompted by her participation in a meeting of independent journalists on July 4. She was sent to a hospital to be examined, but the doctors there declined to give her a medical certificate because the marks left by the blows were not visible enough. She was sent back to the police station after the medical examination and spent seven hours in a filthy cell, with no water and food. She was released at 1:00 a.m. on July 15.⁶⁴

76. On August 8, 2005, independent journalist Lucas Garve, the president of the Freedom of Expression Foundation, was awoken in his Havana home by soldiers from a rapid intervention unit at around 10:30 p.m. and told he would "pay dearly" if he went out the next day. Garve decided to stay at home on August 9 and was later told soldiers were posted in the house opposite his own all day. He had previously been the target of threats because President Fidel Castro named him as a "counter-revolutionary leader," along with some 30 other independent journalists, while speaking on a national television station. The *Cubnet* website also reported other, similar incidents the same day in Havana. Ángel Pablo Polanco, of the *Servicio Noticuba* independent news agency, was also threatened near his home. Polanco was arbitrarily detained for three days in August 2002. The press freedom organization Reporters Without Borders has registered 10 cases of threats against independent journalists since June 2005. In many cases, the threats were made by state security agents when the journalist complied with an order to report to a police station.⁶⁵

77. On September 16, 2005, Guillermo Fariñas, editor of the independent *Cubanacán Press* agency, was beaten publicly by armed government supporters in the central city of Santa Clara after he took part in a protest against the arrest of a dissident. The attack came after Fariñas and some 15 other government opponents demonstrated outside a police station to demand the release of Noelia Pedraza Jiménez, a fellow dissident who had just been arrested. About 100 armed pro-government supporters watched the demonstration. After announcing to the demonstrators that Pedraza would

⁶³ Reporters without Borders, www.ifex.org/en/content/view/full/67615/.

⁶⁴ Reporters without Borders, www.ifex.org/en/content/view/full/68054/.

⁶⁵ Reporters Without Borders, www.ifex.org/en/content/view/full/68600/.

shortly be released on bail pending trial, Vladimir Méndez Mauad, a captain with the state security department, offered to drive Fariñas home. The journalist, who has to use crutches because of a disability and, until recently, had to use a wheelchair, accepted. As Fariñas left the police station, however, a police officer warned him that whatever happened to him outside at the hands of the armed pro-government supporters "will be your problem." Fariñas said some 60 pro-government supporters armed with clubs who were still outside then challenged him, asking him if he had the courage to repeat to them what he had said on *Radio Martí*. Kneeling and with his hands behind his head, Fariñas replied, "Why do you listen to *Radio Martí* if you are revolutionaries?" After Fariñas refused to say, "Long live Fidel Castro," they began to insult him and hit him with their clubs until one of them called a halt to the beating, fearing that they would kill him in public. Political instructors with the ruling Communist Party of Cuba then drove him to a deserted spot 23 kilometers outside the city and dumped him there. According to the information received, Fariñas' arms and hands were so swollen from the beating that he could not write or use a computer keyboard.⁶⁶

DOMINICAN REPUBLIC

PROGRESS

78. On May 23, 2005, the President of the Dominican Republic, Leonel Fernández, overturned a decree that established serious limitations to the exercise of freedom of expression. After being in effect for only a few weeks, Regulation # 301-05 on the operation and powers of the National Commission on Public Performances and Broadcasting was overturned last Thursday by presidential decree and a team of experts was charged with preparing a draft legislative bill on the matter that is more appropriate for the country's current situation. Rafael Molina, the second vice president of the Inter-American Press Association, said that it was important "that the team in charge of drafting the new bill do so as soon as possible since there is another regulation, Number 824, which also contains problems for freedom of expression." The overturned regulation for the Functioning and Organization of the National Commission on Public Performances and Broadcasting, charged the Commission with the responsibility for preventing transmission by the media of content offending the nation's morals, decent behavior, and social principles, or of alarming news such as fires, hurricanes, earthquakes, tidal waves, floods, etc., without approval and proper authorization. It also empowered the Commission to suspend radio or television broadcasts of any kind, among other provisions that limited the public's right to receive information.⁶⁷

⁶⁶ Reporters Without Borders, www.ifex.org/en/content/view/full/69482/.

⁶⁷ Inter-American Press Association, www.ifex.org/en/content/view/full/66884/.

ECUADOR

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

79. *Radio La Luna*, a radio station that has joined in Quito's civil disobedience, was jammed and silenced in April 2005. The station had opened its airwaves to the public so that citizens could express opinions and their proposals for Ecuador's political future, and as part of this, it joined in the growing civil unrest demanding the resignation of Ecuador's president, Colonel Lucio Gutiérrez. *Radio Luna* suffered interference and temporary blackouts starting on April 17, an effort that seemed to be the work of the government, given that highly specialized equipment and technicians are needed to carry out such a campaign.⁶⁸

80. On August 19, 2005, journalist Marcos Villamar of the program "*La Televisión*," which airs on *Ecuavisa*, was detained by a group of soldiers from the Ecuadorean Armed Forces outside the Eloy Alfaro Air Base in Manta. He was brought onto the base, where Col. Leonidas Enríquez forced Villamar to allow soldiers to review his footage for anything that might compromise national security. The reporter complied against his will. After showing that the footage consisted only of pan shots, he was released.⁶⁹

81. In August 2005, approximately ten radio stations were forced to suspend news broadcasts in Orellana and Sucumbíos provinces in the Amazon region due to the imposition of a state of emergency. Among them was *Radio Sucumbíos*, a station well-respected in the area for its investigative journalism and news reporting. All of the station's reporters were reportedly under constant direct surveillance by a member of the armed forces, who was monitoring their work. In addition, according to an August 23 press release by the Latin American and Caribbean Catholic Communication Organization (*Organización Católica Latinoamericana y Caribeña de Comunicación*, OCLACC), *Radio Sucumbíos* was threatened with closure for having met its obligation to inform the public about the concerns and requests being made by the region's citizens. It was warned by telephone and in writing. The provinces in which the state of emergency was imposed are petroleum-producing areas that have been excluded from development. The radio stations criticized this situation and supported the communities and their leaders when they launched protests on August 14. The protests were aimed at forcing the government to provide services to the areas' residents and ask the transnational petroleum companies operating there to contribute to basic public works, such as paving of roads, health care infrastructure, and potable water and sewage services. In response, the government declared a state of emergency in the two provinces, including a prohibition on holding public gatherings and meetings, as well as censorship of the local media.⁷⁰

⁶⁸ World Association of Community Radio Broadcasters, www.ifex.org/en/content/view/full/66112/.

⁶⁹ Inter-American Press Association, Annual Report on Ecuador, www.sipiapa.com/publications/informe_ecuador_2005o.cfm.

⁷⁰ PROBIDAD, www.ifex.org/en/content/view/full/68835/.

82. On September 14, 2005, Wilfredo Lucero, president of the National Congress, refused to allow Félix Narváes of *Ecuavisa* into the legislature for a couple of hours. Lucero was annoyed because a few days earlier the journalist had accused him of using the legislature's money to have his face and hair improved. The official told the media that he had changed his image because of the effect of chemotherapy and he had paid for it out of his own pocket. The channel apologized publicly.⁷¹

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

83. On February 4, 2005, a bomb went off outside the premises of radio station *Radio Canela* in the early hours of the morning. There were no injuries, but damages were estimated at \$20,000. No one claimed responsibility for the attack but *Radio Canela* owner Wilson Cabrera said he suspected the government, which he has accused of corruption on several occasions. *Radio Canela* is based in Macas, 240 kilometers southeast of Quito. President Lucio Gutiérrez condemned the attack and denied the government was in any way involved. He accused "anarchist groups" of wanting to "spread chaos in the country." The day before the bomb attack, journalist Carlos Vera, of *Canal 8* television station, claimed that soldiers threatened him with imprisonment for calling the president a "dictator" and a "populist" on the air. Speaking on a state radio station, President Gutiérrez denied that the government wanted to arrest anyone.⁷²

84. In April and May 2005, Paco Velasco, director of the Quito radio station *La Luna*, said that he received threats against himself and his family after calling for nighttime marches and pot-banging protests against the government of President Lucio Gutiérrez. He also said that the phone service at his radio station was interrupted during the evenings of April 15 and 16. Velasco left the country on May 3 because he said it was not safe for him to continue his work. The Rapporteurship received information that he returned to Quito a few weeks later.⁷³

85. On April 27, 2005, reporters Ximena Montenegro and Walter Villarreal from the television stations *Gamavisión* and *Ecuavisa*, respectively, along with their cameramen and technical crews, were abducted in Santa Lucía, Guayas province, by supporters of Lucio Gutiérrez. The abductors demanded that the stations broadcast live reports to the entire country on their support for the former president. The journalists were released after meeting the abductors' demand.⁷⁴

⁷¹ Inter-American Press Association, Annual Report on Ecuador, www.sipiapa.com/publications/informe_ecuador_2005o.cfm.

⁷² Reporters Without Borders, www.ifex.org/en/content/view/full/64356/.

⁷³ Inter-American Press Association, annual report on Ecuador, www.sipiapa.com/publications/informe_ecuador_2005o.cfm.

⁷⁴ Inter-American Press Association, annual report on Ecuador, www.sipiapa.com/publications/informe_ecuador_2005o.cfm.

86. The Ecuadorian police have tapped and recorded the phone calls of journalists Milton Pérez and Maria Fernanda Zavala, of local television station *Teleamazonas*. On June 10, police acknowledged tapping the two journalists' mobile phones and recording their calls with the aim of locating the fugitive former interior minister, Oscar Ayerve. The two journalists had interviewed Ayerve on May 9 after he went into hiding on April 20. A warrant was issued for the former minister's arrest immediately after Gutiérrez's ousting because of his role in the use of violence against protesters during the uprising. He was on the run for a month thereafter. Carlos González, a member of Parliament, revealed that the journalists' phones were being tapped. *Agence France-Presse* quoted González as saying the tapping began on April 20 and only received retroactive approval from a judge on May 17. The police have issued contradictory statements in the case. While acknowledging their use of tapping, they denied having the required equipment to do so. They also said they had judicial authorization but denied getting it retroactively. According to the information received by the Rapporteurship, Ayerve ceased to be a fugitive on May 18, but the police continued to tap the journalists' phones even after that date.⁷⁵

PROGRESS

87. In January 2005, Ecuador's executive branch approved regulations for the implementation of the Law on Transparency and Access to Public Information, which was approved on May 18, 2004.⁷⁶

EL SALVADOR

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

88. On February 16, 2005, a program broadcast by journalist Mauricio Funes was abruptly taken off the air by the management of *Canal 12* television station, and two days later, the journalist was told that his contract would be terminated. Funes was hosting the "*La Entrevista al Día*" program and when he was removed from the air, he was discussing the previous day's firing of a number of individuals who worked for his program and the news program "*Hechos*." The journalist was forced to cancel the interview with the guest he had invited to speak on the program. The incident took place while the program was being broadcast live in El Salvador and abroad. The journalist said he believed the dismissals were an attempt to exercise control over the program and to possibly modify the station's editorial orientation. Funes said he was told the decision to remove him from the air was made in Mexico by the management of Azteca, which owns *Canal 12*. Two days later, *Canal 12*'s general manager informed Funes that AZTECA, had decided to terminate his contract as of February 19. In an interview with a local

⁷⁵ Reporters Without Borders, www.ifex.org/en/content/view/full/67368/.

⁷⁶ Inter-American Press Association, annual report on Ecuador, www.sipiapa.com/publications/informe_ecuador_2005o.cfm.

newspaper, Funes said the decision to fire him was unjustified. The station's general manager apparently told Funes, "They [AZTECA-Mexico] just told me to tell you that your contract was over and that they thank you for your work. That was all."⁷⁷

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

89. On May 1, 2005, *Canal 12* journalist Porfirio Mercado and cameraman Juan Antonio Castellanos were assaulted on Labor Day (May 1) by a group of protesters, who also attacked a vehicle belonging to the television station. Mercado was beaten while he was trying to speak with the protesters. The equipment of photojournalist Mauro Arias, of *La Prensa Grafica*, was also damaged. The head of the *Bloque Popular Juvenil* (BPR), Efrén Mejía, justified the actions to local media, saying it was the journalist who acted in opposition, and those who do not obey or who attempt to boycott or block the march, will be shown that the people are to be respected.⁷⁸

GRENADA

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

90. Some sectors of the Grenadian media are afraid to be aggressive in their reporting for fear of state reprisals, reported Grenada's local newspaper, *Grenada Today* on May 7, 2005. The newspaper said that there is a perpetual fear of threats of libel and lawsuits from politicians, with about 12 lawsuits failed against the media in the past five years. Self-censorship was mentioned as the main challenge by some media houses, particularly in the electronic media.⁷⁹

GUATEMALA

91. In July, the Office of the Special Rapporteur for Freedom of Expression participated in the start of a formal dialogue between Guatemalan civil society organizations and government authorities. The dialogue session was aimed at discussing the legislative reforms needed in the area of community radio, which the Office of the Special Rapporteur has been following in recent years. The Office of the Special Rapporteur has received no official information about the results of this dialogue, and it calls on the government again to fulfill the recommendations made by the Inter-American

⁷⁷ Probidad, www.ifex.org/en/content/view/full/64596/, www.ifex.org/en/content/view/full/64676/.

⁷⁸ Information from the *Asociación de Periodistas de El Salvador*, transmitted by the Permanent Mission of El Salvador to the OAS.

⁷⁹ The Media Workers Association of Grenada (MWAG), *Grenada Today*, May 7, 2005.

Commission in its report on the state of human rights in Guatemala after an official visit in 2003.⁸⁰

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

92. On February 24, 2005, the Rapporteurship received information that journalists from the *"Contacto Noticioso"* program, aired by the *Canal 13* cable television station, had received a string of threatening phone calls warning them to stop reporting or risk being killed. *"Contacto Noticioso"* producer Benjamin Martínez and his team said they had received at least 25 anonymous phone calls since the start of the year. The content of the calls ranged from funeral march music to direct death threats. A recent *"Contacto Noticioso"* program had criticized the low standard of living in the city of Esquipulas. Another report had detailed raises awarded to certain municipal employees. Martínez believed this report may have been the reason for the threats.⁸¹

93. On March 14, 2005, a group of police officers equipped with anti-riot gear assaulted Edwin Benavente, a reporter for the daily *Nuestro Diario*, as he was covering riots that erupted in Guatemala City during protests against a free trade agreement. The incident took place during a violent confrontation between rioters, who were throwing stones, and police, who responded by firing tear gas and rubber bullets. Benavente said that a group of police officers surrounded a protester and began to beat him, and when the police realized that the reporter was photographing them, one of the officers approached and pushed Benavente roughly with his shield. The photographer, who had fallen to the ground, got up and struck the officer in the face. Several police officers then attempted to seize his identification and camera, and one of them threatened to lob a tear gas canister at him. During the struggle, Benavente was struck repeatedly.⁸²

94. On March 17, 2005, journalist Marielos Monzón, host of the program *"Buenos Días"* program on *Radio Universidad* station, received three consecutive threatening calls on her mobile phone. The caller, using obscene language, told the journalist that if she did not stop defending Guatemala's indigenous peoples, she would be killed. A few minutes later, the Uruguayan foreign minister contacted Monzón to confirm reports, published by at least two local media outlets, that Uruguayan journalist and *"Buenos Días"* producer Gabriel Mazzarovich had been killed in Guatemala. The reports turned out to be false. These incidents occurred shortly after the broadcast of several

⁸⁰ See Inter-American Commission on Human Rights, *Justicia e Inclusión Social: Los Desafíos de la Democracia en Guatemala* (Justice and Social Inclusion: The Challenges of Democracy in Guatemala), <http://www.cidh.org/pais.esp.htm>. The Rapporteurship drafted Chapter VII of this report, dealing with freedom of expression issues, on behalf of the Commission. Recommendation 5 of that chapter encourages Guatemala to put in place policies to incorporate the use of democratic and equal-access criteria in the award of television and radio concessions, in line with the obligations assumed by the State in the Peace Agreement of 1996.

⁸¹ Reporters without Borders, www.ifex.org/en/content/view/full/64879/.

⁸² *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/65414/.

Radio Universidad special reports, prepared by Monzón and Mazzarovich, about events in Guatemala following the ratification of a free trade agreement with the United States. Monzón has received threats in the past and on two occasions armed men broke into her home. These events forced the journalist to leave the country for three months with her children in March 2003.⁸³

95. Journalists Alfonso Guáquez, a correspondent for the *Centro de Reportes Informativos sobre Guatemala* (CERIGUA) in the department of Solola, and Juan Carlos Aquino, host of the “*Punto Informativo*” news program on *Novedad Radio* in Zacapa department, received death threats by individuals who would appear to feel threatened by the journalists’ work. The threats against Guáquez began on January 11, after the journalist reported on disturbances in western Guatemala, stemming from the opposition of a group of peasants to mining in the region. On March 25, 2005, Guáquez received an anonymous message warning him that he, his wife and brother would be killed. The correspondent further reported that Sololá Governor Julio Adalberto Urrea Ruiz tried to implicate him in the disturbances. Authorities apparently issued a warrant for Guáquez’s arrest for his alleged role in the incidents. In a separate case, Aquino received a telephone call on March 8 at *Radio Novedad*’s recording booth, warning him that he would die if he continued to broadcast reports about corruption in Zacapa’s municipal government. On March 21 and 22, following a report about “phantom posts” in the administration, Aquino received two more anonymous phone calls. The caller told the journalist that if he did not stop talking about the government’s performance, he would be “eliminated.”⁸⁴

96. On June 16, 2005, photojournalist María Cheté, of *Siglo XXI* newspaper was attacked at the Third Tribunal while reporting on the trial of brothers Joaquín Anselmo, Juan Ramón and Renato Fernando Frías Rivera. As Joaquín Anselmo Frías Rivera was entering the courtroom he took out his frustration on the press, targeting María Cheté in particular and kicked her in the face. Officers of the Police Special Forces (*Fuerzas Especiales de la Policía*, FEP) who were guarding the accused witnessed the incident but did nothing to prevent the attack.⁸⁵

97. On July 11, 2005, three journalists were attacked by former members of the paramilitary Civilian Self-Defense Patrols (*Patrullas de Autodefensa Civil*, PAC) in the northeastern Chiquimula region. It is the second machete attack on journalists by ex-paramilitaries in four months. Rolando Hernández and Arnulfo Ortiz, of *Vanguardia Informativa*, and Edwin Paxtor, of the television program *TV Enfasis*, were attacked while covering a demonstration by former PAC members protesting what they deemed inadequate compensation by government for their support to the army during the 1960-1996 civil war. The demonstrators attacked the journalists with machetes, chased them and took their equipment. Hernández received a machete blow to the head and was hit on

⁸³ *Centro de Reportes Informativos sobre Guatemala* (CERIGUA), www.ifex.org/en/content/view/full/65763/.

⁸⁴ *Centro de Reportes Informativos sobre Guatemala* (CERIGUA), www.ifex.org/en/content/view/full/65782/.

⁸⁵ *Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala* (APG), www.ifex.org/en/content/view/full/67455/.

other parts of his body with sticks. Other reporters working for the national media were also chased. The victims held ex-PAC leader Víctor Hugo Argueta Corado responsible.⁸⁶

PROGRESS

98. On February 25, 2005, a Guatemala City court sentenced former armed forces member Eduviges Funes to 16 years in prison for his part in a June 2003 raid on the home of *El Periódico* publisher José Rubén Zamora. The court acquitted the other defendant, former soldier Belter Álvarez, for lack of evidence. A group of 11 heavily armed men took part in the June 24, 2003 raid on Zamora's home. They threatened the publisher and his family for a period of three hours. In January 2004, Zamora announced that he had identified four of the assailants with the police's help and as a result of investigations conducted by his newspaper. All four of the suspects, including the two defendants at the trial, were members of the presidential guard, a now-disbanded elite military intelligence unit reportedly involved in a number of human rights violations during the 1960-1996 civil war in Guatemala.⁸⁷

99. On June 14, 2005, Guatemala suspended its laws on *desacato*, or insult, which had called for imprisonment of six months to six years. The ruling came after Mario Fuentes Destarac, president of the Guatemalan Journalism Chamber, filed a petition of unconstitutionality before the Constitutional Court. The Court's decision suspends articles 411, 412 and 413 of Guatemala's Criminal Code, a first step toward the permanent elimination of the laws. The submission was based on the principle that insult laws challenge Article 35 of the Republic's Constitution, which consecrates freedoms of expression and of the press.⁸⁸

GUYANA

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

100. On January, 22, 2005, Prime Minister Samuel Hinds announced that the government would suspend *CNS Channel Six*'s licence for one month after the station criticized the measures taken by the government in response to major flooding. On January 31, Guyana's High Court affirmed the suspension as an interim measure until the court could issue a ruling on the constitutionality of the government's decision. Hinds accused *CNS*'s "Voice of the People" program of "stirring up public disorder and hostility to the government's relief efforts." The same day the suspension was announced, the authorities confiscated the station's transmitting equipment and closed its studios. *CNS* briefly

⁸⁶ Reporters without Borders, www.ifex.org/en/content/view/full/67857/.

⁸⁷ Reporters Without Borders, www.ifex.org/en/content/view/full/65026/ and www.rsf.org/article.php3?id_article=7401, and Guatemala Human Rights Commission USA www.ghrc-usa.org/Publications/vol17no05.pdf.

⁸⁸ See press release of the Office of the Special Rapporteur for Freedom of Expression 126/05, July 1, 2005, included in Annex 9 of this report. See also World Press Freedom Committee, www.ifex.org/en/content/view/full/67453/.

resumed broadcasting on January 28 in violation of the suspension. The head of the station told *Agence France-Presse* this was done because he had never received the prime minister's closure order. The next day, the police seized equipment that the station had rented in order to resume its broadcasts. *CNS Channel Six* returned to the air on February 22 after seized transmitting equipment was returned to the station by Chief Executive Officer of the National Frequency Management Unit, Valmikki Singh.⁸⁹

HAITI

101. A series of demonstrations and disputes between the opposition and pro-government groups occurring in Haiti in early 2004 led to a climate of violence that had a negative impact on the work of journalists and the media. At that time, there were grave incidents, including attacks, assaults, and threats against journalists, the destruction of media facilities and the death of a journalist. These incidents led several media to suspend their operations or to shut down entirely.

102. While the situation has stabilized, the Office of the Special Rapporteur remains concerned about reports on the situation in some regions of the interior, where a strong presence of irregular armed groups is said to threaten the work of journalists.

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

103. On January 14, 2005, Abdias Jean, a correspondent for a Miami radio station, was reportedly killed while covering a police operation and raid in the Village de Dieu sector of Port-au-Prince, considered a stronghold of supporters of deposed President Jean-Bertrand Aristide. According to the information received by the Inter-American Press Association, Jean was killed in retaliation for having witnessed the execution of three children in a case in which members of the National Police are also being blamed.⁹⁰

104. On January 14, 2005, two reporters from the daily *Le Nouvelliste*, Claude Bernard Serant and Jonel Juste, were attacked by Aristide supporters in the Port-au-Prince district of Bel-Air, a day after an operation in the area by United Nations Stabilisation Mission (MINUSTAH) peacekeepers. Their assailants beat them severely and stole their equipment and money. Juste said in a report in *Le Nouvelliste* that one of the attackers told him: "Don't come back. The next time you won't escape alive." The Aristide supporters accused the reporters of being spies and said that it was the journalists' fault Aristide was no longer in power. Both Serant and Juste had to be hospitalized due to their injuries.⁹¹

⁸⁹ Reporters Without Borders, www.ifex.org/en/content/view/full/64247/, information on reopening of station available at www.stabroeknews.com/index.pl/article_general_news?id=11921509.

⁹⁰ Inter-American Press Association, www.ifex.org/en/content/view/full/63965/.

⁹¹ Reporters Without Borders, www.ifex.org/en/content/view/full/63859/.

105. On February 8, 2005, journalist Raoul Saint-Louis, a co-presenter on the privately-owned radio station *Megastar*, said he had been forced into hiding because of a shooting attack four days before. He also was forced to change his residence and halt his work. The attack occurred on the evening of February 4. Several shots were fired as Saint-Louis was outside the radio station with his wife and several colleagues. One of the shots went right through his hand, causing an injury that required hospitalization. As it was dark, Saint-Louis was unable to see who fired the shots. He said he had received death threats by phone during the preceding month after he accused the government on the air of not doing enough to combat corruption.⁹²

106. On February 18, 2005, police attacked *Radio Megastar* journalist Makenson Remy in Port-au-Prince while he was driving home. When he stopped at a red light in the Nazon neighborhood, police, whom Remy had noticed were following him, ordered him to get out of his car. Then, according to the account he gave to *Associated Press*, they beat him and threatened to kill him if he did not stop working for *Megastar*. Remy said the police accused him of making pro-Aristide comments on the radio, and that while they might have hurt him, they could have killed him.⁹³

107. April 28, 2005, journalist Robenson Laraque, of radio program "*Tele Contact*," died from injuries he suffered while observing a clash between UN troops and members of the disbanded Haitian military in the city of Petit-Go ve.⁹⁴

108. Nancy Roc, host of the *Radio M tropole* weekly program "*Metropolis*", was forced to leave the country on June 16, 2005 after being threatened with kidnapping. Roc left Haiti for Florida after a rumor circulated for two weeks that she had been kidnapped. Roc also noted other disturbing incidents – a neighbor was murdered on June 11 and Roc received a series of threatening phone calls. She said that she received six to eight calls a day over the course of four days, and in the final call she was told that her abduction was "hours away" and that she would be kidnapped at any cost. She left for the airport in an armored vehicle under armed escort. The journalist, who was also warned she was in danger by her own sources, blamed the threats on drug traffickers who are reportedly linked to the *Fanmi Lavalas*, a militia that support former president Jean-Bertrand Aristide.⁹⁵

109. On July 14, 2005, the body of Haitian journalist Jacques Roche was found in Port-au-Prince. Roche, cultural editor with the daily *Le Matin* and the host of a local television show, had been kidnapped from his car in the Port-au-Prince neighborhood of Nazon. Roche's captors had demanded US\$250,000 in ransom, said the *Associated Press*. Roche's abduction and murder do not appear to be directly related to his work, but

⁹² Reporters without Borders, www.ifex.org/en/content/view/archivealerts/118/.

⁹³ Reporters without Borders, www.ifex.org/en/content/view/full/64684/.

⁹⁴ See press release of the Office of the Special Rapporteur for Freedom of Expression 129/05, Oct. 5, 2005, included in Annex 9 of this report and Inter-American Press Association, www.ifex.org/es/content/view/full/66279.

⁹⁵ Reporters without Borders, www.ifex.org/en/content/view/full/67530/.

journalists have limited their movements in response to the pervasive climate of lawlessness.⁹⁶

110. On October 3, 2005, security guards of President Boniface Alexandre attacked two reporters while they were covering a ceremony marking the beginning of the judicial year. *Reuters* correspondent Joseph Guyler Delva and *Radio Metropole* reporter Jean Wilkens Merone both reported serious injuries after they were dragged inside the courthouse and then severely beaten by the guards.⁹⁷

PROGRESS

111. On March 2005, Joubert St-Just, one of the alleged killers of *Radio Echo 2000* presenter Brignol Lindor, was arrested by residents in the town of Miragoâne. Lindor was hacked to death with machetes on December 3, 2001 in the southern town of Petit-Goâve. St-Just is a member of *Domi Nan Bwa*, a local grass-roots organization linked to *Fanmi Lavalas*, the party of former President Jean-Bertrand Aristide. St-Just was handed over to the police in Petit-Goâve and placed in a cell following his arrest by Miragoâne residents. This is the first time since the investigation began that any suspect has been arrested. The investigation resulted in September 2002 in the indictment of 10 *Domi Nan Bwa* members, but the arrest warrants were never executed. No charge was ever brought against the Petit-Goâve deputy mayor who had called publicly for Lindor to be killed.⁹⁸

HONDURAS

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

112. On November 5, 2005, *Virtud Stéreo* radio station, based in the southwestern town of La Virtud, was forced to close temporarily and its manager, Jaime Díaz, received death threats in connection with an apparent party rivalry during the period leading up to the November 27 presidential, legislative and local elections. According to the Honduran organization Committee for Free Expression (*Comité por la Libre Expresión, C-Libre*), *Virtud Stéreo* was forced to suspend its broadcasts after its power cables were severed by machete-wielding members of the Liberal Party (*Partido Liberal*). La Virtud Mayor Mariano Aguirre is a member of the party. Liberal Party supporters also repeatedly harassed and threatened to kill Díaz. Díaz attributed the harassment to the party's resentment of the fact that the ruling National Party had bought more airtime on his station. He told C-Libre that the National Party paid for 90 publicity spots a day during the campaign while the Liberal Party arranged for just 25 a day. The Liberals asked the station

⁹⁶ Committee to Protect Journalists, www.ifex.org/en/content/view/full/67976/.

⁹⁷ See press release of the Office of the Special Rapporteur for Freedom of Expression 129/05, Oct. 5, 2005, included in Annex 9.

⁹⁸ Reporters without Borders, www.rsf.org/article.php3?id_article=13108&var_recherche=joubert.

manager to reduce the number of National Party publicity spots aired on his station and refund the party for the extra monies paid. Díaz refused.⁹⁹

**PRINCIPLE 10 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Use of criminal defamation laws in relation to reporting on matters of public interest)**

113. On January 11, 2005, attorney Siomara Benítez Molina filed a defamation complaint against journalist Carlos Ismael Galeas, head of news programming for *San Miguel* radio station, based in Marcala, La Paz department. Benítez claimed that Galeas defamed her by reporting that she was implicated in a coffee smuggling operation. The journalist denied the accusation. In December 2004, Galeas aired a statement by police officer José Santos Alvarado Corrales, who claimed that he and eight other officers had investigated a coffee smuggling operation in Marcala and across the border to El Salvador. The police officers reportedly discovered that high-ranking Honduran officers, including Pedro Pereira, were implicated in the smuggling ring. Pereira is in charge of the Pasamonos customs office, on the border with El Salvador, and is Benítez's husband. According to Benítez, in subsequent reports Galeas insinuated that she was also implicated in the smuggling operation. Another journalist from the *San Miguel* radio station, Suyapa Banegas, was also charged with defamation in relation to the same incidents. On October 13, 2005, the Comayagua Tribunal, in Marcala, acquitted Galeas, Banegas, and five police officers of defamation charges. Judge Rafael López Murcia, who read out the ruling, said that there was no evidence to suggest that the crime of defamation had been committed. The judge said that Galeas and Banegas were simply doing their job by informing on a matter that was in the public interest. Similarly, the court determined that the accused police officers had acted appropriately by investigating an illegal operation that impacts on the local and national economy. As such, the Tribunal called on the Public Prosecutor's Office and the Security Ministry to launch a thorough investigation into the allegations of smuggling in the area.¹⁰⁰

114. In late July 2005, media businessman and investor Jorge Canahuati Larach, owner of *La Prensa* and *El Heraldo* newspapers, published in the northern city of San Pedro Sula and Tegucigalpa, respectively, became the target of a new legal action for libel and defamation. Banker Jaime Rosenthal Oliva, who is also a newspaper owner, filed the action. Rosenthal, owner of the San Pedro Sula daily *Tiempo*, also owns a television channel. He is arguing that articles published in *La Prensa* put his own life and those of his family members in danger. The articles were regarding a land dispute, in which a man was wounded by a security guard from the Continental bank, which is owned by Rosenthal, who also claims the land is his. *La Prensa* ran front page articles on July 23 and 25, entitled "Rosenthal is trying to take away land belonging to nine families in Copán" and "Rosenthal's guard wounds neighbour defending land". The land in dispute is located in Copán, a western region. Rosenthal maintains that the *La Prensa* articles were without any

⁹⁹ Reporters without Borders, www.ifex.org/en/content/view/full/70489/.

¹⁰⁰ *Probidad*, www.ifex.org/en/content/view/full/64346/, www.ifex.org/en/content/view/full/69777/, www.ifex.org/es/content/view/full/66458/; *Asociación Mundial de Radios Comunitarias (AMARC)* www.ifex.org/es/content/view/full/64682/.

basis in fact, and were motivated by the express desire to "defame him, consciously and intentionally." He said that the land under dispute belongs to him and that the Continental bank has a public land deed that states he is the legitimate owner of the property, which was split into lots to be sold to 100 poor families.¹⁰¹

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

115. In February 2005, Supreme Court Justice María Elena Matute filed a defamation complaint against journalists Nelson Fernández and Luis Fuentes, director and editor-in-chief of the daily *La Prensa*, published in the northern city of San Pedro Sula. Justice Matute disputed claims published in a February 1, 2005 *La Prensa* report that she negotiated an agreement that would have given her 12 million lempiras (approx. \$642,000) in exchange for resigning from her post. The newspaper reported that the judge was stepping down in order to allow her son, Marco Tulio Hernández Matute, and her brother-in-law, Congress Secretary Juan Orlando Hernández Alvarado, to run in the 2005 elections. After *La Prensa* published the article in question, one of the judge's brothers asked the paper to publish his reply. According to Justice Matute, however, "the clarification that appeared in *La Prensa* did not correspond to the information my brother handed to the paper's executives on two separate occasions. As a result, I had no choice but to launch legal action . . . The article was offensive and damaging to my reputation." Fernández and Fuentes averted a public hearing on the defamation charges after reaching a conciliation agreement with Justice Matute in May.¹⁰²

PROGRESS

116. In March 2005, the legislature approved a reform of Constitutional Article 182 giving citizens a constitutional right to *habeas data* about themselves. The law says that "[e]very person has the right, in a rapid and non-onerous manner, to access information about himself or herself and his or her property already in the databases or in private or public registries, and if necessary, to update, correct, or amend it." Congress has not yet approved, however, a bill on Access to Public Information and *Habeas Data*. The bill was introduced in October 2004 and had the support of the heads of five political party caucuses, but the legislative commission that introduced the bill extended the debate.¹⁰³

117. On May 19, 2005, the Constitutional Chamber of the Supreme Court ruled that the nation's insult law, found in Article 345 of the Criminal Code, was unconstitutional. The decision stems from the October 2003 submission by then Attorney General Roy Medina alleging Article 345 was contradictory to Articles 60 and 72 of the country's Constitution, and thus unconstitutional. The Court noted in its decision the

¹⁰¹ *Probidad*, www.ifex.org/en/content/view/full/68360/.

¹⁰² *Probidad*, www.ifex.org/en/content/view/full/64497/, www.ifex.org/es/content/view/full/66346/.

¹⁰³ *Probidad*, www.ifex.org/en/content/view/full/65548/, www.ifex.org/en/content/view/full/68815/.

following: "The tendency among modern democracies is to eliminate insult laws, because they consider them contrary to the right of equality before the law and an obstacle to freedom of expression by granting special treatment to public officials."¹⁰⁴

JAMAICA

PRINCIPLE 4 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Access to information held by the state)

118. In October 2005, journalists complained that they have been unable to get a weekly update of the murder statistics from the Constabulary Communications Network (CCN) arm of the police force when they ask for it. They charged that the CCN was hiding the weekly statistics for murder because they did not want to alarm the population with the high crime figures too frequently. The release of these statistics, which were once released on a weekly basis, was stopped a few months ago under the pretext that the one officer in the Police Statistics unit was ill and had gone on leave. The statistics are now released quarterly.¹⁰⁵

119. On October 28, 2005, Phyllis Thomas, the Enterprise Editor of *The Gleaner*, reported in a column that the publication was denied access to a 2003 report on the salaries of judges completed by a committee and submitted to the Minister of Justice. The column noted that a request for the document made to the Ministry of Justice was denied. The acting Responsible Officer, Brenda Smith, said that "I have been advised to inform you that the report done and submitted for comments, to form part of a Cabinet submission, is not for public access. The matter of compensation/emoluments to judges is dealt with by the Ministry of Finance and Planning." The column noted, however, that another letter, with the same date and bearing the same reference number and signature, was delivered to them on the same day as the one referred to above, and was in fact stapled together. The second letter said, in part, that "efforts will be made to identify the existence of such report and to provide the copy if and when this is identified." A request for documents that the ministry relied on to determine judges' salaries was also denied by the Ministry of Finance, which said in part that "The Ministry of Finance and Planning is not involved in the determination of judges salaries..."¹⁰⁶

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

120. At a political campaign in Port Antonio, Portland on August 28, 2005, Minister of Finance and Planning and contender for leadership of the People's National Party, Dr. Omar Davies, took issue with press reports and commentary over the resignation

¹⁰⁴ See press release of the Office of the Special Rapporteur for Freedom of Expression 126/05, July 1, 2005, included in Annex 9 to this report. See also World Press Freedom Committee, www.ifex.org/en/content/view/full/66901/.

¹⁰⁵ Ken Chaplin, *The Jamaica Observer*, October 4, 2005.

¹⁰⁶ *The Jamaica Gleaner*, www.jamaica-gleanerjm.com.

of the prime minister's son, Richard Patterson as a result of a scandal affecting the National Solid Waste Management Authority. Dr. Davies warned that there would be "bangarang" (a Jamaican expression interpreted to mean "war and pandemonium") if the media went after members of his family who hold public sector jobs. His comments were made in the context of some other public officials questioning the media's handling of related stories. His comments were challenged by the press on several occasions. Dr. Davies, in response to the suggestion that his remark was a threat against press freedom, said, "No threat was made, in that way. What I am saying was I would come out fighting and defending them."¹⁰⁷

121. In October 2005, Attorney General and Minister of Justice A.J. Nicholson warned journalists that they could not write anything negative about the debated Caribbean Court of Justice (CCJ) which is being established to replace the Privy Council in England, as Jamaica's and the region's final Appellate Court.¹⁰⁸

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

122. On August 22, 2005, a Jamaican policeman confiscated the camera of Eldorado Mullings, a cameraman with *Television Jamaica* (TVJ), after Mullings filmed a police operation to remove unauthorized street vendors in downtown Kingston. The police reportedly objected to Mullings' filming of the operation, and one member struggled with Mullings and eventually seized the tape. TVJ's station manager asked for a written apology to the station and to Mullings over the incident, which it called a legitimate news event in the public's interest.¹⁰⁹

MEXICO

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, direct or indirect pressures)

123. A February 24, 2005 edition of *El Universal* containing a report accusing Hidalgo's governor of lying about having a law degree was confiscated in the state of Hidalgo. *El Universal* was nowhere to be found throughout the state. Newspaper vendors said that all copies of the issue had been seized by individuals "who appeared to be local government agents" and who had acted in a violent and intimidating manner. The seized edition had a front-page article alleging that Hidalgo Governor Miguel Angel Osorio Chong's claims of having a law degree were unfounded because he had only completed part of the course. "With a false degree, Osorio Chong claims to be a lawyer," the report said.¹¹⁰

¹⁰⁷ Claude Robinson, *The Jamaica Observer*, August 28, 2005.

¹⁰⁸ *Sunday Herald Jamaica*, October 2005.

¹⁰⁹ Claude Robinson, *The Jamaica Observer*, August 28, 2005.

¹¹⁰ Reporters without Borders, www.ifex.org/en/content/view/full/65010/.

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

124. On February 7, 2005, television journalist Jorge Cardona Villegas, of the *Televisa Monterrey* station, in the northeastern city of Monterrey, Nuevo León State, was the victim of an assassination attempt. Cardona Villegas was sleeping in his home when gunmen fired more than 50 gunshots at his residence and vehicle. Investigators and *Televisa Monterrey* staff said the attack may have been linked to the recent broadcast of a program accusing organized crime of being behind the kidnapping of 30 people in neighboring Tamaulipas State. Cardona Villegas declined an offer of protection from the Nuevo León Prosecutor's Office and took his own precautions, including changing his place of residence. He also reportedly went into hiding.¹¹¹

125. On February 9, 2005, Emilio Gutiérrez Soto, a correspondent for *El Diario de Juárez* newspaper, received death threats from members of the military after he published an article about a military raid on a local hotel. The newspaper said that an officer surnamed Martínez Piedra summoned the journalist to a meeting in a public place. Gutiérrez was told that the matter was urgent. When he arrived at the meeting place, the reporter was surrounded by eight soldiers who insulted and threatened him, saying he would be killed if any information about the meeting was published. *El Diario de Juárez* is published in Ascención in the Chihuahua region of northern Mexico.¹¹²

126. On March 6, 2005, photographer Víctor Hugo Moreno, of the magazine *Política*, was assaulted by police officers while covering a carnival in Xalapa, in the eastern state of Veracruz. Moreno said that he was in front a carnival float that he was photographing and crossed over to get a better shot. One of those responsible for crowd control then began to insult him, and then pushed the reporter and shouted obscenities. Moreno said he told him, in a non-confrontational manner, that he was bothering him and should allow him to work. When Moreno turned back towards the crowd, he found himself surrounded by police officers. He informed him that he was with the press, but they threatened to detain him. Soon after, ten other police officers arrived, and a number of Moreno's colleagues tried to intervene. During the ensuing altercation, Moreno was kicked several times in the ribs and struck on the ear with a police club, and his camera was damaged.¹¹³

127. Reporter Alfredo Jiménez Mota, of *El Imparcial* newspaper in Hermosillo, Sonora State, went missing on April 2, 2005 and relatives and friends feared his disappearance was linked to articles on drug trafficking. Reporter Shaila Rosagel, Jiménez's colleague at *El Imparcial*, said she was supposed to meet him later that evening after he

¹¹¹ Reporters without Borders, www.ifex.org/en/content/view/full/64411/, www.ifex.org/en/content/view/full/64426/.

¹¹² Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/64509/.

¹¹³ Reporters without Borders, www.ifex.org/en/content/view/full/65354/.

finished an interview with a contact. He has been missing since that time. Relatives, colleagues, and friends of the journalist do not know where he is and fear that his disappearance is linked to his most recent articles, in which he revealed information on alleged plans of drug traffickers to kill local government officials, as well as possible links between local police officers and gangs.¹¹⁴ In a report by the Mexican government to the Office of the Special Rapporteur for Freedom of Expression, the government informed that Jimenez's father, Jose Alfredo Jimenez Hernandez, and the director of *El Imparcial*, Jorge Morales Borbon, had filed a petition for an opening of a preliminary investigation. On April 22, 2005, the federal Attorney General's Office obtained the case's existing evidence in order to take over the investigation. As a result of its investigation, the federal Attorney General's Office has determined that members of the criminal organization known as *Los Guerriots*, *Los Numeros* or *Los Enriquez Parra* are likely responsible for Jimenez's disappearance. During the investigation, authorities have seized ranches, firearms, weapon cartridges, marijuana, and a vehicle used by the group. The State noted that due to the confidentiality of the investigations, it would provide more details when further advances have been made.

128. On April 5, 2005, Dolores Guadalupe García Escamilla, who hosted the program "*Punto Rojo*" for private radio station *Stereo 91*, was struck by nine shots to the abdomen, pelvis, arms, and legs as she arrived at work. She died from her injuries on April 18. An assailant approached the reporter after she parked her car in front of the station, firing at least 14 times in all, the Mexican press reported. García Escamilla was taken to a nearby hospital and underwent emergency surgery. According to the information received, the attack occurred about a half hour after the station aired a report by García Escamilla on Monday's fatal shooting of a Nuevo Laredo lawyer, who news reports said had represented alleged drug dealers. García Escamilla had covered crime for *Stereo 91* since 2001.¹¹⁵

129. On April 8, 2005, Raúl Gibb Guerrero, editor of the regional daily *La Opinión* in Papantla, in the eastern state of Veracruz, was assassinated near his home. Authorities reportedly suspected drug traffickers of being behind the killing. Gibb was gunned down on his way home at around 9:30 p.m. (local time), about 200 meters from his home. He sustained seven bullet injuries, three in the head, three in the abdomen, and one in the left arm. Police said the shots were fired from a distance of about two meters. According to witnesses, four men fired about 15 times from two cars that were following Gibb's car. The journalist's car ran off the road and crashed into a ditch. The *Associated Press* (AP) news agency quoted José Luis Santiago Vasconcelos, the prosecutor in charge of the case, as saying he suspected a link with drug traffickers, who are very active in Veracruz State. *La Opinión*, which is sold in the north of the state, often devotes articles to drug trafficking and had published one the day before Gibb's murder.¹¹⁶

¹¹⁴ Inter-American Press Association, www.ifex.org/en/content/view/full/65821/.

¹¹⁵ Committee to Protect Journalists, www.ifex.org/en/content/view/full/65881/, www.ifex.org/en/content/view/full/66069/.

¹¹⁶ Reporters without Borders, www.ifex.org/en/content/view/full/65921/.

