



Organization of
American States

Inter-American
Commission on
Human Rights **IACHR**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.
Doc. 69
30 December 2011
Original: Spanish

**ANNUAL REPORT OF THE
INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS
2011**

VOLUME II

**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL
RAPPORTEUR FOR FREEDOM OF EXPRESSION
2011**

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GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF
EXPRESSION 2011**

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TABLE OF ACRONYMS AND REFERENCES

ACHPR:	African Commission on Human and Peoples' Rights
American Convention:	American Convention on Human Rights
American Declaration:	American Declaration of the Rights and Duties of Man
Declaration of Principles:	Declaration of Principles on Freedom of Expression
European Convention:	European Convention on Human Rights and Fundamental Freedoms
European Court:	European Court of Human Rights
IACHR:	Inter-American Commission on Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ILO:	International Labor Organization
Inter-American Court:	Inter-American Court of Human Rights
OAS:	Organization of American States
OSCE:	Organization for Security and Cooperation in Europe
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization

ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION 2011

INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Office of the Special Rapporteur") was created in October of 1997 by the Inter-American Commission on Human Rights (hereinafter, "IACHR") during its 97th Period of Sessions. Since its establishment, the Office of the Special Rapporteur has had the support of not only the IACHR, but also Member States of the Organization of American States (OAS), non-Member States, civil society organizations, communications media, journalists, and, particularly, the victims of violations of the right to freedom of expression. Indeed, those who have turned to the inter-American system for the protection of human rights as a mechanism for the protection and guarantee of their right to freedom of expression have found that the Office of the Special Rapporteur offers decisive support for reestablishing the guarantees necessary for exercising their rights and for insuring that the damage from the violation of those rights is repaired.

2. Since its inception, the Office of the Special Rapporteur has worked for the promotion of the right to freedom of expression through technical assistance in individual cases before the inter-American system for the protection of human rights. With the same objective, and in the framework of the IACHR, the Office of the Special Rapporteur has prepared thematic and country reports, carried out official visits and promotional trips, and participated in dozens of conferences and seminars that have sensitized and trained hundreds of public officials, journalists, and defenders of the right to free expression.

3. The Annual Report of 2011 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for the work of the Office of the Special Rapporteur. The report begins with a general introductory chapter that explains in detail the office's mandate, the most important achievements of the Office of the Special Rapporteur in its thirteen years of operation, and the activities carried out in 2011.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2011, the Office of the Special Rapporteur received information from multiple sources about situations that could affect the exercise of the right to freedom of expression as well as progress in the effort to guarantee this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereinafter, "Declaration of Principles"), approved by the IACHR in 2000. The Declaration of Principles constitutes an authoritative interpretation of Article 13 of the American Convention on Human Rights (hereinafter, "American Convention") and an important instrument to help States to resolve challenges and promote, guarantee, and respect the right to freedom of expression.

5. Based on analysis of the situations reported in the hemisphere, the Office of the Special Rapporteur highlights some challenges facing the States in the region. In particular, Chapter II of this report places emphasis on the murders, attacks, and threats against journalists. States have the obligation to protect journalists who confront particular risks as a result of the exercise of their profession. States have an obligation to investigate, try, and punish those responsible for these acts, not only to provide reparation to the victims and their families, but also to prevent future occurrences of violence and intimidation. Additionally, the Office of the Special Rapporteur considers it important to call attention to other aspects of freedom of expression in the Americas, such as the misuse of the criminal law to try those who make statements that offend public officials, and best practices such as the approval and application of access to information laws.

6. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office charged with promoting and monitoring respect for freedom of expression in the hemisphere. This standing has generated, in turn, a substantial increase in the expectations of the hemispheric community with regard to the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special

Rapporteur, but also its financial support, since without this support it cannot function and carry out the activities required by its mandate. The Office of the Special Rapporteur does not directly receive resources from the regular fund of the OAS. For this reason, its sustainability depends largely on the voluntary contributions made by some States and the contributions of foundations and international aid agencies for specific projects. It is important to once more urge OAS Member States to follow those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Plan of Action approved by the Heads of State and Government at the Third Summit of the Americas, held in Quebec in April of 2001, establishes that “[t]o strengthen democracy, create prosperity and realize human potential, our Governments will... [c]ontinue 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[.]”

7. The Office of the Special Rapporteur is grateful for the financial contributions received during 2011 from Costa Rica; the United States of America; France; Sweden; Switzerland; and the European Commission. Once more, the Office of the Special Rapporteur invites other States to add to this necessary support.

8. The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, is grateful for the confidence of the IACHR and highlights the work of her predecessors in the consolidation of the Office of the Special Rapporteur. In particular, the Special Rapporteur expresses her gratitude towards her staff for the committed and exemplary work that they have carried out. This annual report is the product of their effort and dedication.

9. This annual report intends to contribute to the establishment of an improved climate for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress of the hemisphere’s inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the problems that we all wish to resolve and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and journalists in the region.

CHAPTER I GENERAL INFORMATION

A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support

1. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This Special Rapporteurship was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

2. The Commission's initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere's Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Special Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government stated the following:

We agree that a free press plays a fundamental role [in protecting 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.¹

3. The Heads of State and Government of the Americas likewise expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. On this point, the Summit Plan of Action recommended the following:

To strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression, information 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.²

4. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur, adding that their governments would:

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

¹ Declaration of Santiago. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

² Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

*seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.*³

5. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-O/05), in which it reaffirms the right to freedom of expression, recognizes the important contributions made in the Office of the Special Rapporteur's 2004 Annual Report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the way hate speech is addressed in the American Convention.⁴ The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

6. In 2006, the OAS General Assembly reiterated its support for the Office of the Special Rapporteur in its Resolution 2237 (XXXVI-O/06). In this resolution, the General Assembly reaffirmed the right to freedom of expression, recognized the important contributions made in the Office of the Special Rapporteur's 2005 Annual Report, and urged follow-up on the issues mentioned in the report. These included, among others, public demonstrations as an exercise of freedom of expression and freedom of assembly, as well as freedom of expression and the electoral process.⁵ As in the previous case, the Office of the Special Rapporteur has followed up on these issues in its annual evaluation of the situation regarding freedom of expression in the region. In the same resolution, the General Assembly called for convening a special meeting of the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding the subject matter of Article 13 of the American Convention, and to specifically address issues such as public demonstrations and freedom of expression, as well as the development and scope of Article 11 of the American Convention. That meeting was held on October 26-27, 2007.

7. In 2007, the OAS General Assembly approved Resolution 2287 (XXXVII-O/07), in which it invited the Member States to consider the Office of the Special Rapporteur's recommendations on the matter of defamation laws. In that resolution, the General Assembly reiterated its request to convene a special meeting in the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding Article 13 of the American Convention. That meeting was held on February 28-29, 2008.

8. In 2008, the General Assembly approved Resolution 2434 (XXXVIII-O/08), which reaffirms the right to freedom of expression and requests once again that the IACHR conduct appropriate follow-up on compliance with standards in this area and deepen its study of the issues addressed in its annual reports. The resolution invites the Member States to consider the recommendations of the Office of the Special Rapporteur regarding defamation, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and in this regard, to regulate these conducts exclusively in the area of civil law.

9. In 2009, in its Resolution 2523 (XXXIX-O/09), the General Assembly underscored the importance of the Office of the Special Rapporteur's recommendations contained in the 2004, 2005, 2006, 2007, and 2008 annual reports. It also requested once again that the IACHR follow up on the

³ Plan of Action. Third Summit of the Americas. April 20-22, 2001. Quebec, Canada. Available at: http://www.summit-americas.org/iii_summit/iii_summit_poa_en.pdf

⁴ IACHR. Annual Report 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>

⁵ IACHR. Annual Report 2005. OAS/Ser.L/V/II.124 Doc. 7. 27 February 2006. Chapter V and VI. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>

recommendations included in these reports and in particular invited the Member States to take into consideration the Office of the Special Rapporteur's recommendations, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, as well as by regulating this conduct exclusively in the area of civil law.