130. In a report by the Mexican government to the Office of the Special Rapporteur for Freedom of Expression, the government stated that authorities in Veracruz began an investigation into the death of Guerrero. There were no eyewitnesses so advances in the investigation have been difficult, the State said. After some investigatory efforts, however, it is believed that organized crime is behind the killing, it added. The federal Attorney General's Office has taken over the investigation.

131. On April 28, 2005, representatives of *Primera Hora* in Mazatlan, Sinaloa filed criminal complaints in connection with death threats received by three of the publication's reporters. Jose Luis Rodriguez, Juan Escutia, and another unidentified reporter received death threats over the telephone relating to stories on the theft of gasoline from state oil monopoly *Petroleos Mexicanos* and the killing of an agent with the prosecutor's office.¹¹⁷

132. On May 10, 2005, a homemade bomb destroyed the vehicle of Pedro Pérez Natividad, editor of the daily *Primera Hora*, in Nuevo Laredo, Tamaulipas State, in northeastern Mexico. Pérez's van was parked in front of his home a few streets from the newspaper's offices when the bombing occurred at around 11:30 p.m. (local time), completely destroying the interior. Police found a Coca-Cola bottle and a petrol-soaked cloth inside the vehicle. The editor said he had no enemies or conflicts with anyone, and did not know where the threat came from. Pérez also said he had not received any warnings prior to the attack, although a colleague specializing in criminal cases had received threats, which were recorded on a police wiretap. Pérez's attack may have been provoked by an article in *Primera Hora* on the Gulf Cartel drug-traffickers. The editor noted, however, that, "[the] case goes back eight months and it was reported on by all the media, based on information provided by the authorities." Witnesses reported seeing a man approximately 1.7 meters tall and wearing a striped shirt fleeing the scene after the explosion. Pérez has been receiving Tamaulipas state police protection since May 12.¹¹⁸

133. On July 12, 2005, the Office of the Special Rapporteur received information that journalist José Luis Villanueva Berrones, of the newspaper *Expreso*, had received a threat in the form of a rag doll hanging from a footbridge. The doll was wearing a t-shirt that bore the words "To all those who don't believe we exist, we leave this doll for Villanueva from EXPRESO. We are going after him. Triangle of death." It is unknown whether Villanueva had received any other threats.¹¹⁹

134. On July 18, 2005, thirty-one journalists were violently removed from the offices of the Oaxaca-based daily *Noticias* by dozens of unidentified individuals who stormed the offices of the newspaper around 8 p.m. The employees had been confined to their offices for the previous several weeks due to a blockade erected by a striking, pro-government union. Those who stormed the building pulled journalists and press workers

¹¹⁷ Inter-American Press Association, Annual Report on Mexico, www.sipiapa.com/publications/informe_mexico_2005o.cfm.

¹¹⁸ Reporters without Borders, www.ifex.org/en/content/view/full/66687/.

¹¹⁹ Inter-American Press Association, www.ifex.org/en/content/view/full/67970/.

out of the building and destroyed computers and furniture, according to local press reports. According to the information received, some of the individuals wore masks and carried sticks, bottles, and pipes. A few employees suffered bruises, but no serious injuries were reported. The intruders arrived at the newspaper with officials of the Oaxaca Attorney General's Office, according to *Noticias*. State police who arrived on the scene did not intervene, the Mexico City-based daily *Reforma* reported. The newspaper has continued publication out of a printing plant in a neighboring town. Police have confiscated copies of the newspaper and attacked its vendors, *Noticias* reported. Members of the Revolutionary Confederation of Workers and Peasants (CROC), a trade union with ties to the ruling Institutional Revolutionary Party (PRI), originally set up camp outside the newspaper on June 17, blocking its entrances and exits. *Noticias* staffers were not allowed to leave the building. Octavio Vélez, a *Noticias* reporter, said the building's electricity and telephone lines were cut on June 19, and power was not restored until the next day. The reporter said that the crowd outside blocked efforts to deliver food. Workers ate food that was in the company's cafeteria, and some contracted illnesses as a result. *Noticias* has been highly critical of Oaxaca state authorities and appears to be targeted for that reason, according to Pedro Matías, local correspondent with the Mexico City-based news magazine *Proceso*.¹²⁰

135. In a report by the Mexican government to the Office of the Special Rapporteur for Freedom of Expression, the government informed that authorities in the state of Oaxaca noted that the problems facing *Noticias* stem from two causes – one that is of a private character and one related to labor issues at the newspaper. The State noted that both problems are in the process of being resolved by the corresponding authorities. The State said that the issue of a private character relates to the location of the newspaper's warehouses in community land in Oaxaca. The land on which the warehouses are located has been subject to agrarian problems between communal farmers and a local family. With respect to the labor conflict, the State noted that workers from *Editorial Taller*, the newspaper's publisher, demanded higher salaries and more economic benefits. The company reached an agreement with these workers, but labor problems still ensued and the strike was scheduled for the end of May 2005. The government attempted to block this strike with judicial measures. A group of workers then decided to remain in the building to guard their place, and later some argued that these workers were not free to leave. In June, officials from the Attorney General's Office in Oaxaca attempted to assure the workers safe passage, but they refused. The strike began on June 17 and the workers that had remained inside the newspaper offices finally left. The State of Oaxaca began a preliminary investigation of the events and implemented precautionary measures in favor of Ericiel Gomez Nucamendi and 116 workers in order to protect their lives and physical integrity. A working group headed by federal officials met with workers, legislators, and religious officials, as well as the Oaxaca Governor, and in August, a dialogue began between the newspaper and a union leader. This led to a truce among the parties, who agreed to analyze proposals and arrive at a formal agreement at a later meeting.

¹²⁰ Committee to Protect Journalists, www.ifex.org/en/content/view/full/68098/.

136. On July 29, 2005, Sugey Estrada, a reporter with *Noroeste* newspaper in Escuinapa, Sinaloa, said she was threatened by municipal police chief Filiberto Bribiesca Sandoval when she asked for an interview. The newspaper publishes the "Escuinapa Report" on the environment of harassment faced by journalists in the region who have been forced to leave their jobs and, in some cases, flee with their families to other cities out of fear of attacks.¹²¹

137. On September 18, 2005, Jesus Reyes Brambila, a social page reporter for *Vallarta Milenio*, was found dead in the trunk of a car that belonged to the newspaper. Brambila was found naked, bound, and blindfolded in a black bag. He had endured stab wounds to the throat and chest and three trauma injuries to the head. The medical examiners' office said Reyes, the brother of *Vallarta Milenio's* executive editor Luis Reyes Brambila, had been killed days before his body was discovered.¹²²

138. On October 3, 2005, *Radio La Poderosa* reporter Agustín Chávez was severely beaten in Tlaxiaco, in the southern state of Oaxaca, by brothers of the town's former mayor, whose allegedly corrupt administration has been the subject of reports by Chávez. Isaac and Franco Pacheco Pérez, brothers of former Tlaxiaco mayor Hugo Pacheco Pérez, intercepted Chávez, telling him, "Son of bitch, we were looking for you." They then beat him for about 10 minutes until he lost consciousness. The attackers also threatened to kill him because of the harm done to their brother by his reporting on local government corruption between 2002 and 2004. Chávez was hospitalized for about 20 hours for treatment for head injuries. He said that nine days after the attack that he still had not recovered the use of his right leg. On June 3, 2005, Chávez received a death threat from an anonymous telephone caller. He filed a complaint, but, mysteriously, the findings of the ensuing investigation are not available. He was also physically attacked on September 17 by a member of the current municipal administration who called for the retraction of statements Chávez had made about him.¹²³

139. In October 2005, the municipal police chief of Tuxtla Gutiérrez, in the southern state of Chiapas, reportedly made death threats against Concepción Villafuerte, editor of the local daily *La Foja Coleta*. In a press release circulated anonymously in Tuxtla Gutiérrez on October 17, local police officers alleged that they were the victims of abuse of authority, corruption, and embezzlement by their superiors, especially municipal police chief Mariano Rosales Zuarth.

140. The press release also alleged that, while inebriated, Rosales ordered Superintendent Deonicio Elevit Nolaesco to "get rid of" Villafuerte if she continued to write in *La Foja Coleta* or any other newspaper. He reportedly told Elevit to run her over with a

¹²¹ Inter-American Press Association, Annual Report on Mexico, www.sipiapa.com/pulications/informe_mexico_2005o.cfm.

¹²² Inter-American Press Association, Annual Report on Mexico, www.sipiapa.com/pulications/informe_mexico_2005o.cfm.

¹²³ Reporters without Borders, www.ifex.org/en/content/view/full/69768/.

car to make it look like an accident. The release also mentioned threats being made against Enoc Gordillo, a journalist who contributes to various news media in the nearby city of San Cristóbal de las Casas. *La Foja Coleta*, known for exposing alleged irregularities by regional officials, had been covering issues facing the police, including extortion within the force, low wages and lack of uniforms. The paper ran an open letter on October 20 reproducing the main points of the anonymous press release.¹²⁴

141. On November 3, 2005, radio journalist Arturo García, of *Reporte 98.5 FM*, was severely beaten by about 30 police officers as a result of a comment he made while covering the arrest of a taxi driver in the old part of Mexico City. The police initially let García through to cover the arrest of the taxi driver who, according to his friends, had been mistreated by the police. When asked the reason for the arrest, the police reportedly told García the taxi driver had been "obstructing traffic." García then commented: "That's not a sufficient reason." The police then insulted García, who was in the middle of giving a telephone report to his station, and grabbed the phone and arrested him. García's jacket and car both had the logo of *Grupo Imagen*, the media group to which *Reporte 98.5 FM* belongs. The police then punched and clubbed García for about eight minutes. In the course of this beating, one of the police officers reportedly raised his right hand over García and told him, "This is the hand I am going to kill you with."¹²⁵

142. On November 6, 2005, Mexican radio reporter Benjamín Fernández González was seriously wounded when he was shot seven times at close range while walking his dog in a park in Loma Bonita, a town in Oaxaca state. The reporter hosts the show "*Poder Informativo*" for *Radio Hit* and is known for his criticism of local authorities. Fernández is also a political activist, serving as local president of the *Partido de Acción Nacional* (PAN) party between 1999 and 2002. The reporter was taking his daily walk with his dog around 5:30 p.m. when two unidentified assailants intercepted him, according to local press reports. One assailant fired nine shots, hitting the journalist seven times, press reports said. The journalist was struck in the chest, abdomen, shoulder, and arms, said his daughter, who added that her father was out of danger after sustaining injuries that were initially considered life-threatening. She said her father believed the attack may have been related to his work on the radio.¹²⁶

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

143. On May 6, 2005, a civil litigation court judge ordered house arrest for Argentine journalist Olga Wornat in connection with a civil suit brought against the journalist by Marta Sahagún, the wife of Mexican President Vicente Fox. Wornat is the author of an unauthorised biography of Marta Sahagún entitled *La Jefa*, published in 2003, and a more recent work, *Crónicas malditas* (published in English as *Damned Chronicles*

¹²⁴ Reporters without Borders, www.ifex.org/en/content/view/full/70026/.

¹²⁵ Reporters without Borders, www.ifex.org/en/content/view/full/70252/.

¹²⁶ Committee to Protect Journalists, www.ifex.org/en/content/view/full/70365/.

from a Devastated Mexico), investigating the presidential couple and their entourage. In the latter, Wornat claimed that the First Lady's sons, particularly Manuel Bribiesca Sahagún, were involved in influence-peddling and illegally profiting from building sector contracts. She said that Bribiesca had a private jet worth one million dollars. Marta Sahagún's personal secretary announced on May 3 that a suit was being filed against the journalist for "mental pain and suffering." Justice Carlos Jiménez Mora, the federal civil litigation court judge hearing the case, admitted the claim on May 6 and placed Wornat under house arrest pending his decision. Bribiesca, who denies Wornat's allegations, said on May 8 that he also intended to take her to court

144. On October 27, 2005, Enrique Zamora Cruz, director of *El Orbe* regional newspaper, was detained in Tapachula, Chiapas state, and accused of defamation. Agents from the Chiapas attorney general's office detained Zamora and took him to the branch office to question him. He was held incommunicado for several hours while being questioned and informed he was charged with the defamation of Chiapas state governor Pablo Salazar Mendiguchia. He was freed on October 28. A report in *El Orbe* said the complaint refers to various recent articles about the government's handling of the crisis caused by hurricane Stan. The newspaper alleged that government officials mistreated hurricane victims and embezzled public funds. The newspaper also called for a thorough investigation of Mayor Ángel Barrios Zea.¹²⁷

145. On December 16, 2005, journalist and human rights activist Lydia Cacho Ribeiro was detained. She was released on 106,000 pesos (US\$10,000) bail the next day and faces criminal defamation charges. Cacho, a columnist for the Mexico City-based weekly magazines *Día Siete* and *Tentaciones*, was arrested around noon while she arrived at the offices of *Centro Integral de Atención a la Mujer* (CIAM), a center for victims of domestic violence and rape in Cancún, according to local press reports. Cacho is the center's director. The judge reportedly based the arrest warrant on Cacho's alleged failure to answer an earlier summons in the defamation case. But Cacho claims that she never received the summons, adding that "an arrest warrant cannot be issued without making sure that the accused has received the summons." The underlying defamation case is based on a complaint filed by Puebla-based clothes manufacturer José Camel Nacif Borge, the Mexican press said. In a book released in May titled, *The Demons of Eden*, Cacho described the activities of a child prostitution ring that she said operated with the complicity of local police and politicians. She alleged that Nacif had ties to an accused pedophile, which the businessman said damaged his reputation. Cacho received numerous death threats after the book was released, and she was provided federal police protection.¹²⁸

¹²⁷ *Probidad*, www.ifex.org/en/content/view/full/70152/.

¹²⁸ Committee to Protect Journalists, www.ifex.org/en/content/view/full/71258/.

PROGRESS

146. On February 17, 2005, Mexico's Secretary of Communications and Transportation (SCT) gave a license to the community radio station *Huayacocotla*, located north of the city of Veracruz. The community station has broadcast via short wave since 1965 to serve the farming and indigenous community of the region. The station now has the legal recognition to transmit programs on FM radio. The license requests of another five stations, however, are still pending: *Calenda de Oaxaca*, *Bemba de Sonora*, *Erandi de Michoacán*, *Omega Experimental* and *La Volador*. The stations had not received information from the SCT in six months and had therefore stopped transmitting.¹²⁹

147. In April 2005, the Senate approved an amendment to the Federal Penal Code to establish a reporters' privilege. The amendment exempts members from a number of professions from government requests that they reveal their sources of information. It still needs the approval of the Chamber of Deputies.¹³⁰

148. On July 22, 2005, a miners' union executive board member, Juan Jose Gutierrez Ballesteros, and his two bodyguards were arrested and then released after payment of fines for threatening Orlando Valencia Estrada, a local talk show host. Valencia is the host of "*Noticentro*," on the *La Consentida* radio station.¹³¹

149. Mexico's government noted in a report to the Office of the Special Rapporteur of Freedom of Expression that in response to the attacks perpetrated against some journalists, it has designated special prosecutors to handle freedom of expression issues. It then provided an update on advances made in the following cases: Roberto Javier Mora Garcia, Francisco Javier Ortiz Franco, Francisco Arratia Saldierna, Raul Gibb Guerrero, Alfredo Jimenez Mota, and the *Diario Noticias* case.

Roberto Javier Mora Garcia

150. Mora, the director of *El Manana* newspaper in Nuevo Laredo, Tamaulipas, was found dead in his apartment on March 19, 2004. The Attorney General of Tamaulipas initiated an investigation. As a result of this, authorities determined that Hiram Oliveros and Mario Medina Vazquez were the likely authors of the crime. Both denied responsibility in their initial declarations, but in further declarations on March 28, 2004 they admitted that they participated in the crime. They were prosecuted and sentenced for homicide.

¹²⁹ Asociación Mundial de Radios Comunitarias (AMARC-México), February 17, 2005

¹³⁰ Inter-American Press Association, Annual Report on Mexico, www.sipiapa.com/publications/informe_mexico_2005o.cfm.

¹³¹ Inter-American Press Association, Annual Report on Mexico, www.sipiapa.com/publications/informe_mexico_2005o.cfm.

Franciso Javier Ortiz Franco

151. Ortiz, the editor and co-founder of the weekly publication *Zeta* in Tijuana, Baja California, was murdered on June 22, 2004. The Baja California Attorney General undertook investigatory measures and found that those likely responsible for the murder are linked to organized crime. The federal Attorney General's Office has taken over the investigation.

Francisco Arratia Saldierna

152. Arratia, a journalist who covered drug trafficking and organized crime for the newspaper *El Imparcial* in Matamoros, Tamaulipas, was assassinated on August 31, 2004. The investigation of the state Attorney General's office found that Raul Castelan Cruz, Filemon Hernandez and/or Filemon Hernandez Romero were likely responsible for the crime. On September 24, 2004, state police officials detained Raul Castelan Cruz and handed him over to the federal Attorney General's office. He admitted that he was one of the perpetrators of the crime. On December 15, 2004, the Public Minister formally accused Raul Castelan Cruz and Filemon Hernandez and/or Filemon Hernandez Romero, and left open the case in order to establish the identity of another person who participated in the crime. The State Commission of Human Rights of Tamaulipas also requested a copy of the preliminary investigation in order to follow the case.

153. The Mexican government's updates in the cases of Raul Gibb Guerrero, Alfredo Jimenez Mota, and *Diario Noticias* have been summarized previously in the corresponding sections of this report.

NICARAGUA

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

154. On August 14, 2005, Rony Adolfo Olivas Olvias, a reporter for *La Prensa* and *Hoy* in the city of Esteli was shot by a taxi driver who was transporting him home. The taxi driver Santos Roberto Osegueda surrendered to police on August 17 and was placed formally placed in custody on August 19 after confessing to the murder of Olivas Olivas. He said he killed Olivas after they got into an argument. The police investigators have nonetheless not ruled out the possibility that the murder was linked to Olivas' coverage of international drug trafficking. His colleagues had already confirmed that he had been receiving telephone death threats for several weeks prior to his murder. Msgr Abelardo Mata, the bishop of Estelí and head of a local human rights group, said Olivas had told him he intended to name certain people, including civil servants, who were involved in illegal activities.¹³²

¹³² Inter-American Press Association, Annual Report on Nicaragua, www.sipiapa.com/publications/informe_nicaragua2005o.cfm; Reporters without Borders, www.rsf.org/article.php3?id_article=14703.

PROGRESS

155. On January 26, 2005, Eugenio Hernández González was declared guilty of having assassinated María José Bravo, a correspondent for *La Prensa* newspaper. Judge Rosa Inés Osorio, of the Juigalpa Criminal Court, ruled on the case after a trial that lasted more than eight hours.

156. Bravo was killed on November 9, 2004 outside a vote-counting center in Juigalpa. She was covering a clash between members of the Alliance for the Republic (*Alianza para la República*, APRE) coalition and the Constitutionalist Liberal Party (*Partido Liberal Constitucionalista*, PLC). The two parties' supporters were questioning the results of elections in Santo Tomás and Cuapa municipalities. Hernández, a former El Ayote mayor, shot Bravo at point-blank range.¹³³

PANAMA

PRINCIPLE 8 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Right of every social communicator to keep confidential his or her sources, notes, and personal and professional files)

157. On November 17, 2005, reporter Rafael Antonio Ruiz and deputy editor Cesar Ivan Catillo of the daily *El Siglo* were fired in connection with a November 14 report for reportedly refusing to reveal their sources. Ruiz's article referred to the former head of the police anti-narcotics department, Rogelio Harris, who was arrested on suspicion of corruption and drug trafficking following his dismissal on October 3. The reporter alleged that Juan de Leon, a member of President Martin Torrijos' personal security staff, was likely involved in the case. Ruiz quoted a source as saying that Harris used public funds and intelligence contacts to get drugs from traffickers. On the day the story was published, a main shareholder of the newspaper – Abdul Waked – ordered Ruiz to name his source, and Ruiz refused. The two journalists were dismissed after that.¹³⁴

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

158. In August 2005, Supreme Court Justice Winston Spadafora filed a complaint against journalist Jean Marcel Chéry of *La Prensa* for a July 18 article reporting that Attorney General Ana Matilde Gómez had said that judges had to render accounts for their decisions. Gómez proposed the creation of autonomous offices to evaluate the conduct of justice system officials, including Supreme Court judges and "*procuradores*." The offices would audit the handling of the cases for which those officials are responsible. In the article, after quoting Gómez's comments, Chéry questioned Supreme Court decisions, including one announced by Magistrate Spadafora annulling a US\$2 million debt owed by

¹³³ *Probidad*, www.ifex.org/en/content/view/full/64090/.

¹³⁴ Reporters without Borders, www.ifex.org/en/content/view/full/70543.

businessman Jean Figali, a prominent friend of former president Mireya Moscoso, to the Interoceanic Regional Authority (*Autoridad de la Región Interoceánica*, ARI), the public body responsible for administering the area and facilities returned to Panamanian authorities under the Torrijos-Carter Canal Treaties. The civil libel suit for US \$2 million in damages also seeks confiscation of Chery's salary in the amount of \$18,753.¹³⁵

PROGRESS

159. On May 17, 2005, the Legislative Assembly in Panama approved a bill to repeal the gag laws, eliminating laws that had been used to restrict press freedom.

160. Legislative bill #73 prohibits the application of sanctions for insult, introduces measures relating to the right to clarification and reply, and introduces other regulations. One of the articles establishes the elimination of the concept of insult by preventing "government officials in power from imposing economic sanctions and prison sentences against those who they believe have disrespected them." The law, which was approved on May 16, repealed Law #11 of 1978, which stipulated a number of measures relating to the media and the publication of printed materials, and Law #67 of 1978, which regulated the exercise of the journalism profession in Panama, and other matters.¹³⁶

PARAGUAY

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

161. In April 2005, Obdulio Espinoza, the mayor of San Antonio, located outside of the capital, threatened a correspondent for *ABC Color* on two occasions. Espinoza told Higinio Ruiz Dias by telephone to "watch out" because he had a daughter and a family. The threats were apparently linked to articles about corruption in the government.¹³⁷

162. On August 4, 2005, the Paraguayan Journalists Union (SPP) reported an increase in the danger faced by journalists in their work. It condemned the destruction of community radio station *Quebracho Poty* in Puerto Casado, 700 kilometers north of Asunción; an attack on Antonio Amarilla, a photographer of the daily *Vanguardia* of Ciudad del Este on the border with Brazil; and death threats to two journalists in Ciudad del Este and Pedro J. Caballero. One of the victims is Mariana Ladaga, coordinator of the SPP branch in Ciudad del Este and correspondent of *La Nación*. Another correspondent of this

¹³⁵ *Probidad*, www.ifex.org/en/content/view/full/68340/; *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/68784/.

¹³⁶ Inter American Press Association, www.ifex.org/en/content/view/full/66772/.

¹³⁷ Inter-American Press Association, Annual Report on Paraguay, www.sipiapa.com/publications/informe_paraguay_2005o.cfm.

newspaper, Emerson Dutra, reported that he had received a telephoned death threat, probably from the drug trafficking mafia.¹³⁸

163. On October 10, 2005, journalist Nicolás Sotelo, director of *FM San Juan* community radio station in the San Juan del Paraná district, was beaten and threatened by town mayor Aldo Lepretti. Sotelo said that Lepretti was angered by criticisms that had been made on Sotelo's program. Lepretti damaged the studio and without any explanation began punching and kicking the journalist, and threatened him with a revolver. Earlier that day, two community leaders from the Ita Paso neighbourhood, Inocencia Pineda and Zully Jacquet, came on Sotelo's programme to sharply criticize the municipality's administration. Sotelo said he was familiar with the problem and therefore corroborated the complaints made by his guests. He also spoke about the community's lack of information about a construction project involving the paving of an access road. After the community leaders left, the journalist remained in the studio alone. Shortly afterwards, Lepretti entered the studio. Sotelo thought the mayor had come to exercise his right to respond to the criticisms, but Lepretti grabbed him by the throat, threw him to the ground, punched him in the face, and kicked him. The mayor then held a gun to Sotelo's head and threatened to kill him, saying "I've already let you get away with a lot."¹³⁹

PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Indirect violations of freedom of expression)

164. On August 26, 2005, *Ñemity FM* community radio station was closed and its equipment was confiscated by the Curuguaty Public Prosecutor, National Telecommunications Commission (CONATEL) officials, and over 200 police at 6 a.m. (local time). CONATEL officials claim the action was carried out because the radio station does not have a broadcasting permit. The station, however, has a temporary permit from the authorities and has provided CONATEL with the documentation required for a permit, as have the other community radio stations also waiting for the government to keep its promise to formally legalize the stations' operations.

165. It has now been a year since the license application process began, but very few radio stations have been definitively licensed. Bureaucratic bottlenecks and lack of political will to recognize communities' rights to organize radio stations have been identified as the reasons the government has prevented Paraguayans from exercising their right to freedom of expression and information. *Ñemity FM* broadcasts from the city of Capi'ibary, San Pedro Department, northern Paraguay, and is a member of the World Association of Community Radio Broadcasters (AMARC) and the Paraguayan Association for Community Radio Broadcasting (*Asociación Paraguaya de Radiodifusión Comunitaria, COMUNICA*).¹⁴⁰

¹³⁸ Inter-American Press Association, Annual Report on Paraguay, www.sipiapa.com/publications/informe_paraguay_2005o.cfm.

¹³⁹ *Probidad*, www.ifex.org/en/content/view/full/69903/.

¹⁴⁰ World Association of Community Radio Broadcasters, www.ifex.org/en/content/view/full/68927/.

PROGRESS

166. In April 2005, 23 civic organizations presented a freedom of information bill in the Chamber of Deputies. Another proposed law on Freedom of Public Information is under debate in the Chamber of Deputies. Chapter IV of this report, on developments related to access to information, discusses these bills further.

PERU

PRINCIPLE 4 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Access to information held by the state)

167. A law approved by Congress on June 23, 2005 on national intelligence contradicts legislation on the right to access information in effect since 2002. The law, which still needs the signature of President Alejandro Toledo, was seen as a setback for citizens' right to access information.

168. The new law increases the number of exceptions to the current rule, established under the general law on access to information. The new law also increases to 10 years from five years the period that must lapse before confidential information can be obtained. The time limit for restricted information would be 15 years under the new law, and 20 years for classified information. It also allows the National Intelligence Council (COIN), the National Intelligence Directorate (DINI), the Ministry of Defense, the Ministry of the Interior, and the General Administration on Security and Defense of the Ministry of Foreign Relations, to create their own guidelines for classifying and declassifying documents.¹⁴¹

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, and direct or indirect pressure)

169. On May 25, 2005, journalists Jerónimo Centurión and Paola Bazán, of the Lima-based television program *"La Ventana Indiscreta,"* were taken into custody by police as they were leaving one of the Congress buildings, and taken to a police station where they were kept for seven hours. They were detained after they videotaped, without authorization, documents they found piled up in the reception area of a ruling party congressman's office. Centurión and Bazán said that the police never informed them why they had been detained and taken to the police station. The police confirmed this. In the course of an investigation, the journalists entered the reception area the congressman's office after having obtained authorization to enter a different part of the building. They identified themselves to a secretary and then proceeded to videotape the documents. During the seven hours they were kept at the police station, the journalists were obliged to explain what they had been doing, without having been told if they had done anything

¹⁴¹ Inter-American Press Association, www.ifex.org/en/content/view/full/68049/.

wrong. The police insisted at all times that Centurión and Bazán were not actually being detained.¹⁴²

170. On July 11, 2005, Robinson Gonzáles Campos, presiding magistrate of the First Criminal Provisional Bench of the Supreme Court, barred certain media from a press conference, alleging that they had twisted his previous statements and insulted his work. The conference was being held to explain the reasons for the decision to release several people serving sentences for corruption, taken by the court over which Gonzáles presides. Among the media barred were *Perú 21* newspaper and “*La Ventana Indiscreta*” television program, which Gonzáles alleged had a vested interest in damaging his image and that of the judiciary. Also barred were journalists from *Panamericana Televisión*, *Frecuencia Latina* and *Canal N* television stations, as well as various print media. In addition, journalists from *La República* newspaper said that when they went to the Prosecutor General offices on July 11 to cover a story, they found that their names were not on the authorized media list.¹⁴³

PRINCIPLE 8 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Right of every social communicator to keep confidential his or her sources, notes, and personal and professional files)

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

171. Richard Enciso Sánchez, a journalist working for *Radio Ancash* in the northern department of Ancash, received three anonymous threatening phone calls starting September 17, 2005. The calls demanded that he reveal the name of a policeman he interviewed on September 16. During the interview, broadcast on the “*La Hora Siete*” news program, Enciso asked the officer about discontent among a certain sector of the police force and a possible police strike. The officer interviewed spoke in favor of the strike, stating that police officers are badly paid and are forced to work extra hours to compensate for their low salaries. The phone threats against Enciso started the following day. The journalist has stated he will not reveal his source's identity. He also asked the chief of police for the city of Chimbote to launch an investigation in order to identify those responsible for the calls.¹⁴⁴

172. On March 2, 2005, José Antonio Simons Cappa, editor of the magazine *El Huinsho* of Yurimaguas, Alto Amazonas, was beaten and threatened by local authorities. His equipment was also seized. The events occurred after Simons filmed a public conversation involving the mayor, Leonardo Inga Vásquez, municipal official Roland Pinedo,

¹⁴² Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/67010/.

¹⁴³ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/67932/.

¹⁴⁴ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/69370/.

Councilman Fernando Fernández Rengifo and provincial prosecutor Jorge Guzmán Sánchez, who is investigating criminal complaints brought against the mayor's administration.¹⁴⁵

173. On March 8, 2005, seven journalists were attacked by members of the National Police while covering a nationwide strike against the Minera Barrick company, headed by Leonardo Mautino, also governor of the province. The attacks were made on the following journalists: Pedro Andrade, a reporter for *Radio Programas del Peru*; Marco Herrera, a reporter from Huaraz municipality; and Arturo Escobar, Javier Poma Sotelo, Fredy Valenzuela, Joel Gómez Arquíño, and Hernando Vega, journalists for *ATV Noticias* in Huaraz. Journalists Edgar Robles Rush, Ivan Trejos de la Cruz, William Cervantes Alvarado, and Oscar Rosas Albornoz, of the program "*El Equipo de la Noticia*" of radio station *Fuego de Huaraz* were detained and then released in a few hours.¹⁴⁶

174. On March 26, 2005, Victor Abel del Castillo Saavedra, of *TV Sur Canal 9*, was attacked violently by municipal police officers in the Plaza Nazarenas of Cuzco. The attacks appeared to be linked to the journalist's reports that the Cuzco municipality had made irregular payments to journalists to promote the mayor's work.¹⁴⁷

175. On March 28, 2005, two unidentified men entered the home of journalist Marilú Gambini Lostanau in Chimbote, Ancash. While one of them assaulted and threatened her, the other searched her work material apparently looking for information about a narcotics case that the journalist had been investigating since 2004 involving several officials of that city.¹⁴⁸

176. On April 5, 2005, Miguel Angel Carpio Tanata, a reporter for the program "*El Informe*," which is transmitted by the municipal channel in San Martín region, had to leave the area after being informed of a threat against his life. The threats followed the broadcast of a fragment of a report by him during a press conference organized by the office of Prime Minister Carlos Ferrero.¹⁴⁹

177. On April 12, 2005, César Hildebrandt Chávez, journalist of the program "*La Ventana Indiscreta*" broadcast by *Frecuencia Latina*, was physically attacked by relatives of police Lt. Lady Bardales. Bardales is a member of the security detail of the government Palace who had been investigated by the press for allegedly being close to President Alejandro Toledo.¹⁵⁰

¹⁴⁵ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁴⁶ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁴⁷ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁴⁸ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁴⁹ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁵⁰ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

178. On April 18, 2005, José Antonio Cárdenas, zone chief of the government program "*A Trabajar Urbano*" used a revolver to threaten to kill Raul Vela Carhuas, of the daily *El Pregonero* of Huánuco, because of his report of irregularities in Cárdenas's sector.¹⁵¹

179. On May 20, 2005, legislator Victor Valdez Meléndez attacked Rufino Zambrano Pinto of the daily *Ahora* of Pucallpa after Valdez testified in a court in Coronel Portilla province in a lawsuit against the daily for defamation. *Ahora* published articles that blamed the legislator for instigating a protest that ended with a fire, which affected the provincial government building of Coronel Portillo.¹⁵²

180. On May 26 and 27, 2005, Mario Espinoza Ruiz, Ronald Ripa Casafranca and Nilo González Domínguez of *Radio Panorama* of Andahuaylas received telephone death threats at the radio station after interviewing the director of the city's school board, Liceo Truyenque Aréstegui about a complaint by a group of local teachers.¹⁵³

181. On June 6, 2005, Juan Sánchez Calderón, anchorman of the program "*Minuto a Minuto*" and news director of *Radio Visión* of Tacna, reported that the chief of the accounts section of the water department of Tacna attacked them at the radio station. They attributed the attack to journalistic reports about alleged irregularities.¹⁵⁴

182. On July 23, 2005, Mario Ccama Chacón, town manager for the Santa Teresa district in Cusco, violently forced his way into the broadcast booth for the *People's Voice Radio*, as Luis Alberto Ochoa Muñoz was reporting on administrative irregularities in that town. Ccama fired a shot at the journalist, but since the bullets were defective Ochoa was not wounded. The attacker was arrested and taken to the San Joaquín Prison in Quillabamba.¹⁵⁵

183. On July 28, 2005, Roncin Davis Romero, Zarumilla province chief in the Tumbes region, used a bottle to attack journalist Christian Aguayo Infante, editor of the bimonthly *Trinchera*. The reporter attributes the attack to stories on illegal activities involving Davis during his term in office.¹⁵⁶

184. On August 17, 2005, Judge César González Aguirre, on the Huánuco First Superior Court Criminal Panel, threatened Celio Alva Calderón, correspondent of *El Pregonero* newspaper. The judge had brought an action for libel against journalist Raúl Vela Carhuas, *El Pregonero* editorial page editor, as well as Alva Calderón, following reporting

¹⁵¹ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

¹⁵² Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

¹⁵³ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

¹⁵⁴ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

¹⁵⁵ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

¹⁵⁶ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/pulications/informe_peru2005o.cfm.

on abuse of authority and malfeasance by González, who is alleged to have issued conflicting rulings in a trial.¹⁵⁷

185. On August 19, 2005, journalist Gino Márquez and cameraman Germán Huaroto, with the news program "*Cuarto Poder*" on *América Televisión*, were threatened by Luis Toledo Manrique, the president's brother, his son, and a member of his security detail, while investigating irregularities involving use of official vehicles by family members of president Toledo.¹⁵⁸

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

186. On January 19, 2005, Julio Jara Ladrón de Guevara, editor-in-chief of the Cusco-based newspaper *El Comercio*, received a one-year suspended prison sentence and a fine for defamation of a former regional government official. Judge Miguel Ángel Castelo Andía, of Cusco's Third Criminal Court, ordered the suspended prison sentence and the payment of 16,000 nuevos soles (approx. US\$4,900) to the state and 1,000 nuevos soles (approx. US\$300) to the plaintiff, Rafael Córdova Paliza. The judge ruled that the newspaper had defamed Córdova Paliza, a former Cusco regional government official, by publishing an article in which Córdova Paliza was accused of swindling a group of rural communities. On Oct. 3, 2003, the newspaper published an article containing statements by Congressman Manuel Figueroa Quintana accusing Córdova Paliza of defrauding 42 peasant communities by pretending to be an advisor to President Alejandro Toledo. The congressman also claimed that Córdova Paliza misappropriated 60,000 nuevos soles (approx. US\$18,400). An appeal has been filed and a decision is expected from a higher court.¹⁵⁹

187. On February 4, 2005, the Madre de Dios Superior Tribunal, in southeastern Peru, rejected an appeal filed by journalist Luis Aguirre Pastor's defense and upheld a sentence that bans the journalist from practicing his profession for one year. Aguirre, director and host of the radio news program "*La Voz de Madre de Dios*", was indicted for defamation in 2003. The journalist's attorney, Raúl Solorio, appealed the ruling on February 18. The ruling banning Aguirre from working as a journalist was based on his lack of a university degree and failure to be a member of a journalists' association. There is no law in Peru, however, that requires individuals to be members of a professional association or have a degree in order to practice journalism. Aguirre also received a two-year prison sentence for defamation and insult in connection with statements made on his radio program. Although the journalist has not been jailed, he is being required to pay 10,000 soles (approx. US\$3,100) in damages.¹⁶⁰

¹⁵⁷ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁵⁸ Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁵⁹ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/63909/.

¹⁶⁰ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/6.

188. On May 4, 2005, British journalist Sally Bowen, a former correspondent in Peru for the *Financial Times* and the *BBC*, was sentenced by Judge Alfredo Catacora to pay 3,000 dollars in damages to businessman Fernando Zevallos, about whom she had quoted a detractor in her book *The Imperfect Spy: The Life of Vladimir Montesinos*. Zevallos filed a complaint regarding the inclusion of statements, made by Óscar Benítez Linares, an ex-informant of the Drug Enforcement Agency (DEA), in the journalist's 2003 book implicating him in drug-trafficking. Zevallos was being tried for drug-trafficking, and Linares's statements were later corroborated by other DEA sources. On June 28, 2005, an appeals court in Lima overturned the sentence. Charges against her co-author Jane Holligan, had already been lifted because she lives abroad.¹⁶¹

189. On July 5, 2005, the Minister of Interior, Félix Murazzo, announced that he had filed a complaint against four journalists with the program, *La Ventana Indiscreta* on *Frecuencia Latina*, Cecilia Valenzuela (director), José Luis Flores (producer), Jerónimo Centurión and Alexa Vélez (reporters). The complaint was based on a broadcast of a video linking him to Fujimori's former advisor Vladimiro Montesinos.¹⁶²

190. On July 15, 2005, Mabel Cáceres Calderón, editor of *El Búho* weekly in the region of Arequipa, was sentenced to a year in prison after being accused of defamation by Miguel Sierra Lopez, attorney to Rolando Cornejo Cuervo, chancellor of the University of San Agustín (UNSA). The sentence is to be reviewed by the First Criminal Division of Arequipa's Superior Court. The journalist, who is also being fined 460 soles (approx. US\$140), was found guilty of defamation because of several articles she co-authored that were allegedly damaging to Sierra's reputation. The journalist believed Sierra's real motive was to prevent the publication of information prejudicial to him. In a public letter on March 31, Sierra accused Cáceres of attempting to extort money from him in exchange for not publishing information that would discredit him, an accusation denied by the journalist.

191. In the same sentence, the court rejected a second accusation of defamation filed by the UNSA, which was presented by its chancellor. This is the fourth lawsuit filed by the official against the editor of *El Búho*. She was absolved in the three previous cases. Cáceres has endured repeated intimidation, including death threats and anonymous smear campaigns, since she revealed serious irregularities in the administration of UNSA in 2002.¹⁶³

192. On September 2, 2005, the First Criminal Tribunal of the Lima High Court (*Primera Sala Penal para Procesos con Reos Libres*) overturned a previous ruling that had acquitted journalist Pedro Salinas Chacaltana of defamation charges. Jorge Mufarech Nemy, a member of Congress for the ruling party, filed a complaint for defamation against the journalist in January 2004. The congressman is seeking a three-year prison for Salinas

¹⁶¹ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/66516/, Reporters without Borders, www.rsf.org/article.php3?id_article=13730.

¹⁶² Inter-American Press Association, Annual Report on Peru, www.sipiapa.org/publications/informe_peru2005o.cfm.

¹⁶³ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/69463/.

and payment of US\$1 million in damages. This latest decision brings the case back to square one. Salinas, who was advised of the ruling on September 21, believes that it is a tactical maneuver by Mufarech in order to silence the press.¹⁶⁴

PROGRESS

193. In 2005, a number of advances were made in investigation and trial of those responsible for the April 2004 murder of journalist Alberto Rivera Fernandez in the city of Pucallpa. Fernandez had worked for the radio station *Oriental*.

194. During the week of September 20, three public hearings were held in Pucallpa for the murder and in one of these hearings, journalist Roy Culqui confessed to killing Rivera.

195. On October 1, the National Police captured Angel Mendoza Casanova, who confessed to his involvement in the murder. Casanova, who had been on the run, said that the crime had been ordered by Solio Ramirez Garay, the current chief justice of the Civil Court of Ucayali, the region's highest civil court. Ramirez was removed from the bench.

196. On October 5, the other perpetrator, Lito Fasabi Pizango, turned himself in and confessed that he had killed Rivera. In his statement, he said that Mayor Luis Valdez Villacorta had ordered the crime to be carried out, and Fasabi added that he was offered \$300,000 to do this. Fasabi also implicated the chief justice of Ucayali. On October 7, the prosecution ordered the arrest of Mayor Valdez, who took refuge in a clinic, and Judge Solio Ramirez, who was at large.¹⁶⁵

TRINIDAD & TOBAGO

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

197. *Mirror* reporter Suzette Edwards-Lewis was allegedly roughed up by policeman while covering a story in Port-of-Spain in January 2005. John Victor, president of the Media Association of Trinidad and Tobago, spoke against the abuse of media practitioners by the police as the organization complained about harassment of journalists by officers in the execution of their duties. He was speaking at an annual general meeting of the organization on August 27, 2005. "Although we have been in constant contact with the Police Service, sadly the results of those investigations remain unknown," he told the gathering.¹⁶⁶

¹⁶⁴ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/69513/.

¹⁶⁵ Inter-American Press Association, Annual Report on Peru, www.sipiapa.com/publications/informe_peru_2005o.cfm.

¹⁶⁶ Corey Connelly, *The Trinidad Guardian*, August 29, 2005.

UNITED STATES

PRINCIPLE 8 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Right of every social communicator to keep confidential his or her sources, notes, and personal and professional files)

198. In its 2004 Annual Report, the Office of the Special Rapporteur reported on the case of journalists Judith Miller, of the *New York Times*, and Matthew Cooper of *Time* magazine, who were found guilty of contempt of court by a U.S. Federal District Court judge for refusing to reveal their source and hand over documentation in a grand jury investigation of the leak of a CIA operative's identity. The judge ordered the journalists jailed until they agreed to testify, but this order was stayed pending appeal.

199. On April 19, 2005, a Federal Appeals Court in the District of Columbia ruled to uphold the incarceration order against Miller and Cooper, affirming the February 15 ruling of a three-judge panel of the same court. The journalists then appealed the case to the U.S. Supreme Court, which declined to hear the case in June. Going against Cooper's wishes, *Time* then agreed to hand over internal records, notes, and e-mails that were sought by prosecutor Patrick Fitzgerald in order to avoid heavy fines. Cooper then decided to cooperate with the investigation because he said his source had given him consent to discuss their conversations. Thus, Cooper avoided jail. In July, U.S. District Court Judge Thomas Hogan ordered Judith Miller jailed until October, or until she agreed to testify.

200. Miller spent 85 days in a U.S. prison. She was released on September 29 after agreeing to testify before the grand jury, having obtained what she described as a voluntary and personal waiver from her source.¹⁶⁷

201. Another case involving reporter's privilege that was included in the 2004 Annual Report was the case of Wen Ho Lee, a nuclear scientist who sued the Department of Energy for leaking information about him to the press in connection with an espionage investigation. Lee subpoenaed reporters Jeff Gerth and James Risen of *The New York Times*, H. Josef Hebert of the *Associated Press*, Bob Drogen of the *Los Angeles Times*, and former CNN reporter Pierre Thomas in order to determine the source of the leak. The journalists were held in contempt of court by U.S. District Court Judge Thomas Penfield Jackson in August of 2004 for refusing to answer some of Lee's questions. They were ordered to pay fines of \$500 a day, but the fines were stayed pending appeal. On June 28, 2005, a panel of the U.S. Court of Appeals in Washington, D.C. upheld the District Court's ruling. Noting that the reporter's privilege's "very existence has long been the subject of substantial controversy," Judge David B. Sentelle wrote that whether Lee had overcome the reporters' qualified First Amendment privilege from revealing their

¹⁶⁷ Committee to Protect Journalists, www.ifex.org/en/content/view/full/66231, www.ifex.org/en/content/view/full/67791/, www.ifex.org/en/content/view/full/69532/; International Federation of Journalists, www.ifex.org/en/content/view/full/67705/.

confidential sources was a matter best decided by the District Court, and that the Court of Appeals would only review the case for abuse of discretion by the lower court.¹⁶⁸

202. On November 17, 2005, Walter Pincus of the *Washington Post* became the fifth journalist to be found in contempt of court for refusing to reveal a confidential source in the Wen Ho Lee case. In ruling that Pincus must reveal his source or pay a \$500-a-day fine, U.S. District Judge Rosemary M. Collyer wrote that "the qualified First Amendment reporter's privilege does not protect Mr. Pincus from revealing his sources and that the reporter's privilege urged by Mr. Pincus in federal common law is not tenable." Collyer suspended the fine to give Pincus time to appeal and gave him 48 hours to "contact each of his Government sources" to see if they would "release him from his pledge of confidentiality."¹⁶⁹

**PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)**

203. Police used violence against journalists covering the aftermath of Hurricane Katrina in New Orleans in a series of attacks that occurred on September 1 and September 7, 2005. On September 1, New Orleans police ripped a camera from the neck of photographer Lucas Oleniuk of the *Toronto Star*, a Canadian daily. Oleniuk had taken photos of clashes between police and looters. The *Toronto Star* reported that the police removed memory cards containing some 350 images, including shots of "officers delivering a fierce beating to two suspects, an assault so fearsome one of the suspects defecated." Also on September 1, Gordon Russell of the New Orleans-based newspaper *Times-Picayune* wrote that he and a *New York Times* photographer were forced to flee the location of a shoot-out between police and residents because officers slammed the journalists against a wall and threw their equipment on the ground. The incident occurred near the Convention Center, where hurricane victims were waiting to be evacuated.