10. In 2011, the General Assembly passed resolution 2679 (XLI-O/11) reiterating the importance of freedom of expression for the exercise of democracy and reaffirming that free and independent media are fundamental for democracy, for the promotion of pluralism, tolerance and freedom of thought and expression, and for the facilitation of free and open dialogue and debate in all sectors of society, without discrimination of any kind. The Assembly invited the Member States to consider the recommendations of the IACHR Office of the Special Rapporteur for Freedom of Expression and asked the IACHR to follow up on and deepen its research on the subjects contained in the pertinent volumes of its annual reports for the years 2006, 2007, 2008, 2009, and 2010 on freedom of expression.

11. On the subject of access to information, the General Assembly has made several statements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXIII-O/03) in 2003, reiterated in 2004 in Resolution 2057 (XXXIV-O/04), and in 2005 in Resolution 2121 (XXXV-O/05), the General Assembly asked the Office of the Special Rapporteur to continue reporting on the situation regarding access to public information in the region in its annual reports. In 2006, through Resolution 2252 (XXVI-O-06), among other points, the Office of the Special Rapporteur was instructed to provide support to the Member States that request assistance in the development of legislation and mechanisms on access to information. The IACHR was also asked to conduct a study on the various forms of guaranteeing that all persons have the right to seek, receive, and disseminate public information based on the principle of freedom of expression. As a follow-up to this resolution, the Office of the Special Rapporteur in August 2007 published the *Special Study on the Right of Access to Information*.⁶

12. In the same regard, in 2007 the General Assembly approved Resolution 2288 (XXXVII-O/07), which highlights the importance of the right of access to public information, takes note of the Office of the Special Rapporteur's reports on the situation regarding access to information in the region, urges the States to adapt their legislation to guarantee this right, and instructs the Office of the Special Rapporteur to offer advisory support to the Member States in this area. It also requests that different bodies within the OAS, including the Office of the Special Rapporteur, prepare a basic document on best practices and the development of common approaches or guidelines to increase access to public information. This document, developed in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department of State Modernization and Good Governance, as well as with input from delegations of the Member States, was approved in April 2008 by the Committee on Juridical and Political Affairs.

13. In 2008, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the States to adapt their legislation to meet standards in this area, and instructs the Office of the Special Rapporteur to offer advisory support, as well as to continue including a report on the situation regarding access to public information in the region in its Annual Report.

14. In 2009, in its Resolution 2514 (XXXIX-O/09), the General Assembly once again reiterated the importance of the right of access to public information and recognized that the full respect for freedom of expression, access to public information, and the free dissemination of ideas strengthens democracy, contributes to a climate of tolerance of all views, fosters a culture of peace and non-violence, and strengthens democratic governance. It also instructs the Office of the Special Rapporteur to support the Member States of the OAS in the design, execution, and evaluation of their regulations and policies

⁶ IACHR. Estudio Especial sobre el Derecho de Acceso a la Información. August, 2007. Available at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>

with respect to access to public information and to continue to include in its Annual Report a chapter on the situation regarding access to public information in the region.

15. In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which issued resolution AG/RES 2607 (XL-O/10) in June of 2010. This resolution approved the text of the Model Law⁷ and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

16. In 2011, the General Assembly approved resolution 2661 (XLI-O/11), which, among other matters, entrusts the IACHR Office of the Special Rapporteur for Freedom of Expression with continuing to include a report in the IACHR annual report on the situation or state of access to public information in the region and its effect on the exercise of the right to freedom of expression.

17. Since its creation, the Office of the Special Rapporteur has also had the support of civil society organizations, the media, journalists and, most importantly, individuals who have been victims of violations of the right to freedom of thought and expression along with their family members.

B. Mandate of the Office of the Special Rapporteur

18. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.⁸

19. The Office of the Special Rapporteur has a general mandate to carry out activities for the protection and promotion of the right to freedom of thought and expression, including the following:

- a. Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports;
- b. Carry out promotional and educational activities on the right to freedom of thought and expression;
- c. Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression;
- d. Conduct visits to OAS Member Countries;
- e. Prepare specific and thematic reports;
- f. Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression;
- g. Coordinate with ombudsman's offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States;
- h. Provide technical advisory support to the OAS bodies;

⁷ The Model Law and its Implementation Guide are available at: http://www.oas.org/dil/access_to_information_model_law.htm

⁸ See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

- i. Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in the IACHR's Annual Report, presented annually to the General Assembly;
- j. Gather all the information necessary to prepare the aforementioned reports and activities.

20. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur. In April 2008, the IACHR announced a competition to select Álvarez's successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission Chairman Paolo Carozza. The competition was closed on June 1^o, 2008, and the pre-selected candidates to occupy this post were interviewed in July, during the IACHR's 132nd period of sessions. Following the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur.⁹ The new Special Rapporteur assumed the post on October 6, 2008.

C. Principal Activities of the Office of the Special Rapporteur

21. During its 13 years of existence, the Office of the Special Rapporteur has carried out in a timely and dedicated manner each of the tasks assigned to it by the IACHR and by other OAS bodies such as the General Assembly.

22. This part of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2011.

1. Individual Case System: Strategic Litigation on Freedom of Expression within the inter-American System

23. One of the most important functions of the Office of the Special Rapporteur is to advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports.

24. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic situations that affect freedom of thought and expression, and creates important case law that can be applied in the inter-American human rights system itself as well as in courts in countries throughout the region. The individual case system also constitutes an essential factor within the broad strategy of promoting and defending the right to freedom of thought and expression in the region, a strategy that the Office of the Special Rapporteur carries out through various mechanisms offered by the inter-American human rights system.

25. Since its creation, the Office of the Special Rapporteur has advised the IACHR in the presentation of important cases involving freedom of expression to the Inter-American Court of Human Rights (hereinafter, the "Court" or the "Inter-American Court"). The most relevant cases in the area are:

- *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. This case dealt with prohibition of prior censorship. The Court's decision led to an exemplary constitutional reform in Chile and to the establishment of an important hemispheric standard in this area.
- *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. The petitioner was a naturalized citizen of Peru who was a majority shareholder in a television channel that aired a

⁹ IACHR. Press Release No. 29/08. Available at: <http://www.cidh.org/Comunicados/English/2008/29.08eng.htm>

program that was severely critical of certain aspects of the Peruvian government, including cases of torture, abuse and acts of corruption committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the petitioner's Peruvian citizenship and removed his shareholding control of the channel. The judgment of the Inter-American Court found that the government's actions had violated the right to freedom of expression through indirect restrictions and ordered the State to restore the victim's rights.

- *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.

- *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. During the 1993 presidential campaign in Paraguay, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Canese was prosecuted and sentenced in the first instance to four months in prison, among other restrictions to his basic rights. The Inter-American Court found that the conviction was disproportionate and violated the right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, in the sense that people should be fully entitled to raise questions about candidates so that voters can make informed decisions.

- *Case Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Palamara, a former military official, had written a book that was critical of the National Navy. The book gave rise to a military criminal trial for "disobedience" and "breach of military duties," and led the State to withdraw from circulation all existing physical and electronic copies. The Court ordered a legislative reform that would ensure freedom of expression in Chile, as well as publication of the book, restitution of all copies that had been seized, and reparation of the victim's rights.