204. On September 7, Peter Fimrite of the *San Francisco Chronicle* said he was surrounded by a New Orleans police SWAT team because he was out on the street after dark. Fimrite was attempting to find a cell phone signal on a street where 17 journalists from the Hearst Corp. were staying. The Army had patrolled the street for a week and knew of the journalists' presence, according to a guard hired to protect the journalists. In addition, Brian Williams, anchor for U.S. broadcaster NBC, and his crew were ordered to stop trying to film a National Guard unit that was securing a store in downtown New Orleans on September 7. Williams told the *Washington Post* that he could not think of any justification for why he was not allowed to report "in a calm and heavily defended American city."

¹⁶⁸ Reporters Committee for Freedom of the Press, www.rcfp.org/news/2005/0628-con-appeal.html.

¹⁶⁹ Reporters Committee for Freedom of the Press, www.rcfp.org/news/2005/1117-con-anothe.html.

205. Journalists were also reportedly angered by a “request” from the Federal Emergency Management Agency (FEMA) to avoid filming the dead. *Washington Post* reporter Timothy Dwyer said he heard a sergeant from a state agency tell a camera crew that if they were caught filming a body they would be thrown off the boat they were allowed to be on in a flooded part of the city. Dwyer said bodies were actually visible from the off-ramp of Interstate 10 that the boats were using as a staging area.¹⁷⁰

206. On October 8, 2005, two New Orleans police officers were caught on film beating a man suspected of public intoxication, and a third officer was caught on film harassing the *Associated Press Television News* producer whose crew was filming the scene. The footage shows the third officer ordering the producer, Rich Matthews, to stop filming the beating. Matthews held up his press credentials. The officer grabbed the producer and forcibly leaned him backward over a parked car. The officer further jabbed the journalist in the stomach while subjecting him to string of profanities. All three officers were suspended from active duty, pending an official investigation. The incident came a month after Hurricane Katrina.¹⁷¹

URUGUAY

PRINCIPLE 4 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Access to information held by the state)

207. On March 21, 2005, the newspaper *Centenario*, of Colonia province, 177 kilometers west of Montevideo, said that after 21 months of back and forth, the provincial government decided to deny it access to the minutes of meetings of the Local Board of Florencio Sánchez. The government argued that the minutes were “internal control documents” and therefore “it is not appropriate that these documents be delivered to journalists.”¹⁷²

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, or direct or indirect pressures)

208. In May 13, 2005, *Channel 12* removed a program hosted by Argentine journalist Jorge Lanata after being pressured because of a series devoted to alleged corruption. The channel, one of three private stations in Montevideo, removed “*Lanata.uy*” from the air after the broadcast of its series “*Untouchables*.” Lanata said the pressure on the channel came from Francisco Casal, a players’ agent in Uruguayan soccer, and Milka Barbato, the former president of the semi-official National Development Corporation and former vice president of the *Banco de la Republica Oriental del Uruguay*. Both were

¹⁷⁰ Committee to Protect Journalists, www.cpj.org/news/2005/USA-00spet05na.html, Reporters without Borders, www.ifex.org/en/content/view/full/69024/.

¹⁷¹ Committee to Protect Journalists, www.cpj.org/cases05/americas_cases05/usa.html.

¹⁷² Inter-American Press Association, Annual Report on Uruguay, www.sipiapa.com/publications/informe_uruguay_2005o.cfm.

subjects of the program. The channel said the program was cancelled by mutual agreement of Lanata and channel officials for exclusively economic reasons. Barbato filed a civil suit in August demanding \$700,000 from Lanata, his colleagues, the company producing the program and *Channel 12*.¹⁷³

**PRINCIPLE 8 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Right of every social communicator to keep confidential his or her sources, notes, and personal and professional files)**

209. In February 2005, police raided the home of journalist Dostin Armand Pilón to search for the recording of a broadcast by Radio Centro station in Cardona, 120 miles northeast of Montevideo. Pilón had been investigating allegations of child prostitution in the area, implicating members of the police department. Although the judge who authorized the house search verbally apologized for his action, he did not rescind the order. The law stipulates that radio stations, and not individual journalists, are responsible for holding tape recordings for a determined length of time.¹⁷⁴

**PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)**

210. On October 17, 2005, Marcelo Borrat, a former announcer of the radio program "*Juramento Hipocratico*" on *AM Libre*, was kidnapped around midnight by three masked men who later beat him and cut his face, according to a police report filed by Borrat. The report said that the three men approached Borrat, threatened him with a gun and then forced him into a red Fiat. They then took him to a beach near Montevideo, where they beat him, cut his face, forced him into the water, and told him he should "destroy the recording" or they would kill him. The journalist had reportedly recorded a phone call in which the other announcer on the program prevented Borrat's continued broadcast of a press release from the Uruguayan Press Association (*Asociación de la Prensa Uruguaya*) denouncing layoffs at *TV Libre*. Borrat was taken off the air while he read the press release about *TV Libre*, which belongs to the same business group as *AM Libre*. The police are investigating the case, although police sources told *El País* newspaper that it would be difficult to prove anything.¹⁷⁵

PROGRESS

211. On March 16, 2005, the Criminal Appeals Court cleared Alberto Rodriguez, a reporter for *El Pueblo*, of defamation in connection with criticisms made against the director of the city zoo. The court dismissed the charges, which were filed by a prosecutor in Salto, 500 km northeast of Montevideo. The prosecutor sought a 10-month prison

¹⁷³ Inter-American Press Association, Annual Report on Uruguay, www.sipiapa.com/publications/informe_uruguay_2005o.cfm.

¹⁷⁴ Inter-American Press Association, www.ifex.org/en/content/view/full/64511/.

¹⁷⁵ *El País*, Montevideo, October 19, 2005, *Primera sección*, p. 9.

sentence for defamation after Rodriguez criticized the zoo director for the escape and death of a jaguar in 2004.

212. The judgment said that the role of public servants implies that “freedom of speech is protected as a privileged form of criticism of public officials vis-à-vis other legal interests,” and that public officials charged with serving the public interest act on behalf of the public, so their “activities should be subject to the broadest control.” In addition, the court said that “in a democratic society, judicial persecution of government critics is unacceptable.”¹⁷⁶ This case is discussed further in Chapter III of this report in the section on domestic jurisprudence of the Member States.

213. On July 21, 2005, a criminal appeals court overturned the conviction of Carlos Dogliani for defamation in connection with the publication of critical news and opinion stories about the decisions of the municipal government in Paysandu, 400 kilometers northeast of Montevideo. Dogliani had been sentenced to five months in prison. The Court said that criticism of public officials “is not just possible, but lawful,” and therefore those who do so have “no criminal responsibility” even when they use “extremely harsh words.”¹⁷⁷

214. On September 30, 2005, a judge in Durazno, located about 150 miles of the north of Montevideo, acquitted journalists Dino Capelli and Carlos Roman Fernandez of newspaper *El Acontecer* in a criminal libel trial. The suit had been brought by executive board members of the main municipal housing cooperative. The judge said that in democratic systems, it is “vitally important that there exist an unfettered press, free from government or private censors to tell them how to report.”¹⁷⁸

VENEZUELA

PRINCIPLE 5 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Prior censorship, interference, or direct or indirect pressures)

215. On September 19, 2005, members of the presidential guard entered the press offices of the Capriles Network (owner of the dailies *Ultimas Noticias* and *El Mundo*) and forced photographer César Palacios to delete a number of photographs from his digital camera. Palacios had photographed the guards as they beat a group of President Hugo Chávez's supporters who had crossed a security perimeter in order to get closer to the president. The incident occurred during Chávez's visit to the National Mausoleum, where the remains of the country's independence heroes are kept. Palacios took the photographs through the window of the Capriles Network photography department, housed in a building

¹⁷⁶ Inter-American Press Association, Annual Report on Uruguay, www.sipiapa.com/publications/informe_uruguay_2005o.cfm.

¹⁷⁷ Inter-American Press Association, Annual Report on Uruguay, www.sipiapa.com/publications/informe_uruguay_2005o.cfm.

¹⁷⁸ Inter-American Press Association, Annual Report on Uruguay, www.sipiapa.com/publications/informe_uruguay_2005o.cfm.

near the mausoleum. Upon noticing the camera's flash, the soldiers entered the building and went up to the office, intending to arrest the photographer. The Network's director of photography, Esso Álvarez, intervened and convinced the soldiers not to arrest Palacios in exchange for the deletion of the photographs.¹⁷⁹

216. In another incident on September 19, 2005, a team of journalists from the daily *El Guayanes* was unable to carry out its work after it was barred from entering La Ceiba stadium in Ciudad Guayana, Bolívar State, in southeastern Venezuela. The order to bar the team came from Nilson Meza, director of the Bolivar State Sports Institute (IDEBOL). Ines Maria Granado, a journalist with *El Guayanes*, said that when they tried to enter the stadium, a guard, acting under direct orders from Meza, forbade them to do so. Granado added that at a press conference the next day, Meza declared that he had taken the decision to bar the journalists because they always "do whatever they please." The director said that in order to visit the stadium, journalists were required to seek written permission from director Ángel Lameda, who would supervise their work. Several local media outlets have complained of difficulties carrying out their work in a normal fashion in IDEBOL. Other journalists confirmed that Lameda has not processed requests efficiently and, on the contrary, has made access even more difficult by adding on to the list of requirements.¹⁸⁰

217. On October 21, 2005, the Inter-American Commission on Human Rights held a public hearing on Freedom of Expression in Venezuela. Representatives of the non-governmental organizations *Instituto Prensa y Sociedad*, the Center for Justice and International Law (CEJIL), *Programa Venezolano de Educación-Acción en Derechos Humanos* (PROVEA), and the Human Rights Center of Andres Bello Catholic University, along with Carlos Ayala Corao, former President of the Commission, participated in the hearing. The petitioners denounced that in the last year, several political opinion programs critical of or independent from the government's point of view have been cancelled by private television stations. These programs include, among others, "24 Horas," of *Venevision*, and "Triangulo," "Linea Abierta," "30 Minutes," and "La Entrevista," of *Televen*. Petitioners denounce that in these cases, government pressures on these two private stations helped lead to the cancellations. Petitioners also denounced that information programs had been reduced to about half of what they were in 2004 on the private television stations in the country.¹⁸¹

218. In the context of the same hearing before the Inter-American Commission on Human Rights, representatives of Venezuelan non-governmental organizations (listed above) alleged that the Venezuelan government has begun to use the Law of Social Responsibility for Radio and Television, passed last December despite strong international criticism, to augment its already strong presence in the national media and to punish

¹⁷⁹ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/69485/

¹⁸⁰ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/69590/.

¹⁸¹ *Instituto Prensa y Sociedad*, "Estudio sobre la situación de los medios de comunicación en Venezuela" ("Study on the situation of communications media in Venezuela"), document presented to the IACHR, October 21, 2005.

private media outlets that do not follow the government line. Petitioners denounced that the law has allowed the government to increase the amount of time devoted to national *cadenas*, or mandatory messages from the national government, to 70 minutes weekly. These *cadenas* have been conducted, at times, in spite of the need of media to transmit critical information to the populous. Such a case occurred in February 2005, when a *cadena* was transmitted precisely during one of the worst floods in Caracas since 1999. According to a study of the *Instituto Prensa y Sociedad*, the Venezuelan government transmitted 1,159 *cadenas* lasting a total of 709 hours between 2002 and 2005.¹⁸²

219. On November 1, 2005, David Ludovic, writer of the *El Nacional* newspaper column "*A las puertas del Palacio*" ("At the palace's door"), was pressured by the president's security personnel into handing over a tape of interviews done adjacent to the White Palace (*Palacio Blanco*, a building in front of the Miraflores presidential palace in downtown Caracas). The guards told him that the area is a security zone where tape recorders cannot be used without permission from the presidential press office. Ludovic was also forced to sign a statement in which he denied having been the victim of physical or verbal attacks. The journalist went to the area, as he has been doing since September, to interview people seeking assistance at the social services department (*Departamento de Atención Social al Ciudadano*) in the White Palace. As he was interviewing two women, he was approached by three security guards who demanded that he hand over the tape and accompany them into the building. According to Ludovic, he was questioned exhaustively twice and treated with disdain. The tape was temporarily confiscated. As he was being questioned, the security personnel explained to the journalist that in order to be able to use his tape recorder outside the Palace he should obtain a permit from the Presidential Press Office. Ludovic was strongly urged by the guards to sign a statement denying that he had been subjected to any physical or verbal attacks. He did so despite reservations.¹⁸³

PRINCIPLE 9 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Murder, kidnapping, intimidation of and/or threats to social communicators and the material destruction of communications media)

220. On June 29, 2005, Juan Carlos Neida, a photographer for the daily *El Nuevo País*, was assaulted and detained by four men presumed to be members of the Military Intelligence Directorate (*Dirección de Inteligencia Militar*, DIM), after he took some photographs in the Caracas neighborhood of Las Mercedes. Neida said he was stopped by four men with DIM identification cards while taking photographs of a nightclub façade for an article about a traffic accident involving National Land Institute director Eliécer Otaiza several days earlier. Although he showed them his press card and tried to explain his actions to his captors, the men forced him into a black Jeep and proceeded to hit and insult him. Neida said he was held for eight hours while the group drove around Caracas,

¹⁸² *Instituto Prensa y Sociedad*, "Estudio sobre la situación de los medios de comunicación en Venezuela" ("Study on the situation of communications media in Venezuela"), document presented to the IACHR, October 21, 2005.

¹⁸³ *Instituto Prensa y Sociedad*, www.ifex.org/fr/content/view/full/70295/.

then finally left on the deserted Cota Mil highway. His assailants also erased his camera's memory.¹⁸⁴

221. In another incident on June 29, 2005, a group of unidentified men surrounded, threatened and held captive journalist Mabel Sarmiento and photographer Cirilo Hernández, both of the daily *Últimas Noticias*. The news crew had been taking photographs in Andrés Bello Blanco Plaza, located beside the Foreign Affairs Ministry and the Presidential Palace in Caracas. The news crew was working on a report about extremely poor people wandering the city's streets. When they tried to leave, they were stopped by a group of men. Sarmiento said that the assailants told them that they were confiscating the film roll, because that public space belonged to Lina Ron, a politician who supports President Hugo Chávez. They were quoted as saying, "you can't do anything in this plaza without her permission." Sarmiento said the assailants tried to confiscate their camera, insulted them and threatened to hit them. They then shut them up in an office and told them that they were to stay there until Ron arrived. Two hours later Ron arrived and insulted the reporters. She warned them that she gave the orders in the plaza and that they had to have her permission to carry out activities there. She also complained about some articles published in *Últimas Noticias*. The journalists were then allowed to leave.¹⁸⁵

222. On October 26, 2005, a group of journalists were insulted and threatened by demonstrators who allegedly were students of the Libertador Experimental Pedagogical University (*Universidad Pedagógica Experimental Libertador*, UPEL). The journalists were covering a demonstration outside the Aragua governor's offices, in the city of Maracay, some 96 km from Caracas. "El Carabobeño" newspaper reporter Gina Reyes Demei, her photographer, Cesar Pérez, and Reinaldo Campins and Maria Eugenia Hermoso, journalists for *Color TV* and *Color FM*, respectively, were insulted and stopped from passing by the demonstrators as they were headed towards Miranda and Bolívar avenues. The streets had been blocked by burning tires and barricades for motives which are still unknown. Reyes said that the demonstrators demanded that the journalists leave and take no photographs. Pérez insisted that the right to take photographs on public streets was protected under the Constitution. One of the demonstrators responded by breaking a bottle on the ground and threatening him with it. The journalists were forced to leave the area.¹⁸⁶

223. On October 28, 2005, a team of journalists of the regional paper *Notítarde* was assaulted by students from the University of Carabobo (UC) in the state of the same name, 200 km from Caracas. The team had been sent to the area to verify the presence of explosive devices which had allegedly been found in the university's Department of Economics and Social Sciences. They were working on a report near university premises when they noticed a fight break out among some youths (identified by witnesses as UC students) and started to photograph them. When the students realized what was going on, they pulled out guns and ran after the photographer but were unable to catch him. They

¹⁸⁴ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/67803/.

¹⁸⁵ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/67814/.

¹⁸⁶ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/70286/.

then surrounded the car where journalist Alecia Rodriguez del Valle was waiting with her driver. They threatened her with a gun, demanded that she show some ID and that she hand over the photographer and his camera. She claimed she worked for a newspaper from another state and was allowed to go. The driver, however, was detained for several hours. When Rodriguez managed to contact him via cell phone, the students demanded that she bring the photographer and his camera or risk being beaten. After a long negotiation, the driver and his car were freed.¹⁸⁷

224. Also on October 28, 2005, a team of reporters for the newspaper "*El Siglo*" in Aragua State, 99 kilometers from Caracas, was threatened and assaulted by a group of demonstrators who detained them for more than five hours in an attempt to force the Aragua governor Didalco Bolivar to hand over the deeds for some lands in exchange for the journalists' release. Journalist Kenny Aguilar and her photographer Yorman Pérez were headed towards a state prison to cover the death of an inmate and a group of women who were protesting on the La Villa - San Francisco de Asís motorway, when they were intercepted by the protesters. Aguilar said that she tried to persuade the demonstrators to let them go, but her pleas were useless. The demonstrators even threatened to use the journalists as shields if the police intervened. Moreover, they threatened them with broken bottles and verbally attacked them, accusing them of lying. Once the demonstration was broken up by the police and the National Guard, the journalists left the place unharmed, but unable to cover the events in the prison.¹⁸⁸

225. On November 2, 2005, a group of students attacked crews from four television stations - *Televén*, *RCTV*, *Venevisión*, and *Televisora Informativa del Centro* (TIC TV) – while these attempted to cover a student protest against a transportation strike in Maracay, capital of Aragua State. According to Reporters Without Borders, "This was an especially violent attack in which some journalists were forced to flee and others found themselves unable to cover the demonstration...Once again the press has been singled out as a target in social disturbances and we call on the authorities, in view of the current unrest, to take the necessary measures to protect journalists." The *RCTV* and *Venevisión* crews quickly pulled out when the students began attacking them with stones and bottles. The students went on to threaten the *Televén* crew with broken bottles and tried to take their camera. They also took the TIC TV crew's microphone, broke their camera and beat them. TIC TV reporter Sorelia Machuca, who was psychologically traumatized by the attack, and cameraman Carlos Perdomo, who was hurt in the neck and back, were given a week's leave from work. When the *Venevisión* crew went back a short while later to try to film the scene of the incidents, they were again threatened by students armed with sticks and stones and their vehicle was slightly damaged.¹⁸⁹

226. On November 10, 2005, equipment belonging to the Rubio community television station (*Televisora Comunitaria de Rubio*, *TV Rubio*) was stolen through a hole in

¹⁸⁷ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/70184/.

¹⁸⁸ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/70278/.

¹⁸⁹ Instituto Prensa y Sociedad, www.ifex.org/en/content/view/full/70275/.

the ceiling of its transmission facility on El Campanario hill in Rubio, Junín municipality, Táchira state. Unidentified people entered the facility and removed equipment intended to protect the station's transmitters from electrical problems, as well as the facility's air conditioner. Although they were unable to remove the principal transmitter, they took pieces of its front panel and repeatedly hit the equipment in an attempt to pry it away from its support structure, thereby damaging it. The attack came after the station had received permission to operate and was preparing to begin broadcasting. The Ministry of Communication and Information had provided the community with transmission equipment in September. The organizers of the station said the attack was "sabotage" and occurred amid community complaints and actions against the office of the Junín mayor, an opponent of the national government. The Junín mayor's administration is accused of failing to fulfill contracts affecting basic services, especially the provision of electricity. *TV Rubio* has also accused mayor's office officials of unjustified delays in providing electricity for the initiation of the station's broadcasts, the only thing delaying the station's exercise of its right to communicate.¹⁹⁰

PRINCIPLES 10 AND 11 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Use of defamation laws by public officials, and *desacato* laws)

227. In early 2005, Venezuela's Legislative Assembly passed a reform of its Criminal Code that maintains a provision on *desacato* (criminal insult) and extends its protection to other public offices and officials. Under Article 148 of the previous Criminal Code, the President of Venezuela is entitled to protection from *desacato*. Article 149 provided protection to the Vice President, justices of the Supreme Tribunal of Justice, Cabinet Ministers, state Governors and the Metropolitan Mayor of Caracas. The modified legislation, called the Law on the Partial Reform of the Criminal Code, extends *desacato* protection to members of the National Assembly, the 5 rectors of the National Electoral Council, members of the High Military Command, the Human Rights Ombudsman (*Defensor del Pueblo*), the Attorney General (*Fiscal General*), and the Comptroller General (*Contralor General de la Republica*). The law modifies Articles 444 and 446 to increase the prison terms of those found guilty of defamation, while article 508 strengthens sanctions for those staging protests in public or in private.¹⁹¹

228. On March 12, 2005, a judge sentenced journalist Patricia Poleo, director of newspaper *El Nuevo País*, to six months in prison for charges of defamation against Justice and Interior Minister Jesse Chacon. Judge Juvenal Barreto delivered the sentence in connection with the October 18, 2004 publication of Poleo's column "Factors of Power." In connection with that column, the newspaper published a picture of a military official holding a rifle over the body of a civilian. The caption noted "Jesse Chacon over the cadaver of a guard from *Venezolana de Television*. . . Assuredly this is a part of his

¹⁹⁰ World Association of Community Radio Broadcasters, www.ifex.org/fr/content/view/full/70464/.

¹⁹¹ See press release of the Office of the Special Rapporteur for Freedom of Expression 118/05, March 28, 2005, included in Annex 9 to this report. See also Inter-American Press Association, www.sipiapa.com/pressreleases/srchcountrydetail.cfm?PressReleaseID=1300.

resume that was taken into account when he was named Interior Minister.” The column made reference to the taking of the state television company on November 27, 1992, an effort led by Chacon during a failed coup attempt. The minister said that he did participate in the taking of the TV company, but that he was not the person who appeared in the uniform because that day he was wearing a different uniform. On November 29, 2004, he presented a criminal suit against Poleo for defamation. A March 2005 conciliation hearing failed to produce an agreement, so the oral hearing began in April and concluded in less than a week.¹⁹²

229. On May 7, 2005, a prosecutor indicted journalist Marianella Salazar, columnist for *El Nacional* and an announcer on radio *Magica FM 99.1*, for allegedly slandering Vice President Jose Vicente Rangel and Miranda State Gov. Diosdado Cabello. The charges stem from information published in her column about engagement in alleged financial irregularities by the two officials.¹⁹³

230. On October 4, 2005, prosecutors again indicted journalist Marianella Salazar for alleged slander. The charges stem from the request by Salazar to investigate a supposed “illicit laboratory” (*laboratorio sucio*) headed by Vice President Jose Vicente Rangel. The allegations of such a laboratory were published in the weekly *La Razon*, but were not imputable to Salazar.¹⁹⁴

231. On October 21, 2005, in the context of a public hearing before the Inter-American Commission on Human Rights, petitioners from Venezuelan NGO’s denounced that between 2002 and 2005, 54 criminal cases and 12 administrative proceedings were brought against journalists and/or media outlets.¹⁹⁵

232. On November 2, 2005, broadcaster and lawyer Carlos Gibson was sentenced to eleven months in prison for allegedly committing libel and slander on repeated occasions in Ciudad Guayana, state of Bolívar, southern Venezuela. Because it was his first conviction, he was put on probation and must report to the bailiff's office twice a month. The court also decided that three consecutive notices, including the entire ruling against Gibson, should be published in two national newspapers. In addition, Gibson was also ordered to pay all trial expenses, and is forbidden from mentioning Orlando Aguilar, who filed the complaint against him, in the media or even in private. Gibson said he plans to appeal. The process was initiated after accusations against the Sidme Company, owned by Aguilar, were aired in the April 23, 2004 edition of the program “*Sin Bozal*” (“Without a Muzzle”), transmitted by the *Maxima 99.5* radio station. David Sánchez, Efraín Rivilla, and Bárbara María Pérez were invited to the radio station where they put forward their opinions

¹⁹² *Instituto Prensa y Sociedad*, www.ipys.org/alertas/atentado.php?id=570.

¹⁹³ Information from the Venezuelan government, citing *El Nacional*, April 21, 2005 and May 7, 2005.

¹⁹⁴ Information from the Venezuelan government, citing Claudia Mujica, lawyer for Salazar, Oct. 4, 2005.

¹⁹⁵ See this section under the heading “Principle 5” for a list of the organization participating in the hearing.

about the entrepreneur and his company. Gibson, who also works as a lawyer, is representing Sánchez, Rivilla, and Pérez in a number of criminal cases.¹⁹⁶

PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION
(Indirect violations of freedom of expression)

233. On May 10, 2005, officials of the National Telecommunications Commission (*Comisión Nacional de Telecomunicaciones*, CONATEL) and five soldiers from the National Army raided the premises of *Radio Alternativa de Caracas 94.9 FM*, a community radio station, and confiscated its transmitter. The officials reportedly did not identify themselves or offer any explanation for their actions, which were carried out without a search warrant and in the absence of the station managers. They only alluded to the initiation of an "administrative sanctions process" resulting from the allegedly illegal operation of the station.¹⁹⁷

234. On October 21, 2005, in the context of a public hearing on freedom of expression before the Inter-American Commission on Human Rights, petitioners from Venezuelan NGO's presented the results of an investigation regarding the placement of official advertisement in two major national newspapers, *Ultimas Noticias*, with a pro-government editorial stance, and *El Nacional*, with an opposition editorial stance. The investigation suggested that the government was disproportionately favoring the pro-government newspaper with advertisement while punishing the opposition newspaper by withdrawing ads. The study showed that between 2001 and 2005, the presence of official advertisement increased from 62% to 81% in *Ultimas Noticias*, while decreasing from 83% to a mere 13% at *El Nacional*.¹⁹⁸

235. On October 24, 2005, the National Agency for the Administration of Taxes and Customs (*Servicio Nacional Integrado de Administracion Tributaria y Aduanera*, SENIAT) imposed a fine and ordered the closure of the offices of the regional newspaper *El Impulso* for 24 hours, reportedly in connection with "flaws" in the paper's 2002 tax return. Officials shut down the newspaper's operations in the city of Barquisimeto and evicted the administrative and editorial staff. They also imposed a fine of \$13,900.¹⁹⁹

¹⁹⁶ *Instituto Prensa y Sociedad*, www.ifex.org/fr/content/view/full/70506/.

¹⁹⁷ *Instituto Prensa y Sociedad*, www.ifex.org/en/content/view/full/66593/.

¹⁹⁸ *Instituto Prensa y Sociedad*, "Estudio sobre la situación de los medios de comunicación en Venezuela" ("Study on the situation of communications media in Venezuela"), document presented to the IACHR, October 21, 2005.

¹⁹⁹ See press release of the Office of the Special Rapporteur for Freedom of Expression 130/05, October 26, 2005, included in Annex 9 to this report. See also Inter-American Press Association, www.ifex.org/en/content/view/full/70081.

CHAPTER III

JURISPRUDENCE¹

A. Summary of the jurisprudence of the African Commission on Human and Peoples' Rights

1. Introduction

1. The following sections summarize the jurisprudence on freedom of expression of the African Commission on Human and Peoples' Rights (hereinafter "the ACHPR" or "the Commission"). The inclusion of these sections in this chapter responds to an attempt by the Special Rapporteur for Freedom of Expression to encourage comparative law case studies in compliance with the mandate of the Heads of State and Government conferred at the Third Summit of the Americas held in Quebec, Canada, in April 2001. During the Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression, and further decided that the States will:

[...] support the work of the Inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.²

2. Complying with its mandate, the Office of the Special Rapporteur has published comparative jurisprudence studies each year in its portion of the Annual Report of the Inter-American Commission on Human Rights. Published in the 2002 Annual Report, the first study outlined the jurisprudence of the Inter-American system pertaining to freedom of expression issues. In 2003, the Office of the Special Rapporteur explored the jurisprudence of the European Court of Human Rights. A study of the jurisprudence of the United Nations Human Rights Committee was published in the 2004 Annual Report. This report on the African human rights system hopes to complement the studies of previous years. The Special Rapporteur for Freedom of Expression regards the ACHPR's jurisprudence on the right to freedom of expression as a resource that can contribute to the interpretation of this right in the inter-American system, and serve as a useful tool for legal practitioners and interested persons.

3. The human rights instrument that governs freedom of expression in Africa is the African Charter on Human and Peoples' Rights (hereinafter "the African Charter"), which entered into force on October 21, 1986.³ Article 9 of the African Charter, sometimes called the Banjul Charter, guarantees the right to freedom of expression while recent resolutions serve to support this basic right. The resolution putting forth the

¹ This chapter was made possible through the assistance of Nicholas Devereux, a second-year law student at the Washington and Lee University School of Law, who provided the research and preliminary drafting of this report. Mr. Devereux was an intern with the Office of the Special Rapporteur for Freedom of Expression during the summer of 2005.

² "Plan of Action," Third Summit of the Americas, April 20-22, 2001, Quebec, Canada, available at www.summit-americas.org.

³ The complete African Charter is available at: http://www.achpr.org/english/info/history_en.html.

Declaration of Principles on Freedom of Expression was adopted October 23, 2002 and a Special Rapporteur on Freedom of Expression in Africa was appointed December 7, 2004.⁴ There have been efforts to establish a functioning African Court on Human and Peoples' Rights but at the time research for this report concluded, the Court had neither an operating budget nor any elected judges.⁵ Thus, all cases continue to be considered only by the ACHPR itself.

4. The African human rights system differs from other major human rights instruments in many aspects. Two striking differences are the concept of duties and the presence of "claw-back" clauses. Although duties of the individual have been mentioned in other human rights instruments, the concept of duty is discussed at length in the African Charter. Article 9 of the African Charter, which deals with the right to freedom of expression, demonstrates how the rights and their limitations work in the African system. Article 9 itself states the right to freedom of expression in very simple terms:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.⁶

While Article 9(1) gives everyone an absolute right to receive information, Article 9(2) limits the right to freedom of expression with the phrase, "within the law." The exact meaning of this limitation has been the subject of debate, but the ACHPR has held that the phrase "within the law" should be interpreted to mean within international norms.⁷ It has also been argued that due to the close correlation of the right to receive information and the right to expression, both rights are in fact limited by Article 9(2).⁸

⁴ The Declaration of Principles on Freedom of Expression is available at: http://www.achpr.org/english/doc_target/documentation.html?../resolutions/resolution67_en.html. The resolution that appointed the Special Rapporteur on Freedom of Expression is available at: http://www.achpr.org/english/info/index_free_exp_en.html. Andrew Chigovera, the newly-appointed African Special Rapporteur for Freedom of Expression, made an official visit to the Inter-American Commission and the Office of the Special Rapporteur in Washington, DC in March 2005. The Inter-American Rapporteur, Eduardo Bertoni, and his African counterpart met to discuss common problems facing them and the possibility of cooperation in addressing freedom of expression issues. In addition, the two Rapporteurs approved a joint declaration that, among other things, reaffirms the fundamental importance of freedom of expression in democracies. This joint declaration is included as Annex 6 to this report.

⁵ The most recent activity has been the passage of a resolution urging that judges be elected and resources be allocated for the Court. The resolution can be found at: http://www.achpr.org/english/resolutions/resolution81_en.html.

⁶ The African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981) (hereinafter "African Charter") art. 9, reprinted in 21 I.L.M. 59, 60 (1982), also available at: http://www.achpr.org/english/info/charter_en.html.

⁷ See, e.g., Communications 140/94, 141/94 and 145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda vs. Nigeria*, Thirteenth Annual Activity Report of the ACHPR 1999-2000, p. 54, also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity13_en.pdf. In that case, Nigeria claimed that its actions were justified because they fell within existing Nigerian law, and therefore met the limitation clause of Article 9(2). The African Commission held that "within the law" cannot be read to mean that national law should take precedence over international law guaranteeing the right to freedom of expression.

⁸ F. Ougurgouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, at 161-62 (Martinus Nijhoff Publishers, 2003).

5. A more general limitation of Article 9's right to freedom of expression is found in Article 27, which reads:

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.⁹

6. Article 27(1) describes some of the duties that are expected of Africans as part of the human rights system. The inclusion of these duties marks an effort to incorporate the sense of community present in African society before European colonization. One theory asserts that with colonization, Europeans imposed organized governmental systems from which individuals were expected to extract their human rights.¹⁰ Accordingly, the concepts of communal living and mutual respect present in the more natural African tribal society were abandoned. By returning to this sense of duty to one's community, the African Charter is presumably attempting to avoid an overdependence on individualism and assertion of a single person's rights.¹¹ Although the African Charter places greater emphasis on duties than other human rights instruments, acceptance of the concept is evident in other instruments as well. The OAS long ago adopted the American Declaration of the Rights and Duties of Man, and the United Nations Universal Declaration on Human Rights also contains language on duties.¹² Some argue that the human rights tide is now turning away from an over-dependence on the concept of individual rights to a greater sense of duty to one's community.¹³

7. After asserting a broad, almost absolute, right to freedom of expression in Article 9, that right is limited by the "claw-back" clause of Article 27(2). This differs from the assertion of rights in other human rights instruments, where the rights themselves are specifically defined.¹⁴ In those instruments, derogation clauses expressly state the circumstances in which a right may be limited. The ACHPR has made clear in several decisions that the African Charter does not provide for the limitation of rights in

⁹ African Charter, art. 27, 21 I.L.M. at 63.

¹⁰ N. Barney Pityana, "The Challenge of Culture for Human Rights in Africa: The African Charter in a Comparative Context," in Evans & Murray (eds.), *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, at 228-231 (Cambridge University Press, 2002).

¹¹ *Id.*

¹² See generally American Declaration of the Rights and Duties of Man (Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948); Universal Declaration of Human Rights, Article 29, (Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948).

¹³ N. Barney Pityana, "The Challenge of Culture for Human Rights in Africa: The African Charter in a Comparative Context," in Evans & Murray (eds.), *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, at 228-31 (Cambridge University Press, 2002).

¹⁴ See, e.g., Article 13 of the American Convention on Human Rights, 1144 U.N.T.S. 123, Article 13 (1969) (hereinafter "ACHR"); and Article 19 of the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter "ICCPR").

“emergency situations,” when derogation clauses are often applied.¹⁵ Instead, in the African system, “claw-back” clauses are phrased in a broader manner that gives more discretion to those entities that will limit the rights previously set forth. The system has faced criticism in that this vagueness creates room for governments to manipulate the wording in attempts at justifying violations of their citizens’ rights.¹⁶ However, the ACHPR, through its decisions, has tried to more precisely define the rights it protects and the limitations on those rights. The following cases have been chosen for their importance in showing the way the ACHPR has interpreted the African Charter on freedom of expression issues and set forth the human rights system for the Continent.

2. Cases Under the African Charter for Human and Peoples’ Rights

a. Political activism/opinion

i. 212/98, *Amnesty International v. Zambia*¹⁷

8. In the case of *Amnesty International v. Zambia*, the Commission found a violation of the right to freedom of expression in the unlawful deportation of William Banda and John Chinula. Filed on behalf of Banda and Chinula, Amnesty International’s communication alleged that the two men in separate incidents were forcibly sedated, served with deportation orders and driven to police stations in bordering Malawi, where they were dumped. Both men had been leading members of the UNIP party, which lost the 1991 elections to the MMD party after being in power since independence in 1964. Chinula was deported in August 1994 without notice and without any opportunity to address the courts of Zambia. Banda was ordered by the government in 1991 to be deported, but exhausted local remedies by arguing and losing his case before the Supreme Court of Zambia in 1994.

9. In response to the allegations, the State argued that it was acting within its sovereign rights in ordering its internal affairs and regulating immigration. In addition, the State invoked a “claw-back” clause in Article 12(2), which holds that one’s right to leave and return to one’s country is restricted “as provided for by law for the protection of

¹⁵ See, e.g., Communications 48/90, 50/91, 52/91, 89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa vs. Sudan*, Thirteenth Annual Activity Report of the ACHPR 1999-2000; Communication 250/2002, *Liesbeth Zegveld and Mussie Ephrem vs. Eritrea*, Seventeenth Annual Activity Report of the ACHPR 2003-04; Communications 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, Twelfth Annual Activity Report of the ACHPR 1998-99.

¹⁶ See, e.g., Makau wa Mutua, “The African Human Rights System: A Critical Evaluation,” available at: http://hdr.undp.org/docs/publications/background_papers/MUTUA.PDF; website of Centre for Human Rights, University of Pretoria, also available at: http://www.chr.up.ac.za/centre_publications/ahrs/african_charter.html#principles.

¹⁷ Communication 212/98, *Amnesty International vs. Zambia*, Twelfth Annual Activity Report of the ACHPR 1998-99, at 76, reprinted in *African Human Rights Law Reports 2000*, at 325 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?..activity_reports/activity12_en.pdf.

national security, law and order, public health and morality.”¹⁸ The deportation orders stated that both Chinula and Banda posed a danger to the peace and security of Zambia.

10. In its holding, the Commission ruled that the Zambian Court was in violation of the African Charter for deporting the two men simply because they were not Zambian. The Commission found in considering the evidence that the Zambian government did not offer sufficient proof that the men were not Zambian citizens and were in Zambia illegally. To justify deportation, it must be shown that the individual was somehow in violation of the country’s laws. Absent this showing, the deportations constituted a violation of Article 9(1), the right to receive information. Because Banda and Chinula were not supplied with any legitimate reason for their deportation, their right to receive information was violated.

11. In Banda’s case, the Commission found that the courts of Zambia erred by deciding that he posed a danger to the peace and security of the country without sufficient evidentiary support. Even more unjust was the complete denial of judicial appeal for Chinula before his deportation. For these reasons, the Commission rejected Zambia’s use of the Article 12(2) “claw-back” clause.

12. The Commission also found that the deportations were politically motivated and therefore a violation of Article 9(2). Given that Banda and Chinula had been prominent businessmen and highly visible political figures for decades, their deportations following the transfer of power to a new governing party were not a coincidence. The Commission held that freedom of expression is essential to one’s political consciousness and participation in the public affairs of one’s country. Denial of these ideals constituted a violation of Article 9(2).

ii. 228/99, *The Law Office of Ghazi Suleiman v. Sudan*¹⁹

13. In the case of *Law Office of Ghazi Suleiman v. Sudan*, the African Commission found that the government of Sudan committed an Article 9 violation in prohibiting Mr. Suleiman from delivering a public lecture. Mr. Suleiman had been invited by a group of human rights defenders to deliver a lecture on January 3, 1999 in Sinnar, Blue Nile State. Before leaving for the lecture, Mr. Suleiman claimed in his communication that security officials threatened that if he made the trip, he would be arrested. Mr. Suleiman argued that this threat and the implied threat of repercussions for the human rights group forced him to cancel the lecture. He also alleged that he was subject to numerous threats and arrests by security officials between 1998 and 2002.

14. The State only submitted a defense during the admissibility stage of the proceedings, claiming that Mr. Suleiman, as a human rights advocate, would know the

¹⁸ African Charter, art 12, 21 I.L.M. at 61.

¹⁹ Communication 228/99, *The Law Office of Ghazi Suleiman vs. Sudan*, Sixteenth Annual Activity Report of the ACHPR 2002-03, at 48, also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity16_en.pdf.

proper procedure for seeking redress by instituting court proceedings against the security officers. Sudan claimed that an effective domestic remedy was available, and that Mr. Suleiman's decision not to pursue a claim in Sudan points only to the lack of credibility of Mr. Suleiman's assertions. Sudan requested that the complaint with the Commission be thrown out. The Commission declared the communication admissible because the state of emergency at the time and Mr. Suleiman's general fear for his life made the local remedy unavailable. Because the State made no submission on the merits, the Commission considered only Mr. Suleiman's arguments.

15. In its discussion of the right to freedom of expression, the Commission invoked Article 60 of the African Charter, which provides that the Commission shall draw inspiration from international law on human and people's rights.²⁰ The Commission then cited to opinions by both the European Court of Human Rights and the Inter-American Court of Human Rights that stated the importance of freedom of expression in democratic society.²¹ In finding that Sudan violated Mr. Suleiman's right to freedom of expression, the Commission asserted that speech promoting human rights and democracy is of particular importance and deserves special protection:

The charges levied against Mr. Ghazi Suleiman by the government of Sudan indicate that the government believed that his speech threatened national security and public order. Because Mr. Suleiman's speech was directed towards the promotion and protection of human rights, "it is of special value to society and deserving of special protection." In keeping with its important role of promoting democracy in the Continent, the African Commission should also find that a speech that contributes to political debate must be protected. The above challenges to Mr. Ghazi Suleiman's freedom of expression by the government of Sudan and violate his right to freedom of expression under Article 9 of the African Charter.²²

iii. 137/94, 139/94, 154/96, 161/97, *International PEN and Others on behalf of Ken Saro-Wiwa Jr. v. Nigeria*²³

16. In finding an Article 9 violation in the case of Ken Saro-Wiwa, the Commission drew a close connection between the rights to freedom of expression, association and assembly. Mr. Ken Saro-Wiwa was a writer and political activist who was detained following the murder of four Ogoni leaders. As president of the group MOSOP (Movement for the Survival of the Ogoni Peoples), Mr. Saro-Wiwa organized a public meeting on May 21, 1994. After organizers lost control of the meeting, a riot resulted during which four Ogoni leaders of a rival group were killed. On May 22, Saro-Wiwa and

²⁰ African Charter, art. 60, 21 I.L.M. at 67.

²¹ *Law Office of Ghazi Suleiman v. Sudan*, p. 53 (citing *Lingens v. Austria*, Judgment of the Eur. Ct.H.R. Series A. N. 236 (April 1992); *Thorgeirson v. Iceland*, Judgment of the Eur. Ct.H.R. Series A. N. 239 (June 1992); *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, Series A No. 5, November 1985 at para.70.¹)

²² *Id.*, citing Article 6 of the U.N. Human Rights Defenders' Declaration.

²³ Communications 137/94, 139/94, 154/96, 161/97, *International PEN, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa, Jr. and Civil Liberties Organisation v. Nigeria*, Twelfth Annual Activity Report of the ACHPR 1998-99, at 62, reprinted in *African Human Rights Law Reports 2000*, at 212 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity12_en.pdf.

others were detained by the State Military Advisor, who claimed they had incited the mob to murder. However, no charges were officially brought until January 1995, and the communications claim that he had been detained for his political writings. The communications also claim that during his detention, Mr. Saro-Wiwa was severely beaten, held in very poor conditions and denied access to a lawyer or doctor. The February 1995 trial was held before a tribunal established under the Civil Disturbances Act and directly appointed by General Abacha, leader of the Nigerian Federal Military Government. This trial came to pass despite earlier arguments that the cases were within the exclusive jurisdiction of the Rivers State High Court, Rivers State being where the offenses occurred. In October 1995, Mr. Saro-Wiwa and eight others were sentenced to die. They were denied the right to appeal.

17. During the trial, the Constitutional Rights Project and International Pen submitted complaints to the tribunal and General Abacha alleging irregularities, harassment, lack of evidence and an unfair trial. Following these unsuccessful attempts and the conclusion of the trial, the African Commission was approached to adopt provisional measures to prevent the executions. The Secretariat of the Commission in turn faxed a note verbal to the Nigerian government invoking interim measures and explaining that a stay of the execution proceedings was proper. The Commission reasoned that because the case was currently pending before the Commission and because Nigeria had already invited the Commission to undertake a mission to that country, execution of any sentence should be delayed until the Commission had a chance to discuss the situation with Nigerian authorities. The Commission received no response to its note, and the individuals in question were executed in secret on November 10, 1995.

18. The Nigerian government submitted that its actions were necessary to protect the rights of those who had been murdered in the riot. It also argued that the process set up under the Civil Disturbances Decree was legitimate because the Decree had been enacted, without protest, to deal with crisis situations.

19. The Commission found numerous violations of the African Charter in the events leading up to, and including, the executions of Mr. Saro-Wiwa and his companions. Because the Nigerian government made no written submissions and refuted none of the allegations in its oral argument, the Commission decided solely on the facts presented. In first considering the right to free assembly, the Commission found a violation because the Tribunal found the parties guilty of murder even though government officials had in fact prevented them from attending the rally after which the murders occurred. Disallowing their attendance was therefore found to be a violation of the right to free assembly. The Commission also concluded that the condemned persons were tried and convicted based on their association with MOSOP and the ideas that organization held. This tactic of finding guilt by association violated the victims' right of association. Finally, the Commission found a violation of the Article 9(2) right to freedom of expression implicit in the government's violation of the right to association and assembly. The communications allege that the victims were condemned to death specifically for the peaceful expression and dissemination of their views as members of MOSOP. Because the government did not contradict these assertions and because it had already been found to be highly prejudiced

against MOSOP, the Commission found the Nigerian government in violation of Article 9(2).

iv. 48/90, 50/91, 52/91, 89/93, *Amnesty International and Others v. Sudan*²⁴

20. In these combined communications arising out of the events following a 1989 coup in Sudan, the Commission found that the government had imposed blanket restrictions on freedom of expression and that this constituted a violation of Article 9(2). The four above communications all allege human rights violations by the government that seized power in Sudan following a coup on July 30, 1989. Most allegations describe the arbitrary arrest, detention and torture of hundreds of people simply for being human rights activists or members of opposition groups. Many political prisoners were kept in “ghost houses” where they were subjected to various forms of torture. Other civilian supporters of opposition groups, the complainants allege, were arrested and executed on the spot. The complainants further claim that the new government issued a decree that suspended the constitution, thereby ousting the jurisdiction of the courts and denying citizens fundamental human rights, such as the rights to liberty, personal security and freedom from arbitrary detention. Citizens were denied the right to appeal any government action taken under this decree. Some communications also allege that special military tribunals were established where individuals were given death sentences without being provided with representation or the right to appeal. During these efforts, the government dismissed hundreds of judges in further attempts to control and manipulate the judiciary.

21. In its defense, the government argued that most measures were taken during emergency situations and in attempts to quell a rebellion by the group the Sudanese Peoples’ Liberation Army (SPLA). The government also defended its tribunal system, claiming that it was permitted by national law, that numerous safeguards existed to ensure fair trials, and that many detained people had since been released. In response to the contention that much of the violence was taking place against Sudanese Christians, the government reiterated its adherence to the constitutional provision that provided for freedom of faith and worship.

22. In its decision, the Commission commended Sudan for recent improvements in the human rights situation such as the adoption of a new constitution, but noted that the government is still required, by its mandate, to rule upon and attempt to remedy past violations. In finding an Article 9 violation, the Commission responded to Sudan’s argument that it acted as was necessary in an emergency situation in the following manner:

...the Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the

²⁴ Communications 48/90, 50/91, 52/91, 89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa vs. Sudan*, Thirteenth Annual Activity Report of the ACHPR 1999-2000, at 124, reprinted in *African Human Rights Law Reports 2000*, at 297 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity13_en.pdf.

legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.

The Commission has established the principle that where it is necessary to restrict rights, the restriction should be as minimal as possible and not undermine fundamental rights guaranteed under international law (ACHPR/101/93: 25, *Civil Liberties Organisation vs/Nigeria*). Any restrictions on rights should be the exception. The Government here has imposed a blanket restriction on the freedom of expression. This constitutes a violation of the spirit of article 9.2.²⁵

23. Thus invoking the concept that emergency situations do not make it acceptable to derogate from human rights obligations, the Commission found that Sudan's blanket restrictions imposed on freedom of expression violated Article 9(2).

v. Communications 54/91, 61/91, 98/93, 164-196/97, 210/98, *Malawi African Association and Others v. Mauritania*²⁶

24. In these combined communications, the Commission found grave violations of human rights, including a breach of Article 9, by the Arab-dominated Mauritanian government for its treatment of the black population and minority groups. A *coup d'état* took place in 1984 that gave power to the government of Colonel Maaouya Ould Sid Ahmed Taya, in which the black population had little influence or representation. Numerous violations were claimed surrounding the arrest and subsequent detention in 1986 for the publication of a *Manifesto* providing evidence of racial discrimination against black Mauritians.²⁷ The Commission declined to consider these claims because they occurred prior to the entry into force of the African Charter. However, additional claims implicating freedom of expression violations were brought that occurred in 1987.

25. In March 1987, 18 people alleged to be members of a support group for the families of those previously charged in the *Manifesto* trials were brought up on charges of arson. Most of the detainees were allegedly beaten while awaiting trial. At trial, the evidence against them consisted of allegedly coerced statements made to police. When the accused tried to retract these statements, the tribunal refused and applied sentences of four to five years.

26. In April 1987, six people were charged with the distribution of tracts. Arson charges were added at the last minute, leaving the detainees' attorneys with insufficient

²⁵ *Id.*, at 137.

²⁶ Communications 54/91, 61/91, 98/93, 164-196/97, 210/98, *Malawi African Association, Amnesty International, Ms. Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO, Collectif des Veuves et Ayants-droit and Association Mauritanienne des Droits de l'Homme vs. Mauritania*, reprinted in *African Human Rights Law Reports 2000*, at 149 (Juta Law, 2004), also available at: [http://www.achpr.org/english/doc target/documentation.html?../activity_reports/activity13_en.pdf](http://www.achpr.org/english/doc/target/documentation.html?../activity_reports/activity13_en.pdf).

²⁷ Specifically, Communication 61/91 alleges that more than 30 people were detained following the publication of the "Manifesto of the Oppressed Black Mauritians." They were not allowed access to lawyers before their trials, some were held in solitary confinement, and they were found guilty of distributing publications injurious to the national interest and of engaging in racial and ethnic propaganda. Because these trials occurred in September of 1986 and the African Charter did not enter into force until October 21, 1986, the Commission found it could not consider the allegations.

time to prepare their defense. The accused were found guilty and sentenced to four years imprisonment. Regardless of apparent irregularities in the trial, the Supreme Court confirmed the sentences.

27. In October 1987, over 50 people were charged with “endangering state security by participating in a plot aimed at deposing the government and provoking massacres and looting among the country’s inhabitants.”²⁸ All those accused belonged to black ethnic groups and were tried under a summary procedure where it is assumed they had been caught *in flagrante delicto*. They were allegedly kept in solitary confinement, deprived of sleep, allowed no appeal and tried by a tribunal headed by an army officer who was not known to have any legal training. Of the convictions, three lieutenants were sentenced to death. Their executions were performed in such a slow manner that the victims were forced to ask that they be killed as quickly as possible to avoid further torture. The remaining detainees were given life sentences.

28. While the Commission found Mauritania in violation of multiple human rights violations, its discussion of freedom of expression breaches was brief. It held that the charges of March and April 1987 were violations of Article 9(2) to the extent that they related to the distribution of the *Manifesto*. Basing its holding on the evidence submitted by the complainants (the government made no submissions relating to these charges), the Commission found that the *Manifesto* contained no incitement to violence and should therefore be protected under international law. Article 9(2) holds that everyone has the right to disseminate his opinions within the law, with the Commission interpreting “within the law” to mean within international norms. To the extent that the *Manifesto* had no incitement to violence, it was within international norms and persecuting people for its distribution was a violation of Article 9(2). The Commission held that the government’s actions in the situations which occurred in March, April and October of 1987 were violations of Article 9(2).

b. Prior censorship

29. Over the course of the mid 1990’s, the African Commission decided on a number of communications dealing with human rights and freedom of expression violations at the hands of the Federal Military Government in Nigeria. The violations often involved the unreasonable proscription and seizure of newspapers and magazines. Many of the communications submitted to the Commission concerned decrees issued by the Nigerian government that ousted the jurisdiction of Nigerian courts, essentially denying judicial review of government actions. In its decisions, the African Commission set forth some very important concepts that contribute to the central body of African human rights jurisprudence. Among these concepts is the idea that the African Charter, unlike other human rights instruments, does not allow for the derogation of an individual’s rights by national governments. The Nigerian government tried on several occasions to argue the supremacy of domestic law and to justify its actions through the application of the “claw-

²⁸ *African Human Rights Law Reports 2000*, at 152.

back” clause of Article 27 (that restrictions were necessary in the interest of national security). In rejecting these arguments, the African Commission signaled a commitment to the promotion of human rights and freedom of expression. It held that freedom of expression is a fundamental right that should be carefully guarded and restrictions on this right should be avoided whenever possible. The Nigerian decisions also demonstrated the Commission’s commitment to the idea that international human rights standards should trump any domestic law that comes into conflict with these norms.

30. Some of the later Nigerian decisions involve the concept that a newly installed government should attempt to compensate for the human rights violations by the previous government. Although this is an established principle in the arena of international human rights, it marks an important part of the ACHPR’s jurisprudence.²⁹ The following cases more explicitly lay out the concepts discussed above.

i. 102/93, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*³⁰

31. In this case, the Commission found a violation of the right to freedom of expression when the Nigerian government annulled a presidential election and subsequently seized thousands of copies of news magazines that criticized its actions. On June 12, 1993, presidential elections were held that were observed by foreign and local election monitoring groups. These observers were generally satisfied that the elections were fair. Three days later, the National Election Commission began announcing the results. However, a High Court soon restrained the Commission from further reporting any results and the Federal Military Government annulled the elections. The Complainant claims that the initial results seemed to indicate that an opposition Social Democratic candidate had won the election. When the candidate and other Social Democratic Party leaders sought redress with the Supreme Court, the government issued several decrees ousting the court’s jurisdiction, essentially making any appeal impossible. During the protests that followed, the government detained many journalists and seized magazines that had printed articles critical of the government. In particular, 50,000 copies of “Tempo” magazine were seized, as well as several thousand copies of “The News” magazine.

32. The Nigerian government contends that, despite observations by election monitoring groups to the contrary, it found irregularities in the election. As a tense, chaotic situation loomed after the elections, the government decided to reorganize itself instead of turning over power to a new and inexperienced administration. The government claimed its

²⁹ Although the Commission often finds the current government in violation, *Degli and Others v. Togo* is worth noting. In that early communication, the complainants alleged massive human rights violations, including torture and murder at the hands of state security forces in Togo. After sending a delegation to Togo, the Commission did not declare the current administration in violation of the African Charter, finding instead that it had sufficiently dealt with the previous government’s abuses. Communications 83/92, 88/93, 91/93, *Degli and Others v. Togo*, Eighth Annual Activity Report of the ACHPR 1994-95, reprinted in *African Human Rights Law Reports*, at 317 (Juta Law, 2004).

³⁰ Communication 102/93, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, Twelfth Annual Activity Report of the ACHPR 1998-99, at 45, reprinted in *African Human Rights Law Reports 2000*, at 191 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity12_en.pdf.

actions essentially were a coup that represented the best option in the face of a chaotic situation. In regards to the detention of journalists after the elections, the government again justified its actions as necessary in a chaotic situation and explained that many of those detained had since been released.

33. The Commission held that no situation justifies the restriction of fundamental rights such as the right to freedom of expression. Competent authorities should take heed to avoid restricting rights such as these that are guaranteed by constitutional provisions or international standards. Pertaining to the seizure of magazines, the Commission held that proscription of particular publications such as these is of great concern because it indicates discrimination and implicates further a violation of equal treatment before the law. In finding that the Nigerian government had violated Article 9 of the African Charter, the Commission reasoned as follows:

The government justifies its actions with regard to the journalists and proscription of publications by reference to the "chaotic" situation that transpired after the elections were annulled. The Commission decided, in its decision on communication 101/93, with respect to freedom of association, that "competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards" (ACHPR/A/101/93:18).

With these words the Commission states a general principle that applies to all rights, not only freedom of association. Government should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.

Given that Nigerian law contains all the traditional provisions for libel suits, a governmental proscription of a particular publication, by name, is of particular concern. Ad hominem Legislation, that is laws made to apply to specifically one individual or legal entity raise the acute danger of discrimination and lack of equal treatment before the law guaranteed by Article 2. The proscription of "The News" thus constitutes a violation of Article 9. Equally, the seizure of 50,000 copies of "Tempo" and "The News" Magazine justified in the face of Article 9 of the Charter.³¹

- ii. 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*³²

34. This communication also dealt with the proscription of numerous publications following the annulled elections of 1993. In addition to the decrees proscribing certain publications, the government also retrospectively required the registration of all newspapers along with payment of hefty registration fees. Registration was to be decided exclusively by the Newspaper Registration Board which had complete discretion in making

³¹ *Id.*, at 50-51.

³² Communications 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, Twelfth Annual Activity Report of the ACHPR 1998-99, at 52, reprinted in *African Human Rights Law Reports 2000*, at 200 (Juta Law, 2004), also available at: [http://www.achpr.org/english/doc_target/documentation.html?../activity reports/activity12_en.pdf](http://www.achpr.org/english/doc_target/documentation.html?../activity%20reports/activity12_en.pdf).

its decision. Given the retroactive nature of the decree, previous registration under the Newspaper Act was invalid and all newspapers were therefore deemed to be operating illegally and were subject to seizure. The communications dealt more specifically with the seizure of all 50,000 copies of the weekly *TELL* magazine which contained a critical analysis of the government entitled, "The Return of Tyranny – Abacha bares his fangs." In addition, the editor in chief of *TELL* had been detained without explanation, denied access to family, lawyers and medical treatment, and was never charged with a crime. The decrees dealing with the proscription of publications also contained the ouster clauses that by law denied the jurisdiction of the courts, making appeal unavailable.

35. In its defense, the Nigerian government claimed that the registration requirements were in effect to ensure that publications were monitored in order to serve the public interest. The government conceded the retroactive nature of the decrees but claimed that not one newspaper had been declared illegal or fined. Nigeria claimed that the ouster clauses were common and necessary under a military regime because the government did not have enough resources to devote to any cumbersome litigation resulting from the availability of appeal.

36. In its decision, the Commission first considered Article 9(1): "Every individual shall have the right to receive information."³³ Registration fees, the Commission held, are not themselves contrary to the principles of the African Charter but they should be no more than an amount necessary to cover the costs of registration. Excessive registration fees would effectively limit the availability of information and would therefore constitute a violation of Article 9(1). However, the Commission found that the registration fees in this case were not excessive and not in themselves a violation. Instead, the registration process itself was determined to be overly subjective. Giving the registration board complete discretion invites censorship and abuse of the right to receive information. Therefore, the Commission found the government to be in violation of Article 9(1).

37. In considering Article 9(2), the Commission reiterated the concept that, "international standards must always prevail over contradictory national law."³⁴ Thus, while freedom of expression is not an absolute right, any restrictions on it must be in accordance with international standards, and specifically the African Charter. The African Charter does not contain derogation clauses, therefore limitations on rights simply due to special or emergency circumstances are not justifiable. Any restriction instead must conform to the language of Article 27(2), which allows for limitations based on "due regard to the rights of others, collective security, morality and common interest."³⁵ The Commission explains that any limitation must be in furtherance of a legitimate state interest, and the limitation must be "strictly proportionate with and absolutely necessary

³³ African Charter, art. 9(1), 21 I.L.M. at 60.

³⁴ Communications 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, at 58.

³⁵ African Charter, art. 27(2), 21 I.L.M. 63.

for the advantages which are to be obtained” by the limitation.³⁶ Though the article printed in *TELL* may have been critical and sparked debate, the government shows no proof that preventing its distribution was necessary for national security or to maintain public order. In addition, the article was critical only of a political figure, and public figures generally are subject to a higher degree criticism than private citizens. If the article was shown to have been a personal attack, the proper remedy would have been an action of libel instead of the seizure of the magazine. The Commission therefore found that the magazine seizure was a violation of the Article 9(2) right to freedom of expression.³⁷

iii. 140/94, 141/94, 145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria*³⁸

38. In these communications, consolidated by the Commission in its ruling, the complainants again alleged that their right to freedom of expression was violated by the Nigerian military regime. Complainants first alleged that government officials seized the offices of several newspapers and prevented their circulation. During the seizure, numerous people were detained and buildings seized and occupied. The publishers of the newspapers in question all brought suit against the government before two Federal High Courts in Lagos, where decisions were handed down in favor of the publishers. While the suits were still pending, however, the government issued decrees that specifically proscribed *The Guardian*, *Punch*, and *The Concord* newspapers and prevented circulation of their publications. The government never complied with the court decisions, refusing to pay damages and continuing the occupation of many buildings.

39. Of note in the Commission’s holding that Nigeria was in violation of Article 9 is the Commission’s response to a unique argument made by the government. Nigeria argued that it was not in violation of Article 9(2) because its restrictions on freedom of expression were current national law, and one has a right to express and disseminate one’s opinion “within the law.”³⁹ Thus, as current Nigerian law disallowed the publication of newspapers by these groups, the restriction was proper by the terms of Article 9(2) and therefore, Nigeria was not in violation.⁴⁰ The Commission disagreed. It held that interpreting “within the law” to mean existing national law, as opposed to constitutional

³⁶ Communications 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, at 58.

³⁷ Concerning the detention of the editor in chief, the Commission found that the government violated Article 6 (the right to liberty and security of his person). In regards to the retroactive nature of the decrees, the Commission ruled that the retroactive nature itself was a violation of Article 7.2, despite the fact that no person or group had yet to be detained due to the retroactive nature. The Commission insists Article 7.2 must be interpreted as prohibiting punishment for acts that were not crimes at the time committed as well as the greater concept of retroactivity itself.

³⁸ Communications 140/94, 141/94, 145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda vs. Nigeria*, Thirteenth Annual Activity Report of the ACHPR 1999-2000, at 54, reprinted in *African Human Rights Law Reports 2000*, at 227 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity13_en.pdf.

³⁹ African Charter, art. 9(2), 21 I.L.M. at 60.

⁴⁰ Communications 140/94, 141/94, 145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda vs. Nigeria*, at 56.

guarantees or international law, would place national law above international standards and render observance of those standards pointless. Instead, the Commission emphasized that international standards must be upheld and national law must not come into opposition with international norms.⁴¹ Citing additional arguments similar to those contained in previous cases, the Commission found that Nigeria was in violation of Article 9(1) and 9(2).

c. Threats to and detention of individuals based on expression

i. 225/98, *Huri-Laws v. Nigeria*⁴²

40. In this case, the Commission found a freedom of expression violation concerning the Nigerian government's harassment and seizure of a non-governmental organization (NGO) and its employees. Huri-Laws, a Nigerian NGO, brought this communication on behalf of Civil Liberties Organisation (CLO) and its employees. The communication alleged that on numerous occasions since its inception in 1987, the CLO had been the victim of harassment and raids at the hands of the State Security Service (SSS). Specifically, the founder of the CLO, Mr. Olisa Agbakoba, was detained in 1998 when returning from a trip to Europe and was held in detention for 5 weeks. During that time, he was allowed no access to family, doctors or lawyers and was never charged with a crime. In addition, during his incarceration SSS officials raided the CLO without a warrant and seized documents and 13 computers. The communication alleged that these aggressions were attempts to secure incriminating information about CLO's involvement in rallies against the former military regime and General Abacha's self-succession bid. Additional allegations included that a CLO lawyer was detained, held without charges for six months, and tortured after returning from a conference in Scotland. Although Huri-Laws filed suits in Federal High Court challenging these detentions, the suits were unsuccessful because the actions of government agents were barred from appeal by governmental decree.

41. In deciding to consider the communication, the Commission reiterated the principle that a new government in a country inherits the responsibility for misdeeds of a former government. Thus, the current Nigerian government should attempt to compensate victims of abuses by the older military regime if violations are found. Recognizing that organizations such as CLO work towards promoting respect for human rights, the Commission found that attempts to undermine the functioning of these organizations through raids and seizures amounted to a violation of Article 9. The Commission closely associated the freedoms of expression and association by finding the violations of Articles 9 and 10 (freedom of association) in the same discussion.

⁴¹ *Id.*, at 60.

⁴² Communication 225/98, *Huri-Laws vs. Nigeria*, Fourteenth Annual Activity Report of the ACHPR, 2000-01, at 58, reprinted in *African Human Rights Law Reports*, at 273 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity14_en.pdf.

ii. 147/95, 149/96, *Sir Dawda K. Jawara v. The Gambia*⁴³

42. In this case, the Commission found that following a military coup in July 1994, the new government of The Gambia had committed several violations of the Charter, including violation of freedom of expression for false arrest, detention and intimidation of journalists. The former Head of State of The Gambia brought this communication to the Commission after his party was ousted from power by a military coup in July 1994. According to the allegations, the new government established a reign of terror, abolishing the Bill of Rights in the 1970 Gambian Constitution, banning political parties, restricting freedom of expression through detention and intimidation, and killing at least fifty Gambian soldiers and officials of the civilian government. For the above actions, the complainant alleged multiple violations of the African Charter.

43. The government responded that any actions seen as limitations on citizens' freedoms were in fact in conformity with "laws previously laid down" by domestic legislation.⁴⁴ Any limitations were only asserted in the interest of peace and stability and were not contrary to international obligations. In rejecting this argument, the Commission cited to its decision in communication 101/93.⁴⁵ In that case, the Commission held that any provisions that limit the exercise of the freedom of association must conform to constitutional provisions and international human rights standards. The Commission here extended that rule to all freedoms set forth in the Charter. It held that any provisions that limit the exercise of freedoms contained in the African Charter, despite being established as previously laid-down law, must be sure to conform to constitutional provisions and international human rights standards.

44. The Commission found the government had committed violations in the case of almost all breaches claimed, with a few exceptions.⁴⁶ In its discussion of Article 9, the Commission noted that the government offered no defense to the allegations of intimidation of journalists and detention without charge or trial. Considering the allegations submitted by the complainant, the Commission held that the detention and intimidation of journalists for peaceful dissemination of ideas violated both the right to receive information and the right to disseminate it. Thus, the Commission declared The Gambia to be in violation of Articles 9(1) and 9(2).

⁴³ Communications 147/95, 149/96, *Sir Dawda K. Jawara vs. The Gambia*, Thirteenth Annual Activity Report of the ACHPR 1999-2000, p. 96. Also available at: http://www.achpr.org/english/doc_target/documentation.html?../activity_reports/activity13_en.pdf.

⁴⁴ *Id.*, at 98.

⁴⁵ Communication 101/93, *Civil Liberties Organisation (in respect of Bar Association) vs. Nigeria*, Eighth Annual Activity Report of the ACHPR 1994-95, reprinted in *African Human Rights Law Reports 2000*, at 186 (Juta Law, 2004).

⁴⁶ Because the Commission found there to be a lack of evidence concerning torture and the murder of two government officials, it declined to hold the government in violation of Articles 4 (the right to life) and 5 (the right against torture). In so holding, the Commission reiterated the concept that the burden of proof remains with the complainant to bring sufficient evidence of the violations alleged. (pp. 103-04, Thirteenth Annual Activity Report of the ACHPR). To this end, the Commission cited its decision in ACHPR/60/91 at 27, where it held that, "without specific information as to the nature of the acts themselves, the Commission is thus unable to find a violation of Article 5."

iii. 74/92, *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*⁴⁷

45. In this early and brief decision, the Commission found an Article 9 violation among numerous serious and massive human rights violations that occurred during a civil war between government security services and other groups in Chad. The complaint alleges numerous charges: harassment of journalists by government security agents, arbitrary arrest and illegal detention of several people, and several accounts of killings, disappearances and torture. It is also alleged that the assassination of a man, Mr. Bisso Mamadou, occurred despite warnings to the government of the impending danger. The government refused to issue protection to Mamadou before his murder.

46. The Commission's brief decision focused on the government's duty to protect its citizens from being subjected to human rights violations. The respondent State asserted that no violations were committed by government agents and, because Chad was in a state of civil war, the government could not be held responsible for violations committed by persons who were not government agents. In response, the Commission invoked Article 1, which holds that member states must recognize the rights and duties of the African Charter but also, "undertake...measures to give effect to them."⁴⁸ Because member states have this duty to ensure the rights of the African Charter, they can be held in violation if they fail to take appropriate measures to stop human rights abuses. Further, the Commission stated that the African Charter does not allow for a state to derogate from its treaty obligations in the case of emergency. Thus, Chad's claim of innocence due to the civil war does not excuse its violations. Because Chad submitted only a blanket denial of responsibility and provided no substantive responses to the allegations, the Commission was forced to consider only the evidence submitted by the complainants. Based on this evidence, the Commission found that Chad's negligence resulted in several violations of the African Charter, including violation of Article 9.

d. **Defamation**

i. 232/99, *John D. Ouko v. Kenya*⁴⁹

47. As leader of the Student Union for the University of Nairobi, Ouko claimed that he spoke out against government corruption, nepotism and tribalism as well as government involvement in the murder of his predecessor at the Student Union. As a result of these political expressions in peaceful circumstances, Ouko claimed he was imprisoned for 10 months at the Secret Service Headquarters. During his detention, he was subjected to inhumane conditions and physical and mental torture. Ouko fled to Uganda on

⁴⁷ Communication 74/92, *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*, Ninth Annual Activity Report of the ACHPR 1995-96, reprinted in *African Human Rights Law Reports 2000*, at 66 (Juta Law, 2004).

⁴⁸ *Id.*, at 68.

⁴⁹ Communication 232/99, *John D. Ouko vs. Kenya*, Fourteenth Annual Activity Report 2000-01, at 73, reprinted in *African Human Rights Law Reports*, at 325 (Juta Law, 2004), also available at: http://www.achpr.org/english/doc_target/documentation.html?..activity_reports/activity14_en.pdf.

November 10, 1997 and after being denied asylum there, he has resided in the Democratic Republic of the Congo since March 1998.

48. In its holding, the Commission followed a common international norm of accepting the complainant's allegations absent any response or denial by the accused State. Thus, Ouko's inhumane detention was taken as fact. In declaring numerous violations, the Commission also found that Ouko's detention did not meet the minimum standards of the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

49. The Commission discussed a possible Article 9 violation, noting that the right to freedom of expression is guaranteed within the confines of the law. If any expression falls outside of legitimate law (e.g. poses a danger to national security or public order), then the proper method of handling this breach is to seek remedy through settled judicial procedure. The law of defamation requires that remedy be sought by filing suit in court. Instead, the government detained and deported Ouko without instituting any judicial proceedings. The Commission found this procedure to be a violation of the Article 9 right to freedom of expression.

ii. 250/2002, *Liesbeth Zegveld and Mussie Ephrem v. Eritrea*⁵⁰

50. In this case, the Commission found there to be an Article 9(2) violation because the Respondent State did not provide due process of the law when limiting the right of the complainants to disseminate their opinions. The complainants brought the communication on behalf of eleven former government officials who were arrested on September 18-19, 2001. The eleven were part of a group of fifteen senior officials who had written an open letter in May 2001 that criticized the government for operating in an "illegal and unconstitutional manner" and urged the Eritrean people to express their opinion through legal and democratic means.⁵¹ The government claimed that the detainees had been arrested for crimes against national security; however, the complainants claim they are prisoners of conscience, arrested solely for peacefully expressing their opinions.

51. The whereabouts of the eleven detainees was unknown at the time the Commission considered this communication. It is alleged that they have been held incommunicado, with no access to their families or to legal or medical help, and without being brought before a court in due time. The complainants allege that their request for *habeas corpus* regarding the location of the detainees received no consideration from the Eritrean government. Fearing for the detainees' safety, the complainants submitted a request for provisional measures to the Commission along with the communication.

⁵⁰ Communication 250/2002, *Liesbeth Zegveld and Mussie Ephrem vs. Eritrea*, Seventeenth Annual Activity Report of the ACHPR 2003-04, at 90.

⁵¹ *Id.*, at 90.

52. In the admissibility phase, the respondent state argued that the detainees were arrested on charges “in consonance with the existing criminal code...and other relevant national and international instruments.”⁵² The State further argued that it had been unable to bring the detainees before a court of law due to the inefficiency of the criminal justice system it had inherited from Ethiopia. However, Eritrea made no submissions during the merits phase of the process. Holding to custom and to common international practice, the Commission therefore based its decision solely on the evidence introduced by the complainants.

53. In its discussion of Article 9, the Commission first rejected Eritrea’s argument that its actions were in accordance with the law. The State did not provide any information as to under which specific laws the eleven persons were being detained. Absent this showing, the evidence indicated that they had been detained as a result of their political beliefs and opinions they expressed. The Commission held this to be a blatant violation of Article 9(2). The Commission further elaborated that simply limiting one’s right to disseminate opinions that are contrary to law is not itself a violation of the African Charter, but not providing due process of law in these cases does amount to a violation. The Commission stated:

The right to freedom of expression has been recognised by the African Commission as a fundamental individual human right which is also a cornerstone of democracy and a means of ensuring the respect for all human rights and freedoms. Nonetheless, this right carries with it certain duties and responsibilities and it is for this reason that certain restrictions on freedom of expression are allowed. However, Article 9(2) as well as Principle II(2) of the **Declaration of Principles on Freedom of Expression in Africa** categorically state that such restrictions have to be *provided for by law*.

It is a well settled principle of the African Commission that any laws restricting freedom of expression must conform to international human rights norms and standards relating to freedom of expression and should not jeopardise the right itself. In fact, the African Charter in contrast to other international human rights does not permit derogation from this or any other right on the basis of emergencies or special circumstances.

Consequently, if any person expresses or disseminates opinions that are contrary to laws that meet the aforementioned criteria, there should be due process and all affected persons should be allowed to seek redress in a court of law. The facts as presented leave no doubt in the mind of the African Commission that the Respondent State did indeed restrict the 11 persons’ right to free expression. No charges have been brought against the 11 persons and neither have they been brought before the courts. Such restrictions not only violate the provisions of the African Charter but are also not in conformity with international human rights standards and norms.⁵³

⁵² *Id.*, at 98.

⁵³ *Id.*, at 98-99.

B. Domestic jurisprudence of the Member States

1. Introduction

54. The Office of the Special Rapporteur for Freedom of Expression has pursued the aim of furthering comparative law studies as a way of contributing to the flow of information between the Member States regarding the international standards which govern the right to freedom of expression, in the hope that it will lead to a deeper understanding and further establishment of the right to freedom of expression in the Americas. Following these initiatives, the Office of the Special Rapporteur for Freedom of Expression has included in its 2005 Annual Report a chapter describing the jurisprudence of the African Union system under Article 9 of the African Charter and presenting decisions of local courts from the OAS Member States that essentially uphold the standards of freedom of expression.

55. In this section, the report refers to the States' domestic jurisprudence, and it includes certain decisions by local tribunals that were handed down during 2005 and that reflect the importance of respecting freedom of expression as protected in the American Convention.

56. This section highlights some court decisions that have expressly or implicitly taken account of international standards protecting freedom of expression. In other words, this section is not a critique of judicial decisions, but rather an attempt to show that in many cases those standards are indeed considered. The Rapporteur hopes that this attitude will prevail among other judges and courts in the Hemisphere.

57. As a final thought, it will be clear that not all opinions in the decisions quoted are shared by the Office of the Special Rapporteur for Freedom of Expression, but that the Office agrees with the fundamentals of the decisions. As a second point, there is no doubt that there are many other cases that could have been summarized in this report. The selection has been somewhat arbitrary, both for reasons of space and for lack of sufficient information. The Rapporteur's Office urges States to provide it in the future with more judicial decisions enforcing the inter-American system of protection of freedom of expression, so that this section can be expanded in subsequent annual reports.

58. The organization of this section takes account, as it must, of the standards arising from interpretation of Article 13 of the Convention.⁵⁴ The standards referred to have been further developed by the jurisprudence of both the Commission and the Court. Many of those standards have been included in the Declaration of Principles on Freedom of Expression.⁵⁵ For these reasons, the categories described below are related to the various principles of that Declaration. In this report, the categories selected are: (a) freedom of

⁵⁴ For the text of Article 13 of the American Convention on Human Rights, see Annex 1.

⁵⁵ See IACHR, *Annual Report of the Inter-American Commission on Human Rights 2000, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II.111, Doc. 20 rev. (2001), Chapter II.

expression as a guarantee of democracy; (b) the right to criticize public officials; (c) the right to access to information and the Internet; (d) criminal defamation of public officials.

59. This report covers case law from Brazil, Honduras, Argentina and Uruguay. In each of the categories, the relevant principle is quoted from the Declaration, followed by a short summary of the facts of the case, and extracts from the decision of the domestic court.

2. Domestic cases

a. Freedom of expression as a guarantee of democracy

60. Declaration of Principles on Freedom of Expression, Principle 1. “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.”

61. Deciding Body: Supreme Federal Tribunal of Brazil. Decision of August 22, 2005. Opinion by Minister Celso de Mello. Petition 3.486-4.

62. Facts of the case. This case involved a criminal suit for “subversion against national security” in the exercise of a profession against a prominent publisher and two reporters of *Veja* magazine, a well-known political weekly. The court dismissed the suit on procedural grounds, as the Supreme Federal Tribunal of Brazil only has original jurisdiction over constitutional matters, not criminal suits. However, the Tribunal found that the government’s charge posed a challenge to the right of journalistic criticism, a freedom of expression issue which did lie with its jurisdiction. On this question, the Tribunal, per Minister Celso de Mello, held that the government cannot legitimately place criminal penalties on journalistic criticism, a constitutional right. In his opinion, the minister reasoned that the right to journalistic criticism and freedom of expression as a whole are fundamental guarantees of a democratic system of government. To support this notion, he referred to various international decisions on the subject, including cases from the European Court of Human Rights, the Spanish Constitutional Tribunal, and the US Supreme Court.

63. Decision (relevant paragraphs)

No one can ignore the fact that a society founded on democratic principles is incompatible with the criminalization of thought and opinion. This proves especially true when a critical opinion, as harsh as it may be, is inspired by the public interest and is expressed legitimately through the exercise of a constitutional right.

It cannot be ignored that freedom of the press, as a norm that protects free speech and ideas, contains a number of implied rights. Among others, these are (a) the right to impart information, (b) the right to seek information, (c) the right to provide an opinion, and (d) the right to criticize. Journalistic criticism can be understood, in this fashion, as a constitutionally-protected right which counters the State when it fails to generally act in the public interest.

This public interest, which should guide judicial practice as well, is based on ethical and judicial limits that supersede the wills and desires of those who exercise public power.

It is relevant for us to observe, here, that the European Court of Human Rights, on more than one occasion, has warned that...limits on the right to access public information and to provide that information, "in their pure, objective and fact-devoid state, are neither constitutionally acceptable nor compatible with pluralism and tolerance. Without these values (pluralism and tolerance), there is no democratic society."

Freedom of expression of thought...is, in its most proper and essential significance, one of the bases on which a democratic order stands. No [democratic] authority can legitimately establish an official truth in politics, or in other questions involving issues of a philosophical, ideological or confessional nature. Nor can it establish patrons of conduct whose observance would yield a restriction upon the diffusion of free ideas.

b. The right to criticize public officials

64. Declaration of Principles on Freedom of Expression, Principle 11. "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."

65. Deciding Body: Constitutional Chamber of the Supreme Court of Honduras. Decision of May 19, 2005.

66. Facts of the case. In this case, the Honduran high court found Honduras' "*desacato*" law, which criminalizes criticism of public officials and creates a "special realm of protection" around them, unconstitutional, as it violates both national and international norms concerning freedom of expression. The decision originated in a petition of unconstitutionality filed by Honduras' Attorney General in 2003. In its ruling, the court took into account the recommendation of both the Rapporteurship and the Inter-American Commission on Human Rights, both of whom advocate the abolition of *desacato* laws.

67. Decision (relevant paragraphs)

In the opinion of this Constitutional Chamber, it seems sufficiently proven that the privilege granted to public servants of the State by this criminal norm cannot be justified under the terms expressed in Article 60 of our Constitution. (...) Instead, this law adopts a realm of privilege and protection for a certain group based on its position of authority, a contradiction considering that in order to guarantee its transparency, society should scrutinize this group more than all of the rest.

The tendency in contemporary democracies is to eliminate "*desacato*" laws, as they are considered contrary to the rule of law and an impermissible limit upon freedom of expression. This is because they place public officials in a realm of exception above the law. Such a position can be found in the numerous reports and recommendations of the Special Rapporteur for Freedom of Expression of the Organization of American States. Moreover, the Declaration of Principles on Freedom of Expression signals in Principle 11: "Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

Consequently, this Constitutional Chamber of the Supreme Court of Justice, as final and definitive interpreter of the Constitution, in name of the State of Honduras, unanimously and in application of Articles...1, 2, 7, and 8 of the Universal Declaration of Human Rights; 2, 3, 14, 17, 19, and 26 of the International Covenant on Civil and Political Rights; 1, 8, and 25 of the American Convention on Human Rights; 1, 2, 4, 5, 18 and 24 of the American Declaration on the Rights and Duties of Man...holds this law to be unconstitutional...and consequently, removes Article 345 from the Penal Code.

c. The right to access to information and the Internet

68. Declaration of Principles on Freedom of Expression, Principle 5. "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."

69. Deciding Body: National Criminal Chamber of the Supreme Tribunal of Justice, Panel IV (Argentina). Decision of April 11, 2005. C. 4352

70. Facts of the case. This landmark case dealt with the conflict between freedom of expression on the Internet and a government policy of discouraging the use of illegal drugs by criminalizing expression that advocates their use. The defendants in this case ran a website that advocated the decriminalization of marijuana, indicated its botanical properties, and offered instruction on how to grow the plant. For this they were charged with incitement or public diffusion of the use of psychotropic substances, a criminal offense under Argentine law. The highest criminal court in Argentina, citing international jurisprudence and norms on freedom of expression, upheld their acquittals, considering that the individuals' right to provide information and the public's right to access these views superseded the government's interest in discouraging illegal drug use. By doing so, they also extended the protection of the rights to seek and receive information to the realm of the Internet.

71. Decision (relevant paragraphs)

Although Article 12 of Law No. 23.737 prohibits the incitement or public advocacy of the use of psychotropic substances, this prohibition should be interpreted in light of the superior objective...of guaranteeing the constitutional right, in all of its manifestations, to freedom of expression. This right has as its necessary starting point the existence of an open, unrestricted debate regarding all issues in the public interest, as well as the right of the public to be informed.

The meaning of the right to seek and receive information plays a significant role within the larger freedom of expression. For one, it plays a role in the freedoms of the press, of printing, of expression and of opinion via any media. But more importantly for the case at hand, it protects both those who provide or disseminate opinions and information and those who receive and search for them. Along these lines, the Inter-American Court of Human Rights has found that when the freedom of expression of an individual is violated, not only the rights of that individual are in play, but also the rights of all to "receive" information and ideas...[it has found the latter to be] a right protected by Article 13 of the American Convention.

In this case...[defendants], prior to encouraging the use of harmful toxins, explicitly expressed that their intention was to make a statement supporting the legalization of Cannabis. In particular, [defendants] made reference to the protection they received under freedom of expression to do so, as well as the principle of reservation also guaranteed by the fundamental law.

Given these circumstances, it can only be concluded that the conduct of [the defendants] cannot fall under the crime of which they are accused, at least not without violating a higher fundamental right. The principle previously mentioned imposes the obligation that, when freedom of expression is at stake, there is no crime [under Article 12] except when a significant interest in protecting public health is also in play. In that case, the situation would have to rise to such a level of danger that it would authorize the most coercive methods which the State has at its disposition.

We must thus confirm the verdict absolving the [defendants] for publishing material on the Internet with content which could be considered criminal, because their intention [in publishing this content] was to raise public awareness about a debate on criminal policy. Any interpretation contrary to this would violate the constitutionally-guaranteed rights to access public information and to be informed about issues in the public interest.

d. Criminal defamation of public officials

72. Declaration of Principles on Freedom of Expression, Principle 10. "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."

73. Deciding Body: Third Appellate Criminal Tribunal of Montevideo (Uruguay). Decision of March 16, 2005. Decision of March 16, 2005. Sentence No. 63 of March 16, 2005 of the Third Appellate Criminal Tribunal of Montevideo.

74. Facts of the case. This case involved a charge of criminal defamation against a reporter for criticizing the handling by a city official of the escape of a jaguar from the zoo in the city of Salto. The official, a member of the executive committee of one of Uruguay's largest political parties, apparently failed to follow the proper procedures and prematurely called for the animal's death, which resulted in its killing. The appellate tribunal confirmed the decision of the court of first instance to acquit the reporter, holding that public officials should be subject to a particularly high level of scrutiny, and that consequently, the burden of proof for defamation should be very high as well. The Court cited an article by the Special Rapporteur as support for its holding and declared its belief that criminal prosecution of journalistic criticism of government is incompatible with a democratic society.

75. Decision (relevant paragraphs)

When the recipients of alleged defamatory attacks are public figures, the content and the severity of these attacks must be of a more offensive nature than when ordinary citizens are involved. Because those who act in the political arena, a realm of constant confrontation, take on a position which invites criticism, and they should thus be more prepared than the ordinary citizen to protect themselves from these acts.

... the nature of the work of a public official, particularly one involved in and active in politics, yields a place of privilege for the freedom to criticize above other legal rights which may be in play. This is because these types of public officials are charged with the public good. Therefore, they do not act in representation of themselves, but are endowed to act on behalf of people. This consequently means that their actions should be open to a more stringent form of control. Even more importantly, in a democratic society, judicial persecution of those who criticize their government is inadmissible.

CHAPTER IV

REPORT ON ACCESS TO INFORMATION IN THE HEMISPHERE

A. Introduction

1. In its 2003 Annual Report, the Office of the Special Rapporteur for Freedom of Expression published a chapter entitled "Report on Access to Information in the Hemisphere."¹ In that report, the Office of the Special Rapporteur laid out a theoretical background on the right of access to information, stating that "guaranteeing public access to state-held information is not only a pragmatic tool that strengthens democratic and human rights norms and promotes socioeconomic justice; it is also a human right protected under international law."²

2. In June 2005, the General Assembly of the Organization of the American States (OAS) adopted Resolution 2121, entitled "Access to Public Information: Strengthening Democracy." This resolution extends the efforts of previous resolutions on this issue and encourages OAS Member States to implement legislation or other provisions giving citizens broad access to public information.³ The General Assembly also instructed the Special Rapporteur for Freedom of Expression "to continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."⁴

3. The Office of the Special Rapporteur has therefore prepared this report in compliance with its mandate as established by the General Assembly and to continue contributing to the discussion on the issue. This report contains an update on the situation of access to information in the region.⁵

B. Access to information in the Member States: An update of the 2004 Annual Report

4. The General Assembly of the OAS resolved in paragraph 8 of Resolution 2121, entitled "Access to Public Information: Strengthening Democracy," to instruct the Special Rapporteur for Freedom of Expression to "continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."⁶

¹ Inter-American Commission on Human Rights, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: Report on Access to Information in the Hemisphere, pp. 135-154.

² *Id.*, para. 8.

³ OAS, AG/RES. 2121 (XXXV-O/05), *Access to Information: Strengthening Democracy*. Available at: <http://www.oas.org/XXXVGA/docs/ENG/2121.doc>.

⁴ *Id.*, para. 8.

⁵ For more information on the theoretical approach to access to information, see: Inter-American Commission on Human Rights, Annual Report 2004, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*, pp. 104-23, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>. See also Inter-American Commission on Human Rights, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*, pp. 135-154., available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>.

⁶ See paragraph 8 of this resolution, which is included as Annex 4 to this report.

Pursuant to this mandate, in an effort to record the developments of the States in this area during 2004, this section of the report will update the situation of access to information in relevant Member States.

5. In this annual report, the Special Rapporteur includes the laws that the Member States of the Organization of American States passed during 2005 with respect to the right of access to information. During the year, Bolivia issued a decree providing access to information, while Chile replaced an article in its Constitution that now allows for access to public information. Honduras also amended its Constitution to provide citizens with the right to seek information from the government about themselves or their family. These developments highlight that the issue of access to information has continued to receive attention in 2005.

1. Bolivia

6. A decree signed by President Carlos Mesa on May 17, 2005 guarantees journalists the right to a response when they request information from government institutions. Decree 28168 recognizes that the right to access information is a fundamental element for the full exercise of citizenship and the strengthening of democracy, and provides that all natural and legal persons have the right to solicit and receive full and adequate information for the executive branch, and the information must be provided within 15 working days. The decree also provides that requests for information can only be denied in exceptional circumstances. Mesa resigned in June 2005 amid popular uprisings.