- *Case Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. This case addresses the State's refusal to provide Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with certain information that they requested from the Foreign Investment Committee regarding forestry company Trillium and the Río Cóndor project. In this ruling, the Inter-American Court recognized that the right to access to information is a human right protected under Article 13 of the American Convention.

- *Case Kimel v. Argentina*. Judgment of May 2, 2008. The decision refers to the conviction of journalist Eduardo Kimel who in a book had criticized the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal proceeding in defense of his honor. The Inter-American Court found that the journalist's punishment was disproportionate and violated the victim's right to freedom of expression. In its decision, the Inter-American Court ordered the State to, among other things, provide the victim with reparations and reform its criminal legislation on the protection of honor and reputation, finding that it violated the principle of criminal definition or strict legality.

- *Case of Tristán Donoso v. Panama*. Judgment of January 27, 2009. This judgment refers to the proportionality of the sanctions imposed on a lawyer convicted of the crimes of defamation and slander for having declared during a press conference that a State official had recorded his private telephone conversations and had disclosed them to third parties. The Inter-American Court concluded that the State violated the lawyer's right to freedom of expression, since the criminal conviction imposed as a form of subsequent liability was unnecessary. The Inter-American Court also established criteria on the intimidating and inhibiting nature of disproportionate civil sanctions.

- *Case Rios et al. v. Venezuela*. Judgment of January 28, 2009. The judgment refers to different public and private acts that limited the journalistic endeavors of the workers, management, and others associated with the RCTV television station, as well as to certain declarations by agents of the State against the station. The Inter-American Court found that statements were incompatible with the freedom to seek, receive, and impart information “since they could have resulted intimidating for those linked with that communication firm.” The Inter-American Court also found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Inter-American Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against the journalists and to adopt “the necessary measures to avoid illegal restrictions and direct or indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

- *Case of Perozo et al. v. Venezuela*. Judgment of January 28, 2009. This judgment involved statements by public officials and other alleged hindrances to the exercise of freedom of expression, such as acts of violence by private actors against individuals linked to the Globovisión television station. The Inter-American Court found that statements made by high-level public officials and State authorities’ omissions in terms of their obligation to act with due diligence in investigating acts of violence against journalists constituted violations of the State’s obligation to prevent and investigate the facts. The Inter-American Court found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt “the necessary measures to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

- *Case Usón Ramírez v. Venezuela*. Judgment of November 20, 2009. Usón, a retired military officer, was convicted of the crime of “slander against the National Armed Forces,” after appearing on a television program and expressing critical opinions regarding the institution’s reaction in the case of a group of soldiers who had been severely injured while in a military establishment. The Inter-American Court found that the criminal law used to convict Usón did not comply with the principle of legality because it was ambiguous, and concluded that the application of the criminal law in the case was not appropriate, necessary and proportional. The Inter-American Court ordered the State, *inter alia*, to vacate the military justice proceedings against the victim and modify, within a reasonable time, the criminal prevision employed in his case.

- *Case of Manuel Cepeda Vargas v. Colombia*. Judgment dated May 26, 2010. This case refers to the extrajudicial execution of Senator Manuel Cepeda Vargas, who was a national leader of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica. The Court held that in cases like this one, it is possible to illegally restrict freedom of expression through *de facto* conditions that put the person exercising freedom of expression at risk. The Court found that the State, “must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation.” Likewise, the Court found that effects on the right to life or personal integrity that are attributable to the State can mean a violation of Article 16(1) of the Convention when the cause is connected with the legitimate exercise of the victim’s right to freedom of association. In this sense, the Court highlighted that opposition voices are “essential in a democratic society” and indicated that “in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors.” Finally, the Court found that although Senator Cepeda Vargas was able to exercise his political rights, his freedom of expression and freedom of association, “the fact that he continued to exercise them was obviously the reason for his extrajudicial execution,” meaning

that the State “did not create either the conditions or the due guarantees for Senator Cepeda (...) to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated.”

- *Case of Gomes Lund et. al. v. Brazil.* Judgment dated November 24, 2010. The case addresses the arbitrary detention, torture and forced disappearance of 70 people as the result of operations of the Brazilian army between 1972 and 1975. The purpose of the operations was to eradicate the so-called Araguaia Guerrillas. The operations took place in the context of the Brazilian military dictatorship. The case also addressed the damage to the right to access to information that the family members of the victims suffered. In this respect, the Inter-American Court reiterated its jurisprudence on the right to freedom of thought and expression, which has held that Article 13 of the American Convention protects the right of all individuals to request information held by the State, subject to the limitations permitted under the Convention’s regime of exceptions. In addition, the Inter-American Court established that in cases of violations of human rights, State authorities cannot resort to citing State secrecy, the confidentiality of information, or public interest or national security in order to avoid turning over the information required by the judicial or administrative authorities in charge of the investigation. Likewise, the Court held that when the investigation of a crime is at issue, the decision whether to classify the information as secret and refuse to turn it over - or to determine if the documentation even exists - can never depend exclusively on a state body whose members have been accused of committing the illicit act. Finally, the Court concluded that the State cannot resort to the lack of evidence of the existence of the documents requested by the victims or their family members. On the contrary, it must back up its denial of documents by demonstrating that it has taken all available measures to prove that, in effect, the requested information does not exist. In this sense, the Court indicated that in order to guarantee the right to access to information, government authorities must act in good faith and diligently carry out the actions necessary to ensure the effectiveness of the right to freedom of thought and expression, especially when the request for information involves learning the truth of what happened in cases of serious human rights violations like forced disappearance and extrajudicial execution, as was the case here.

- *Case of Fontevecchia and D’Amico v. Argentina.* Judgment of November 29, 2011. The case refers to the civil punishment imposed on Messrs. Jorge Fontevecchia and Hector D’Amico, director and editor, respectively, of the magazine *Noticias*, through judgments issued by Argentine courts as subsequent liability for the publication of two articles, in November of 1995. These publications referred to the existence of an unrecognized son of Carlos Saúl Menem, then President of the Nation, with a congresswoman; the relationship between the President and the congresswoman; and the relationship between the President and his son. The Supreme Court of Justice of the Nation found that the right to privacy of Mr. Menem had been violated by the publications. The Inter-American Court found that the information published was of public interest and that it was already in the public domain. Therefore, there was no arbitrary interference with the right to privacy of Mr. Menem. Thus, the measure of subsequent liability imposed did not comply with the requirement of being necessary in a democratic society, and constituted a violation of Article 13 of the American Convention.

26. The Office of the Special Rapporteur advanced new individual petitions and cases whose reports on admissibility and merits were presented during the Commission’s sessions in 2011. The cases that were presented before the Inter-American Court of Human Rights in 2011 are as follows:

- *Case 12.590 José Miguel Gudiel et al. v. Guatemala (Diario Militar).* The issues addressed in this case are forced disappearance and the execution of persons in connection with expression, as well as the struggle against impunity in these crimes and the right to access information about these events.

- *Case 12.658 Luís Gonzalo “Richard” Vélez Restrepo, Aracelly Román Amariles, Juliana Vélez Román, Mateo Vélez Román v. Colombia.* This case addresses, *inter alia*, the alleged attack on a journalist by members of the military while the journalist was filming a protest by campesinos.

27. A detailed report on the petitions and cases is presented in Chapter III of the IACHR’s 2011 Annual Report.

28. As part of its litigation activities, on June 27-29, the Special Rapporteur and attorney Ana Luisa Lima formed part of the IACHR delegation present during the public hearing before the Inter-American Court of Human Rights on the preliminary objections and eventual merits, reparations, and costs in the case of *González Medina v. The Dominican Republic*. The hearing was held at the seat of the Tribunal in San Jose, Costa Rica, in the framework of the XLI Ordinary Period of Sessions.