2. Chile⁷

7. Chile this year passed a new constitutional article on freedom of information, which provides that actions and decisions of government entities belong in the public record. Article 8, which repeals a presidential decree, two articles and resolutions on confidential and classified records, enables all records and decisions to be open to the public, with the exception of those already declared confidential or classified by a qualified quorum law, which requires an absolute majority. If the government does not provide access to such decisions and records, the interested party can file an action in the courts. Article 8 took effect as of its August 26, 2005 publication in the *Diario Oficial*.

8. The text of the article provides the following: "Those who hold public office must strictly adhere to the principle of probity in all of their actions." It then says: "The actions and decisions of government entities are of public record, as are the foundations and the procedures thereof. However, only a qualified quorum law can declare that a given record is classified or confidential, when publicity would compromise the duties of such an entity, individual rights, national security or the national interest."

⁷ Inter-American Press Association's Annual Report on Chile, available at www.sipiapa.org/publications/informe_chile2005o.cfm.

3. Honduras⁸

9. In March, the legislature approved a reform of Constitutional article 182 giving citizens a constitutional right to *habeas data* about themselves. The law says that “[e]very person has the right, in a rapid and non-onerous manner, to access information about himself or herself and his or her property already in the data base or in private or public registries, and if necessary, to update, correct or amend it.”

10. Congress has not yet approved, however, a bill on Access to Public Information and *Habeas Data*. The bill was introduced in October 2004 and had the support of the heads of five political party caucuses, but the legislative commission that introduced the bill extended the debate.

4. Other developments

a. Argentina⁹

11. As of October 2005, Argentina’s Freedom of Information Act was still awaiting final passage. The Chamber of Deputies approved the bill, but the Senate made a number of amendment proposals that would jeopardize the law’s original aims. In postponing the debate, the bill lost its parliamentary character, which means that it must be submitted again for consideration in the Argentine national Congress, which will begin its next session in March 2006.

12. In addition, a bill introduced by four senators from the Justicialist Party would increase the areas that are subject to confidentiality, which now applies to defense and security matters.

b. Guatemala¹⁰

13. Guatemala’s Freedom of Information Law is still awaiting passage by the nation’s Congress. The bill was proposed four years ago, but no political group has demonstrated an interest in debating and approving the bill. Openness and transparency in public information have been the subject of popular demand.

⁸ See March 24, 2005 report from PROBIDAD, available at <http://www.ifex.org/en/content/view/full/65548/>; Also see August 23 report from PROBIDAD, www.ifex.org/en/content/view/full/68815.

⁹See Inter-American Annual Report on Argentina, available at www.sipiapa.org/pulications/informe_argentina_2005o.cfm.

¹⁰See Inter-American Press Association Annual Report on Guatemala, available at www.sipiapa.org/pulications/informe_guatemala2005o.cfm.

c. Nicaragua¹¹

14. A freedom of information bill is still under consideration in Nicaragua. National Assembly Justice Commission member Walmaro Gutierrez said that the Assembly would hold a plenary debate on its approval.

d. Paraguay¹²

15. In April, 23 civic organizations presented a freedom of information bill in the Chamber of Deputies that would require officials to give reliable and documented information to any citizen. It also provides for prison sentences for those who attempt to cover up information, although it notes that sensitive information affecting the financial sector or violating the privacy of individuals will not be released.

16. This bill comes as another proposed law on Freedom of Public Information is under debate in the Chamber of Deputies. This bill, sponsored by legislators from various parties, lays out rules for providing information to citizens and provides for who specifically must give out information. The bill, however, contains a provision that allows issues “that could affect national security” or “the privacy of individuals” to be withheld. It says that officials may refuse to provide information.

e. Peru¹³

17. In June 2005, Congress approved a law on national intelligence that could endanger the public right to obtain information. The National Intelligence Service and Intelligence Office Act, which still needed the signature of President Alejandro Toledo as of October 2005, has a broad and vague notion of national security, and this could be interpreted in a way that would limit the right to obtain information. The law would amend a law on constitutional rights, primarily the Freedom of Information Act that has been in effect since 2003. The new law increases the number of exceptions to the current rule, established under the general law on access to information. The new law also increases to 10 years from five years the period that must lapse before confidential information can be

¹¹See Inter-American Press Association Annual Report on Nicaragua, www.sipiapa.org/pulications/informe_nicaragua2005o.cfm.

¹²See Inter-American Press Association Annual Report on Paraguay, available at www.sipiapa.org/pulications/informe_paraguay2005o.cfm.

¹³See Inter-American Press Association, <http://www.ifex.org/en/content/view/full/68049/>, also see IAPA annual report on Peru, available at http://www.sipiapa.org/pulications/informe_peru2005o.cfm.

obtained. The time limit for restricted information would be 15 years under the new law, and 20 years for classified information. It also allows the National Intelligence Council (COIN), DINI, Ministry of Defense, Ministry of the Interior, and the General Administration on Security and Defense of the Ministry of Foreign Relations, to create their own guidelines for classifying and declassifying documents.

CHAPTER V

PUBLIC DEMONSTRATIONS AS AN EXERCISE OF FREEDOM OF EXPRESSION AND FREEDOM OF ASSEMBLY¹

A. Introduction: Purpose and content of the report

1. The most impoverished sectors of our hemisphere face discriminatory policies and actions; their access to information on the planning and execution of measures that affect their daily lives is incipient and, in general, traditional channels to make their complaints known are frequently inaccessible. Confronting these prospects, in many of the hemisphere's countries, social protest and mobilization have become tools to petition the public authorities, as well as channels for public complaints regarding abuses or human rights violations.²

2. The Rapporteurship notes that, despite the importance attached both to freedom of expression and to the freedom of peaceful assembly for the operation of a democratic society,³ this does not make them absolute rights.⁴ Indeed, the instruments for

¹ This chapter was possible thanks to the research and preliminary drafting of Mariela Aisenstein, a lawyer from the Torcuato Di Tella University, Argentina. She was an intern for the Rapporteurship during 2005.

² IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Rapporteurship for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 29.

³ The importance of freedom of expression for the operation of a democratic society has been expressed on several occasions in the universal (United Nations) system for the protection of human rights, the European system for the protection of human rights, the African system for the protection of human rights, and the inter-American system for the protection of human rights.

The European Court of Human Rights has held that "...freedom of expression constitutes one of the essential foundations of [a democratic society], one of the basic conditions for its progress and for the development of every man. [This right] is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued. See: ECHR, *Case of Scharsach and News Verlagsgesellschaft mbH v. Austria*, Judgment of 13 November 2003, Reports of Judgments and Decisions 2003-XI, para. 29; ECHR, *Case of Perna v. Italy*, Judgment of 6 May 2003, Reports of Judgments and Decisions 2003-V, para 39; ECHR, *Case of Dichand and Others v. Austria*, Judgment of 26 February 2002, available at <http://www.echr.coe.int>, para. 37; ECHR, *Case of Lehideux and Isorni v. France*, Judgment of 23 September 1998, Report 1998-VII, para. 55; ECHR, *Case of Otto-Preminger-Institut v. Austria*, Judgment of 20 September 1994, Series A., No. 295-A, para. 49; ECHR, *Case of Castells v. Spain*, Judgment of 23 April 1992, Series A., No. 236, para. 42; ECHR, *Case of Oberschlick v. Austria*, Judgment of 23 May 1991, Series A., No. 204, para. 57; ECHR, *Case of Müller and Others v. Switzerland*, Judgment of 24 May 1988, Series A., No. 133, para. 33; ECHR, *Case of Lingens v. Austria*, Judgment of 8 July 1986, Series A., No. 103, para. 41; ECHR, *Case of Barthold v. Germany*, Judgment of 25 March 1985, Series A., No. 90 para. 58; ECHR, *Case of The Sunday Times v. United Kingdom* Judgment of 29 March 1979, Series A., No. 30, para 65; and ECHR, *Case of Handyside v. United Kingdom*, Judgment of 7 December 1976, Series A., No. 24, para. 49.

For its part, the United Nations Human Rights Committee has held a similar position. See HR Committee, *Case of Aduayom and Others v. Togo*, Decision of July 12, 1996, Communication No. 422/1990: Togo 19/08/96. CCPR/C/57/D/422/1990 (Jurisprudence), para. 7.4, available at <http://www.unhchr.ch/tbs/doc.nsf/>.

The African Commission on Human and Peoples' Rights has expressed a similar opinion. See ACHPR, *Media Rights Agenda and Others v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. Nos. 105/93, 128/94, 130/94 and 152/96, Decision of 31 October 1998, para. 54.

⁴ IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Rapporteurship for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 31.

the protection of human rights establish limits on both rights. These limits should be expressly established by law and they should be necessary to ensure respect for the rights of others, or the protection of national security, public safety, or public health or morality.

3. To date, the Inter-American Court of Human Rights (hereinafter the “Inter-American Court”) has not handed down any judgment in an individual case in which it has expressed an opinion on whether limits imposed on public demonstrations respect the standards of protection for freedom of expression and freedom of assembly established by the inter-American system. For this reason, the Rapporteurship will provide a description of jurisprudence issued by other systems regarding public demonstrations and the possible limits upon them, in order to make a contribution to the interpretation of public demonstrations as an exercise of the freedom of expression and of assembly within the framework of the inter-American system.

4. For this same purpose, the Rapporteurship has also included, in this chapter, decisions of national courts that, in establishing regulations for public demonstrations, take into consideration, either expressly or implicitly, international norms for the protection of the freedom of expression and the freedom of assembly.

B. Public demonstrations as an exercise of the right to freedom of expression and freedom of assembly

5. The exchange of ideas and social demands as a form of expression presupposes the exercise of related rights such as the right of citizens to assemble and to demonstrate, as well as the right to the free flow of opinions and information.⁵ Provided for by Articles 19 and 21 of the International Covenant on Civil and Political Rights (hereinafter the “ICCPR”), by Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the “European Convention”), by Articles 9 and 11 of the African Charter of Human and Peoples’ Rights (hereinafter the “African Charter”) and by Articles 13 and 15 of the American Convention on Human Rights (hereinafter the “American Convention”), both rights constitute vital elements necessary for the proper operation of a democratic system that includes all sectors of society.

6. According to the European Court of Human Rights (hereinafter the “European Court”), the expression of opinions is one of the goals of the right to peaceful assembly. In this regard, the right to demonstrate is protected both by the right to freedom of expression and by the right to freedom of assembly.⁶ In this regard, the Inter-American

⁵ *Ibid.*, para. 30.

⁶ See, e.g. ECHR *Case of Vogt v. Germany*, Judgment of September 26, 1995, Series A, No. 323, para. 64; ECHR, *Case of Rekvényi v. Hungary*, Judgment of May 20, 1999, Reports of Judgments and Decisions 1999-III, para. 58; ECHR, *Case of Young, James and Webster v. the United Kingdom*, Judgment of August 13, 1981, Series A, No. 44, para. 57; ECHR, *Case of Refah Partisi (The Welfare Party) and others v. Turkey*, Judgment of July 31, 2001, para. 44, available at <http://www.echr.coe.int>; ECHR, *Case of United Communist Party of Turkey and others v. Turkey*, Judgment of January 30, 1998, Report 1998-I, para. 42. Also see Supreme Court of Zambia, *Case of Christine Mulundika and 7 others v. The People*, Judgment of February 7, 1996, 2 LCR 175 (in which the Court stated that the right to organize and participate in a public

continued...

Court has held that “[f]reedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”⁷

7. For its part, the African Commission of Human and Peoples’ Rights (hereinafter the “African Commission”) has held that there is a close relationship between the rights established in Articles 9 (right to freedom of expression), 10 (right of association) and 11 (right of assembly), and that the right to freedom of expression is implicitly violated when there is a violation of the rights of association and of assembly.⁸

C. Public demonstrations in the framework of the United Nations

1. Instruments of protection

8. The right to demonstrate publicly is provided for by several international instruments. As mentioned above, the right to demonstrate is protected both by the right to freedom of expression and by the right to freedom of assembly.⁹

9. The right to freedom of expression enjoys ample protection. The Universal Declaration of Human Rights (hereinafter the “UDHR”), approved on December 10, 1948 by the United Nations General Assembly, provides in its Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁰

10. In addition, Article 19 of the ICCPR, which was opened for signature, ratification and accession on December 16, 1966, and which came into force on March 23, 1976, provides:

1. Everyone shall have the right to hold opinions without interference.

...continuation

assembly is inherent to the right to express and receive ideas and information without interference and to communicate ideas and information without interference).

⁷ See I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Series A., No. 5, November 13, 1985, para. 69.

⁸ African Commission on Human and Peoples’s Rights (ACHPR), Case of International Pen , Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria, Decision of October 31, 1998, available at <http://www.achpr.org>, Annual Report No. 12, AHG/215 (XXXV), Comm. Nos. 137/94, 139/94, 154/96 and 161/97.

⁹ See, e.g. ECHR *Case of Vogt v. Germany*, Judgment of September 26, 1995, Series A, No. 323, para. 64; ECHR, *Case of Rekvényi v. Hungary*, Judgment of May 20, 1999, Reports of Judgments and Decisions 1999-III, para. 58; ECHR, *Case of Young, James and Webster v. the United Kingdom*, Judgment of August 13, 1981, Series A, No. 44, para. 57; ECHR, *Case of Refah Partisi (The Welfare Party) and others v. Turkey*, Judgment of July 31, 2001, para. 44, available at <http://www.echr.coe.int>; ECHR, *Case of United Communist Party of Turkey and others v. Turkey*, Judgment of January 30, 1998, Report 1998-I, para. 42. In all these cases the ECHR established that the expression of opinions constitutes one of the goals of the right of assembly.

¹⁰ Universal Declaration of Human Rights, Article 19, available at <http://www.un.org>.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.¹¹

11. The right to freedom of assembly also enjoys ample protection. Article 20 of the UDHR provides that: "1. Everyone has the right to freedom of peaceful assembly and association."¹²

12. In addition, Article 21 of the ICCPR provides that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."¹³

2. Jurisprudence

13. The Human Rights Committee has held that restrictions may be imposed on public demonstrations so long as their purpose is to protect one of the interests listed in Articles 19 (right to freedom of expression) and 21 (right to freedom of assembly) of the ICCPR.

a. *Kivenmaa v. Finland*¹⁴

14. According to the petitioner, on September 3, 1987, on the occasion of the visit of a foreign Chief of State and his meeting with the President of Finland, the petitioner and about 25 members of her organization (Social Democratic Youth Organization), amid a larger crowd, gathered across from the Presidential Palace, where the leaders were meeting, distributed leaflets and raised a banner critical of the human rights record of the

¹¹ International Covenant on Civil and Political Rights, AG Res. 2200^a (XXI), 21 ONU GAOR/Sup. No. 16, U.N. Doc. A/6316 (1966), 999 U. N. T. S. 171, Article 19.

¹² Universal Declaration of Human Rights, available at <http://www.un.org>, Article 20.

¹³ International Covenant on Civil and Political Rights, AG Res. 2200^a (XXI), 21 ONU GAOR/Sup. No. 16, U.N. Doc. A/6316 (1966), 999 U. N. T. S. 171, Article 21.

¹⁴ Human Rights Committee, *Case of Kivenmaa v. Finland*, Decision of June 10, 1994, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990 (Jurisprudence).

visiting head of State. The police immediately took the banner down and asked who was responsible. The petitioner identified herself and was subsequently charged with violating the Act on Public Meetings by holding a "public meeting" without prior notification of the authorities.¹⁵

15. For its part, the State party argued before the Committee that a demonstration necessarily entails the expression of an opinion, but, by its specific character, it is to be regarded as an exercise of the right of peaceful assembly. In this connection, the State party argues that Article 21 of the Covenant must be seen as *lex specialis* in relation to Article 19 and that therefore the expression of an opinion in the context of a demonstration must be considered under Article 21, and not under Article 19 of the Covenant.¹⁶ In this light, the State party argued that the right of public assembly (Article 21 of the Covenant) is not restricted by the requirement of a prior notification, which is necessary to guarantee the peacefulness of the public meeting.¹⁷

16. The Human Rights Committee (hereinafter the "Committee") held that the State of Finland had violated the right to freedom of expression of the petitioner in that the State had not referred to a law allowing it to restrict the petitioner's freedom of expression, nor had it proven that the restriction was necessary to safeguard any of the interests provided for in paragraph 2 of Article 19 of the Covenant. In other words, the requirement of prior notification of an intended demonstration could be established for reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others,¹⁸ but in the instant case the restriction had not been imposed for any of these reasons.

17. The Committee found that the requirement to notify the police of an intended demonstration in a public place is not incompatible with Article 21 of the Covenant.¹⁹

18. With respect to the issue of what constitutes a public demonstration, the Committee held that the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration.²⁰

¹⁵ *Ibid.*, paragraph 2.1.

¹⁶ *Ibid.*, paragraph 7.4.

¹⁷ *Ibid.*, paragraph 7.8.

¹⁸ Article 21 of the International Covenant on Civil and Political Rights provides: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

¹⁹ Human Rights Committee, *Case of Kivenmaa v. Finland*, Decision of June 10, 1994, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990 (Jurisprudence), paragraph 9.2.

²⁰ *Ibid.*, paragraph 9.2.

b. *Tae-Hoon Park v. Republic of Korea*²¹

19. On December 22, 1989, the petitioner was found guilty of breaching the National Security Law. The judgment was based on his having belonged to Young Koreans United (YKU), an organization whose purpose was to commit the crimes of siding with and furthering the activities of the North Korean Government and which, thus, favored the enemy. The participation of the author in peaceful demonstrations in the United States, calling for the ending of U.S. intervention, constituted siding with North Korea, in violation of said law.²²

20. According to the petitioner, although he was convicted for joining an organization, the real reason for his conviction was that the opinions expressed by him and other YKU members were critical of the official policy of the South Korean Government; this constituted a violation of his freedom of expression.²³ The conviction and the judgment itself were based on the fact that the petitioner, had, by participating in certain peaceful demonstrations and other gatherings in the United States, expressed his support or sympathy to certain political slogans and positions.²⁴

21. The State argued that the petitioner's activities as a member of YKU constituted a threat to the preservation of the democratic system and that hence restriction of the freedom of expression of the petitioner was therefore a necessary protective measure.²⁵

22. The Committee held that the right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification.²⁶

23. Regarding the issue of whether the measures taken against the petitioner were justified in order to protect national security (the reason invoked by the State to justify the restriction), the Committee considered that the State party failed to specify the nature of the threat which it contended that the petitioner's exercise of freedom of expression posed; the Committee further found that none of the arguments advanced by the State party sufficed to render the restriction of the petitioner's right to freedom of expression compatible with paragraph 3 of Article 19.²⁷

²¹ Human Rights Committee, *Case of Tae-Hoon Park v. Republic of Korea*, Decision of November 3, 1998, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 628/1995: Republic of Korea. 03/11/98. CCPR/C/64/D/628/1995 (Jurisprudence).

²² *Ibid.*, paras. 2.1, 2.2 and 2.3.

²³ *Ibid.*, para. 3.2.

²⁴ *Ibid.*, para. 2.4.

²⁵ *Ibid.*, paras. 8.1 and 8.2.

²⁶ *Ibid.*, para. 10.3.

²⁷ *Ibid.*, para. 10.3.

24. In view of the aforementioned, the Committee found that the State had violated the petitioner's right to freedom of expression.²⁸

D. Public demonstrations in the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms

1. Instrument of protection

25. The European Convention, signed on November 4, 1950, provides for the right to freedom of expression and the right to the freedom of assembly, and establishes restrictions on both. With respect to freedom of expression, Article 10 of the European Convention provides that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.²⁹

26. The European Convention is similar to the ICCPR in the sense that neither instrument forbids prior censorship.³⁰

27. Regarding freedom of assembly, Article 11 of the European Convention provides that:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent

²⁸ *Ibid.*, para. 11.

²⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 (ETS No. 5), 213 U.N.T.S. 222, Article 10.

³⁰ In contrast with the American Convention, which expressly forbids it in subsection 2. In this regard, the Inter-American Court has held that "a comparison of Article 13 with the relevant provisions of the European Convention (Article 10) and the Covenant (Article 19) indicates clearly that the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas." See I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Series A., No. 5, November 13, 1985, para. 50.

the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.³¹

2. Jurisprudence

28. In its decisions, the European Court has established that restrictions on freedom of expression, as well as on freedom of assembly, are justified as long as they are "prescribed by law," have the purpose of protecting one of the interests provided for in subsection 2 and "are necessary in a democratic society."

29. Regarding the condition that restrictions must be "necessary," the European Court has noted that while the adjective "necessary", is not synonymous with "indispensable", it does not have the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable", or "desirable" and that it implies the existence of a "pressing social need."³² For restrictions to correspond to a pressing social need, they must be proportionate to the legitimate aim pursued.³³

30. It is noteworthy that the European Court has held that the right to freedom of expression should be regarded as a *lex generalis* and the right to freedom of assembly as a *lex specialis*,³⁴ insofar as the expression of opinions is one of the objectives of the freedom of peaceful assembly.³⁵ On the other hand, it has considered that Article 11 (right to freedom of assembly) does not contemplate issues different from those contemplated under Article 10 (right to freedom of expression).³⁶

a. *Ezelin v. France*³⁷

31. On February 12, 1983, a number of Guadeloupe independence movements and trade unions held a public demonstration at Basse-Terre to protest against two court decisions whereby three militants were convicted for criminal damage to public buildings.

³¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950 (ETS No. 5), 213 U.N.T.S. 222, article 11.

³² See ECHR, *Case of The Sunday Times v. United Kingdom*, Judgment of March 29, 1979, Series A., No. 30, para 59.

³³ See *Ibid*, para. 62. Also see ECHR, *Case of Barthold v. Germany*, Judgment of March 25, 1985, Series A., No. 90 para. 59.

³⁴ ECHR, *Case of Ezelin v. France*, Judgment of April 26, 1991, Series A, No. 202, paras. 35 and 37.

³⁵ See, e.g. ECHR *Case of Vogt v. Germany*, Judgment of September 26, 1995, Series A, No. 323, para. 64; ECHR, *Case of Rekvényi v. Hungary*, Judgment of May 20, 1999, Reports of Judgments and Decisions 1999-III, para. 58; ECHR, *Case of Young, James and Webster v. the United Kingdom*, Judgment of August 13, 1981, Series A, No. 44, para. 57; ECHR, *Case of Refah Partisi (The Welfare Party) and others v. Turkey*, Judgment of July 31, 2001, para. 44, available at <http://www.echr.coe.int>; ECHR, *Case of United Communist Party of Turkey and others v. Turkey*, Judgment of January 30, 1998, Report 1998-I, para. 42.

³⁶ ECHR, *Case of Steel and others v. United Kingdom*, Judgment of September 23, 1998, Reports 1998-VII, para. 113.

³⁷ ECHR, *Case of Ezelin v. France*, Judgment of April 26, 1991, Series A, No. 202.

The applicant, who was Vice-Chairman of the Trade Union of the Guadeloupe Bar at the time, took part and carried a placard.³⁸

32. The Judiciary initiated an investigation on criminal damage to public buildings and insults against the judiciary which took place during the demonstration. In the course of said investigation the applicant was convicted of “breach of discretion,” for having carried a placard announcing his profession and not having either disassociated himself from the demonstrators' offensive and insulting acts or leaving the march.³⁹

33. In the Government's submission, there was no violation of the right to peaceful assembly and freedom of expression, because the petitioner had been able to take part in the march and to express his convictions publicly.⁴⁰

34. The European Court held that the State had violated the right to peaceful assembly (it decided that it was unnecessary to separately analyze a possible violation of the right to freedom of expression). In this connection, it noted that the freedom to take part in a peaceful assembly is of such importance that it cannot be restricted in any way, even for a lawyer, so long as the person concerned does not himself commit any reprehensible act on such an occasion. Hence, it decided that the restriction was not necessary in a democratic society.⁴¹

b. *Chorherr v. Austria*⁴²

35. During a military ceremony attended by approximately 50,000 people, the applicant and a friend distributed leaflets calling for a referendum on the purchase of fighter aircraft by the armed forces. In addition, they wore rucksacks to the backs of which were attached very large placards.⁴³

36. The actions of the two men had caused a commotion among the spectators, whose view had been blocked. The police informed them that they were disturbing public order and instructed them to cease what they regarded as a demonstration. When they refused to comply with the police's orders, they were arrested and criminal proceedings were instituted against them.⁴⁴

³⁸ *Ibid.*, para. 10.

³⁹ ECHR, *Case of Ezelin v. France*, Judgment of April 26, 1991, Series A, No. 202, para. 12 and 20.

⁴⁰ *Ibid.*, para. 38.

⁴¹ *Ibid.*, para. 53.

⁴² ECHR, *Case of Chorherr v. Austria*, Judgment of August 25, 1993, Series A, No. 266-B.

⁴³ *Ibid.*, para. 7.

⁴⁴ *Ibid.*, para. 8.

37. In the State's contention, the police had had to intervene because of the commotion that the applicant's and his friend's behavior had engendered among the spectators of the ceremony. The police feared that the situation would get out of hand.⁴⁵

38. The European Court held that the State had not violated the right to freedom of expression of the applicant. It stated that the margin of appreciation that States enjoy extends in particular to the choice of the means (reasonable and appropriate) to be used by the authorities to ensure that lawful manifestations can take place peacefully.⁴⁶ In the instant case the Court noted that the nature, importance, and scale of the ceremony justified the deployment of such a considerable number of police forces to ensure that it passed off peacefully. Moreover, the measures had been intended to prevent breaches of the peace and not to frustrate the expression of an opinion.⁴⁷ Therefore, the restriction had been necessary in a democratic society.⁴⁸

c. *Steel and Others v. United Kingdom*⁴⁹

39. First applicant. On August 22, 1992, together with approximately sixty others, the applicant took part in a protest against a grouse shoot. The protesters attempted to obstruct and distract those taking part in the shoot. When the police arrived they began warning the protesters to stop their behavior. When the protesters ignored this request, the police arrested several of the protestors.⁵⁰

40. Second applicant. On September 15, 1993, the applicant took part in a protest against the building of an extension to a motorway in London. A group of twenty to twenty-five protesters broke into the construction site, without any incidents of violence or damage to the construction. The applicant was arrested for conduct "likely to provoke a disturbance of the peace."⁵¹

41. Third, fourth, and fifth applicants. On January 20, 1994 the applicants went to a conference center in London, where the "Fighter Helicopter II" Conference was being held, in order to protest against the sale of fighter helicopters. They handed out leaflets and held up banners saying: "Work for Peace and not War."⁵²

⁴⁵ *Ibid.*, para. 30.

⁴⁶ *Ibid.*, para. 31.

⁴⁷ *Ibid.*, para. 32.

⁴⁸ *Ibid.*, para. 33.

⁴⁹ ECHR, *Case of Steel and others v. United Kingdom*, Judgment of September 23, 1998, Reports 1998-VII.

⁵⁰ *Ibid.*, para. 7.

⁵¹ *Ibid.*, paras. 15 and 16.

⁵² *Ibid.*, para. 21.

42. The Government submitted that the applicants' arrests and initial detention complied with established common-law power of arrest in respect of actual or reasonably apprehended breaches of the peace.⁵³

43. The European Court examined, with regard to each one of the applicants, whether the restrictions placed on their freedom of expression were "prescribed by law," pursued a legitimate objective (among those established by subsection 2 of Article 10) and were "necessary in a democratic society."

44. As to whether the restrictions were prescribed by law, the European Court held that, in the case of the first and second applicants, they were prescribed by law, but that in the case of the third, fourth and fifth applicants they were not, since the protests had been entirely peaceful, and did not risk a breach of the peace.⁵⁴

45. The European Court declared that each applicant's arrest and initial detention pursued the legitimate aims, pursuant to Article 10 of the Convention, of preventing disorder and protecting the rights of others.⁵⁵

46. Regarding the need for restrictions in a democratic society, the European Court expressed that, in the case of the first applicant, the risk of disorder arising from the persistent obstruction by the demonstrators justified the detention of the applicant and hence was not a disproportionate measure.⁵⁶ With respect to the second petitioner, the European Court found that she had acted in a way that could cause a breach of the peace, and that, taking into account the interest in maintaining public order and protecting the rights of others, her detention was not disproportionate.⁵⁷ As to the third, fourth, and fifth applicants, the European Court found that, given that the restrictions were not prescribed by law because the conduct of the applicants did not risk a breach of the peace, these restrictions were disproportionate to the aims of preventing disorder and protecting the rights of others and, therefore, were not necessary in a democratic society.⁵⁸

47. In sum, the European Court decided that the State had not violated the right to freedom of expression of the first two applicants and that it had in the case of the third, fourth, and fifth applicants.

⁵³ *Ibid.*, para. 51.

⁵⁴ *Ibid.*, paras. 64 and 94.

⁵⁵ *Ibid.*, para. 96.

⁵⁶ *Ibid.*, paras. 103 and 104.

⁵⁷ *Ibid.*, para. 109.

⁵⁸ *Ibid.*, para. 110.

d. ***Piermont v. France***⁵⁹

48. The petitioner, a German Citizen and a member of the European Parliament, was invited to French Polynesia during the election campaign preceding the territorial assembly and parliamentary elections of 1986. She was warned not to make any comments on French internal matters, under the threat of being expelled.⁶⁰

49. On March 1, 1986, the applicant joined about 900 other people in the traditional march organized by the independence and anti-nuclear movements. This demonstration took place without incident on the streets of Faaa. During the demonstration the applicant denounced the continuation of nuclear testing and the French presence in the Pacific.⁶¹ On the next day, March 2, 1986, the French High Commissioner issued an order expelling the applicant and prohibiting her from re-entering the territory.⁶²

50. After leaving Polynesia, the applicant traveled to New Caledonia. Some forty activists gathered to express their hostility to her presence in the territory. Given the risk of confrontation, the High Commissioner issued an order excluding her from the territory.⁶³

51. The Government argued that the interference pursued two aims recognized by subsection 2 of Article 10 of the Convention: the prevention of disorder and territorial integrity. Freedom of expression also entails duties, and the tense local political atmosphere (above all in New Caledonia) and the imminence of elections called for some caution on the applicant's part.⁶⁴

52. Restrictions in French Polynesia. The European Court found that the State violated the applicant's right to freedom of expression. In arriving at this decision, the Court noted that the applicant had expressed her opinion in the course of an authorized and peaceful demonstration. It even recognized that the applicant had not made any calls to violence or disorder, but that she had simply spoken in support of the anti-nuclear and independence demands made by several local parties. Her speech was therefore a contribution to a democratic debate in Polynesia. Finally, it held that the demonstration was not followed by any disorder and that the stances taken up by the applicant did not constitute a serious threat to public order. Thus, the European Court concluded that the restriction was disproportionate and therefore unnecessary in a democratic society.⁶⁵

⁵⁹ ECHR, *Case of Piermont v. Francia*, Judgment of April 27, 1995, Series A, No. 314.

⁶⁰ *Ibid.*, paras. 8 and 10.

⁶¹ *Ibid.*, para. 11.

⁶² *Ibid.*, para. 12.

⁶³ *Ibid.*, paras. 18, 19 and 20.

⁶⁴ *Ibid.*, paras. 70, 74 and 83.

⁶⁵ *Ibid.*, paras. 77 and 78.

53. Restrictions in New Caledonia. The European Court found that the State had violated the applicant's right to freedom of expression. The Court recognized that, despite the fact that the political atmosphere was tense and that the presence of the applicant led to hostilities, the measure taken had been disproportionate for the same reasons as in French Polynesia.⁶⁶ Therefore, it was unnecessary in a democratic society.

e. *Plattform "Ärzte für das Leben" v. Austria*⁶⁷

54. The demonstration at Stadl-Paura Church. The applicant, an association of doctors who are campaigning against abortion, requested authorization to hold a demonstration. As the organizers feared that incidents might occur, they sought to change the route of the demonstration. The police representatives pointed out to them, however, that the main body of the police officers had already been deployed along the route originally planned. They also noted that it would be impossible to prevent counter-demonstrators from disrupting the applicant's demonstration.⁶⁸

55. The counter-demonstrators interrupted the religious services that were being held by the applicant. The police intervened at the moment when physical violence nearly broke out, forming a cordon between the opposing groups.⁶⁹

56. The Salzburg demonstration. The police authority gave permission for a second demonstration against abortion to be held in the cathedral square in Salzburg. Some 350 people expressed their opposition. About 100 policemen formed a cordon protecting the applicant from a direct attack. In order to prevent the religious ceremony from being disrupted, the police cleared the square.⁷⁰

57. The applicant complained that the State had disregarded the true meaning of freedom of assembly by having failed to take practical steps to ensure that its demonstrations passed off without any trouble.⁷¹

58. In the Government's submission, Article 11 did not create any positive obligation to protect demonstrations. Freedom of peaceful assembly – provided for by Article 12 of the Austrian Basic Law of 1867 – was only designed to protect the individual from interference by the State. Article 11 did not apply to relations between individuals.⁷²

⁶⁶ *Ibid.*, para. 85.

⁶⁷ ECHR, *Case of Plattform "Ärzte für das Leben" v. Austria*, Judgment of June 21, 1988, Series A, No. 139.

⁶⁸ *Ibid.*, paras. 8-11.

⁶⁹ *Ibid.*, paras. 12 and 13.

⁷⁰ *Ibid.*, para. 19.

⁷¹ *Ibid.*, para. 28.

⁷² *Ibid.*, para. 29.

59. The opinion of the European Court was that a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.⁷³

61. The European Court further stated that, while it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area, the obligation they enter into under Article 11 of the Convention is an obligation as to means (measures to be taken) and not as to results to be achieved.⁷⁴

61. Finally, the European Court found that the Austrian authorities had taken reasonable and appropriate measures, and hence that the State had not violated the right to freedom of assembly.⁷⁵

E. Public demonstrations in the framework of the African Charter on Human and Peoples' Rights

1. Instrument of protection

62. The African Charter, adopted on June 18, 1981, provides for the right to the freedom of expression and the right to freedom of assembly, and establishes restrictions on both. Regarding freedom of expression, Article 9 of the African Convention provides that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.⁷⁶

63. With respect to freedom of assembly, Article 11 provides that:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted

⁷³ *Ibid.*, para. 32.

⁷⁴ *Ibid.*, para. 34.

⁷⁵ *Ibid.*, para. 39.

⁷⁶ African Charter of Human and Peoples' Rights, Article 9, available at <http://www.achpr.org>.

in the interest of national security, the safety, health, ethics and rights and freedoms of others.⁷⁷

2. Jurisprudence

64. The African Commission has referred to public demonstrations in three cases. It has noted that there is a close relationship among the rights provided for in Articles 9 (right to freedom of expression), 10 (right of association) and 11 (right to assembly) and that the right to freedom of expression is implicitly violated when the rights to association and to assembly are breached.

a. *Mr. Dawda K. Jawara v. Gambia*⁷⁸

65. The complainant, a former Head of State of the Gambia, alleged that after the military coup that overthrew his government, political parties were banned and the Ministers were forbidden to take part in any political activity. He alleged that freedom of expression, movement, and religion were restricted. These restrictions were manifested, according to the complainant, by the arrest and detention of people without charge, kidnappings, torture, and the burning of a mosque.⁷⁹

66. The complainant alleged that an independent Member of Parliament and his supporters were arrested for planning a peaceful demonstration. In addition, Ministers and Members of Parliament in the former regime have been banned from taking part in any political activity.⁸⁰

67. It was the opinion of the African Commission that the banning of political parties constituted a violation of the freedom of assembly provided for by Article 11 of the African Charter.

b. *Burkinabé Movement for Human and People's Rights v. Burkina Faso*⁸¹

68. The complainant, chairman of the Burkinabé Movement for Human and Peoples' Rights, alleged the commission of grave human rights violations in Burkina Faso from the early days of the revolutionary government to the date of the petition.⁸²

⁷⁷ *Ibid.*, para. 11.

⁷⁸ African Commission on Human and Peoples' Rights (ACHPR), *Case of Mr. Dawda K. Jawara v. Gambia*, Decision of May 11, 2000, available at <http://www.achpr.org>, Annual Report No. 13, AGH/222 (XXXVI), Communications No. 147/95 and 149/96.

⁷⁹ *Ibid.*, paras. 1 and 3.

⁸⁰ *Ibid.*, para. 66.

⁸¹ ACHPR, *Case of Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Decision reached at the 29th Session, in Libya, available at <http://www.achpr.org>, Annual Report No. 14, AHG/229 (XXXVII), Communication No. 204/97.

⁸² *Ibid.*, para. 1.

69. The complainant alleged, *inter alia*, several human rights violations as well as threats made against his organization and person during successive students' strikes in February, March, and April 1997.⁸³

70. The complainant alleged the deaths of citizens (who were shot or tortured to death) as well as the deaths of two students who had gone onto the streets with their colleagues to express certain demands and to support those of the secondary school teachers and professors of higher education.⁸⁴

71. The African Commission deplored the abusive use of means of State violence against demonstrators even when the demonstrations are not authorized by the competent administrative authorities. The Commission held that the public authorities possess adequate means to disperse crowds, and that those responsible for public order must make an effort in these types of operations to cause only the barest minimum of damage and violation of physical integrity and to respect and preserve human life.⁸⁵

72. However, the African Commission decided that the State had not violated the freedom of expression or the freedom of assembly since the complainant had not established said violations.⁸⁶

c. *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria*⁸⁷

73. The complainants argued that, after the murder of four Ogoni leaders on May 21, 1994, in a riot during a public meeting organized by the Movement for the Survival of the Ogoni Peoples (representing the rights of those who lived in oil producing areas of Ogoni land), the president of the Movement for the Survival of the Ogoni Peoples and hundreds of other persons were arrested and put on trial.⁸⁸

74. The complainants alleged that the accused persons were tried, convicted, and sentenced to death for the peaceful expression of their views and opinions on the violations of the rights of the Ogoni people.⁸⁹

75. The complainants alleged that Article 11 of the Charter (right of assembly) was violated because the murder trial was a direct consequence of the public meetings of

⁸³ *Ibid.*, para. 11.

⁸⁴ *Ibid.*, para. 43.

⁸⁵ *Ibid.*, para. 43.

⁸⁶ *Ibid.*, para. 45.

⁸⁷ ACHPR, *Case of International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria*, Decision of October 31, 1998, available at <http://www.achpr.org>, Annual Report No. 12, AHG/215 (XXXV), Communications Nos. 137/94, 139/94, 154/96 y 161/97.

⁸⁸ *Ibid.*, para. 2.

⁸⁹ *Ibid.*, para. 11.

the Movement for the Survival of the Ogoni Peoples. It appears that the Tribunal held the accused responsible for the murders because they organized the rally in which the murders took place.⁹⁰

76. The Government argued that its actions were necessary to protect the rights of the citizens who had been murdered.⁹¹

77. The African Commission stated that there is a close relationship between the rights provided for by Articles 9 (right to freedom of expression), 10 (right of association) and 11 (right of assembly). It acknowledged that the victims were disseminating information and opinions on the rights of the people who live on the oil-producing Ogoni lands, through the Movement for the Survival of the Ogoni Peoples and, specifically, a rally. The allegations of the complainants had not been contradicted by the State, which had already been shown to be prejudiced against the Movement for the Survival of the Ogoni Peoples, without giving concrete justifications. The Movement for the Survival of the Ogoni Peoples was founded specifically for the expression of views of the people who live in the oil producing areas, and the rally was organized with this purpose. The State had violated Article 9 implicitly when it violated Articles 10 and 11.⁹²

F. Public demonstrations in the framework of the inter-American human rights system

1. Instruments of protection

78. The right to freedom of expression and the right to freedom of assembly are provided for by several instruments of the inter-American human rights system: the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.

79. First, the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"), approved by the Ninth International Conference of American States held in 1948, refers to the right to freedom of expression in its Article IV, as follows:

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.⁹³

⁹⁰ *Ibid.*, para. 106.

⁹¹ *Ibid.*, para. 14.

⁹² *Ibid.*, para. 110.

⁹³ American Declaration of the Rights and Duties of Man, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/1.4.rev.11 (January 31, 2005), Article IV.

80. Regarding the right to assembly, Article XXI provides that:

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.⁹⁴

81. It is noteworthy that both the Inter-American Court and the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission") have held that, although it was adopted as a declaration and not as a treaty, the American Declaration constitutes a source of international obligations for the Member States of the OAS.⁹⁵

82. The American Convention, signed on November 22, 1969 and which entered into force on July 18, 1978, provides, in turn, for the right to freedom of expression and the right to freedom of assembly, while establishing limits on both rights. Regarding freedom of expression, Article 13 provides:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph 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.

3. 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.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.⁹⁶

⁹⁴ *Ibid.*, Article XXI.

⁹⁵ See I/A Court H.R., I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89, Series A., No. 10, July 14, 1989, para. 35-45; IACHR, Case of James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, para. 46-49; Case of Rafael Ferrer-Mazorra et al. v. United States, Report No. 51/01, Case 9903, April 4, 2001. Also see Article 20 of the Statute of the Inter-American Commission on Human Rights.

⁹⁶ American Convention on Human Rights, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/1.4.rev.11 (January 31, 2005), Article 13.

83. With respect to freedom of assembly, Article 15 provides that:

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.⁹⁷

84. Finally, the Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission during its 108th session in the year 2000, contains several principles that highlight the importance of the right to freedom of expression, guarantee it, and establish the requirements for its full exercise.

85. First, Principle 1 provides 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.⁹⁸

86. Second, Principle 2 establishes 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.⁹⁹

87. Finally, Principle 5 provides that:

Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.¹⁰⁰

88. Regarding the role of the Declaration of Principles, the Inter-American Commission has held that it “constitutes a basic document for interpreting Article 13 of the American Convention on Human Rights... [it] also incorporates international standards into the Inter-American system to strengthen protection of this right.”¹⁰¹

⁹⁷ *Ibid.*, Article 15.

⁹⁸ Declaration of Principles on Freedom of Expression, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/1.4.rev.11 (January 31, 2005), Principle 1.

⁹⁹ *Ibid.*, Principle 2.

¹⁰⁰ *Ibid.*, Principle 3.

¹⁰¹ IACHR, Chapter II, Annual Report 2000, Vol. III, “Report of the Rapporteurship on Freedom of Expression,” OEA/Ser. L/V/II/111, Doc. 20 rev., para. 3.

89. More recently, the Rapporteurship itself has noted that “since its adoption, the Declaration has emerged as a frame of reference for evaluating the possible violations of the freedom of expression in the Member States. Increasingly, the States, civil society organizations, and private persons invoke its principles to assess progress, regression, or possible violations of this right, and undertake possible actions to support this right.”¹⁰²

2. Standards for the interpretation of public demonstrations in light of Articles 13 and 15 of the American Convention

90. As mentioned above, since the Inter-American Court has not decided, in any individual case, whether limits imposed on public demonstrations respect standards for the protection of freedom of expression and freedom of assembly established by the inter-American system, the Rapporteurship proposes to provide some guidelines for a possible interpretation of restrictions on public demonstrations, with a view to Articles 13 and 15 of the American Convention.

91. The Rapporteurship emphasizes that societal participation through public demonstrations is important for the consolidation of democratic life of societies. In general, as an exercise of freedom of expression and freedom of assembly, it is of crucial social interest, which in turn leaves the State with very narrow margins to justify restrictions on this right.¹⁰³ In this respect, the purpose of the regulation of the right to assembly cannot be that of establishing grounds for prohibiting meetings or demonstrations.¹⁰⁴

¹⁰² IACHR, Chapter II, Annual Report 2004, Vol. III, “Report of the Rapporteurship on Freedom of Expression,” OEA/Ser. L/V/II. 122, Doc. 8 rev. 1, para. 2.

¹⁰³ In this respect, the Constitutional Court of Spain has held the following: “...should the public authority decide to forbid the demonstration, it should” a) explain its decision (STCE 36/1982) [Judgment of the Constitutional Court of Spain 36/1982]; ground it, i.e., give the reasons which have led it to the conclusion that the demonstration would give rise to a prohibited breach of the peace, and c) explain why the adoption of necessary preventive measures to avoid this danger and to allow the exercise of this fundamental right, is impossible. In any case, as we had also noted in STCE 66/1995, the competent authority, before prohibiting the exercise of this fundamental right, must, applying criteria of proportionality, propose changes in date, place or duration, so that the assembly can take place; the demonstration can only be forbidden if, under the circumstances of the case, the authority to make changes cannot be exercised. See *Tribunal Constitucional Español (TCE)*, 42/2000, *Sentencia del 14 de febrero de 2000*, FJ 2 [Constitutional Court of Spain (CCS), 42/2000, Judgment of February 14, 2000, FJ 2].