29. Likewise, on August 22-28, the Special Rapporteur and attorney Michael Camilleri participated in the initial meetings and the public hearing before the Inter-American Court of Human Rights on the preliminary objections and eventual merits, reparations, and costs in the case of *Fonvecchia and D’amico v. Argentina*. The hearing was held in Colombia in the framework of the 92nd ordinary period of sessions.

30. Finally, on November 29, the Special Rapporteur and attorney Lorena Ramírez participated in the public hearing before the Inter-American Court of Human Rights on the preliminary objections and eventual merits, reparations, and costs in the case of *Néstor José Uzcátegui et al. v. Venezuela*. The hearing was held in Costa Rica in the framework of the 93rd ordinary period of sessions.

31. With the preparation and advancement of these cases, the Office of the Special Rapporteur helps make it possible for the Commission and the Inter-American Court of Human Rights to establish important case law on the guarantees necessary for the full exercise of freedom of thought and expression. The standards achieved lend a greater dynamism to the work of the bodies of the inter-American system and make it possible to take on new challenges in the effort to raise the level of protection for freedom of thought and expression throughout the hemisphere.

2. Precautionary Measures

32. The Office of the Special Rapporteur has worked with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) *Matus Acuña v. Chile*,¹⁰ (ii) *Herrera Ulloa v. Costa Rica*,¹¹ (iii) *López*

¹⁰ IACHR decision issued June 18, 1999, and expanded on July 19, 1999, requesting that the Chilean government adopt precautionary measures for the benefit of Bartolo Ortiz, Carlos Orellana, and Alejandra Matus, in light of detention orders against the first two and an order prohibiting the distribution and sale of a book, stemming from the publication of the *Libro Negro de la Justicia Chilena [Black Book of Chilean Justice]*, written by Mrs. Matus.

¹¹ IACHR decision of March 1, 2001, requesting that the State of Costa Rica adopt precautionary measures for the benefit of journalist Mauricio Herrera Ulloa and the legal representative of the newspaper *La Nación*, who had received criminal and civil convictions due to the publication of reports against an official in the Costa Rican Foreign Service, with the sentences not having fully materialized at the time the measures were adopted.

Ulacio v. Venezuela;¹² (iv) Peña v. Chile;¹³ (v) Globovisión v. Venezuela;¹⁴ (vi) Tristán Donoso v. Panama;¹⁵ (vii) Yáñez Morel v. Chile,¹⁶ (viii) Pelicó Pérez v. Guatemala,¹⁷ and (ix) Rodríguez Castañeda v. Mexico.¹⁸ The granting of the precautionary measures does not constitute a prejudgment on the merits in question. Rather, these measures are adopted out of a need to avert grave, imminent, and irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction in the case and so the subject of the action does not disappear.

33. During 2011, the Office of the Special Rapporteur collaborated in the study of twenty-two (22) requests for precautionary measures, among them requests by Leo Valladares Lanza and Daysi Pineda Madrid (Honduras), communicators with La Voz de Zacate Grande (Honduras), and two persons in Jamaica whose identity is protected and who have been victims of aggression, attacks, threats, and harassment due to their sexual orientation, among others. A more detailed description of these facts can be found in the IACHR's 2011 Annual Report.

3. Public Hearings

34. The IACHR received various requests for hearings and working meetings on matters involving freedom of expression during its most recent periods of sessions. The Office of the Special Rapporteur participates actively in the hearings on freedom of expression, preparing the reports and handling the corresponding interventions and follow-up.

35. In the context of the 141st period of sessions of the IACHR, a private hearing was held on the situation of freedom of expression and information in Venezuela at the request of Public Space, the National Journalism Association, the Center for Human Rights of the UCAB and the National Press Workers' Union (SNTP in its Spanish acronym). The purpose of the hearing was to update the information submitted previously, with emphasis on the legislation passed in December 2010 and its effect on freedom of Expression.

36. During the 143rd Period of Sessions of the IACHR, held between October 19 and November 4, 2011, the following hearings on freedom of expression were held, among others: Access to public information in Latin America; Freedom of Expression in Ecuador; Access to public information in Venezuela; Attacks on journalists in Mexico; and Access to public information in Panama.

¹² IACHR decision of February 7, 2001, requesting that the State of Venezuela adopt precautionary measures for the benefit of journalist Pablo López Ulacio, who had accused a businessman of benefiting from state insurance contracts in the context of a presidential campaign. The journalist was ordered detained and prohibited from publicly mentioning the businessman in the daily *La Razón*.

¹³ IACHR decision of March 2003, requesting that the State of Chile adopt precautionary measures, for the benefit of writer Juan Cristóbal Peña. Consisting on the lift of the judicial order seizing and withdrawing from circulation a biography of a popular singer who sought the order on the grounds that the account was considered grave slander.

¹⁴ IACHR decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize operating equipment from the Globovisión television station and that it guarantee an impartial and independent trial in this case.

¹⁵ IACHR decision of September 15, 2005, requesting that the State of Panama suspend a detention order against Santander Tristán Donoso, stemming from his failure to comply with a monetary fine imposed for the alleged commission of the crime of libel and slander. Mr. Tristán Donoso denounced that the Prosecutor General of the Nation had divulged taped conversations telephone calls.

¹⁶ IACHR decision adopted following the presentation of an individual petition in 2002, in the name of Eduardo Yáñez Morel, who was prosecuted for committing the crime of *desacato*, having severely criticized the Supreme Court of Justice on a television program in 2001.

¹⁷ IACHR decision of November 3, 2008, in which the IACHR requested that the State of Guatemala take the measures necessary to guarantee the life and humane treatment of Pelicó and his family, because of the grave and constant threats received by the journalist as a result of his investigations and publications on drug trafficking.

¹⁸ IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

4. Seminars and Workshops with Strategic Actors in the Region

37. Seminars are a critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last 12 years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

38. Hundreds of journalists, attorneys, university professors, judges, and journalism and law students, among others, have attended the training sessions. These are offered by staff members of the Office of the Special Rapporteur both in country capitals and in more remote regions where there is often no access to information on the guarantees that can be sought to protect the right to freedom of thought and expression.

39. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the workshops and working meetings have allowed the Office of the Special Rapporteur to work closely with strategic actors to advance the application of international standards in domestic legal systems.

40. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2011.

41. On January 22, the Rapporteur held a videoconference for the Universidad Iberoamericana in Mexico on the right to freedom of expression and the inter-American system's mechanisms for protection.

42. Between February 7 and 11, 2011, the Special Rapporteur for Freedom of Expression, Catalina Botero, accompanied by attorney Michael Camilleri and attorney Lorena Ramírez, made an academic visit to Jamaica during which they held various academic events. On February 9, a seminar was held on Freedom of Expression in the Inter-American System at The University of the West Indies in Kingston for 30 members of social organizations, journalists, and academics. On February 10, in coordination with the Norman Manley Law School, a seminar was held for a group of 50 attorneys, judicial functionaries, and graduate and undergraduate law students. Finally, on March 11, in coordination with the University of the West Indies, the Office of the Special Rapporteur held a seminar for 40 journalists and members of social organizations in Montego Bay. The Rapporteur also participated as a judge in the Moot Court on freedom of expression organized by the Law School at Norman Manley University.

43. During the visit to Jamaica, the Office of the Special Rapporteur had the opportunity to discuss the progress and setbacks in the law on access to information with members of the Ministry of Justice, the Ministry of Foreign Affairs, and the office of the Attorney General, as well as with 90 journalists and members of civil society.

44. On February 25, the Special Rapporteur participated in a teleconference on inter-American standards on freedom of expression held for functionaries of the People's Ombudsman's Office of Panama.

45. During the week of March 14-18, 2011, the Office of the Special Rapporteur carried out an academic visit to Colombia during which it held five academic activities. On March 10, 2011, the Special Rapporteur for Freedom of Expression participated in a Congress on freedom of the press in the JW Marriott Hotel in Bogotá. The event was organized jointly with *Andiarios WAN-IFRA Ibérica*. On Monday, March 14, the Office of the Special Rapporteur held a seminar on the right to access to public information for 40 judges of the Superior Tribunals of Bogotá and Cundinamarca in the auditorium of the *Escuela Judicial Rodrigo Lara Bonilla*. On Tuesday, March 15, the Office of the Special Rapporteur held a seminar on inter-American standards on freedom of expression in coordination with the Master's in Journalism of the Universidad del Rosario for a group of 50 academics, journalists, journalism Master's

students, and law students of that university. On Wednesday, March 16, 2011, the Office of the Rapporteur held a seminar entitled, "The Right to Freedom of Expression and the Inter-American Human Rights System's Mechanisms for Protection," in coordination with Media for Peace. The event was held in Bogotá, in the Viaggio hotel. Thirty-five representatives of social organizations attended, particularly from those working on freedom of expression and subjects related to human rights in general. On Friday, March 18, 2011, in the city of Popayán, the Office of the Special Rapporteur held a seminar entitled "Freedom of Expression and Access to Public Information" for a group of 40 regional journalists, members of social organizations, and public officials. The event was held in the Casa Museo Mosquera, Calle 3 No. 5-14, Auditorium No. 1. The training was carried out by Mauricio Herrera Ulloa, a member of the Office of the Special Rapporteur's team.

46. During this visit to Columbia, on March 17, 2011, and in coordination with transparency for Columbia, the Special Rapporteur for Freedom of Expression participated in a discussion on the need for a law on access to information in Colombia. The event saw the participation of directors of public authorities including the High Ministry for Public Management, Ministry of Information and Communications Technology, the Government Online Program, and two international guests. The meeting took place in the offices of the Transparency for Colombia Transparency Corporation (*Corporación Transparencia por Colombia*).

47. On Friday, March 18, 2011, the Office of the Special Rapporteur, in coordination with Transparency for Colombia, Foundation for Freedom of the Press (*FLIP- Fundación para la Libertad de Prensa*), and the British Embassy in Bogotá held a seminar on access to public information with the purpose of publicizing inter-American standards on the right to access to information. Another three international experts participated in this event. The seminar will was held for 200 public officials and members of social organizations.

48. The Special Rapporteur for Freedom of Expression participated in the "Hemispheric Forum on Freedom of Expression," sponsored by the University of San Diego, California, and held in the city of La Jolla, California, on April 3-6, 2011. The event was attended by journalists, institutional directors, legislators, and academics specializing in the subject of freedom of expression and from several countries throughout the region. During the event, the Special Rapporteur gave a presentation on "The Scope and Limits of Freedom of Expression in the Inter-American Legal System."

49. From April 12-14, the Office of the Special Rapporteur carried out an academic visit to Ecuador, during which two seminars were conducted on "The Inter-American system for the protection of human rights and freedom of expression", in coordination with the organization Fundamedios. The first was held on April 12 in Guayaquil, in the conference room at the Universidad Casa Grande. This event was attended by 17 journalists, students of communications, journalism and law, and representatives of freedom of expression organizations. On April 13, the same seminar was held at the Universidad Andina Simon Bolivar in Quito was held. This event was attended by 22 journalists and representatives of media and human rights organizations.

50. On May 2-3, 2011, the Special Rapporteur gave a presentation during the forum "The Challenges to Freedom of Expression in the New Millennium," which was held in Manizales, Colombia.

51. On May 12, 2011, the Special Rapporteur participated in the Subregional Dialog of the Members of the Central American and Mexico Integration System: "Democracy for Peace, Security, and Development" in San Jose, Costa Rica. During the event, which was held in the context of the Program Commemorating the 10th Anniversary of the Inter-American Democratic Charter, the Rapporteur gave a presentation at a thematic round table on "Democracy and the Rule of Law." The event was organized by Costa Rica's Ministry of Foreign Relations and Culture, the General Secretariat of the Organization of American States (OAS), the International Institute for Democracy and Electoral Participation (*IDEA Internacional*, in its Spanish acronym), the Foundation for Peace and Democracy (*FUNPADEM* in its Spanish acronym), and the Latin American Social Sciences Faculty (*FLACSO* in its Spanish acronym).

52. On June 8, 2011, the Special Rapporteur met with a group of legal and judicial officials from nine countries in the Western Hemisphere. The meeting was sponsored by the Meridian International Center. The meeting took place in Washington, D.C.

53. On June 24, 2011, the Special Rapporteur participated in the journalism workshop "Silencing the Press: Who are they? Why do they want to silence us? What can we do about it?" hosted by the University of California and the Institute of the Americas. The talk was held via video conference and aimed at journalists in 10 different countries in the region.

54. On July 7 and 10, the Office of the Special Rapporteur participated in an international conference on transitional justice in Brasilia entitled "Program of the II Latin American Conference on Transitional Justice" organized by the International Center for Transitional Justice (ICTJ), the Brasilia Amnesty Commission, and the *Universidad Católica de Brasilia*. The conference brought together important regional and international players to offer an overview of the current practices in transitional justice in Latin America and to contribute to the public debate in Brazil on the best way to treat human rights violations committed during the 1964-1985 dictatorship. The Special Rapporteur spoke on States' obligations to preserve files on human rights violations and on the way in which that information should be distributed.

55. On July 18, the Special Rapporteur gave a training session on inter-American standards of access to information to the five members of the Bangladesh Information Commission, which was on a research trip in the United States to observe the development and application of policies on access to information in public organizations and learn about the inter-American standards on this subject.

56. On July 25, the Special Rapporteur participated via video conference in an event on the regulation of government advertising in Uruguay, organized by the Center for Archives and Access to Public Information (*CAINFO- Centro de Archivo y Acceso a la Información Pública*). The special Rapporteur spoke on the inter-American freedom of expression standards.

57. On September 5, 2011, the Special Rapporteur participated via videoconference in a seminar entitled "Journalism and Access to Public Information: Challenges of the 21st century," organized in Paraguay. The purpose of the event was to inform communicators as to the value added to the exercise of journalism by tools such as laws on access to information.

58. On September 13, the Special Rapporteur participated in a meeting organized by the United Nations (UNESCO) entitled "UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity," held in Paris. The subject discussed was the safety of journalists and impunity. The meeting provided a forum for drafting a coherent plan oriented to address the subject of journalist safety and impunity of the perpetrators of attacks against journalists. UN organizations, international and regional institutions, professional organizations, and NGOs participated. The Special Rapporteur referred to the strengths and weaknesses of international legal instruments. Finally, on September 14, in Paris, the Special Rapporteur held a meeting with representatives of Reporters Without Borders - Americas Section.