In this case the Seville Provincial Union of Labor Committees, in view of the conflictive situation of the workers of the Abengoa company, had called for a demonstration. The petitioner participated in said demonstration and was not warned or reprimanded by the public authorities. A few days afterwards he was punished for having belonged to the group that, in the course of the workers’ demonstration, interrupted automotive traffic for 45 minutes, not heeding the warnings of the police.

The petitioner argued that his punishment for actions that took place during his exercise of his right to demonstrate violated this fundamental right. The State argued that the interruption of traffic in which the petitioner participated could not be considered as part of the right of assembly. The Constitutional Court of Spain held that the mere interruption of traffic along part of the route taken by a demonstration cannot be considered as a conduct that breaches the limit specifically established by Article 21.1 of the Spanish Constitution (disturbing the peace) since, as noted, traffic interruptions can only be considered within said limits when persons or property are endangered as a consequence. Therefore, the Court decided that the punishment imposed on the petitioner had violated his right to assembly in that his actions were protected by the exercise of this fundamental right.

¹⁰⁴ Constitutional Court of Colombia, T-456-92, Judgment of July 14, 1992, available at <http://ramajudicial.gov.co>.

92. In the same sense, the Inter-American Commission has stated that “governments may not invoke one of the lawful restrictions of freedom of expression, such as the maintenance of ‘public order,’ as a means to deny a right guaranteed by the Convention or to impair it of its true content. If this occurs, the restriction, as applied, is not lawful.”¹⁰⁵ The right of assembly and demonstration cannot be considered as synonymous with public disorder for the purpose of restricting it *per se*.¹⁰⁶

93. The Rapporteurship understands that, within certain limits, States can regulate freedom of expression and freedom of assembly to protect the rights of others.¹⁰⁷ Nevertheless, in balancing, for example, freedom of movement and the right to assembly, it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.¹⁰⁸

94. Regulation of public demonstrations can be of several kinds. On the one hand, there is legislative regulation, i.e., those legislative acts that restrict the time, place, or manner in which a demonstration may be held, on the basis that the right to use the streets, parks, or squares is not unlimited. The Rapporteurship considers that for said limitations to respect the standards for the protection of freedom of expression and freedom of assembly, they must not depend on the content of what is to be expressed in the demonstration, they must serve a public interest, and they must leave open alternative channels of communication.¹⁰⁹

95. On the other hand, there is administrative regulation. The Rapporteurship notes that the requirement of prior notification of a demonstration does not diminish the right to freedom of expression or the right to freedom of assembly.¹¹⁰ In this connection,

¹⁰⁵ IACHR, Chapter V, Annual Report 1994, “Report on the Compatibility of ‘Desacato’ Laws with the American Convention on Human Rights,” OEA/Ser. L/V/II.88, Doc. 9 rev.

¹⁰⁶ Constitutional Court of Colombia, T-456-92, Judgment of July 14, 1992, available at <http://ramajudicial.gov.co>.

¹⁰⁷ Article 13, paragraph 2 and Article 15 allow restrictions on freedom of expression and freedom of assembly only if they are necessary to protect the rights of others, among other reasons.

¹⁰⁸ By virtue of this, although most public expressions on the part of the citizens entail inconvenience and costs for third parties, these must be tolerated in the name of freedom of expression. Roberto Gargarella, “*Expresión cívica y ‘cortes de ruta’*,” *El derecho a la protesta: el primer derecho* [“Civic Expression and ‘Blocking Traffic’,” in: *The Right to Protest: The First Right*] (Buenos Aires: Editorial Ad-Hoc, 2005).

¹⁰⁹ See United States Supreme Court (USSC), *Case of Ward v. Rock Against Racism* Decision of August 30, 1989, 492 U.S. 937, 110 S.Ct. 23, 106 L.Ed.2d 636, p. 791; USSC, *Case of Clark v. Community for Creative Non-Violence*, Decision of June 29, 1984 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221, p. 293; USSC, *Case of United States v. Grace*, Decision of April 20, 1983, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736, p. 177; USSC, *Case of City Council v. Taxpayers for Vincent*, Decision of May 15, 1984, 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772, p. 2128; USSC, *Perry Education Association. v. Perry Local Educators’ Association*, Decision of February 23, 1983, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794, 112 L.R.R.M. (BNA) 2766, 9 Ed. Law Rep. 23, p. 45; USSC, *Heffron v. International Society for Krishna Consciousness*, Decision of June 22, 1981, 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298, 7 Media L. Rep. 1489, *inter alia*, p. 648.

¹¹⁰ Constitutional Court of Colombia, T-456-92, Judgment of July 14, 1992, available at <http://ramajudicial.gov.co>. In this case, the petitioner had requested that the judge annul the Mayor of the Municipality of Honda’s denial of permission for a political and electoral march, which had been requested by the petitioner and other citizens for the 29th of February, continued...

the UN Human Rights Committee has declared that the requirement of notifying the police before a demonstration takes place is not incompatible with Article 21 of the ICCPR (right of assembly).¹¹¹ However, the requirement of prior notification should not become a demand that permission be granted beforehand by an officer with unlimited discretionary authority. In other words, an officer cannot deny a permit because he or she believes it to be likely that a demonstration will endanger peace, security, or public order, without taking into consideration whether the danger to peace, security or public order can be avoided by modifying the original circumstances of the demonstration (place, time, and so on).¹¹² Restrictions on the right of assembly must be intended exclusively to prevent serious and imminent dangers; the general possibility of future danger is insufficient.¹¹³

...continuation

1992, at 2:00 PM through various municipal streets. The petitioner requested that the Court order the granting of the permission. The Constitutional Court of Colombia held that: "It is important to note that the purpose of prior notification, in the light of the 1991 Constitution, cannot be that of providing grounds for forbidding an assembly or demonstration. Its purpose is to inform the authorities so that they may take the proper measures to facilitate the exercise of the right without significantly hindering the normal course of activities in the community."

¹¹¹Human Rights Committee, *Case of Kivenmaa v. Finland*, Decision of June 10, 1994, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990 (Jurisprudence), para. 9.2.

¹¹² See Supreme Court of Zambia, *Case of Christine Mulundika and 7 Others v. The People*, Judgment of February 7, 1996, 2 LCR 175. The petitioners argued that Article 5 of the Law of Public Order, requiring anybody wishing to hold a public meeting, procession or demonstration, to apply to the police for a permit. According to said article, the police had the authority to reject the application, or if they decided to allow the event, they could impose conditions. Among these conditions were: the persons who may or may not be permitted to address such assembly or public meeting, and the matters which may not be discussed at such assembly or public meeting. They also argued that Article 7, which established imprisonment of no more than six months, or a fine, or both, was unconstitutional. The petitioners had been convicted by a lower court for the crime of unlawful assembly.

The Supreme Court struck down Articles 5 and 7 of the Public Order Act for being unconstitutional as they infringed upon the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively. In its reasoning, the Court held that the challenged article left a wide margin of discretion to the officer to whom the request for the permit was made. The requirement of a prior permit constituted a true obstacle to the freedoms of expression and assembly, since the right to organize and participate in a public meeting is inherent to the right to express and receive ideas and information without interference and to communicate ideas and information without interference. The possibility that a permit to assemble and express views could be denied on arbitrary grounds, or no grounds at all, constitutes a denial of both the freedom of expression and of assembly.

The Court recognized that public demonstrations are usually regulated in comparative law. It noted that it is a common practice in many countries to require from the organizers of a demonstration a notification that they intend to have a demonstration, so that the authorities may have the possibility of giving instructions or imposing conditions necessary to preserve public order and the peace. However, it said, in the instant case, said requirement caused an interference with the freedoms of expression and assembly in much greater measure than a simple notification, since the authorities were given the power to grant or deny permission to assemble and speak.

In sum, the Court decided that interference with the freedom of expression and freedom of assembly was not necessary in a democratic society for several reasons: the uncontrolled nature of the discretionary power vested in the regulating authority; the fact that the regulating authority was not obliged, when imposing a ban, to take into account whether disorder or breach of the peace could be averted by attaching conditions upon the conduct of the march or meeting such as relating to time, duration and route; although the rights to freedom of expression and assembly are primary and the limitations thereon secondary, Article 5 reversed the order, in effect denying such rights unless the public meeting or march was unlikely to cause or lead to the breach of the peace or public disorder; and the criminalization of a meeting held without a permit irrespective of the likelihood of occurrence of any threat to the peace or public order.

¹¹³ IACHR, Chapter IV, Annual Report 2002, Vol. III, "Report of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 34.

96. In addition, there is interference on the part of the judiciary. The Rapporteurship understands that, in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly.¹¹⁴ In other words, it must be examined whether the application of criminal sanctions is justified under the standard, established by the Inter-American Court, that said restriction (criminalization) satisfies a pressing public interest necessary for the operation of a democratic society.¹¹⁵ It is also necessary to examine whether the imposition of criminal sanctions is, in fact, the least harmful means to restrict the freedom of expression, exercised through the right of assembly, in turn exercised through a demonstration on a thoroughfare or in a public space.

97. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from which the object of the claim arose.¹¹⁶ Engaging in intimidating actions against free speech by imprisoning those who make use of this means of expression has a dissuading effect on those sectors of society that express their points of view or criticisms of government actions as a way of influencing the decision-making processes and state policies that directly affect them.¹¹⁷

98. Finally, there are those restrictions imposed by officers in the exercise of police power. The Rapporteurship considers that the police may impose reasonable restrictions upon demonstrators to ensure that they are peaceful or to restrain those that are violent, as well as to disperse demonstrations that turn violent or obstructive.¹¹⁸ However, the action on the part of security forces should not discourage the right to assembly, but to the contrary, protect it; hence, the dispersing of a demonstration should be justified by the duty to protect the people. A security operation deployed in this context must use the means for dispersal that are the safest, swiftest, and least harmful to the demonstrators.¹¹⁹ In this connection, the African Commission has held that “the public authorities possess adequate means to disperse crowds, and that those responsible for

¹¹⁴ “The state selection of an act of protest as a criminal offense, when this selection is made contravening the principles of the criminal power of the State – e.g., because the act of protest is protected by the legitimate exercise of a right – constitutes an illegitimate criminalization...”, CELS, *El Estado frente a la protesta social – 1996-2002* [The State Facing Social Protest – 1996-2002] (Buenos Aires: Siglo XXI Editores Argentina, 2003) p. 48.

¹¹⁵ “In the opposite case, the criminal power of the State, far from constituting a means of last resort to ensure social peace, is used as a spurious mechanism for social control.” See *Ibid.*, p. 49.

¹¹⁶ “The existence of other alternatives to channel a claim can in no way provide grounds to declare an act of expression unlawful because, precisely, the choice regarding the time or manner in which something is expressed corresponds to the voluntary nature of this activity, especially when the appropriateness of the alternatives is at least *ex ante* questionable.” See *Ibid.*, p. 70.

¹¹⁷ IACHR, Chapter IV, Annual Report 2002, Vol. III, “Report of the Rapporteurship for Freedom of Expression,” OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 35.

¹¹⁸ See: United States Court of Appeals, *Washington Mobilization Committee v. Cullinane*, Decision of April 12, 1977, 566 F.2d 107, 184 U.S.App.D.C. 215, p. 119.

¹¹⁹ CELS, *El Estado frente a la protesta social – 1996-2002* [The State Facing Social Protest – 1996-2002] (Buenos Aires: Siglo XXI Editores Argentina, 2003) p. 175.

public order must make an effort in these types of operations to cause only the barest minimum of damage and violation of physical integrity, to respect and preserve human life.”¹²⁰

99. The Rapporteurship notes that officers cannot arrest demonstrators when they are acting peacefully and legally. It is only if otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence, that a police officer is empowered to take steps to prevent it; mere disorder is not enough.¹²¹

100. Moreover, as the European Court has stated, “a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.”¹²² Nevertheless, the States have a wide discretion in the choice of the means to be used in order to ensure that lawful demonstrations proceed peacefully.¹²³ In this respect, the duty to guarantee the right of assembly is an obligation as to means (measures to be taken) and not as to results to be achieved.¹²⁴

¹²⁰ ACHPR, *Case of Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Decision reached at the 29th Session, in Libya, available at <http://www.achpr.org>, Annual Report No. 14, AHG/229 (XXXVII), Communication No. 204/97, para. 43.

¹²¹ See *Divisional Court of England and Wales, Queen's Bench Division, Case of Redmond-Bate v. Director of Public Prosecutions*, Judgment of July 23, 1999, 163 JP 789, [1999] Crim LR 998, 7 BHRC 375. In this case, the appellant and two other persons were expressing their religious beliefs from the steps of a Cathedral. A passer-by complained of their presence to a police officer. The officer warned them not to stop people. When a crowd of about 100 hostile people had gathered, the officer feared that the appellant's and the other two's preaching was going to incite the spectators to violence and asked the women to stop preaching. When they refused, they were arrested, and the appellant was charged with obstructing a police officer in the execution of his duty, when she disregarded the officer's request to desist from conduct that he reasonably feared was going to bring about a breach of the peace.

The Court found that it had not been proven that the appellant and the other two persons were obstructing the thoroughfare or that they were acting unlawfully. The Court held that a police officer has no right to call upon a citizen to desist from lawful conduct. It is only if otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence, that a police officer is empowered to take steps to prevent it. For a provocation to cause a breach of the peace it must instigate to violence; disorder is not enough. To assume that the conduct of the appellant and the other two persons would cause violence to erupt was illogical (they were preaching about morality, God, and the Bible). Thus, the police officer was not justified in detaining the appellant for an alleged breach of the peace. For the aforementioned reasons, the Court decided that there had been a violation of the appellant's right to freedom of expression.

¹²² ECHR, *Case of Plattform "Ärzte für das Leben" v. Austria*, Judgment of June 21, 1988, Series A, No. 139, para. 32.

¹²³ *Ibid.*, para. 34. Also see: ECHR, *Case of Chorherr v. Austria*, Judgment of August 25, 1993, Series A, No. 266-B, para. 31.

¹²⁴ ECHR, *Case of Plattform "Ärzte für das Leben" v. Austria*, Judgment of June 21, 1988, Series A, No. 139, para. 34.

101. Regarding journalists and cameramen doing their job in a public demonstration, the Rapporteurship understands that they should not be bothered, detained, relocated, or made to suffer any other restriction of their rights due to their being engaged in the practice of their profession. Moreover, their work implements should not be confiscated. To the contrary, any action intended to obstruct their work should be prevented, as long as they do not place the rights of others at risk.¹²⁵

102. The Rapporteurship recommends that the Member States of the OAS develop effective mechanisms for the full exercise of the freedom of expression. Freedom of expression does not merely require that the State adopt a “hands-off” stance *vis-à-vis* the sphere of public communications, in other words, that it not impose censorship. Freedom of expression requires much more; it requires, for example, that the State become involved in keeping public spaces open and in guaranteeing a “right to access to public fora” for all.¹²⁶

¹²⁵ See CELS, *El Estado frente a la protesta social –1996-2002* [*The State and Social Protest – 1996-2002*] (Buenos Aires: Siglo XXI Editores Argentina, 2003) pp. 182-183.

¹²⁶ S. Holmes and C. Sunstein, *The Cost of Rights* (New York: Norton and Company, 1999), p. 111, cit. by Roberto Gargarella, “Cómo argumentar (y sobre todo cómo no hacerlo) frente a situaciones de conflicto social. La doctrina argentina frente a la protesta, in *El derecho a la protesta: el primer derecho* [“How to Argue (and Above All How Not To) in Situations of Social Conflict. Argentinian Legal Doctrine and Protest” in: *The Right to Protest: The First Right*] (Buenos Aires: Editorial Ad-Hoc, 2005).

CHAPTER VI

FREEDOM OF EXPRESSION AND THE ELECTORAL PROCESS: THE CASE OF OPINION POLLS AND EXIT POLLS¹

A. Introduction

1. Elections are one of the pivotal times for participation in government and democratic life. Suffrage is an essential mechanism in representative democracies through which the people not only elect their governors, but also accept or reject the policies and direction of government, and in general express their will.

2. Elections are tightly linked to freedom of expression and information as it is essential for citizens to have as much information as possible to make a decision in casting their votes. Accordingly, free circulation of facts, ideas, and opinions is crucial. Unquestionably, the most common way for citizens currently to inform themselves is through the media.

3. During elections, therefore, freedom of expression is particularly important. However, certain restrictions are often placed on this right during political campaigns and at the elections. Among the most common are restraints on campaign spending and duration, regulations on partisan propaganda, and bans on dissemination of opinion polls and exit polls.

4. The Inter-American Court of Human Rights (hereinafter, Inter-American Court) and the Inter-American Commission on Human Rights (hereinafter, IACHR) have found that freedom of expression is an indispensable requirement for the very existence of a democratic society. The Inter-American Court, furthermore, has held that, owing to the importance of this right, it is essential to protect and ensure its exercise in political debate during the electoral process.² In light of these principles, the Office of the Special Rapporteur for Freedom of Expression has decided to address the issue of restrictions on election polls and their impact on freedom of expression. The purpose of this activity is to analyze the main doctrinal and jurisprudential trends on a matter that is certainly more complex than it appears at first sight. Without pretending to be exhaustive, this report seeks to make a contribution to the issue which could be expanded and added to in the future through concrete studies on particular situations.

5. Given the lack of inter-American jurisprudence in this sphere of freedom of expression, the Office of the Special Rapporteur has chosen to explore its possible boundaries through a comparative study of the case law of local tribunals in Europe and the Americas, in compliance with the mandate of the Heads of State and Government

¹ This chapter was made possible through the assistance of Eleonora Rabinovich, who provided the research and prepared the first draft. Ms. Rabinovich recently graduated with a master's degree in Latin American and Caribbean Studies from New York University. She was an intern at the Office of the Special Rapporteur in 2005. The Office thanks her for her contributions.

² Inter-Am. Ct. H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C, No. 111.

conferred at the Third Summit of the Americas held in Quebec, Canada, in April 2001.³ During the Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression, and further held that the States “will support the work of the Inter-American System of Human Rights in the area of freedom of expression, through the Special Rapporteur for Freedom of Expression of the IACHR, will proceed to disseminate comparative case law studies, and will further endeavor to ensure that national laws on freedom of expression are consistent with international legal obligations.

B. Political rights, freedom of expression and democracy

1. The protection of electoral rights in international instruments

6. While elections are not enough to guarantee the existence of a democracy in the full sense of the term,⁴ without an open contest for power among social forces and political groups it is impossible to talk about a democratic regime. Hence all definitions of democracy, even minimal ones,⁵ consider the existence of free and regular elections to be a requirement *sine qua non* in order to be able to classify a regime as democratic. Thus, for example, for Italian political philosopher, Norberto Bobbio, democracy is “a set of procedural rules for arriving at collective decisions in a way which accommodates and facilitates the fullest possible participation of interested parties.”⁶ Therefore, the realization of democracy, in the first place, presupposes acts of will on the part of the citizenry; second, these acts of will must be carried out freely; and, finally, those decisions, which materialize from elections, require the participation of as many citizens as possible.⁷

7. In the inter-American system, the right to take part in government through elections enjoys ample protection. Article 20 of the American Declaration of the Rights and Duties of Man (hereinafter, the American Declaration), approved by the Ninth International Conference of American States in 1948, provides that “every person having legal capacity is entitled to participate in the government of his country, directly or through his

³ Plan of Action of the Third Summit of the Americas, April 20-22, 2001, Quebec City, Canada, p. 7, available at <http://www.summit-americas.org>.

⁴ The concept of democracy is perhaps one of the most hotly disputed in the political sciences. It is not the purpose of this study to join in the academic debate on the subject. However, it should be mentioned that many authors find purely formal definitions insufficient. Accordingly, free, competitive, and institutionalized elections, and the rules and procedures for forming and running a government (which together we will call “electoral democracy”) are essential components of democracy and comprise its most basic sphere. But democracy is not limited to this realm either in terms of its reach or range of action. See “Democracy in Latin America. Towards a Citizens’ Democracy”, published for the United Nations Development Programme (UNDP), 2004, available in Spanish at <http://www.undp.org.ni/files/democracia.pdf>

⁵ For example, Adam Pzeworski defines democracy as a system in which parties “lose elections” (In *Democracy and the Market* (Cambridge: Cambridge University Press 1991)). Joseph Schumpeter, for his part, defines a democracy as a *modus procedendi* from which specific individuals obtain power through a competition for the vote of the people. (In *Capitalism, Socialism and Democracy*, (New York: Harper and Brothers, 1942)).

⁶ See Bobbio, Norberto, *El futuro de la democracia* (Plaza & Janes 1985), p. 12.

⁷ See Supreme Court of Justice of Paraguay, Constitutional Chamber, Decision No. 99 of May 5, 1998. para. 4.

representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.”⁸

8. For its part, Article 23 of the American Convention on Human Rights (hereinafter, American Convention), adopted at San José, Costa Rica on November 22, 1969, and in force since July 18, 1978, provides that every citizen shall enjoy the right “to take part in the conduct of public affairs, directly or through freely chosen representatives” and “to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters”⁹

9. The same occurs in the framework of the universal system for protection of human rights. Thus, the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948, provides at Article 21 that “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives” It also states that “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”¹⁰

10. In the same fashion, Article 25 of the International Covenant on Civil and Political Rights,¹¹ which was opened for signature, ratification, and accession on December 16, 1966, and entered into force on March 23, 1976, provides that all citizens shall have the right and opportunity “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives” and “[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

2. The importance of freedom of expression in the electoral process

11. As mentioned, freedom of expression is particularly important in electoral processes since, in order to be able to make free and rational decisions, it is necessary for citizens to have as much information as possible on the candidates, their proposals, and the political context as a whole.

12. That is what the Inter-American Court found when it ruled that freedom of thought and expression is an essential tool for the formation of voters’ opinions. It is also a

⁸ American Declaration of the Rights and Duties of Man, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/II.4 rev.9 (2003).

⁹ American Convention on Human Rights, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/II.4 rev.9 (2003).

¹⁰ Universal Declaration of Human Rights, Article 21, available at <http://www.un.org/Overview/rights.html>.

¹¹ International Covenant on Civil and Political Rights, AG Res. 2200 (XXI), 21 ONU GAOR /Sup. No.16), ONU Doc. A/6316 (1966), 999 U.N.T.S. 171.

genuine means for analyzing the political platforms of the various candidates, and permits greater disclosure and oversight of the future authorities and their administration.¹²

13. The Inter-American Court notes that “the formation of the collective will through the exercise of individual suffrage is nurtured by the different options proposed by political parties through the candidates that represent them. Democratic debate requires the free circulation of the ideas of and information on those candidates and their political parties by the media, candidates themselves, and anyone who wishes to express their opinion or provide information. It is essential for everyone to be able to question and enquire about the capacity and suitability of candidates, as well as to disagree with and oppose their proposals, ideas and opinions, so that voters can form an opinion in order to vote.” It is because of this crucial role that freedom of expression plays at the time of elections that the Inter-American Court considers it indispensable to protect and ensure this right in the political discussions that precede the government elections.¹³

14. In the same way, the European Court of Human Rights (hereinafter, the European Court) has determined that the two rights are interrelated and that freedom of expression is one of the “conditions” necessary to “ensure the free expression of the opinion of the people in the choice of the legislature.” Therefore, it is particularly important for opinions and information of every kind to be allowed to circulate freely in the period leading to elections.¹⁴

15. Certainly, for the Inter-American Court, the exercise of political rights and freedom of thought and expression are intimately linked and mutually strengthening. By the same token, the European Court held that free elections and freedom of expression, in particular political debate, together form the foundations of any democratic system.¹⁵

C. Electoral polls and exit polls

1. Concept and history

16. The Office of the Special Rapporteur has reiterated that the media strengthen democracy through the exercise of freedom of expression.¹⁶ During elections there are different ways in which the media can encourage the public participation that is essential in democratic development: by providing information on government performance,

¹² Inter-Am. Ct. H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C, No. 111, para. 88.

¹³ *Ibid.*, para. 90.

¹⁴ Eur. Ct. H.R., *Case of Mathieu-Mohin and Clerfayt v. Belgium*, Judgment of March 2, 1987, Series A, No. 113, para. 54.

¹⁵ *Ibid.*, par. 47; and Eur. Ct. H.R., *Case of Lingens v. Austria*, Judgment of July 8, 1986, Series A, No. 103, paras. 41-42.

¹⁶ See, for example, IACHR, 2001 Annual Report, Vol. II “Report of the Office of the Special Rapporteur for Freedom of Expression”, Introduction, OEA/Ser. L/V/II. 114, Doc. 5 rev. 1.

providing guidance to voters on how to exercise their rights, reporting on campaign progress, offering a platform for political parties to spread their message among the electorate, and enabling candidates to debate with one another.¹⁷

17. Electoral surveys and their publication are one of the rites of modern political campaigns. Opinion polls are regularly broadcast by the media, used by politicians in preparing decisions and refining campaign strategies, and followed with interest by public opinion.

18. Conceptually speaking, a poll is a social research technique to determine the opinions and attitudes of a collective by means of a questionnaire that is applied to a small, representative group of its members known as a "sample".¹⁸ Opinion polls are normally used to determine the people's position on a particular issue, reveal voting intentions, and forecast the outcome of the ballot. Exit polls are surveys carried out on the day of the elections to determine how people have voted; they can also suggest what the final result of the elections could be.

19. The first-ever opinion poll on record was conducted by a newspaper called *The Harrisburg Pennsylvanian* in 1824 to verify the preferences of the citizens of Wilmiltown, USA. The example was followed in 1880 by a group of newspapers composed of the *Boston Globe*, *New York Herald Tribune*, *St. Louis Republic*, and *Los Angeles Times*.¹⁹ However, the key date is 1936, when the polls of George Gallup and Elmor Roper accurately predicted the outcome of the Roosevelt-Landon election in the United States.²⁰ Thereafter, in particular from the 1960's onward, polls began to be widely used for electoral purposes by political parties and the media. In Latin America, on the other hand, polls appeared later, and only burgeoned in the transitions from authoritarian government to democracy in the early 1980's. The long line of political instability and military regimes that were a common feature in the region prevented an activity that requires full freedom to interview the public and disseminate the results.²¹

2. Possibilities, risks, and limitations of polls

20. Opinion polls perform important functions in modern society. First, they provide information about the opinions of men and women in a given area; they are also decision making tools for politicians and public officials, as well as for citizens. However,

¹⁷ See "Media and Elections", in Ace Project. Available at <http://www.aceproject.org/main/english/me/me.htm>.

¹⁸ See Durán Barba, Jaime, "Encuestas electorales" in *Diccionario Electoral*, Center for Electoral Advice and Promotion (CAPEL) of the Inter-American Institute of Human Rights, available at <http://www.iidh.ed.cr/capel/>.

¹⁹ *Ibid.*

²⁰ See Kavanagh, Dennis, "Las encuestas de opinión pública", in *Estudios Públicos* 53 (verano 1994) and Abreu Sojo, Ivan, "El valor de las encuestas de opinión pública", in *Revista Latina de Comunicación Social*, No. 15, March 1999, La Laguna (Tenerife), available at <http://www.ull.es/publicaciones/latina/a1999c/124ivan.htm>

²¹ See Huneus, Carlos, "Las encuestas de opinión pública a en las nuevas democracias de Latin America", In *Contribuciones* No. 62, April-June 1999, Buenos Aires: CIEDLA.

polls can also strengthen oversight of the state by subjecting politicians and government measures to the scrutiny of public opinion.²² During elections, moreover, exit polls also serve the public, who, by obtaining information from other sources, can monitor the authorities and demand an explanation from them and from polling firms in the event of discrepancies in results.²³

21. Polls and forecasts are the focus of attention in political campaigns. However, there have been numerous historic blunders. To mention a few, in 1948, all the polling firms predicted the defeat of Harry Truman in the United States; in 1990, most polls predicted the triumph of the *Sandinistas* over Violeta Chamorro in Nicaragua; in 1970, the polling firms got it wrong when they forecast a Labour victory over the Conservatives in Great Britain.²⁴ Does this mean that opinion polls are worthless? In reality, according to most experts, historically, polls have been correct more often than not.²⁵ Furthermore, different factors that have to do with contemporary political culture –in particular, the disintegration of collective ties and party loyalty – have meant that an increasingly large proportion of voters make up their minds at the last moment, which makes electoral forecasting difficult.²⁶ That said, polls help to understand the reality, determine trends, and analyze events in an electoral process.

22. Polls are also criticized because it is said that they can unduly influence voters, who ought to vote as their conscience dictates. Usually two effects are mentioned: i) polls tend to favor the candidate who is the frontrunner (also known as the “bandwagon effect”) because constituents prefer to vote for the person who looks most likely to win and because they encourage the “tactical” vote, resulting in a so-called “self-fulfilling prophecy”; ii) publication tends to harm the candidate who is ahead in the polls (“underdog effect”) because some electors prefer to support the losing candidate. Another effect mentioned is that it reduces voter turnout because when, according to the polls, the outcome of an election appears clear, people lose motivation and do not go and vote.²⁷

23. The fact is there are no unanimous opinions or conclusive findings on the impact that polls – and, in general, the media – have on audiences.²⁸ There are, on the other hand, an array of theories. The more mechanical visions take the view that candidates can sway voters simply by injecting the right message. The so-called

²² *Ibid.*

²³ See Judgment of the Constitutional Court of Peru, April 4, 2001. EXP. N.º 02-2001-AI/TC

²⁴ Abreu Sojo, *Op. Cit.*

²⁵ Abreu Sojo, *Op. Cit.* See also Colomé, Gabriel, “*Sondeos de opinión, ¿el fracaso del oráculo?*”, in *Chasqui, Revista Latinoamericana de Comunicación*, 71, 2000.

²⁶ Huneeus, *Op. Cit.*

²⁷ See Abreu Sojo, *Op. Cit.* See also Emery Claude, “Public Opinion Polling in Canada”, Parliamentary Information and Research Service, January 1994, available at <http://www.parl.gc.ca/information/library/PRBpubs/bp371-e.htm> y Sudman, Seymour, “Do exit polls influence voting behaviour?”, in *Public Opinion Quarterly* 50, 1986.

²⁸ Kavanagh, *Op. Cit.*

“hypodermic needle” model has been widely criticized and rejected: nowadays, virtually all theoreticians believe that the media are not monolithic forces that impose themselves on a passive, inert, and isolated audience but, rather, that audiences take in the message and recreate and produce meanings according to a particular context and sociocultural dynamic. In contrast to the hypodermic model, for example, the so-called “resonance model” posits that campaign messages operate in consonance with the extant predispositions and sentiments of voters, the most important being partisan identification.²⁹ Certainly, the very idea that the voter decides how he or she will vote *without* influences is unrealistic.³⁰ And there are many different factors that determine how and why people vote, from partisan identification to structural variables (such as the state of the economy), or the impact of political campaigns and opinion polls.

24. Other critics mention the danger that surveys can be manipulated or distorted. Quite apart from the margin of error to which all polls are naturally subject, opinion polls can be manipulated in different ways, such as through selection of questions, sample, and timing.³¹ To reduce this danger many countries adopt laws requiring the media, whenever they publish opinion polls, to provide certain information on the firm that conducted them and how they were carried out.³² In this context, as with everything that relates to the publication of information, it is crucial for the media to behave ethically and responsibly. Professional coverage of opinion polls entails asking a set of key questions about them, *inter alia*: Who conducted the survey? When was it carried out? What was the sample size? What is the margin of error? How do the results compare to those of other polls? That coverage also entails making the answers known to the public.³³ There are also ethical standards that apply to pollsters, such as those proposed by the World Association for Public Opinion Research (WAPOR), an organization whose members include the main institutes and firms that carry out public opinion studies. Those standards identify a series of data that pollsters must provide when reporting the findings of any survey they carry out, and serve to put their research into perspective.³⁴

25. Finally, another of the objections made with regard to polls is that the obsession with polls and the media attention they receive has turned political campaigns

²⁹ See Iyengar, Shanto and Adams, F. Simon, “New perspectives and evidence on political communication and campaign effects”, in *Annual Review of Psychology*, 51, 2000.

³⁰ Durán Barba, *Op. Cit.*

³¹ See “Media and Elections”, in Ace Project, available at <http://www.aceproject.org/main/english/me/me.htm>.

³² For example, Canada (see <http://www.elections.ca/content.asp?section=loi&document=ec90506&dir=ref&lang=e&textonly=false>) and France (see <http://www.senat.fr/dossierleg/pjl01-184.html>). In many countries, this requirement originates from the self-imposed rules governing the media and not from legal obligations (See Spangenberg, Frits, “Information to be published with public opinion polls results”, in *The freedom to publish opinion polls results. Report on a worldwide update*, Foundation for Information, 2000, available at <http://www.unl.edu/WAPOR/Opinion%20polls%202003%20final%20version.pdf>).

³³ See “Questions to Ask About Opinion Polling”, at Ace Project <http://www.aceproject.org/main/english/me/med06a01.htm>.

³⁴ See <http://www.unl.edu/WAPOR/ethics.html>.

into a “horse race”, where the focus is on seeing who wins or loses, and not on the discussion of the candidates’ plans and programs.³⁵ These criticisms are usually inscribed within a broader trend of mistrust of the relationship between the media and political processes. Indeed, one group of authors believes that the media have distorted the political process and turned politics into “video-politics,”³⁶ that is, a spectacle based on a war of images and an over-simplification of debate. However, the Office of the Special Rapporteur shares the view held by many other scholars who, while acknowledging the “mediatization” of politics, believe that this complex phenomenon is not due solely to the power of the media, but must be examined in the context of the political culture and the strength of the institutions and political parties in each country.³⁷

26. Certainly, the fear that polls can alter electoral processes has prompted different legal responses throughout the world. Most countries place a temporary ban on the publication of opinion polls. The length of this ban varies from country to country: some, such as Bulgaria, the Czech Republic, Italy, and Montenegro, have restrictions of a week or more; others, such as Argentina, Colombia, or Poland, have 24-hour bans. Finally, the Office of the Special Rapporteur wishes to draw attention to the fact that many countries, such as the United States, Germany, Australia, Austria, Belgium, Brazil, Denmark, Finland, Ireland, India, Japan, New Zealand, Norway, South Africa, Sweden, Thailand, or the United Kingdom, impose no legal restrictions.³⁸

27. Different restrictions are also applied to the publication of exit polls, and some countries prohibit disclosure of these results until the ballot boxes have closed or until a certain period of time after they close has passed. Again, the length of the ban varies according to the particular country.³⁹ In this case, the most common justifications put forward have to do with the need to ensure peaceful voting, to avert possible tensions caused by contradictory information, to prevent voters from being misled by results that could later change, or to stop unofficial results from influencing voters who have not yet cast their ballot, in particular in countries with different time zones.⁴⁰

28. One of the most difficult issues to decide – in particular in the case of pre-electoral polls – is the length of bans. How many days’ blackout is reasonable? In the first

³⁵ Colomé, *Op. Cit.*

³⁶ See Muraro, Heriberto, *Políticos, periodistas y ciudadanos. De la videopolítica al periodismo de investigación* (Buenos Aires: Fondo de Cultura Económica 1997).

³⁷ For an interesting review of these positions, see Mazzoleni, Gianpetro and Winfried Schulz. “Mediatization of politics: a challenge for democracy?” in *Political Communication*, 16, 1999.

³⁸ Data drawn from *Comparative study of laws and regulations restricting the publication of electoral opinion polls* (London: Article, 19 January 2003), p. 7, and Spangenberg, Frits, “The freedom to publish opinion polls results. Report on a worldwide update”. Foundation for Information, 2000, available at <http://www.unl.edu/WAPOR/Opinion%20polls%202003%20final%20version.pdf>.

³⁹ *Ibid.*

⁴⁰ See Lange, Yasha, *Media and Elections. Handbook* (Council of Europe Publishing, June 1999); “Exit polls and the First Amendment”, in *Harvard Law Review*, 98, June 1985.

place, as we shall see further on, lengthy bans – of a month or a week, for example – have been considered to infringe freedom of expression. However, if one considers that polls exert an undue influence on the electorate and, therefore, their publication should be restricted, how long should information from polls be kept from the public so that they can reach an independent opinion? In this case, one or two days could be insufficient. As mentioned in the *Media and Elections Handbook* published by the Council of Europe, if the elections are on a Sunday, the voters can still remember the polls that were published on the Friday.⁴¹ It would seem, therefore, that there is a difficult paradox to solve.

29. On this point, the Office of the Special Rapporteur considers that this question should be analyzed in the framework of the fundamental roles that freedom of expression plays in the strengthening and consolidation of democratic systems. In this sense, the crucial questions to ask are: To what extent is it possible deliberately to withhold information that voters can use to decide how to vote? Is it fair that politicians and pollsters should be privy to information that the members of the public are not? Apparently underlying this question is the assumption that voters are not mature or intelligent enough to understand and make a judgment on certain matters, a paternalistic concept that does not coincide with the idea of democracy. On the contrary, democracy conceives the individual as “a human being who has the capacity to choose between different options, taking responsibility for the consequences of his/her choices, namely, as a responsible, reasonable, autonomous person.”⁴²

D. Polls and freedom of expression in the European and inter-American frameworks

1. The European experience

a. Normative framework and jurisprudence

30. Freedom of expression is enshrined in Article 10 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter, the European Convention), which provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health

⁴¹ Lange, *Op. Cit.*

⁴² "Democracy in Latin America. Towards a Citizens' Democracy," published for the United Nations Development Programme (UNDP), 2004, p. 57, available at <http://www.undp.org.ni/files/democracia.pdf>.

or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁴³

31. Unlike the American Convention, the European Convention does not expressly prohibit prior censorship.⁴⁴

32. The European Court has not yet dealt with an individual petition that challenges the prohibition of the dissemination of election polls. Nevertheless, in several cases the European Court has analyzed the issue of freedom of expression in relation to electoral processes and established several guidelines for evaluating this question.

33. In first place, as mentioned, the European Court has held that free elections and freedom of expression together form the bedrock of any democratic system.⁴⁵ The European Court has determined that freedom of expression is one of the "conditions" necessary to "ensure the free expression of the opinion of the people." For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.⁴⁶

34. However, the European Court has recognized that in certain circumstances the two rights may come into conflict and it may be considered necessary to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the free expression of the opinion of the people.⁴⁷ The Court has found that, in striking the balance between these two rights, the Contracting States have a margin of appreciation.⁴⁸

35. However, in its decisions the European Court has determined that restrictions on freedom of expression are justified provided that they are "prescribed by law", designed to protect one of the interests set forth in section 2, and "necessary in a democratic society". With respect to the need for restrictions to be "necessary", the European Court

⁴³ European Convention on Human Rights and Fundamental Freedoms, November 4, 1950 (ETS No. 5), 213 U.N.T.S. 222, Article 10.

⁴⁴ In contrast to the American Convention, which expressly prohibits prior censorship at Article 13 (2). In this connection, the Inter-American Court has held that "[a] comparison of Article 13 with the relevant provisions of the European Convention (Article 10) and the Covenant (Article 19) indicates clearly that the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas". See Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights) OC-5/85, Series A, No. 5, of November 13, 1985, par. 50.

⁴⁵ Eur. Ct. H.R., *Case of Mathieu-Mohin and Clerfayt v. Belgium*. Judgment of March 2, 1987, Series A, No. 113, p. 22, par. 47, and *Case of Lingens v. Austria*. Judgment of 8 July 1986, Series A, No. 103, pars. 41-42.

⁴⁶ Eur. Ct. H.R., *Case of Mathieu-Mohin and Clerfayt v. Belgium*. Judgment of March 2, 1987, Series A, No. 113, para. 54.

⁴⁷ Eur. Ct. H.R., *Case of Bowman v. The United Kingdom*, Judgment of February 19, 1998, par. 43.

⁴⁸ *Ibid.*

has noted that, whilst the adjective "necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable" and that it implies the existence of a "pressing social need".⁴⁹ For restrictions to meet a pressing social need they must be proportionate to the legitimate aim pursued.⁵⁰

36. The specific issue of prohibition of the distribution of electoral surveys was judicially debated in France. In 2001, the French Court of Cassation ruled as invalid an electoral law that forbade the publication of opinion polls in the last seven days before national elections, and the distribution of exit polls until the close of voting.⁵¹ The case had been brought in 1997, when – between the first and second round of the parliamentary elections – *Le Parisien* newspaper published polls while the ban was in effect or told its readers where to find them on the Internet, in clear breach of Article 11 of Law 77-808 of July 19, 1977. The director of the newspaper was sued by the *Commission des Sondages* – the regulatory body charged with enforcing electoral laws – and the case went all the way to highest French court.

37. The French Court of Cassation found that the 1977 law violated Articles 10 (freedom of expression) and 14 (prohibition of discrimination)⁵² of the European Convention.⁵³ According to the Court, the ban on the publication of opinion polls in the last week before an election was incompatible with the provisions at Articles 10 and 14 of the European Convention, since the law failed to protect voters' right to free choice – as had been initially asserted and in keeping with the intention of the legislators – and did not meet any pressing social need, as stipulated by the interpretation of the European Convention.

38. The Court further found the blackout to be discriminatory inasmuch as modern communications media, such as the Internet, enabled certain press agencies outside the national territory to broadcast opinion poll results in the last week prior to the election, while domestic agencies were prohibited to do so.

39. Following the decision of the Court of Cassation, the French Senate initiated its own investigation of the law and concluded that the week-long ban was contrary to freedom of information because it enabled the media to base their reporting on the polls,

⁴⁹ See Eur. Ct. H.R., *Case of The Sunday Times v. United Kingdom*, Judgment of April 26, 1979, Series A, No. 30, para. 59.

⁵⁰ See *Ibid*, par. 62. See also Eur. Ct. H.R., *Case of Barthold v. Germany*, Judgment of March 25, 1985, Series A, No. 90, par. 59.

⁵¹ Court of Cassation, Criminal Chamber, September 4, 2001, Amaury, No. 00-85.329.

⁵² Article 14 of the European Convention provides that, "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

⁵³ European Convention on Human Rights and Fundamental Freedoms, November 4, 1950 (ETS No. 5), 213 U.N.T.S. 222. .

but withheld the source of their information (i.e. the polls) from the public.⁵⁴ The Senate also concluded that modern communication technologies made the information blackout less effective, since the information could be published in other countries and accessed via cable or the Internet.⁵⁵ Accordingly, the new law passed in 2000 replaced the week-long prohibition with a ban of 24 hours.⁵⁶

b. The Council of Europe and election coverage

40. The Council of Europe has been making significant strides in efforts to regulate certain aspects related to freedom of expression and the European Convention. In 1999, the Council adopted a number of recommendations on media coverage in which it sets out certain guidelines that are worth examination.⁵⁷

41. In the document, the Council of Europe reaffirms the importance of the editorial independence of the media in election periods. However, it notes that particular attention should be paid to certain specific features – including dissemination of opinion polls.

42. In that connection, the Council recommends that all regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. In particular, the Council holds, such information could: a) name the political party or other organization or person which commissioned and paid for the poll; b) identify the organization conducting the poll and the methodology employed; c) indicate the sample and margin of error of the poll, and, d) indicate the date and/or period when the poll was conducted. According to the Council, and in keeping with the principle of editorial independence, all other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.⁵⁸

43. The Council finds that any restriction forbidding the publication or broadcasting of opinion polls on voting day should be compatible with the right to freedom of expression enshrined in the European Convention. With respect to exit polls, the European Council says that Member States may consider prohibiting reporting of such polls until all polling stations in the country have closed.⁵⁹

⁵⁴ See *"Comparative study of laws and regulations restricting the publication of electoral opinion polls"* (London: Article 19, January 2003), p. 7.

⁵⁵ *Ibid.*

⁵⁶ See <http://www.senat.fr/dossierleg/pjl01-184.html> (in French)

⁵⁷ Council of Europe, Committee of Ministers, Recommendation No. R (99) 15 on *Measures Concerning Media Coverage of Election Campaigns*, adopted by the Committee of Ministers on September 9, 1999 at the 678th meeting of the Ministers' Deputies.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

44. The Council of Europe underscores the important role of self-regulatory measures by media professionals themselves – for example, in the form of codes of conduct – to ensure responsible, accurate, and fair coverage of electoral campaigns.⁶⁰ A clear example of what it proposes can be found at the BBC (British Broadcasting Corporation), one of the most prestigious media organizations, which has clear internal guidelines on reporting the findings of opinion polls and the publication of exit polls.⁶¹ *Inter alia*, the BBC's guidelines include:

- Do not lead a news bulletin or programme simply with the results of a voting intention poll;
- Report the findings of voting intention polls in the context of trend;
- Do not rely on the interpretation given to a poll's results by the organisation or publication which commissioned it;
- Always report the expected margin of error; the organisation which commissioned the poll; the organisation which carried it out; the methodology employed, and the dates of the fieldwork;
- No opinion poll may be published on the day of the election until the polls close, or in the case of a European election, all the polls have closed across the European Union.⁶²

45. Such self-regulatory guidelines as the BBC has established are consistent with what the Office of the Special Rapporteur has held: there are many ways in which the media can raise the level of professionalism and ethical responsibility to the public without the need for the State to impose legal restrictions and penalties.⁶³ In its report titled, "Media Ethics", the Office of the Special Rapporteur concluded that, "[t]he government must refrain from placing restrictions on the media that are designed to promote ethical behavior. Given the freedom to choose how and what to report and the education necessary to make ethical decisions, the media will become more responsible."⁶⁴

46. In this connection, Principle 6 of the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission at its 108th Regular Session in 2000, provides that, "journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State." As regards the concern related to lack of professionalism, the Office of the Special Rapporteur has said: "[M]edia are primarily responsible to the public, and not to the government. [...] Having said that, the Office underscores that both journalists and media owners should be mindful of the need to maintain their credibility with the public, a key to their survival over time, and of the

⁶⁰ *Ibid.*

⁶¹ In the United Kingdom there are no restrictions on the publication of pre-electoral opinion polls. See "Comparative study of laws and regulations restricting the publication of electoral opinion polls" (London: Article 19, January 2003), p. 9.