59. From September 19-23, 2011, the Special Rapporteur, together with Mauricio Herrera Ulloa and Flor Elba Castro, carried out an academic visit to Peru during which five academic events were held. On September 19, 2011, the Special Rapporteur participated in a conference entitled "Evidence: The right to truth and justice" - organized by the National Security Archive, Open Society Institute, and the Institute for Legal Defense (*IDL- el Instituto de Defensa Legal*) in Lima - with a presentation on case law on access information and existing inter-American legal mechanisms for moving forward in the recognition of the right to truth in Latin America. This was a closed event that included the participation of 28 international specialists from 14 countries throughout the Americas. In the afternoon of that same day, the Rapporteur participated in a public panel entitled, "Access to Official Information and Human Rights: Experiences from the Americas," which was attended by more than 100 State officials and representatives of social organizations. On September 20, 2011, in coordination with the Institute for Press and Society (*IPYS- Instituto Prensa y Sociedad*), the Special Rapporteur gave a training session on inter-American standards of freedom of expression and access information to a group of 200 State

officials from Peru during a national conference on access to public information. On September 22, 2011, in coordination with IDL and the *Universidad Católica del Perú*, the Rapporteur gave a seminar on freedom of expression for a group of 70 public officials from different State agencies and members of the academic community of that university. On September 21 and 23, 2011, the Special Rapporteur and her team gave two seminars, one in Lima and the other in Ayacucho, on inter-American standards on freedom of expression and access to information for journalists and members of human rights organizations. Forty journalists from 10 different regions throughout the country attended the event in Lima. Additionally, during the visit, members of the Office of the Special Rapporteur's team visited and establish dialogue with representatives and leaders of 15 organizations for the defense of human rights - particularly of freedom of expression and access to information - in order to promote the use of the protective mechanisms of the Inter-American system while at the same time encouraging the promotion and protection of the right to freedom of expression. Also during the visit, the Special Rapporteur held formal meetings with the President of the Council of Ministers, the Foreign Minister of the Republic, and the Minister of Justice.

60. On October 24, 2011, the Special Rapporteur presented jointly with the United Nations Special Rapporteur on Freedom of Opinion and Expression the reports published by these Rapporteurs as follow-up to their official joint visit to Mexico in August of 2010. Representatives of the Mexican federal government, the press, civil society, and the National Human Rights Commission also participated.¹⁹

61. On November 17 and 18, attorney Michael Camilleri traveled to London to participate as a representative of the Office of the Special Rapporteur in a global conference of international experts to discuss subjects related to freedom of expression and intellectual property rights. The event was organized by Article XIX in London.

62. Finally, on November 23, attorney Michael Camilleri traveled to Vienna, Austria, at the invitation of that country's government to attend a consultation of experts on the subject of impunity and crimes against journalists in a workshop titled "Safety of Journalists: Towards a more effective and national protection framework," held in the Ministry for European and International Affairs. While in that city, he also attended meetings with the Office of the representative for Freedom of Expression of the OSCE and with members of the International Press Institute.

5. Annual Report and development of expert knowledge

63. One of the main tasks of the Office of the Special Rapporteur is the preparation of the Annual Report on the state of freedom of expression in the hemisphere. Every year, this report analyzes the state of enjoyment of the right to freedom of expression in the OAS Member States, which includes noting the principal threats to ensuring the exercise of the right to freedom of expression and the advances that have been made in this area.

64. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009 and 2010), Venezuela (2009 and 2010) and Mexico (2010).

65. The Office of the Special Rapporteur has also prepared thematic reports that have led to a significant process of debate in the region, as well as the implementation of legislative and administrative reforms in many States throughout the Americas. In 2011, the Office of the Special Rapporteur worked on the thematic reports included as chapters in this report.

¹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Press Release R113/11. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=873&IID=2>

6. Special statements and declarations

66. Through the daily monitoring of the state of freedom of expression in the region—conducted by means of an extensive network of contacts and sources—the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

67. The Office of the Special Rapporteur receives an average of 2,250 e-mails per month. Of these, 75% refer to alerts, press releases, or requests for information and consultations on freedom of expression in the region, and receive a timely response; 10% refer to formal petitions to the IACHR's individual case system; and the remaining 15% have to do with issues that do not fall within its area of competence. The Office of the Special Rapporteur reviews, culls, and sorts the information it receives to determine the course of action to take. Actions may range, *inter alia*, from directing letters to the States or issuing press releases to advocating that the IACHR grant precautionary measures in serious situations that may so warrant.

68. In addition, since its creation the Office of the Special Rapporteur has participated in the drafting of joint declarations with the other regional rapporteurs and the UN rapporteur for freedom of expression. These joint statements are generally signed by the UN Special Rapporteur; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE); the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

69. The joint declarations constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural and religious tensions, and impunity in cases of attacks against journalists (2006); diversity in access, ownership, and content of the media, particularly radio and television (2007); the defamation of religions and anti-terrorist and anti-extremist legislation (2008); media and elections (2009); ten key challenges to freedom of expression in the next decade (2010)²⁰; and Wikileaks (2010).²¹

70. On June 1, 2011, the rapporteurs for freedom of expression of the UN, OAS, OSCE, and the African Commission issued the "Joint Declaration on Freedom of Expression and the Internet," which expresses the need to protect and promote the Internet and the limits on State regulation of this medium. In this declaration, the rapporteurs recommend guidelines for protecting freedom of expression on the Internet. In the declaration, the rapporteurs make reference to States' obligations to promote universal access to the Internet; the responsibilities of intermediaries; the conditions for limits placed on Internet access and on Internet data traffic; the principles of nondiscrimination in traffic and treatment of data; and in general the application of principles of freedom of expression to the Internet.²²

²⁰ The abovementioned joint declarations are available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

²¹ The abovementioned joint declarations are available at: <http://www.cidh.org/relatoria/docListCat.asp?catID=16&IID=1> and <http://www.cidh.org/relatoria/artListCat.asp?year=2010&countryID=1&IID=1&catID=1>

²² Joint Declaration on Freedom of Expression on the Internet. June 1, 2011. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=848&IID=2>

71. In 2011, the Office of the Special Rapporteur issued 46 press releases²³ calling attention to incidents related to freedom of thought and expression. The statements highlight especially worrying incidents and local best practices, and explain the corresponding regional standards. The press releases issued during 2011 can be accessed through the website of the Office of the Special Rapporteur, available at: <http://www.cidh.org/relatoria>.

D. Staff of the Office of the Special Rapporteur

72. The Office of the Special Rapporteur has worked, under the coordination of the Special Rapporteur, with a team that fluctuates between two and three attorneys who are experts on freedom of expression issues, one expert in journalism and communications, one person who fulfills administrative assistant duties, and since July 2009, one person in charge of fundraising and follow-up on projects and donor agreements. The Office of the Special Rapporteur has had support from specialized external consultants in the preparation of some technical reports.

73. The work team of the Office of the Special Rapporteur is comprised of Catalina Botero Marino, Special Rapporteur; Flor Elba Castro Martínez, Project Manager; Michael John Camilleri, Lorena Cristina Ramírez Castillo and Charles Abbott, Human Rights Specialists; and Mauricio Herrera Ulloa, Press Coordinator. Likewise, specialist attorneys Ramiro Álvarez-Ugarte and Ana Luisa Gomes Lima collaborated with the Office of the Rapporteur this year.