⁶² See "BBC, Editorial Guidelines", available at:

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/politics/reportingopinio.shtml>

⁶³ See IACHR, Annual Report 2001, Vol. II "Report of the Office of the Special Rapporteur for Freedom of Expression", Chapter IV, "Media Ethics", OEA/Ser. L/V/II. 114, Doc. 5 rev. 1.

⁶⁴ *Ibid.*

important role of the press in a democratic society. So, the media should take up the challenge of self-regulation, which will impede any threat of imposing legal sanctions for journalistic decisions that are based essentially on subjective insights or professional judgment. Such sanctions are invalid because they have the effect of inhibiting the media and preventing the dissemination of information of legitimate interest to the public.”⁶⁵

2. The inter-American experience

47. As we have seen, for the Inter-American Court, freedom of expression plays an essential role in electoral processes, and it is indispensable to protect and ensure this right in political discussions that precede elections.⁶⁶

48. To date, however, neither the Inter-American Commission on Human Rights nor the Inter-American Court have decided cases that specifically concern restrictions on election polls and their impact on freedom of expression. For that reason, the Office of the Special Rapporteur includes in this section decisions of local tribunals that have examined this issue. In this way, moreover, the Office of the Special Rapporteur carries out the mandate conferred by the Heads of State and Government at the Third Summit of the Americas to carry out and disseminate comparative studies on jurisprudence.⁶⁷

a. Domestic jurisprudence of the countries

i. Colombia

49. In 1993, the Constitutional Court of Colombia examined a petition that alleged unconstitutionality of a prohibition against the dissemination of electoral surveys that was in force in the country. The challenged provision – Article 23(2) of Law 58 of 1985 – provided that “in the last 30 days before an election, no media organization shall disseminate any opinion polls that show the level of citizen support for the candidates or predict the outcome of the election.”⁶⁸

50. In its ruling, the Court found that the disputed provision constituted an act of censorship that infringed, on one hand, the right of citizens to receive information, and, on the other, the right of the media to exercise their right to report news in their possession. According to the tribunal, that ban also violated the right to freedom of expression because

⁶⁵ See IACHR, Annual Report 2003, Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression”, Introduction, OEA/Ser. L/V/II. 118, Doc. 70 rev. 2.

⁶⁶ Inter-Am. Ct. H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004, Series C, No. 111, pars. 88 and 90.

⁶⁷ Plan of Action of the Third Summit of the Americas, April 20-22, 2001, Quebec City, Canada, p. 7, available at <http://www.summit-americas.org>.

⁶⁸ Constitutional Court of Colombia, Judgment No. C-488/93, October 28, 1993.

it prevented expression of the opinion of those surveyed.⁶⁹ For the Court, the dissemination of surveys did not jeopardize public order, privacy, or the common good, and therefore the restriction lacked any valid justification.

51. In his defense of the disputed rule, the Minister of Communications of Colombia had argued that the State had to ensure that, in addition to being truthful and objective,⁷⁰ information was timely. The Court, on the other hand, considered that the 30-day restriction was unfair, inappropriate, and, indeed, untimely for the precise reason that it deprived the citizenry of access to information of public interest – that is, people’s opinions of their candidates and their proposals – at a time when they most needed it to reach a political decision. “The media, as holders of the right to provide information, and the public, as holders of the right to information, are entitled to know and disseminate the receptiveness of the public to the ideological programs and activities of candidates to government office, in particular at times when such information is most important, such as the run-up to an election. It should be recognized that in a modern democracy, one of the most suitable mechanisms for this purpose is precisely that of opinion polls”, the Court said.

52. The Colombian Court also mentioned one of the arguments usually put forward to justify restrictions of this type: the risk of manipulation. In this connection, the Court said that fundamental rights cannot be curtailed to avert a hypothetical wrong lest a greater wrong be committed; that is, “to deny the democratic nature of the rule of law.” As the Court found, “The acceptance of democracy entails the acceptance of this regime with all of its inherent risks.” In the case of Colombia, according to the Court’s ruling, the risk of manipulation in the dissemination of opinion polls was prevented by the provision contained in the part of Article 23 not disputed by the plaintiff, which provides that “any electoral opinion poll to be published or broadcast shall be done so in full and shall expressly name the individual or legal person who conducted it, the source of their information, the type and size of the sample, the concrete issue or issues to which it refers, the area and date or period of time in which it was carried out, and the estimated margin of error.” Given such provisions, said the Court, a ban is pointless.

53. However, the Court held that it was reasonable to impose restrictions a few days beforehand. In the decision, the Court left the door open for legislators to determine a “reasonable margin for reflection” so that voters may consider and decide how to vote

⁶⁹ The Constitution of Colombia expressly enshrines the right to freedom of expression at Article 20, which provides, “Everyone is guaranteed freedom to express and disseminate their thoughts and opinions, to provide and receive truthful and impartial information, and to found mass media organizations”.

⁷⁰ With respect to the concept of truthful information, it is timely to recall that as the Office of the Special Rapporteur has noted on numerous occasions, “it should not be assumed that there can be one indisputable truth.” Moreover, even assuming that it is possible to determine the truth about everything, “[p]rior imposition of a requirement to report only the truth expressly precludes the possibility of engaging in the debate necessary to reach it.” See IACHR, Annual Report 2001, Vol. II “Report of the Office of the Special Rapporteur for Freedom of Expression”, Chapter IV, “Media Ethics”, OEA/Ser. L/V/II. 114, Doc. 5 rev. 1. By the same token, Principle 7 of the Declaration of Principles on Freedom of Expression provides that “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression.”

"calmly and without outside pressure from the media." Indeed, it ratified that opinion in its 1994 evaluation of the constitutionality of Article 30 of the "Basic Law on Political Parties and Movements," which provides that "on the day of the elections, the media shall not divulge forecasts based on data received, nor disseminate the results of polls on how persons decided to vote or based on statements from voters as to how they voted or intended vote on the day of the elections." In its decision,⁷¹ the Court found the rule to be constitutional based on the following arguments:⁷² "It is clear that the divulgation of polls and predictions on voting behavior on the day of the elections may interfere with the normal and free evolution of the respective contest and give rise to errors or mistaken information that could mislead or discourage voters. On election day, when citizens secretly exercise their right of suffrage and determine the democratic direction of the country, any voice that is not the voice of the people shall remain silent."

54. Finally, the Court found that the ban under review was innocuous since the same opinion polls could be broadcast by foreign radio stations. In addition to being ineffective, the prohibition would appear to have been counterproductive, inasmuch as "it would seem to encourage the circulation of covert information, rumors and speculation, whose objectiveness is impossible for the State to control."

ii. Paraguay

55. In 1998, the Supreme Court of Justice of Paraguay⁷³ upheld the constitutionality of a law that banned publication of opinion polls in the final 15 days before the elections and dissemination of exit polls until an hour after the polls had closed.

56. The action was brought by *Teledifusora Paraguaya*, which challenged Articles 305 and 306 of the Electoral Code. The former article prohibits "the dissemination of the results of opinion polls over the 15 days immediately before the day of the elections" and provides that "publications shall contain the appropriate technical specifications."⁷⁴ The latter prohibits "dissemination of the exit poll results, until an hour after the polls have closed."⁷⁵

57. In its ruling, the Court held that there was an "indisputable public order motive" for the ban. The Court found that in no part did the code stipulate the methodology for opinion polls, and that, accordingly, those methods included the ones that

⁷¹ Constitutional Court of Colombia, Judgment C-089 of March 3, 1994.

⁷² Botero Marino Catalina, Juan Fernando Jaramillo and Rodrigo Uprimny Yepes, "*Libertad de información, democracia y control judicial: la jurisprudencia constitucional colombiana en perspectiva comparada*", in *Anuario de Derecho Constitucional Latinoamericano* (Konrad-Adenauer-Stiftung A.C.-CIEDLA 2000), pp. 437-510, available at <http://www.cajpe.org.pe/rij/bases/juris-nac/catalina.pdf>.

⁷³ Supreme Court of Justice of Paraguay, Constitutional Chamber, Decision No. 99, of May 5, 1998.

⁷⁴ Paraguayan Electoral Code, Article 305.

⁷⁵ Paraguayan Electoral Code, Article 306.

were “most reliable and easy to verify”, as well as those that could induce “false appearances or manipulation of opinions.” According to the Court, the limitation – intended to maintain the “purity” of voters’ opinions – was compatible with the Constitution. The Court held that while perhaps there could be room for discrepancy with the length of the period of 15 days established for the ban, this was a secondary feature that depended on the opinion of the legislature with regard to timing and reasonableness.

58. The vote of the dissenting judge,⁷⁶ who cited several arguments advanced by the Colombian Court in the above-described case,⁷⁷ argued that bans on pre-electoral opinion polls ran contrary to the right to freedom of expression⁷⁸ and information guaranteed in the Paraguayan Constitution.⁷⁹ “I find no reference to any cardinal principle IN OPPOSITION to the publication of opinion polls. Quite the contrary, what I find are principles IN FAVOR OF THEIR PUBLICATION”, said the vote of the dissenting judge.⁸⁰ According to this opinion, the fear of manipulation is not enough to infringe freedom of expression and information, which are also valuable interests for a democracy. Furthermore, the dissenting judge made an interesting observation: the disinformation effect that manipulated and fraudulent opinion polls may cause occurs “from the day they are published, at any time”, and, therefore, any prohibition would also be pointless.

59. With respect to exit polls, on the other hand, the dissenting judge also voted to reject the unconstitutionality of the provisions. Echoing the observations of the Colombian court in the above-described case,⁸¹ the judge held that on the day of the elections “any voice that was not the voice of the people should remain silent” and that all the guarantees necessary should be provided for the exercise of the right of suffrage.

iii. Peru

60. In 2001, the Constitutional Tribunal of Peru examined a petition of unconstitutionality against the prohibition of election polls.⁸² The action had been brought by the Office of the Ombudsman and challenged the second paragraph of Article 191 of the Organic Law on Elections, which provided, “On the day of the election the only projections that may be disseminated are those based on samples of the election returns

⁷⁶ Supreme Court of Justice of Paraguay, Constitutional Chamber, Decision No. 99, of May 5, 1998. See vote of Dr. Sapena Brugada.

⁷⁷ Constitutional Court of Colombia, Judgment No. C-488/93, October 28, 1993.

⁷⁸ Article 26 of the Constitution of the Republic of Paraguay guarantees “free expression and the freedom of the press, as well as the dissemination of thought and opinion without any censorship whatever or any restrictions other than those prescribed in this Constitution. Therefore, no law shall be issued that restricts or renders the exercise of those freedoms impossible. There shall be no press crimes but, rather, common crimes committed by the press. Everyone has the right to generate, process or disseminate information and, likewise, to use any lawful instrument suited to those ends.”

⁷⁹ Article 28 recognizes “the right of persons to receive truthful, responsible and balanced information”.

⁸⁰ Emphasis added.

⁸¹ Supreme Court of Justice of Paraguay, Constitutional Chamber, Decision No. 99, of May 5, 1998.

⁸² Judgment of the Constitutional Court of Peru, April 4, 2001. EXP. N.º 02-2001-AI/TC.

after the dissemination of the results of the first quick count conducted by ONPE or after 22:00 hours, whichever occurs first."

61. In the first place, in interpreting the provision, the Tribunal found that the restriction only referred to the distribution of projections based on surveys – not on the surveys themselves – and only projections based on samples of election returns, while all other opinion polls were permitted. In other words, in the case under review, what was at stake was not the conducting and dissemination of the results of surveys of election returns by polling firms, but only the dissemination of projections. Accordingly, the Tribunal held that what the provision prohibited was the "right to freedom of thought" enshrined in the Constitution, since it denied the right to interpret the results, something that runs contrary to the right to freedom of thought and expression guaranteed in the Peruvian Constitution.⁸³ Bearing in mind that any limitation on freedom of expression must be analyzed restrictively, the Court assessed whether the restriction was necessary, legitimate, and proportionate.

62. The Peruvian Congress had stated that the restriction was necessary to preserve domestic order and to protect faith in the official results and the electoral process. According to the Congress, as the results of polling firms usually differ from the official tally, the dissemination of projections could give rise to baseless expectations and unrest in the population.⁸⁴

63. Against the first argument, the Peruvian Constitutional Tribunal found that while domestic order is a constitutionally protected interest of such importance that in certain cases it may constitute a valid reason to curtail the right to information, that only occurs, according to constitutional doctrine, when there is grave and imminent danger of public unrest. This is so, the Tribunal said, because of the privileged position that freedom of expression and information occupies in the pyramid of constitutional rights and the workings of democracy.

64. Following that line of reasoning, the members of the Tribunal ruled that there was no grave, present, and imminent danger that warranted the restriction. The Tribunal found that the great majority of the population knew that opinion poll results were not accurate and that they should peacefully await the official election results.⁸⁵ Furthermore, the possible danger that the citizenry could be misled could be avoided by requiring pollsters to inform the public of any inaccuracies in the information divulged.

⁸³ Article 2 (4) of the Constitution of Peru provides that every person has the right "to freedom of information, opinion, expression and dissemination of thought by the spoken or written word or by images, without prior authority or censorship, or any other impediment, subject to the obligations prescribed by the law."

⁸⁴ The Congress drew attention to the unrest that occurred in 2000 when opinion polls gave victory to the then-presidential candidate Alejandro Toledo, and the official results named the then-president Alberto Fujimori as the winner.

⁸⁵ With respect to the disorder of the previous year, the Peruvian Tribunal found in its ruling that it was due to the particular political situation in the country and the predisposition of the public to suspect electoral fraud, rather than to an error in the opinion poll projections as regards the winner.

65. With respect to the second reason provided as justification for the restriction – to protect the credibility of the government office in charge of the election results – the Tribunal found, precisely, that it was important that the citizenry be informed by other sources in order to monitor the authorities and demand explanations from them and from polling firms in the event of discrepancies in the results. In this sense, the Court said that opinion polls represented an important “mechanism to monitor the acts of the agencies in charge of the electoral process, and, to that extent, the transparency of the election.”

66. Finally, the Tribunal advanced an interesting argument that is worth mentioning. The members of the Tribunal held that the provision in question not only jeopardized freedom of expression but also violated the principle of equality enshrined in the Peruvian Constitution and international instruments.⁸⁶ As the ban was confined only to Peruvian territory it did not cover the projections put out by foreign press agencies, which could be obtained on the Internet or by cable television. Therefore, the Court said, the prohibition in place would have the result of enabling a minority of the population to access these media, at the time still an exclusive privilege, while the majority could not.

67. In the words of the Tribunal, “Essentially, the circumstances that determine into which of the two segments the citizen falls as far as access to the Internet is concerned, are (...) their economic condition or means and cultural background; economic because access to those media entails the payment of services the cost of which are not precisely within the economic possibilities of the entire population; and cultural, because access to the Internet requires basic technical grounding or training, which vast segments of the Peruvian population still lack, bearing in mind, in that connection, that Peruvians remains predominantly “computer illiterate”. Put in such terms, the constitutional problem consists of the fact that access to the aforementioned information (the right to information) depends on access (or the lack thereof) to certain media (the Internet and cable television), which, in turn, is subject to the economic and cultural circumstances of each person.”

68. For all of these reasons, the Constitutional Tribunal found the challenged provision to be unconstitutional.

iv. Argentina

69. In 2005, the Supreme Court of Justice of Argentina examined the validity of a law that placed a temporary restriction on the dissemination of pre-electoral opinion polls and a ban on disclosure of exit polls.⁸⁷ The case concerned Article 5 of Law 268 of the

⁸⁶ Article 2(2) of the Constitution of Peru provides that everyone has the right “to equality before the law. No one shall be the object of discrimination by reason of origin, race, sex, language, religion, opinion, economic condition or for any other reason.”

⁸⁷ A. 682. XXXVI – “*Asociación de Teleradiodifusoras Argentina et al. v. Government of the City of Buenos Aires – ‘Amparo’*” – CSJN – 07/06/2005.

City of Buenos Aires, which provides that, "It is prohibited, from the final 48 hours before the opening of the polls until three hours after the close of the polls, to disseminate, publish, comment on, or make references to the results of electoral surveys via any medium". The case was initiated by an *amparo* petition lodged by *Asociación de Teleradiodifusoras Argentina (A.T.A.)* and *Asociación de Radiodifusoras Privadas Argentinas* against the city government.

70. In a dissenting vote,⁸⁸ two of the judges questioned the validity of the ban on exit polls with arguments similar to those expressed by the Constitutional Tribunal of Peru. Basically, the judges held that the reasons mentioned to justify the ban – to avoid confusion and social tension, and ensure the reliability of information – revealed a "groundless paternalism" on the part of the State. Indeed, the judges said, it is up to the people to judge the merits of information received; anything to the contrary is incompatible with a republican and democratic vision. The judges held, "No one is asking the State to protect us from errors that pollsters may make with regard to how the citizenry has voted. Let them enjoy their accuracies and suffer for their inaccuracies. Society will value or dismiss them, according to which candidates move up. What the Constitution does not permit is to prevent the people, on the pretext of protecting them, from receiving and weighing up information, and thereby deny activities that are their sole purview." For these reasons, according to the dissenting vote, the blackout on exit polls could not be regarded as a necessary restriction to protect a public interest, and was unconstitutional.

71. However, the majority ruled in favor of the validity of the aforementioned provision, which contains two prohibitions. With respect to the first – on the publication of polls within the final 48 hours before the elections – the Court held that the protected legal interest was the public tranquility "that the electorate must have in order to cast their vote according to the dictates of their conscience, without external influences of any kind and without anyone having the possibility to sway their preference toward a particular political party." The highest Argentine tribunal said that the provision protected the optimal space for reflection that all voters need before they vote, even though, admittedly, there were no certainties as regards the degree of influence of opinion polls. And the provision essentially placed the right to exercise freedom of choice above the unrestricted exercise of the right to freedom of expression. The Court was of the opinion that the law was part of the mechanisms imposed to preserve the "purity of suffrage". By the same token, other constraints – such as restrictions on political party finance, on the length of the electoral campaign, or the ban on proselytism by candidates for a certain time, among others – are also designed "to protect the voters from confusion and undue influence" in order to safeguard the integrity of the electoral process. Furthermore, according to the opinion contained in the vote of one of the judges, the constraint would not deprive voters of information already in their possession.

⁸⁸ *Ibid.* See "*Disidencia parcial del Señor Presidente Doctor Don Enrique Santiago Petracchi y del Señor Vicepresidente Doctor Don Augusto Cesar Belluscio*".

72. As to the second ban – the blackout on exit polls – the Supreme Court held that the provision sought to prevent any alteration to voting before the polls closed and to ensure the right of those yet to vote. The Court said, "The three-hour ban following the close of the polls is intended to prevent claims of victory based on information that could later prove wrong or, if accurate, that could unduly influence the electorate." In addition to preventing voters from being influenced by opinion polls, the rule seeks to avert the tension "that can be generated by conflicting information and confusion between official factual data and mere speculations, which, ultimately, only serve to give less credibility to the final official information if it contradicts the results of exit polls."

73. Therefore, the Argentine court concluded that this "briefest" of restrictions on the dissemination of exit polls did not infringe freedom of expression. One of the judges noted in his vote that "[t]he vitally important function of the press in the electoral process is not impaired by that limitation, particularly if we bear in mind that the coverage of elections cannot be confused with the coverage of a horse race or a soccer match in terms of the importance of or need for "instantaneousness" in transmitting the information.

v. Canada

74. In 1998, the Supreme Court of Canada analyzed the constitutionality of a legal provision prohibiting the publication and dissemination of electoral surveys in the final three days before an election.⁸⁹ The case was brought by *Thomson Newspapers Company*, which owns several publications and held that the ban introduced by the Elections Act,⁹⁰ infringed the freedom of expression enshrined in the Canadian Charter of Rights and Freedoms.⁹¹

75. The Canadian tribunal found that the restriction imposed a complete ban on political information at a crucial time in the electoral process, which interfered with the rights of voters who want to access information necessary to exercise the right to vote, and with the rights of the media and pollsters to provide it.

76. The Canadian government had argued that the Act was designed to protect voters from the potential influence of exposure to inaccurate polls, by providing a period for critical reflection. The Court found that, to be justified, the restriction must impair freedom of expression as little as reasonably possible in order to achieve the legislative objective, and that the impairment must be "minimal", in other words, the least intrusive option. According to the Court, none of these conditions was met and, therefore, the provision was ruled unconstitutional.

⁸⁹ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877.

⁹⁰ The challenged provision was Section 322.1 of the Canada Elections Act.

⁹¹ The *Canadian Charter of Rights and Freedoms* recognizes "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication" (s 2 (b)).

77. In first place, the Court considered that the government was not dealing with a vulnerable group. On the contrary, the Court found that voters must be presumed to have a certain degree of maturity and intelligence and that they can learn from experience and make independent judgments about the value of the information they receive. According to the majority opinion, “[I]nformation which is desired and can be rationally and properly assessed by the vast majority of the voting electorate [cannot] be withheld because of a concern that a very few voters might be so confounded that they would cast their vote for a candidate whom they would not have otherwise preferred.[...] [T]he government cannot take the most uninformed and naive voter as the standard.”

78. The Court also found insufficient evidence to conclude that voters were in danger of manipulation or abuse because of a conflict of interests since, according to the Court, neither the media nor polling organizations had *per se* an interest in disseminating inaccurate polls. Furthermore, there was no conclusive evidence to determine that opinion polls had a negative impact on the democratic electoral process. Therefore, the restriction was unwarranted.

79. The Canadian court considered that other measures less intrusive to freedom of expression could have been adopted to protect the public from inaccurate polls, such as a provision that required the publication of information on the methodology used. The Court noted that the provision in question was overbroad because the ban included polls with acceptable standards of accuracy. The Court also found that the provision was not effective because it did not adequately protect voters from potential misapprehensions caused by polls that did not reveal their methodology.

80. The ruling of the Court prompted a legislative reform in Canada reducing the ban on publication of opinion polls prior to the close of the polls.

vi. Mexico

81. The State of Coahuila has a law that governs political institutions and electoral procedures in the State. Article 192 of this new law, published in the State’s Official Gazette of November 16, 2001, regulates opinion polls conducted during electoral periods in the following terms:

No public opinion polls may be carried out nor their results disseminated in the final three days before, or on the day of, the elections without prior authority from the Institute. In order to grant authority to conduct polls, the General Council must study the methodology proposed by the applicant and set a bond in an amount equivalent to at least 28,000 legal minimum wages in force in the State capital. In the case of higher education institutions officially recognized in accordance with pertinent provisions, the bond mentioned herein shall be in an amount equivalent to at least 9,300 legal minimum wages in force in the State capital.

The bond shall guarantee that the results of the poll are not disseminated before 20:00 hours on the day of the elections, as well as observance of the methodology approved for the poll. Any breach will result in the encashment of the bond in favor of the Institute, without prejudice to other applicable sanctions.

82. One of the main political parties in Mexico, *Partido Acción Nacional* (PAN) lodged a petition with the Mexican Supreme Court challenging the constitutionality of several articles of the law in relation to the federal constitution. With respect to Article 192, the PAN held that it infringed freedom of expression guaranteed by Article 7 of the Mexican Constitution. On February 19, 2002, the Supreme Court of Justice of the Nation (hereinafter the “Supreme Court”) issued its decision on the PAN’s petition, declaring the article constitutional. The Supreme Court found that the Constitution recognized not only the right to freedom of expression, but also the right to the objectiveness, certainty, impartiality, and independence of the electoral process, and that Article 192 acted as a guarantee of those electoral principles.⁹²

b. Standards for interpretation of limitations on electoral polls in light of Article 13 of the American Convention

83. As mentioned, given that the Inter-American Court has yet to decide a case on the question of whether restrictions on electoral surveys respect the standards of protection for freedom of expression provided by the inter-American system, the Office of the Special Rapporteur proposes to mention a number of guidelines to bear in mind in evaluating such laws.

84. The right to freedom of expression is enshrined in several instruments in the framework of the inter-American system for the protection of human rights. In the first place, the American Declaration refers to the right to freedom of expression in Article 4:

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

85. For its part, the American Convention recognizes the right to freedom of expression in Article 13, which provides:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph 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.

3. 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,

⁹² That law is the subject of a case before the Inter-American Commission on Human Rights. See IACHR, Petition 938/03, Report 67/04, *Alejandro Junco de la Vega and Eugenio Herrera Terrazas (Mexico)*, *Admissibility*, October 14, 2004. Its inclusion in this chapter in no way constitutes a prejudgment on merits in the case before the IACHR.

or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

86. Finally, the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission at its 108th Regular Session in 2000, contains several principles that should be taken into consideration in weighing possible regulations on freedom of expression.⁹³

87. Principle 1 provides:

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.

88. Principle 2 says:

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.

89. Lastly, Principle 5 posits:

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.

⁹³ The Inter-American Commission has held that the Declaration of Principles "is fundamental for interpreting Article 13 of the American Convention on Human Rights [...] it also incorporates into the inter-American system the international standards for the more effective exercise of this right." IACHR, Chapter II, 2000 Annual Report, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression", OEA/Ser. L/V/II/111, Doc. 20 rev., par. 3. More recently, the Office of the Rapporteur has said that "since its adoption, the Declaration has emerged as a frame of reference for evaluating the possible violations of the freedom of expression in the Member States. Increasingly, the States, civil society organizations, and private persons invoke its principles to assess progress, regression, or possible violations of this right, and undertake possible actions to support this right." IACHR, Chapter II, 2004 Annual Report, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression", OEA/Ser. L/V/II. 122, Doc. 8 rev. 1, par. 2.

90. Any evaluation of standards or laws that could have an impact on freedom of expression must start with the recognition that it is one of the most highly valued rights in a democracy.⁹⁴ The Inter-American Court has reiterated that freedom of expression is a cornerstone upon which the very existence of a democratic society rests. According to the Court, freedom of expression represents “the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”⁹⁵

91. In line with that argument, the Inter-American Court has postulated that freedom of expression plays a crucial role in electoral processes. For the Inter-American Court, freedom of thought and expression is an essential tool for the formation of voters’ opinions and a genuine means for analyzing the political platforms of the various candidates. For this reason, it is crucial to protect and ensure this right, and to permit “free circulation of the ideas of and information on those candidates and their political parties by the media, candidates themselves, and anyone who wishes to express his or her opinion or provide information.”⁹⁶

92. Upon examining possible regulations on electoral surveys, furthermore, it is important to bear different issues in mind. On one hand, Article 13(2) and Principle 5 of the Declaration of Principles clearly prohibit prior censorship and restrictions on the free circulation of ideas and opinions. The Inter-American Court has reaffirmed that Article 13 does not permit prior censorship, except where public entertainment is concerned and exclusively “for the moral protection of children and adolescents.”⁹⁷

93. Restrictions on freedom of expression, therefore, are only permissible through the subsequent imposition of liability, which must be expressly established by law, where the ends sought to be achieved are legitimate, and the means for establishing liability are necessary to achieve those ends.⁹⁸ In this connection, the Inter-American Court has found that “the legality of restrictions imposed under Article 13(2) on freedom of expression, depend upon a showing that the restrictions are required by a compelling governmental interest. Hence if there are various options to achieve this objective, that which least restricts the right protected must be selected. Given this standard, it is not enough to demonstrate, for example, that a law performs a useful or desirable purpose; to be compatible with the Convention, the restrictions must be justified by reference to governmental objectives which, because of their importance, clearly outweigh the social

⁹⁴ See IACHR, Annual Report 2001, Vol. II “Report of the Office of the Special Rapporteur for Freedom of Expression”, Introduction, OEA/Ser. L/V/II. 114, Doc. 5 rev. 1.

⁹⁵ See Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, of November 13, 1985.

⁹⁶ Inter-Am. Ct. H.R., *Case of Ricardo Canese vs. Paraguay*, Judgment of August 31, 2004, Series C, No. 111.

⁹⁷ Inter-Am. Ct. H.R., *Case of “The Last Temptation of Christ” v. Chile (Olmedo Bustos et al.)*, Judgment of February 5, 2001, Series C, No. 73.

⁹⁸ See “Background and Interpretation of the Declaration of Principles”, IACHR, 2000 Annual Report, Vol.III, “Report of the Office of the Special Rapporteur for Freedom of Expression”, Chapter II, Section B.

need for the full enjoyment of the right Article 13 guarantees [and they] must be so framed as not to limit the right protected by Article 13 more than is necessary.”⁹⁹

94. Accordingly, as the Inter-American Court found, “the restriction must be proportionate to the interest that justifies it, be closely circumscribed to the accomplishment of that objective, and interfere as little as possible with the effective exercise of the right to freedom of expression.”¹⁰⁰

95. The Office of the Special Rapporteur has held that the standards that barred the publication of opinion polls in the last 10 days before elections were examples of prior censorship that were incompatible with the provisions of Article 13(2) of the Convention.¹⁰¹ In this sense, the Office of the Special Rapporteur has postulated that “[t]he rules establishing the principles governing election polls should always be intended to strengthen the unfettered circulation of information.”¹⁰²

96. Another of the principles that should be borne in mind is that of nondiscrimination. As Principle 2 of the Declaration of Principles provides, “All people should be afforded equal opportunities to receive, seek and impart information.” In the same way, the Inter-American Court has found that “in a democratic society [it is necessary to] guarantee the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.”¹⁰³ In that respect, it is important for government rules not to have the effect of allowing some sectors to access certain information on the elections, while denying the same possibilities to others because they lack access to certain media.

97. Finally, it is essential for the media to act with professionalism and responsibility in handling information, which – as in the case of election polls – has a direct impact on the political life of countries. The best way to accomplish that objective is through the adoption of domestic ethical standards and self-regulation. As Principle 6 of the Declaration of Principles provides, “Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.” The Office of the Special Rapporteur has reiterated that the media are primarily responsible to the public, and not to

⁹⁹ See Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, of November 13, 1985.

¹⁰⁰ Inter-Am. Ct. H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C, No. 107

¹⁰¹ See Office of the Special Rapporteur for Freedom of Expression, “Report on the Situation of Freedom of Expression in Panama”, OEA/Ser.L/V/II.117 – 2003, par. 113. The Office of the Special Rapporteur referred in this report to Articles 177 and 178 of the Panamanian Electoral Code, which, respectively, provided that election polls must be registered with the Electoral Tribunal before being published, and banned the publication of election polls within the ten-day period leading up to the election or referendum.

¹⁰² *Ibid.*, par. 111.

¹⁰³ See Inter-Am. Ct. H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, of November 13, 1985.

the government.¹⁰⁴ Accordingly, the public should have the final authority to judge the behavior of the media.

¹⁰⁴ See IACHR, Annual Report 2001, Vol. II "Report of the Office of the Special Rapporteur for Freedom of Expression", Chapter IV, "Media Ethics", OEA/Ser. L/V/II. 114, Doc. 5 rev. 1.

CHAPTER VII

FINAL CONSIDERATIONS AND RECOMMENDATIONS

1. As the organs of the inter-American system have repeatedly stated, freedom of expression and access to information are vital for democracies in the Hemisphere, because they feed on free discussion of ideas and the widest possible dissemination of information and opinions. The exercise of these rights is needed to ward off corruption and guarantee probity in public office, as well as citizen participation and the economic advancement of the population.

2. Nevertheless, despite reiterated recognition of the need to respect and guarantee freedom of expression in the Hemisphere, most recently by the OAS General Assembly in its Resolution 2149 on the "Right to Freedom of Expression and the Importance of the Media,"¹ that freedom cannot yet be called either full or untrammelled. This report shows yet again that murdering and attacking journalists and the misuse of anti-defamation laws by government officials continued to be employed in 2005 as mechanisms for silencing criticism.

3. In recent years, there have been constant references to the benefits for a democratic society of access to public information. This idea was supported, once again, by the OAS General Assembly, in Resolution 2121 (XXXV-O/05), which repeated the exhortation to Member States to introduce the laws or other provisions required to provide citizens with broad access to public information.² Some progress was reported with respect to this issue in 2005, with one country passing a constitutional article guaranteeing the right to access to public information and another passing a constitutional article on *habeas data*. In another country, a decree was signed guaranteeing access to information held by the executive branch. Several countries continued to consider access to information bills.

4. Several countries in the Hemisphere still have "contempt" laws (i.e., laws penalizing offensive expressions directed at public officials). In 2005, some progress was made in this area, with rulings by the Supreme Courts of two countries declaring such laws unconstitutional. On the other hand, parallel to the progress referred to, on many occasions officials were seen to resort not to the notion of contempt (*desacato*) as such, but rather to laws against calumny, libel, or defamation to achieve the same end: namely, to silence journalists publishing information on actions of public concern.

5. Thus the problems and violations that have worried the Rapporteurship are still widespread in the Americas: security issues of social communicators and human rights defenders, the existence and invoking of restrictive laws, lack of effective mechanisms for obtaining access to public information, concentration of ownership of the media, and the dearth of channels for the effective participation of socially excluded or vulnerable sectors.

¹ This resolution is included as Annex 5 to this report.

² This resolution is included as Annex 4 to this report.

Therefore, in order to safeguard and strengthen freedom of expression in the Americas, the Rapporteurship reiterates the recommendations it made in previous reports:

- a. Conduct serious, impartial, and effective investigations into murders, kidnappings, threats, and acts of intimidation against journalists and other media personnel.
- b. Bring those responsible for the murder of, or acts of aggression against, social communicators to trial by independent and impartial courts.
- c. Publicly condemn such acts in order to prevent actions that might encourage these crimes.
- d. Promote the repeal of laws defining contempt (*desacato*) as a crime, since they limit public debate, which is essential to the workings of democracy, and are not in keeping with the American Convention on Human Rights.
- e. Work for amendment of laws against criminal defamation and calumny to prevent them being applied in the same ways as *desacato* laws.
- f. Enact laws allowing access to information and complementary rules governing their implementation in line with international standards.
- g. Promote policies and practices that effectively permit freedom of opinion and access to information, along with equal participation by all segments of society in such a way that their needs, views, and interests are incorporated in the design of, and decisions on, public policies. In light of the issues presented in Chapter V of this report, this requires that states take steps to maintain open public spaces and to protect the right to engage in peaceful public demonstrations.
- h. Bring domestic law into line with the parameters established in the American Convention on Human Rights, Article IV of the American Declaration of the Rights and Duties of Man, Declaration of Principles on Freedom of Expression and the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

6. The challenge facing the Rapporteurship in the coming years is to build on the hard work and achievements of the past seven. The highly motivated staff of the Rapporteurship and its interns are the principal, but by no means only, protagonists to take up this challenge. It will require the political, institutional, and financial support of the States in the region. The participation of journalists and members of civil society is also vital, as key players reporting on violations of the right to freedom of expression. Thanks to a concerted effort by all these groups, the Americas will be able to move toward the

consolidation of ample freedom of expression and access to information throughout the region.

7. The Office of the Special Rapporteur for Freedom of Expression thanks all the states that have worked with it this year, as well as the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support. Lastly, the Rapporteur offers a vote of thanks to all those independent journalists and other media personnel who, day after day, fulfill their important function of keeping society informed.

ANNEXES

1. Complete text of Article 13 of the American Convention on Human Rights
2. Declaration of Principles on Freedom of Expression
3. Declaration of Chapultepec
4. Resolution adopted by the General Assembly XXXV: Access to Public Information: Strengthening Democracy
5. Resolution adopted by the General Assembly XXXV: Right to Freedom of Thought and Expression and the Importance of the Media
6. Joint Declaration by the Special Rapporteur for Freedom of Expression of the IACHR and the Special Rapporteur for Freedom of Expression of the African Commission on Human and Peoples' Rights
7. Joint Declaration by the International Mechanisms for Promoting Freedom of Expression on World Press Freedom Day
8. Joint Declaration by the UN Special Rapporteur for Freedom of Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression
9. Press Releases

ARTICLE 13 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph 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.

3. 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.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Approved by the Inter-American Commission on Human Rights
during its 108th regular session

Declaration of Principles on Freedom of Expression

PREAMBLE

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office

of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. 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.
2. 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.
3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. 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.
5. 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.

6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.
7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.
8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. 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.
10. 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.
11. 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.
12. 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.

13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

Declaration of Chapultepec

Adopted by the Hemisphere Conference on Free Speech
Mexico City March 11, 1994

Preamble

On the threshold of a new millennium, the Americas envision a future rooted in democracy. A political opening has taken hold. Citizens have a heightened awareness of their rights. More than at any time in our history regular elections, governments, parliaments, political parties, labor unions, associations and social groups of every kind reflect the hopes of our people.

In this environment of democratization, several developments engender optimism but also suggest prudence. Institutional crises, inequalities, backwardness, unresolvable frustrations, the search for easy solutions, failure to grasp the nature of democracy and special interest groups constantly threaten the advancements made. They also represent potential hurdles to further progress.

That is why we who share this hemisphere, from Alaska to Tierra del Fuego, must consolidate the prevailing public freedoms and human rights.

Democratic rule must be embodied in modern institutions that represent and respect the citizenry; it must also guide daily life. Democracy and freedom, inseparably paired, will flourish with strength and stability only if they take root in the men and women of our continent.

Without democracy and freedom, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

Freedom must not be restricted in the quest for any other goal. It stands alone, yet has multiple expressions; it belongs to citizens, not to government.

Because we share this conviction, because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: Freedom of expression and of the press, whatever the medium of communication. The exercise of democracy can neither exist nor be reproduced without these.

We, the signatories of this declaration, represent different backgrounds and dreams. We take pride in the plurality and diversity of our cultures, considering ourselves fortunate that they merge into the one element that nurtures their growth and creativity: Freedom of expression, the driving force and basis of mankind's fundamental rights.

A free society can thrive only through free expression and the exchange of ideas, the search for and the dissemination of information, the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast. Only by exercising these principles will it be possible to guarantee individuals and groups their right to receive impartial and timely information. Only through open discussion and unfettered information will it be possible to find answers to the great collective problems, to reach consensus, to have development benefit all sectors, to practice social justice and to advance the quest for equality. We therefore vehemently reject assertions which would define freedom and progress, freedom and order, freedom and stability, freedom and justice, freedom and the ability to govern as mutually exclusive values.

Without freedom there can be no true order, stability and justice. And without freedom of expression there can be no freedom. Freedom of expression and the seeking, dissemination and collection of information can be exercised only if freedom of the press exists.

We know that not every statement and item of information can find its way into the media. We know that the existence of press freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favors an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

Without an independent media, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

Wherever the media can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.

After a period when attempts were made to legitimize government control over news outlets, it is gratifying to be able to work together to defend freedom. Many men and women worldwide join us in this task. But opposition remains widespread. Our continents are no exception. There are still counties whose despotic governments abjure every freedom, particularly those freedoms related to expression. Criminals, terrorists and drug traffickers still threaten, attack and murder journalists.

But that is not the only way to harm a free press and free expression. The temptation to control and regulate has led to decisions that limit the independent action of the media, of journalists and of citizens who wish to seek and disseminate information and opinions.

Politicians who avow their faith in democracy are often intolerant of public criticism. Various social sectors assign to the press nonexistent flaws. Judges with limited vision order journalists to reveal sources that should remain in confidence. Overzealous officials deny citizens access to public information. Even the constitutions of some democratic countries contain elements of press restriction.

While defending a free press and rejecting outside interference, we also champion a press that is responsible and involved, a press aware of the obligations that the practice of freedom entails.

Principles

A free press enables societies to resolve their conflicts, promote their well-being and protect their liberty. No law or act of government may limit freedom of expression or of the press, whatever the medium.

Because we are fully conscious of this reality and accept it with the deepest conviction, and because of our firm commitment to freedom, we sign this declaration, whose principles follow.

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.

7. Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.
9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.
10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

The struggle for freedom of expression and of the press is not a one-day task; it is an ongoing commitment. It is fundamental to the survival of democracy and civilization in our hemisphere. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honoring our history and controlling our destiny. To these principles we are committed.

AG/RES. 2121 (XXXV-O/05)
ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY^{1/}
(Approved by the Permanent Council at its meeting of May 26, 2005)

THE GENERAL ASSEMBLY,

HAVING SEEN the report of the Permanent Council to the General Assembly (AG/RES..../05) on the status of implementation of resolution AG/RES. 2057 (XXXIV-O/04), "Access to Public Information: Strengthening Democracy";

CONSIDERING that Article 13 of the American Convention on Human Rights provides that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice";

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers";

RECALLING that the Plan of Action of the Third Summit of the Americas, held in Quebec City in 2001, indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information of all citizens;

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights, and, in that connection, that they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

¹ The Bolivarian Republic of Venezuela considers the study entrusted to the Inter-American Commission on Human Rights, on how States can guarantee to all of their citizens the right to seek, receive and disseminate public information, to be of paramount importance.

Our Government earnestly requests the Inter-American Commission on Human Rights to place emphasis in its study on how States may guarantee the right of all persons, particularly socially-excluded sectors, to receive public information, in the framework of the principle of transparency of information, when that information is disseminated via the media and taking into account the equality of all individuals before the law.

BEARING IN MIND the adoption of the Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas" [AG/DEC. 31 (XXXIII-O/03)], as well as resolution AG/RES. 1960 (XXXIII-O/03), "Program for Democratic Governance in the Americas";

CONSIDERING that the Inter-American Agency for Cooperation and Development (IACD) has been identifying and facilitating access by member state governments to e-government practices that facilitate information and communications technology applications in governmental processes;

CONSIDERING ALSO that the Office for the Promotion of Democracy (OPD) has been providing support to member state governments in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee (CJI) on this issue, in particular, the document "Right to Information: Access to and Protection of Information and Personal Data in Electronic Format," presented by Dr. Jonathan Fried (CJI/doc.25/00 rev. 1);

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING also that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights; and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, and the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, issued on December 6, 2004;

TAKING NOTE ALSO of the reports of the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights on the situation of access to information in the Hemisphere for 2003 and 2004;

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well

as the Regional Forum on Access to Public Information: Challenges to Freedom of Information in the Hemisphere, held in Lima, Peru, on January 20 and 21, 2004; and

TAKING INTO CONSIDERATION the report presented by the Chair of the Permanent Council on May 11, 2005, on the implementation of resolution AG/RES. 2057 (XXXIV-O/04), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

1. To reaffirm that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.

2. To urge the states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.

3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.

4. Also to encourage member states, when preparing and/or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society the opportunity to participate in that process; and to urge them, when drafting and adapting their national legislation, to take into account clear and transparent exception criteria.

5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to facilitate access to such information through electronic or any other means that will allow ready access to public information.

6. To instruct the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights and the Office for the Promotion of Democracy:

- a. To support the efforts of member states that so request in drafting legislation and developing mechanisms in the area of access to public information and citizen participation; and
- b. To assist the Permanent Council in the preparatory work for the special meeting mentioned in paragraph 10.a.

7. To request the Inter-American Juridical Committee to continue to carry out comparative law studies on the protection of personal information.

8. To instruct the Special Rapporteurship for Freedom of Expression to continue to report on the situation regarding access to public information in the region in the annual report of the IACHR.

9. To instruct the Inter-American Commission on Human Rights to conduct a study on how the State can guarantee all citizens the right to seek, receive, and impart public information on the basis of the principle of freedom of expression.

10. To instruct the Inter-American Agency for Cooperation and Development (IACD) to identify new resources to support member states' efforts to facilitate access to public information.

11. To recommend to the Permanent Council that it:

- a. Convene a special meeting with the participation of experts from the states and civil society representatives to promote, impart, and exchange experiences and knowledge with respect to access to public information and its relationship with citizen participation;
- b. Request the Committee on Juridical and Political Affairs to prepare, on the basis of the report of the special meeting and taking into account the report of the Chair of the Permanent Council on the implementation of resolution AG/RES. 2057 (XXXIV-O/04), a basic document on best practices and the development of common approaches or guidelines for increasing access to public information; and
- c. Request the General Secretariat to promote seminars, workshops, or other events for citizens and government administrations, promoting access to public information.

12. To request the Permanent Council to report to the General Assembly at its next regular session on the implementation of this resolution, which shall be carried out in accordance with resources allocated in the program-budget of the Organization and other resources.

AG/RES. 2149 (XXXV-O/05)
RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION
AND THE IMPORTANCE OF THE MEDIA
(Adopted at the fourth plenary session, held on June 7, 2005)

THE GENERAL ASSEMBLY,

RECALLING that the right to freedom of expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, is recognized in Article IV of the American Declaration of the Rights and Duties of Man, Article 13 of the American Convention on Human Rights, the Universal Declaration of Human Rights, the Inter-American Democratic Charter, the International Covenant on Civil and Political Rights, and other international instruments and national constitutions, as well as United Nations General Assembly resolution 59 (I) and resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

RECALLING ALSO that Article IV of the American Declaration of the Rights and Duties of Man states that "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

RECALLING, TOO, that Article 13 of the American Convention on Human Rights states that:

"1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph 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.

3. 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.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

NOTING the "Declaration of Principles on Freedom of Expression" of the Inter-American Commission on Human Rights;

NOTING ALSO Volume III of the Annual Report of the Inter-American Commission on Human Rights, on freedom of expression, which includes Chapter II, "The situation of freedom of expression in the Hemisphere," Chapter V, "Indirect violations of freedom of expression: The impact of the concentration of media ownership," and Chapter VII, "Hate and the American Convention on Human Rights";

TAKING INTO ACCOUNT resolutions 2004/42 and 2005/38 of the United Nations Commission on Human Rights, "The Right to Freedom of Opinion and Expression"; and

RECALLING the studies and contributions approved by UNESCO regarding the contribution of the media to strengthening peace and international understanding, to the promotion of human rights and to countering racialism, and incitement to war,

RESOLVES:

1. To reaffirm the right to freedom of expression; and to call upon member states to respect and promote respect for this right, in accordance with the international human rights instruments to which they are party, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights, *inter alia*.

2. To urge the member states of the OAS that have not already done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the American Convention on Human Rights.

3. To reaffirm that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy.

4. To recognize that the contribution of the media is essential to democracy and to the promotion of pluralism, tolerance, and freedom of expression.

5. To urge member states to promote a pluralistic approach to information and multiple points of view by fostering full exercise of freedom of expression, access to

media, and diversity in the ownership of media outlets and sources of information, through, *inter alia*, transparent licensing systems and effective regulations to prevent the undue concentration of media ownership.

6. To call upon member states to adopt all necessary measures to avoid violations of the right to freedom of expression, and to create the necessary conditions for that purpose, including ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

7. To urge member states, within the legal framework of the international instruments to which they are party, to ensure respect for freedom of expression in the media and in radio and television broadcasts, and, in particular, respect for the editorial independence of the media.

8. To urge member states to review their procedures, practices, and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputation of others, or for the protection of national security or of public order (*ordre public*), or of public health or morals.

9. To request the Inter-American Commission on Human Rights to follow up on and deepen its study of the issues addressed in Chapters II, V, and VII of Volume III of its 2004 Annual Report, on freedom of expression, based, *inter alia*, on the inputs on the subject that it receives from member states, provided that voluntary contributions are received to finance the continuation of said studies.

10. To instruct the Permanent Council, through the Committee on Juridical and Political Affairs, to convene a meeting with a view to conducting a more in-depth study of existing international jurisprudence regarding the subject of Article 13.5 of the American Convention on Human Rights and to invite the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to take part in that meeting.

11. To request the Permanent Council to report to the General Assembly at its thirty-sixth regular session on the implementation of this resolution, which shall be carried out in accordance with the resources allocated in the program-budget of the Organization and other resources.

JOINT DECLARATION

BY

The ACHPR Special Rapporteur for Freedom of Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression

Having met at the OAS Headquarters in Washington, D.C. during the week of February 28, 2005 with the assistance of *ARTICLE 19, Global Campaign for Freedom of Expression* ;

Recalling and reaffirming the importance of the right to freedom of expression for the consolidation of democracy and the rule of law and for the enjoyment of other human rights;

Noting the importance of regional mechanisms in promoting the right to freedom of expression and the need to promote such mechanisms in every region of the world;

Welcoming the recent creation of a Rapporteurship on Freedom of Expression in the African Commission on Human and Peoples' Rights;

Reaffirming the principles enshrined in the Declaration of Principles on Freedom of Expression in Africa approved by the African Commission on Human and Peoples' Rights in October of 2002 and the Declaration of Principles on Freedom of Expression approved by the Inter-American Commission on Human Rights in November of 2000;

Acknowledging the progress that has been made in some of the countries in our regions with respect to the protection of the rights to freedom of expression and access to information;

Expressing concern about the many challenges still facing freedom of expression in our regions;

Adopt the following Declaration:

- All members of society must be free to discuss issues of public interest and to participate freely in public debates without fear of reprisal, either in the form of physical attacks and aggression or through judicial measures.
- Journalists and other media workers, as well as human rights defenders, are frequently the targets of threats, assaults, and assassination in many countries in both Africa and the Americas. These crimes have a chilling effect on freedom expression that is exacerbated when governments fail to investigate such crimes thoroughly and to bring the perpetrators to justice.

- Criminal defamation laws are frequently used in both the countries of the Americas and of Africa to stifle criticism of public officials. In democratic societies, the activities of public officials must be open to public scrutiny. Criminal defamation laws intimidate individuals from exposing wrongdoing by public officials and such laws are therefore incompatible with freedom of expression.
- Freedom of expression requires that many different points of view can be heard. State control of media, as well as laws and practices that permit monopolies in ownership of media companies, limit plurality and prevent the public from hearing certain points of view.

Andrew Chigovera
ACHPR Special Rapporteur for Freedom of Expression

Eduardo Bertoni
IACHR-OAS Special Rapporteur on Freedom of Expression

**JOINT DECLARATION: WORLD PRESS FREEDOM DAY
BY**

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the ACHPR Special Rapporteur for Freedom of Expression, the IACHR-OAS Special Rapporteur on Freedom of Expression, and the OSCE Representative on Freedom of the Media

Washington, D.C. May 3rd, 2005. On the occasion of the World Press Freedom Day, the Special Rapporteur of the Commission of Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, the Special Rapporteur for freedom of expression of the Organization of American States, Mr. Eduardo Bertoni, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, Mr. Miklos Haraszti, and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights, Mr. Andrew Chigovera, wish to pay tribute to the courage and professionalism of the numerous journalists and other media professionals either killed or wounded on account of their professional activities. In addition to the dangers of conflict areas and war zones, journalists frequently face murder attempts, intimidations and harassment because of their inquiries on political, social and economic issues. Unfortunately, in most cases these crimes are not adequately punished; an end to impunity for the perpetrators of such acts would reinforce the role that the Rule of Law must play in all societies.

While the role of private enterprises is crucial to the development of the media, the growing phenomenon of media concentration might prevent the public from receiving a plurality of views and affect the independence of press professionals. Likewise, the adoption and the implementation of legislation against defamation and libel in the sphere of criminal law might boost pressure on journalists and media professionals so as to hamper their capacity of sound judgment and restrict their freedom of expression.

The signatories of this statement underline the importance of all forms of the media, including the print media, radio, television and the Internet, in the exercise of the right to freedom of opinion and expression, which is a fundamental and inalienable right that contributes to the consolidation of democracy and to the development of a civil society based on mutual respect, dialogue and tolerance.

Imparting information, spreading knowledge and creating awareness are basic components of this right. Any obstacle to the free circulation of ideas and opinions hinders freedom of expression and its beneficial consequences. In this context, the work of the Press and media professionals represents an exceptional tool for the promotion of freedom of expression throughout the world.

On this World Press Freedom Day, the four Rapporteurs call upon Governments around the world to foster conditions that are favourable to the full exercise of the right to freedom of expression.

Ambeyi Ligabo

Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion
and Expression of the UN

Miklos Haraszti

Representative on Freedom of the Media of the OSCE

Andrew Chigovera

Special Rapporteur on Freedom of Expression of the ACHPR

Eduardo Bertoni

Special Rapporteur for Freedom of Expression of the OAS

JOINT DECLARATION

BY

the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

Having discussed these issues in London and virtually with the assistance of *ARTICLE 19, Global Campaign for Free Expression*;

Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003 and 6 December 2004;

Recognising the huge and growing importance of the Internet as a vehicle for facilitating in practice the free flow of information and ideas that lies at the heart of the right to freedom of expression;

Stressing the need for strict application of international guarantees of freedom of expression to the Internet;

Aware of the ongoing debate about Internet governance and the concerns that have been raised about government interference in the Internet;

Condemning attempts by some governments to use the need to combat terrorism as a justification for adopting laws that unduly restrict freedom of expression;

Concerned that the standard of restricting expression which amounts to incitement, hitherto well-established in the areas of public order and national security, is being eroded in favour of vague and potentially very overbroad terms;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and welcoming the appointment, by the African Commission on Human and Peoples' Rights, of a Special Rapporteur on Freedom of Expression;

Adopt, on 21 December 2005, the following Declaration:

On the Internet

- No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting. This does not apply to registration with a domain name authority for purely

technical reasons or rules of general application which apply without distinction to any kind of commercial operation.

- The Internet, at both the global and national levels, should be overseen only by bodies which are protected against government, political and commercial interference, just as freedom from such interference is already universally acknowledged in the area of the print and broadcast media. National regulation of Internet domain names should never be used as a means to control content.
- The right to freedom of expression imposes an obligation on all States to devote adequate resources to promote universal access to the Internet, including via public access points. The international community should make it a priority within assistance programmes to assist poorer States in fulfilling this obligation.
- 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. The distribution of filtering system products designed for end-users should be allowed only where these products provide clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.
- No one should be liable for content on the Internet of which they are not the author, unless they have either adopted that content as their own or refused to obey a court order to remove that content. Jurisdiction in legal cases relating to Internet content should be restricted to States in which the author is established or to which the content is specifically directed; jurisdiction should not be established simply because the content has been downloaded in a certain State.
- Restrictions on Internet content, whether they apply to the dissemination or to the receipt of information, should only be imposed in strict conformity with the guarantee of freedom of expression, taking into account the special nature of the Internet.
- 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. While this may pose difficulties in relation to operations in certain countries, these corporations are encouraged to work together, with the support of other stakeholders, to resist official attempts to control or restrict use of the Internet, contrary to the principles set out herein.

On Anti-Terrorism Measures

- The right to freedom of expression is universally recognised as a cherished human right and to respond to terrorism by restricting this right could facilitate certain terrorist objectives, in particular the dismantling of human rights.
- While it may be legitimate to ban incitement to terrorism or acts of terrorism, States should not employ vague terms such as 'glorifying' or 'promoting' terrorism when restricting expression. Incitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.

Ambeyi Ligabo

UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti

OSCE Representative on Freedom of the Media

Eduardo Bertoni

OAS Special Rapporteur on Freedom of Expression

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES
ASSASSINATION OF COLOMBIAN JOURNALIST**

Washington, D.C., January 14, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS deplores the assassination of Colombian journalist Julio Hernando Palacios Sánchez. Likewise, he urges Colombian authorities to launch an investigation into the act and to punish the perpetrators. Julio Palacios was a radio journalist in Cúcuta, in the department of Norte de Santander. He was known for being outspoken on issues of local corruption.

According to the information received, Mr. Palacios was murdered in the morning of January 11, 2005 as he was on his way to work at the radio station. Two individuals on a motorcycle intercepted him, shot him in the chest, and fled. Mr. Palacios was able to drive home and was then taken to a hospital by a family member. He died there a few hours later.

The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, recalls that the assassination of journalists is the most brutal means of restricting freedom of expression. As stated in Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, *"The murder [of] and or threats to social communicators violate the fundamental rights of individuals."* The American Convention on Human Rights, to which Colombia is a party, establishes that states have the duty to prevent, investigate, and sanction any violation of the rights recognized in the Convention. In this regard, it should be noted that the murder, kidnapping, or intimidation of those who work for the media, or threats against them, pursue two specific goals. On the one hand, they seek to eliminate journalists who are investigating abuses or irregularities in order to curtail their investigations and, on the other, they endeavor to intimidate investigators in general. A thorough, effective, and prompt investigation of such crimes is essential in order to send a strong message that the state will not tolerate grave violations of the right freedom of expression and to reassure journalists and others who denounce abuses that they can safely continue to do so.

Finally, the Office of the Special Rapporteur urges the Colombian government to strengthen existing mechanisms to protect social communicators, so that they can perform their valuable work of informing the public without fear. In this regard, it is important to recall the commitment made by the Heads of State and Government at the Third Summit of the Americas, whereby the governments pledged to ensure *"that journalists and opinion leaders are free to investigate and publish without fear of reprisals"*

SPECIAL RAPPORTEURS FOR FREEDOM OF EXPRESSION FOR AFRICA AND THE AMERICAS APPROVED A JOINT DECLARATION

Washington, D.C., March 4, 2005. The recently appointed Special Rapporteur for Freedom of Expression for the African Commission on Human and Peoples' Rights (ACHPR), Commissioner Andrew Chigovera, made an official visit to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), Mr. Eduardo Bertoni, during the week of February 28 through March 4, 2005. The visit was an opportunity for the two defenders of freedom of expression to discuss common problems facing freedom of expression in both Africa and the Americas, consider ways in which the two mandates can cooperate to address some of these problems, and exchange information about strategies to carry out their individual mandates.

At the conclusion of the visit, the two Rapporteurs approved a joint declaration addressing some of the issues they discussed during their meetings. Specifically, the Declaration reaffirms the importance of freedom of expression in a democracy and expresses concern about the many threats to freedom of expression in both regions. The Declaration notes that reprisals against journalists and others who report critically on matters of public interest are common in both regions. In some cases, such reprisals take the form of threats or physical aggression, including murder, against journalists, media workers and human rights defenders. In other cases, reprisals are carried out through the legal system, by applying laws such as criminal defamation laws with the intent to suppress criticism. The Declaration also highlights the importance of plurality in sources of information as an essential component of freedom of expression and observes that "[s]tate control of media, as well as laws and practices that permit monopolies in ownership of media companies, limit plurality and prevent the public from hearing certain points of view."

**THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE
IACHR DEPLORES ATTACK AGAINST TRANSMISSION TOWERS IN THE DEPARTMENT OF
CAQUETA, COLOMBIA**

Washington, D.C., March 16, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States expresses its serious concern about the attack on the exercise of freedom of the press that occurred against the transmission towers of the local radio stations *Cristalina Estéreo* and *Espléndida Estéreo*, near the city of Florencia in the department of Caquetá, early in the morning on March 13, 2005.

According to the information received, on that date several armed men installed approximately twenty kilos of explosives around the area where the transmission equipment of the radio stations was located. The explosion caused serious material damage, which impeded the two local radio stations from continuing to broadcast in the surrounding area.

The Office of the Special Rapporteur deplores the attack, which constitutes one of the most serious kinds of violations of the exercise of freedom of expression. Additionally, the Rapporteurship emphasizes that the material destruction of communications media is a method aimed at silencing the independent and critical press, which also interferes with the right of citizens to receive information. As Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR indicates, "the material destruction of communications media violate[s] the fundamental rights of individuals and strongly restrict[s] freedom of expression."

The Rapporteurship is concerned about this new attack against transmission stations in Colombia, which follows other incidents occurring since February in the departments of Putumayo and Valle del Cauca. On February 13, the antenna of *Latina Estéreo* in Puerto Asís was destroyed by various unidentified individuals who planted explosives so that they could later burn down the transmission station. On February 20, a car bomb destroyed one of the locations of radio television *RCN* in Cali. The Revolutionary Armed Forces of Colombia (FARC) claimed responsibility for this attack. Finally, on March 2, the transmission station of the private television channels *RCN* and *Caracol* in the department of Putumayo was destroyed by several heavily armed men who spread gasoline and set fire to the interior of the building.

The Rapporteurship emphasizes that freedom of expression is essential for the strengthening of the democratic system and indispensable for the formation of public opinion, both necessary elements to allow social communicators to carry out their role of informing Colombian society. The Rapporteurship values the initiatives coming from the highest levels of the government condemning this type of actions and announcing efforts

to investigate them completely. The Special Rapporteur urges the Colombian state to continue with these initiatives, especially to ensure that authorities implement mechanisms of prevention and protection so that these attacks will not be repeated and that the incidents are investigated and sanctioned in a serious and impartial manner. In this sense, the Rapporteurship recalls the commitment expressed by the Heads of State and Government during the Third Summit of the Americas that the States will "ensure [...] that journalists and opinion leaders are free to investigate and publish without fear of reprisals."

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCERNED
OVER THE PASSAGE OF BILL ON THE PARTIAL REFORM OF THE CRIMINAL CODE OF
VENEZUELA**

Washington DC, March 28, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the passage of the Bill on the Partial Reform of the Criminal Code by the Legislative Assembly of Venezuela. The new legislation not only maintains the provision on *desacato* but it extends its protection to other public officials. Article 148 of the previous Criminal Code included the President of the Republic and Article 149 of the Criminal Code included the Vice-president of the Executive, the Judges of the Supreme Court of Justice, the Cabinet Ministers, the state Governors and the Metropolitan Mayor. The modified legislation adds the deputies of the National Assembly, the principals of the National Electoral Council, the members of the High Military Command, the Human Rights Ombudsman (*Defensor del Pueblo*), the Attorney General, the Public Prosecutor General (*Fiscal General*), and the Republic Treasury Inspector (*Contralor General de la República*).

Principle 11 of the Declaration of Principles on Freedom of Expression approved by the IACHR in October 2000, states: "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." This principle is in agreement with the conclusions of the IACHR on the compatibility of *desacato* laws with the American Convention on Human Rights expressed in a report written in 1995. In summary, the following arguments were made: a) *Desacato* laws provide greater protection to government officials than to private citizens, in direct violation of the fundamental principle of a democratic system that subjects the government to controls, such as public scrutiny, to prevent and control abuses of its coercive powers; and b) *desacato* laws act as a deterrent to criticism, because of people's fear of law suits or monetary sanctions.

The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, recalls that in the report on the situation of human rights in Venezuela, the IACHR recommended that Venezuela work "for the repeal of laws that contain *desacato* provisions; such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights."

The Special Rapporteur for Freedom of Expression will continue to analyze the partial reform of the criminal code of the Bolivarian Republic of Venezuela, especially in the issues related to its mandate.

**ANNUAL REPORT: OFFICE OF THE SPECIAL RAPPORTEUR CALLS ATTENTION TO THE
INCREASE OF VIOLENCE AGAINST MEDIA WORKERS IN 2004**

Washington, D.C., April 19, 2005. In its evaluation of the situation of freedom of expression in 2004, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) called attention to the increase in the acts of violence against media workers in the Region. In the 2004 Annual Report there are accounts of 11 murders of media workers related to their work as journalists. The IACHR presented its Annual Report before the Committee on Juridical and Political Affairs of the Organization of American States (OAS) last Friday, April 15, 2005. The third volume of the report contains the Report of the Office of the Special Rapporteur for Freedom of Expression.

Besides the evaluation of the situation of freedom of expression in the Region, the report of the Office includes a summary of the caselaw on freedom of expression in the United Nations Human Rights Committee; a report on access to information in the member states of the OAS; and contains a doctrinal report on concentration of media ownership and its impact on freedom of expression. The annual report also analyzes the problem of hate speech in the context of the exercise of freedom of expression.

Moreover, the Office, following its biannual custom, reported the state of advances and setbacks in the limitations to freedom of expression through laws of *desacato* and of criminal defamation. This year, the Office highlighted the important decisions of the Inter-American Court of Human Rights, which stressed the importance of freedom of expression in democratic societies by rejecting criminal liability as consequence of determined expressions.

When making the report public, the Special Rapporteur for Freedom of Expression asserted that "the great challenge facing the attacks on freedom of expression and of the press is that the society in its whole must take them on as their own fundamental rights, for their development and life in democracy, and not as a right of a few privileged ones".

**SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION TO CARRY OUT OFFICIAL VISIT
TO COLOMBIA**

Washington, D.C., April 22, 2005. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Mr. Eduardo A. Bertoni, will carry out an official visit to Colombia from April 25 to 30, 2005. The visit is taking place at the invitation of the Government of the Republic of Colombia. The objective of the visit is to gather information about the general situation of freedom of expression in the country and to promote the standards established in relation to this issue by the inter-American system for the promotion and protection of human rights. The Rapporteurship thanks the Colombian authorities and civil society organizations for their cooperation in the preparation of this visit.

During his visit, the Rapporteur will meet with, among others, public officials, journalists, directors of communications media, representatives of civil society and academics, both from the capital and from other regions of the country. As part of their agenda, members of the Rapporteurship's delegation will travel to the Arauca region on Wednesday the 27th. The remainder of the activities will take place in Bogotá. During their visit, the members of the delegation will stay at the Hotel Radisson Royal Bogotá, Calle 114 9-65 TeleportBusinessPark, Bogotá. Telephone: (57-1) 6578700, Fax: (57-1) 6295551.

After analyzing the information gathered during the visit, the Rapporteurship will prepare a report to be presented to the Inter-American Commission on Human Rights.

The Office of the Special Rapporteur for Freedom of Expression was created in 1998 by the IACHR as a permanent office, with functional independence and its own budget, which operates within the juridical framework of the Commission.

For additional information about the Office of the Special Rapporteur for Freedom of Expression, consult: www.cidh.org/relatoria. For more information about the Inter-American Commission on Human Rights, see: www.cidh.org.

**PRELIMINARY OBSERVATIONS UPON CONCLUDING HIS OFFICIAL VISIT TO COLOMBIA:
THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES SERIOUS
CONCERN ABOUT SELF-CENSORSHIP AND PERSISTENT IMPUNITY**

Bogotá, Colombia. April 29, 2005. Upon concluding his official visit to the Republic of Colombia, Eduardo Bertoni, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), expresses his concern about the very strong environment of self-censorship among journalists and the media, as well as the persistent impunity registered in many crimes against journalists. The Office of the Rapporteur is conscious, as noticed by the IACHR, that the internal armed conflict affecting Colombia is of great complexity and involves high levels of violence. However, the Office exhorts the Colombian State to reinforce the mechanisms for guaranteeing the full exercise of freedom of expression in Colombia.

The visit, which was made at the invitation of the government, ran from April 25 to April 29, 2005. The purpose was to gather information on the status of freedom of expression in the country. Accompanying the Special Rapporteur for Freedom of Expression were Carlos Zelada and Montserrat Solano, lawyer and collaborator with the Office, respectively. The Special Rapporteur personally thanked the President of the Republic, Álvaro Uribe Vélez, for the invitation and the great cooperation received from his government during the visit. Likewise, the Office of the Rapporteur thanks the civil servants, members of civil society, journalists and the media in Colombia, for all the information received.

During his visit, the Rapporteur met with officials from the Office of the President of the Republic; the Human Rights Program of the Office of the Vice-president of the Republic; the Department of the Interior; the National Police; the "Defensoría del Pueblo", the UN High Commissioner for Human Rights in Colombia, the Culture Ministry, the Communication Ministry and the Office of the Attorney General (Fiscalía General de la Nación). The Rapporteur also met with judges from the Constitutional Chamber; representatives of the Legislative Chamber and the Vice-president of the Republic. Furthermore, the Office of the Rapporteur had numerous meetings with academics, journalists, representatives of the civil society and the media.

As part of the visit, on April 27, the Rapporteur traveled to the department of Arauca, where he received information from local authorities and over 30 representatives of the civil society and the media.

Upon concluding its visit, the Office of the Rapporteur takes note of the efforts of Colombian authorities to guarantee the right to freedom of expression, particularly through the program for the protection of journalist of the Department of the Interior and Justice. The Office of the Rapporteur was pleased to receive information on the programs on social telecommunication, particularly the process of concession of radio frequencies to

community radios started in 2004 and on the programs designed to offer more resources for the general public to access information.

Notwithstanding, the Office of the Rapporteur received many testimonies from media workers, especially from the countryside, who did not publish information on certain topics or changed their editorial line due to fear of retaliation. In addition, some national and regional authorities admitted that civil society, the media and the population in general, fear to participate in public debates and to report on issues related to the internal armed conflict, the activity of illegal armed groups, drug trafficking and corruption.

Freedom of Expression is the cornerstone upon which a democratic society rests. The self-censorship perceived during the visit limits the right of the Colombian population to receive and impart information, restricts public debate and impairs the efforts to strengthen the rule of law. The Office of the Rapporteur urges the State to do everything possible to guarantee the exercise of freedom of expression and freedom of the press, without which democratic societies are weakened.

The murder, kidnapping, threatening and harassment of journalists, as well as, the destruction of the means of communication, not only constitute a clear violation of individual rights but also restrict freedom of expression. These acts work as an intimidation tool by attempting to keep the press silent about illegal and abusive facts and also send a clear message of intimidation to those in civil society who denounce abuses.

According to statistics received from different organizations and from the State, there has been a decrease in the numbers of murders, threats and harassment of journalists. However, they still persist, especially outside the Capital.

Although the Office of the Rapporteur recognizes the impact of government actions in reducing crimes against journalists, it also realizes that this reduction is also partly affected by journalists not reporting information that could endanger them.

The situation is even more serious in the countryside. During its visit to Arauca, the Office of the Rapporteur received information on violent acts committed against those who exercise freedom of expression and who fear to take action due to possible reprisals.

The 2003 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia points out that "the measures adopted in Arauca have not created favourable conditions for the full exercise of freedom of the press and the right of the population to be informed in a true and impartial way. For this reason many journalists have shown an increase in self-censorship, which they define as self-regulation in order to survive." Likewise, the Office of the Rapporteur heard this sort of declarations several time during the visit to Arauca. The information also received accounts for the continuation of threats against those who express themselves freely. Considering this situation the Office of the Rapporteur calls on local authorities not to underestimate these threats and duly act in order to shed light upon these crimes.

Regarding the program for the protection of journalists from the Department of Interior and Justice, the Office of the Rapporteur recognizes that the actions taken by the State in this program have been essential to the protection of those who believe their lives are in risk for exercising freedom of expression, and thus calls attention to the need to strengthen it.

The "chilling effect" caused by the intimidation and murder of journalists is amplified if those crimes result in impunity. The Office received numerous complaints about the scarce solid results in the investigation of such crimes. The State has the obligation to fight impunity by all legal means available, since impunity brings about the repetition of human rights violations and lack of defense for the victims and their families. For these reasons, and not prejudging the complexities that may be present, the Office of the Rapporteur is concerned also the slow advances in the investigations of murders of journalists. According to the information received, most of those cases are still in the preliminary stage of investigation. And although there have been a few convictions, these are the exceptions. Some of the researches have led to the prosecution of the material perpetrators and some times the masterminds were also prosecuted and convicted. Likewise, in the cases of threats against journalists, most of them are also in the preliminary stage of investigation.

Consequently, the Special Rapporteur makes it his, the appeal of the United Nations Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo, to the Colombian authorities to qualify as a priority issue the fight against impunity and take the perpetrators of those aforesaid crimes to justice, without consideration of their political or social status.

The damaging consequences of impunity constitute a factor to be considered in the proposals for legislative changes during the demobilization process proposed by the State, among them the bill known as "Justice and Peace" (Justicia y Paz). The Rapporteur recalls, as stated by the IACHR in its Report on the Demobilization Process in Colombia, that this process must be done in a legal framework that assures access to truth, justice and reparation and that it does not contribute for the consolidation of impunity in the cases of crimes against victims of the conflict, among them journalists. The consolidation of impunity would establish a precedent that would contribute for the creation of an environment favorable to the increase the already alarming levels of self-censorship.

Finally, the Office of the Rapporteur was pleased to hear declarations from Colombian authorities recognizing the importance of freedom of expression and revealing their commitment to guaranteeing the work of the media. The Office of the Rapporteur asks that the State continue to publicly declare its support for freedom of expression, considering that, in the complexity of the Colombian situation, announcements that place the press as contrary to security policies can make it vulnerable to attacks.

Once again, the Office of the Rapporteur recognizes the importance of journalists, the media and human rights defenders, who daily risk their lives and physical integrity to guarantee the right of people to be informed.

Regardless of these preliminary observations and taking into consideration the information gathered during this official visit, former visits and upcoming reports; the Office of the Special Rapporteur will present a report on this and other issues to the Inter-American Commission on Human Rights.

For more information on the Office of the Rapporteur: www.cidh.org/relatoria/

JOINT DECLARATION: WORLD PRESS FREEDOM DAY

Washington, D.C. May 3rd, 2005. On the occasion of the World Press Freedom Day, the Special Rapporteur of the Commission of Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, the Special Rapporteur for freedom of expression of the Organization of American States, Mr. Eduardo Bertoni, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, Mr. Miklos Haraszti, and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights, Mr. Andrew Chigovera, wish to pay tribute to the courage and professionalism of the numerous journalists and other media professionals either killed or wounded on account of their professional activities. In addition to the dangers of conflict areas and war zones, journalists frequently face murder attempts, intimidations and harassment because of their inquiries on political, social and economic issues. Unfortunately, in most cases these crimes are not adequately punished; an end to impunity for the perpetrators of such acts would reinforce the role that the Rule of Law must play in all societies.

While the role of private enterprises is crucial to the development of the media, the growing phenomenon of media concentration might prevent the public from receiving a plurality of views and affect the independence of press professionals. Likewise, the adoption and the implementation of legislation against defamation and libel in the sphere of criminal law might boost pressure on journalists and media professionals so as to hamper their capacity of sound judgment and restrict their freedom of expression.

The signatories of this statement underline the importance of all forms of the media, including the print media, radio, television and the Internet, in the exercise of the right to freedom of opinion and expression, which is a fundamental and inalienable right that contributes to the consolidation of democracy and to the development of a civil society based on mutual respect, dialogue and tolerance.

Imparting information, spreading knowledge and creating awareness are basic components of this right. Any obstacle to the free circulation of ideas and opinions hinders freedom of expression and its beneficial consequences. In this context, the work of the Press and media professionals represents an exceptional tool for the promotion of freedom of expression throughout the world.

On this World Press Freedom Day, the four Rapporteurs call upon Governments around the world to foster conditions that are favourable to the full exercise of the right to freedom of expression.

Ambeyi Ligabo

Special Rapporteur of the UN on the promotion and protection of the right to freedom of opinion and expression

Miklos Haraszti

Representative on Freedom of the Media of the OSCE

Andrew Chigovera

Special Rapporteur on Freedom of Expression of the ACHPR

Eduardo Bertoni

Special Rapporteur for freedom of expression of the OAS

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES
SERIOUS CONCERN ABOUT THREATS TO THREE COLOMBIAN JOURNALISTS**

Washington, D.C., May 18, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its serious concern about the threats that were recently received by three Colombian journalists.

According to the information received by the Office of the Special Rapporteur, at the beginning of this week journalists Carlos Lozano Guillén, Hollman Morris and Daniel Coronell were the objects of death threats that consisted of sending floral arrangements (wreaths) as if they were intended for the journalists' funerals.

The Office of the Special Rapporteur views positively the fact that this act has been condemned from the highest governmental offices, which have also encouraged the investigation. The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, calls upon the State to redouble its efforts to protect the personal integrity of journalists and to guarantee the exercise of freedom of expression and of the press, without which the foundation of democracy will be weakened.

The Office of the Special Rapporteur reiterates that the murder of journalists and threats against them are the most brutal means of restricting freedom of expression. As stated in Principle 9 of the Declaration of Principles on Freedom of Expression, *"The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression."* Finally, the Office of the Special Rapporteur recalls that the American Convention on Human Rights, to which Colombia is a party, establishes that states have the duty to prevent, investigate, and sanction any violation of the human rights recognized in the Convention.

**THE OAS GENERAL ASSEMBLY APPROVES RESOLUTIONS ON THE IMPORTANCE OF
FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION**

Washington, D.C., June 15, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights highlights the support of the XXXV General Assembly of the Organization of American States – held from June 5-7 in Fort Lauderdale, Florida, United States – for the rights to freedom of expression and access to public information through its adoption of the resolutions on the “Right to Freedom of Thought and Expression and the Importance of the Media” and “Access to Public Information: Strengthening Democracy.”

In the resolution on the “Right to Freedom of Thought and Expression and the Importance of the Media,” the General Assembly took note of the most recent report of the Office of the Special Rapporteur for Freedom of Expression and reaffirmed the importance of the right to freedom of expression.

The resolution on “Access to Public Information: Strengthening Democracy” marks the third time the General Assembly has passed a resolution on this issue. In the June 2003 meeting of the G.A. in Santiago, Chile, the Member States adopted a resolution in the area of public information asserting the duties of the States to respect and promote respect for access to public information. During the XXXIV General Assembly, held in June 2004 in Quito, Ecuador, a second resolution extended this effort by encouraging OAS Member States to implement legislation or other provisions providing citizens with broad access to public information and calling upon the Office of the Special Rapporteur for Freedom of Expression and the Unit for the Promotion of Democracy (now the Office for the Promotion of Democracy) to provide support to the States in preparing such initiatives. In the most recent resolution on access to information adopted by the XXXV General Assembly, the G.A. reaffirmed what was resolved in the earlier resolutions and additionally called upon the Inter-American Commission on Human Rights “to conduct a study on how the State can guarantee all citizens the right to seek, receive, and impart public information on the basis of the principle of freedom of expression.” Moreover, the G.A. once again called upon the Permanent Council to convene a special meeting of experts on access to public information, with the assistance of the Office of the Special Rapporteur and the Office for the Promotion of Democracy.

The Special Rapporteur is deeply committed to carrying out this work and supporting Member States in the adoption of legislation in this area.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES
POSSIBLE JAIL TIME FOR REPORTERS IN THE UNITED STATES FOR REFUSING TO
REVEAL CONFIDENTIAL SOURCES**

Washington, D.C., June 30, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deplores that journalists Judith Miller of *The New York Times* and Matthew Cooper of *Time* magazine face time in prison for refusing to reveal their confidential sources in a grand jury investigation. On June 29, U.S. district judge Thomas Hogan stated he would send the reporters to prison in one week if they refused to testify. According to information received by the Office of the Special Rapporteur, both Miller and Cooper have indicated they will go to jail rather than divulge their sources.

The journalists had been subpoenaed by Special Prosecutor Patrick J. Fitzgerald, who was appointed to investigate the leak of undercover CIA operative Valerie Plame's identity. In October 2004, when they refused to testify, Hogan held Miller and Cooper in contempt of court and ordered them imprisoned and fined \$1,000 a day until they agreed to comply with the grand jury investigation. The U.S. Court of Appeals in Washington, D.C. affirmed in February 2005 that Miller and Cooper had no privilege to refuse to testify. On June 27, the U.S. Supreme Court declined to hear the appeal of the two journalists. With the appeals process exhausted, the case returned to federal district court in Washington, D.C., where Hogan held the hearing yesterday to decide when and where the two reporters will serve their time.

The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, recalls that in furtherance of the public's right to information, it is imperative that journalists retain the right to confidentiality of sources. This concept is supported by Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR, which asserts, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

The right to confidentiality is essential to a journalist's work in performing the important public service of collecting and disseminating information. The threat of legal action against journalists and/or their sources will ultimately produce a chilling effect on news media and will lead to a less informed general public. The Special Rapporteur is concerned that without legal guarantees of a journalist's right to confidentiality, freedom of the press in the United States is at risk.

For the reasons stated above, the Special Rapporteur deplores the fact that two U.S. journalists now face jail time for refusing to reveal confidential sources. He also urges the U.S. to pass legislation reforming its laws in accordance with the principles of the IACHR's Declaration of Principles on Freedom of Expression.

**THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE
IACHR EXPRESSES ITS SATISFACTION WITH DECISIONS IN GUATEMALA AND
HONDURAS DECLARING DESACATO LAWS UNCONSTITUTIONAL**

Washington, D.C., July 1, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses satisfaction with judicial decisions in Guatemala and Honduras that found "*desacato*" laws (contempt) to be unconstitutional. The Rapporteurship considers these measures to be important steps in strengthening freedom of expression in the hemisphere.

On May 19, the Constitutional Chamber of the Supreme Court of Honduras arrived at its decision of the unconstitutionality of *desacato* laws, which were penalized with two to four years imprisonment. The decision originated in a petition of unconstitutionality filed by the General Prosecutor of the Republic in 2003.

In its ruling, Honduras's highest court took into account the recommendations of the Rapporteurship and the IACHR, who both urged that the *desacato* laws be abolished. *Desacato* laws, which make criticism of public officials a crime, confer a greater level of protection on public officials than on private persons. These laws are widely considered to be counter to democratic principles. They also violate the full exercise of freedom of expression guaranteed by the American Convention, since they inhibit criticism and diminish public debate.

On June 14, the Constitutional Court of Guatemala suspended *desacato* laws, which called for imprisonment of six months to six years. The ruling came as a result of a petition of unconstitutionality filed by Mario Fuentes Destarac, president of the Guatemalan Chamber of Journalism.

The *desacato*, recognized in several criminal codes in the hemisphere, criminalizes offensive expressions directed at public officials. Since its inception, the Office of the Special Rapporteur has examined the problem of *desacato* laws due to the danger that they could become a mechanism to stifle pluralistic and democratic debate on affairs of government. As Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states, "public officials are subject to greater scrutiny by society". *Desacato* laws, therefore, restrict freedom of expression and the right to information.

In two visits made to Honduras and Guatemala, the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, had recommended the abolition of these *desacato* laws (see Guatemala OEA/Ser.L/V/II.118 - 2004.esp and Press Release 91/03). The Rapporteurship expresses approval of the decisions, which represent an advancement for the protection of freedom of expression, and it urges the governments of both countries to adopt the appropriate measures to effectively eliminate the crime of *desacato*.

For more information about the Rapporteurship: <http://www.cidh.org/relatoria/>

PRESS RELEASE 127/05

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS CONDEMNS THE FARC'S ATTACKS ON RADIO TRANSMISSION TOWERS IN EL CAUCA, COLOMBIA

Washington, D.C., Sept. 9, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), part of the Organization of American States (OAS), condemns the recent attacks against the transmission towers of local broadcasters *Caracol* and *Grupo Radial Colombiano, Colmundo*. The attacks occurred on Sept. 5, 2005 in the municipality of Silvia in the western part of Colombia's Cauca region.

Based on the information received regarding these attacks, members of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) guerrilla group deployed dynamite to blow up the towers belonging to the above-mentioned broadcasters, causing serious material damage. The attacks also halted all broadcasts to neighboring areas. The Office of the Special Rapporteur is concerned by this latest attack in Colombia, which follows on the heels of similar attacks in February, March and May in the regions of Valle del Cauca, Caquetá and Putumayo, respectively.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR notes that "the material destruction of communications media violate[s] the fundamental rights of individuals and strongly restrict[s] freedom of expression."

Eduardo Bertoni, Special Rapporteur for Freedom of Expression, condemns these acts of violence committed by armed dissident groups in violation of international human rights law and international humanitarian law. He calls on the Colombian State to investigate, try and punish those responsible for these acts.

For more information on the Office of the Special Rapporteur, see its website: <http://www.cidh.org/relatoria>

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS CONDEMNS ATTACKS ON NEWSPAPER AND RADIO STATIONS IN MARILIA, BRAZIL

Washington, D.C., Sept. 14, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), part of the Organization of American States (OAS), condemns the recent attacks against the building of *Central Marília de Notícias* (CMN), which houses the offices of *Diário de Marília* and radio stations *Dirceu AM* and *Diário FM*, in the city of Marília, São Paulo state, Brazil.

Based on the information received regarding these attacks, early on September 8, 2005 a group of unidentified assailants overcame CNM security guards and splashed gasoline and set fire to the building, causing serious material damage. These attacks are believed to be linked to exposure by these media outlets of alleged corruption within the local government in Marília.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR notes that "the material destruction of communications media violate[s] the fundamental rights of individuals and strongly restrict[s] freedom of expression."

Eduardo Bertoni, Special Rapporteur for Freedom of Expression, condemns these acts of violence and calls on the Brazilian authorities to investigate, try and punish those responsible for these acts.

For more information on the Office of the Special Rapporteur, see its website: <http://www.cidh.org/relatoria>

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES
ATTACKS AGAINST HAITIAN PRESS**

Washington, D.C., Oct. 5, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), deplores the recent attacks against the exercise of the right to freedom of expression in Haiti, as well as the aggressions and acts of intimidation against journalists and the media in the country.

The Rapporteurship has been informed that on October 3, security guards of President Boniface Alexandre attacked *Reuters* correspondent Joseph Guyler Delva and *Radio Metropole* reporter Jean Wilkens Merone, while they were covering a ceremony marking the beginning of the judicial year. Both journalists reported serious injuries after being dragged inside the courthouse and then severely beaten.

During the last months the Office has also become aware of other attacks against journalists. On September 9, journalists Jean Ristil and Kevin Pina were arrested while monitoring a search warrant at Rev. Fr. Gerard Jean-Juste's church in the Delmas district. On July 10, journalist Jacques Roche was kidnapped and subsequently tortured and murdered by his assailants. On April 7, reporter Robenson Laraque died from injuries suffered while observing a clash between UN troops and members of the disbanded Haitian military in the city of Petit-Goâve. On January 14, radio reporter Abdias Jean was murdered while covering a police operation and raid in the Village de Dieu sector of Port-au-Prince.

In a press communiqué released on July 22, 2005, the IACHR expressed its concern and condemned the attacks and acts of intimidation perpetrated against journalists and human rights defenders, calling on the state to effectively ensure the right to life, the right to humane treatment and the right to freedom of expression enshrined in the American Convention. The Special Rapporteur, Eduardo Bertoni, reiterated that the murder of journalists and threats against them are the most brutal means of restricting freedom of expression. As stated in Principle 9 of the Declaration of Principles on Freedom of Expression, *"The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression."*

The Office of the Special Rapporteur for Freedom of Expression will continue to follow the situation in Haiti, and will inform the Inter-American Commission on Human Rights on this issue during the next period of sessions in October 2005.

For more information on the Office of the Special Rapporteur, see its website:
<http://www.cidh.org/relatoria>

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES
CONCERN ABOUT ADMINISTRATIVE RESOLUTION ORDERING PROVISIONAL CLOSURE
OF NEWSPAPER IN VENEZUELA**

Washington, D.C., October 26, 2005. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern about the decision of the National Agency for the Administration of Taxes and Customs (*Servicio Nacional Integrado de Administración Tributaria y Aduanera*, SENIAT) of Venezuela, which imposed a fine and ordered the closure of the offices of the regional newspaper *El Impulso* for 24 hours.

The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, reiterates that administrative and tax proceedings must never be used to silence criticism and information and that when extreme measures are adopted, full respect for freedom of expression must be guaranteed.

Regarding this, Principle 13 of the Declaration of Principles on Freedom of Expression of the Commission indicates that direct or indirect pressure aimed at silencing the informative work of social communicators is incompatible with freedom of expression.

The Rapporteur's Office will continue to observe the development of these events, taking into account the seriousness of this measure, which seriously limits the informative work of the newspaper. Nonetheless, it recognizes the power of the Venezuelan State to verify compliance with its tax laws by its taxpayers.

For additional information about the Office of the Special Rapporteur:
<http://www.cidh.org/relatoria>

**THE THREE INTERNATIONAL DEFENDERS OF FREEDOM OF EXPRESSION APPROVED A
JOINT DECLARATION**

Washington, D.C., December 22, 2005. The three international defenders and promoters of Freedom of Expression approved this week a joint declaration regarding the right to freedom of expression in the context of the fight against terrorism. The declaration also is related to Internet and the right to freedom of expression.

This year, the United Nations Special Rapporteur on Freedom of Opinion and Expression, Mr. Ambeyi Ligabo; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Mr. Miklos Haraszti; and the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), Mr Eduardo Bertoni, with the assistance of ARTICLE 19 - Global Campaign for Free Expression, issued the joint statement that adds up to former declarations issued by these offices since 1999.

The Declaration recognised the growing importance of the Internet as a vehicle for facilitating in practice the free flow of information and ideas that lies at the heart of the right to freedom of expression; the declaration stressed the need for strict application of international guarantees of freedom of expression to the Internet. Furthermore, the declaration condemned the attempts by some governments to use the need to combat terrorism as a justification for adopting laws that unduly restrict freedom of expression.

The full text of the Declaration can be found at the website of the Office of the Special Rapporteur for Freedom of Expression of the OAS: www.cidh.org/relatoria/.