74. This team's expertise and professional commitment have enabled the Office of the Special Rapporteur to have advised the IACHR in the presentation of cases to the Inter-American Court. It has also made it possible for the Office of the Special Rapporteur to advise the IACHR with due timeliness on the potential adoption of precautionary measures in reference to the right enshrined in Article 13 of the American Convention. This legal team has also been essential in terms of the Office of the Special Rapporteur's capacity to respond to the inquiries made to the Office on a daily basis. The person in charge of communications has served as an essential liaison with the press and has fulfilled the task of monitoring the information that arrives on freedom of expression in the region; this makes it possible to draft statements in a timely manner and to systematically monitor the alerts that are received, and constitutes one of the principal sources for the preparation of annual reports and thematic or country

²³ The following press releases were prepared during 2011: IACHR Special Rapporteur. December 27, 2011. [Press Release R134/11](#); IACHR Special Rapporteur. December 8, 2011. [Press Release R126/11](#); IACHR Special Rapporteur. November 21, 2011. [Press Release R123/11](#); IACHR Special Rapporteur. November 18, 2011. [Press Release R122/11](#); IACHR Special Rapporteur. November 17, 2011. [Press Release R120/11](#); IACHR Special Rapporteur. November 10, 2011. [Press Release R119/11](#); IACHR Special Rapporteur. October 24, 2011. [Press Release R113/11](#); IACHR Special Rapporteur. October 21, 2011. [Press Release R111/11](#); IACHR Special Rapporteur. September 27, 2011. [Press Release R105/11](#); IACHR Special Rapporteur. September 21, 2011. [Press Release R104/11](#); IACHR Special Rapporteur. September 20, 2011. [Press Release R103/11](#); IACHR Special Rapporteur. September 15, 2011. [Press Release R102/11](#); IACHR Special Rapporteur. September 13, 2011. [Press Release R101/11](#); IACHR Special Rapporteur. September 12, 2011. [Press Release R100/11](#); IACHR Special Rapporteur. September 7, 2011. [Press Release R97/11](#); IACHR Special Rapporteur. August 31, 2011. [Press Release R96/11](#); IACHR Special Rapporteur. August 26, 2011. [Press Release R95/11](#); IACHR Special Rapporteur. August 4, 2011. [Press Release R85/11](#); IACHR Special Rapporteur. August 3, 2011. [Press Release R84/11](#); IACHR Special Rapporteur. July 29, 2011. [Press Release R81/11](#); IACHR Special Rapporteur. July 28, 2011. [Press Release R78/11](#); IACHR Special Rapporteur. July 21, 2011. [Press Release R72/11](#); IACHR Special Rapporteur. July 20, 2011. [Press Release R71/11](#); IACHR Special Rapporteur. July 18, 2011. [Press Release R70/11](#); IACHR Special Rapporteur. July 14, 2011. [Press Release R69/11](#); IACHR Special Rapporteur. July 7, 2011. [Press Release R66/11](#); IACHR Special Rapporteur. June 23, 2011. [Press Release R61/11](#); IACHR Special Rapporteur. June 16, 2011. [Press Release R58/11](#); IACHR Special Rapporteur. June 7, 2011. [Press Release R54/11](#); IACHR Special Rapporteur. June 1, 2011. [Press Release R50/11](#); IACHR Special Rapporteur. May 27, 2011. [Press Release R49/11](#); IACHR Special Rapporteur. May 24, 2011. [Press Release R48/11](#); IACHR Special Rapporteur. May 23, 2011. [Press Release R47/11](#); IACHR Special Rapporteur. May 12, 2011. [Press Release R45/11](#); IACHR Special Rapporteur. May 11, 2011. [Press Release R44/11](#); IACHR Special Rapporteur. May 6, 2011. [Press Release R41/11](#); IACHR Special Rapporteur. May 3, 2011. [Press Release R40/11](#); IACHR Special Rapporteur. May 2, 2011. [Press Release R38/11](#); IACHR Special Rapporteur. April 28, 2011. [Press Release R36/11](#); IACHR Special Rapporteur. April 15, 2011. [Press Release R32/11](#); IACHR Special Rapporteur. April 15, 2011. [Press Release R31/11](#); IACHR Special Rapporteur. March 30, 2011. [Press Release R27/11](#); IACHR Special Rapporteur. March 29, 2011. [Press Release R26/11](#); IACHR Special Rapporteur. February 14, 2011. [Press Release R11/11](#); IACHR Special Rapporteur. February 3, 2011. [Press Release R05/11](#); IACHR Special Rapporteur. January 11, 2011. [Press Release R1/11](#)

reports. The addition of the person in charge of fundraising and project follow-up has been essential in developing grant proposals and raising funds.

75. The Office of the Special Rapporteur has also benefited from the presence of interns or fellows, who have been a vital part of the team that enables the Office to carry out its everyday tasks. Students of law, communications and political science, attorneys specialized in freedom of expression, human rights or international law, and journalists have contributed their time, energy, and knowledge so that the Office of the Special Rapporteur can meet its objectives. This year, the Office of the Special Rapporteur would like to thank Luiza Athayde Araujo (Brazil), Charles Abbott (USA) and Elsa Peraldi (Mexico) for their work and contributions.

E. Funding

76. The Office of the Special Rapporteur is financed wholly through external funds specifically donated for such purpose by OAS Member States, observer countries, and international cooperation agencies and foundations. Out of the funds given by donors, the OAS retains a portion ranging from 11% (if the donation comes from a member country of the organization) to 12% (if that is not the case); this is designated to recover the indirect costs of managing these contributions.

77. The framework project of the Office of the Special Rapporteur is called the Project for Strengthening Freedom of Expression in the Americas, the development of which has made it possible to carry out the activities and achievements that have been described.

78. The Office of the Special Rapporteur would especially like to express its appreciation for the contributions received from the OAS Member States, observer countries, and international cooperation bodies. In 2011, the Office of the Special Rapporteur notes in particular the projects that were well executed thanks to the contributions of the European Commission, the United States of America, France, Costa Rica, Sweden and Switzerland. This funding has enabled the Office of the Special Rapporteur to fulfill its mandate and continue to move forward in its efforts to promote and defend the right to freedom of expression.

CHAPTER II

EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction and methodology

1. This chapter describes some of the most important aspects of freedom of expression in the hemisphere during 2011. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report some serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

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

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

4. The cases selected in each topic serve as examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. It is pertinent to clarify that the omission of analysis of the situation of some cases or States is due to the fact that the Office of the Special Rapporteur has not received sufficient information. As such, these omissions should be interpreted only in this sense. In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through requests for precautionary measures which have not yet been made public.

5. In preparing this chapter of its 2011 Annual Report, the Office of the Special Rapporteur generally took into account information received until November, 2011. Information regarding incidents that occurred after the date the 2011 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

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

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

1. Argentina

A. Progress

7. The Office of the Special Rapporteur expresses its satisfaction at the conviction of former soldiers responsible for the disappearance and murder of journalist Rodolfo Walsh, who was disappeared on March 25, 1977. According to the information received, on October 26, 2011, the Oral Criminal Federal Tribunal No. 5 of the Autonomous City of Buenos Aires convicted 16 former soldiers accused of crimes against humanity in the so-called “ESMA Megatrial,” handing down sentences ranging from 18 years to life in prison for the kidnapping, disappearance, torture and murder of 86 people. Walsh, a well-known writer, investigative journalist and activist against the dictatorship, was among the disappeared journalists.¹

8. The Office of the Special Rapporteur learned of the arrest and charging of an individual suspected of murdering journalist and community organizer Adams Ledezma Valenzuela. His death took place on September 4, 2010, in a poor neighborhood in Buenos Aires. According to the information received, on May 4 the authorities arrested Cristian David Espínola Cristaldo, alias Pichu, and charged him with committing the crime of homicide. According to the information, the crime took place because Ledezma had prevented the suspect from selling drugs to minors. Argentine journalism organizations asked the authorities to investigate fully the motives behind the murder and its possible relationship with the statement Ledezma made months before dying that he would reveal the identities of well-known persons who came to the neighborhood to buy drugs. Ledezma was a correspondent with the newspaper *Mundo Villa* and was working on the launch of television channel *Mundo TV Villa*, which was going to be carried into community homes via cable. In statements given to an Argentine newspaper in June of 2010, Ledezma announced the launch of the television channel and said he intended to do investigative journalism. The Office of the Special Rapporteur has learned that the community work Ledezma did was closely linked to his journalistic work.²

9. The Office of the Special Rapporteur takes note with satisfaction of the ruling of the Third Court of the National Criminal Cassation Chamber annulling the conviction for slander issued in 1999 against Eduardo Kimel. The criminal ruling sentenced Kimel to one year in prison, suspended, and the payment of an indemnity of 20,000 Argentine pesos to the benefit of judge Guillermo Rivarola in connection with a publication in which the journalist criticized the actions of the judge with jurisdiction to hear the case of a massacre of three priests and two seminarians in 1976. The ruling is a result of a significant decision of the Argentine State, which in 2009, following a judgment from the Inter-American Court of Human Rights, moved through law 26.551 to decriminalize crimes of slander and defamation for expression that is in the public interest. Once the law was passed, the Center for Legal and Social Studies (CELS) filed a writ of review over the ruling against Eduardo Kimel before the National Chamber of Criminal Cassation and received the aforementioned ruling to acquit. The ruling ratifies the decriminalization of expression related to matters of public interest and sets an important precedent regarding the admissibility of these kinds of complaints in Argentina.³

¹ Judicial Branch of the Nation. Oral Criminal Federal Tribunal No. 5 of the Autonomous City of Buenos Aires. Judgment of October 26, 2011. Available at: <http://www.elargentino.com/gallery/158195.pdf>

² Argentine Journalism Forum (FOPEA in its Spanish acronym). June 3, 2011. *Nine months after the murder of Adams Ledezma Valenzuela*. Available at: http://www.fopea.org/Inicio/A_nueve_meses_del_asesinato_de_Adams_Ledezma_Valenzuela; Página 12. May 5, 2011. *The crime against the journalist from the 31*. <http://www.pagina12.com.ar/diario/sociedad/3-167575-2011-05-05.html>; IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 18. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

³ Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS). November 24, 2011. *La Cámara de Casación anuló la condena por calumnias contra Eduardo Kimel*. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1449>; Página 12. November 24, 2011. *Dos años después de su muerte, Kimel fue absuelto por la justicia argentina*. Available at: <http://www.pagina12.com.ar/diario/ultimas/20-181969-2011-11-24.html>

10. The Office of the Special Rapporteur observed with satisfaction the ruling of the Supreme Court of Justice dated March 2, 2011, reiterating the State's obligation to adopt a government advertising policy with objective and nondiscriminatory standards. The judgment upheld a 2009 ruling of the National Chamber of Administrative Contentious Federal Appeals and as a result ordered the National State "to order government advertising to be distributed among the different publications" of *Editorial Perfil* and *Diario Perfil*, which had brought the *amparo* action against the Media Secretariat of the Leadership of the Cabinet of Ministers.⁴ The Supreme Court ruling cited the September 5, 2007, judgment in the case of Editorial Río Negro, S.A. against the government of the province of Neuquén according to which "the withdrawing of government advertising was an indirect restriction on the freedom of the press, as it was not based on reasonable and justified standards."⁵ The Office of the Special Rapporteur takes note of the concern in Argentina over the placement of official advertising in the media and highlights the importance of what the Office of the Special Rapporteur ordered in the aforementioned case.

11. The Office of the Special Rapporteur takes note of the August 19, 2011, ruling of the Supreme Court of Justice of the Nation modifying the Rules of the General Archive of the Judicial Branch of the Nation to "provide journalists with free access to federal court judicial cases on subjects of public interest that are found in the General Archive." Currently, journalists must access those documents by following a long proceeding, making their work of informing the public more difficult.⁶

12. The Office of the Special Rapporteur takes note of the government's call for bids on 220 digital audiovisual communication service licenses through 64 public tenders. According to the information received, the process will become the largest tender of free-to-air television channels ever held in Argentina. Currently, 43 free-to-air television channels are operating in Argentina. Of the total licenses to be put up for bids, 110 will be granted to the nonprofit sector, including associations, foundations and cooperatives.⁷

B. Attacks, arrests and threats

13. According to information received, on December 15, 2010, Alejandro Guerrero, a photographer with the newspaper *El Ciudadano* in the city of Rosario, Santa Fe, was arbitrarily arrested by police officers, beaten and detained incommunicado for more than six hours. According to reports, several police officers had confused Guerrero with another person shortly after he witnessed several people evicted from a public space they were occupying. The incident took place after work hours and Guerrero did not have his equipment with him. The officers arrested him and took to a police station, where they beat him. When Guerrero identified himself as a member of the media, he was threatened. On being released without charges, Guerrero filed a criminal complaint and a forensic doctor confirmed the injuries. On December 16, the provincial government of Santa Fe ordered four police officers and two junior police officers connected with the arrests be removed from their positions. In May, a first instance criminal inquiry district court ordered two police officers charged for illegal harassment and humiliation.⁸

⁴ Supreme Court of Justice of the Nation. Republic of Argentina. March 2, 2011. *Editorial Perfil S.A. y otro c/ E.N. – Jefatura Gabinete de Ministros. SMC s/amparo ley 16.986*. No. Expediente E.80.XLV/2009. Available at: http://www.csjn.gov.ar/consultaexp/documentos/expedientes/cons_expe.jsp

⁵ IACHR. Annual Report 2007. OEA/SER.L/V/II. 131. Doc.34, rev. 1. March 8, 2008. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Situation of Freedom of Expression in the Region). Para. 54. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

⁶ Supreme Court of Justice of the Nation. August 19, 2011. Acordada No. 15/u. Expediente No. 2625-2011. Available at: http://www.fopea.org/Inicio/La_Corte_Suprema_habilita_el_acceso_de_los_periodistas_a_causas_archivadas_de_interes_publico

⁷ Federal Authority of Audiovisual Communication Services (AFSCA). July 14, 2011. *New TV to guarantee greater plurality*. Available at: <http://www.afsca.gov.ar/web/blog/?p=4491#more-4491>; BBC Mundo. June 24, 2011. *Argentine government wants to change the face of TV*. Available at: http://www.bbc.co.uk/mundo/noticias/2011/06/110624_argentina_canales_digitales_nuevos_vs.shtml; La Nación. June 22, 2011. *220 new television channels to be put up for bids*. Available at: <http://www.lanacion.com.ar/1383500-licitaran-220-nuevos-canales-de-television>

⁸ Argentine Journalism Forum (FOPEA in its Spanish acronym). December 22, 2010. *FOPEA issues alert on police abuse against photographer in Rosario*. Available at: http://www.ifex.org/argentina/2010/12/22/querrero_detenido/es/; Uno. December 17,

14. The Office of the Special Rapporteur learned of an attack on at least one visual reporter for online media outlet *Indymedia* while he was covering a police action to disburse a student demonstration in the city of Córdoba on December 15, 2010. According to the information, a police officer knocked photographer José Fernandez's camera to the ground. When the communicator tried to pick up his equipment, several police officers threw him to the ground and beat and kicked him. At least three other photographers were also attacked during the incident. The Police Conduct Tribunal punished one officer with suspension on finding that the police action violated freedoms of expression and the press.⁹

15. According to information received, on May 20, 2011, security personnel of the building where the Danish Embassy is located struck visual media reporter Julián Herr, with the magazine *El Guardián*, while he was trying to take photographs to illustrate an article on gastronomy, restaurants and embassy clubs. According to the information, although Herr had informed the embassy of the work he was doing, two members of the building's security personnel approached him, insulted him and struck him. The attack caused damage to the photographer's septum that required medical attention. The Danish embassy condemned the attack, dismissing the possibility of any kind of prohibition on capturing images of the diplomatic mission and denying any connection with the attackers.¹⁰

16. On October 27, a Channel 12 vehicle that was properly identified was struck by a bullet while journalist María Gracia Marín and cameraman Raúl Vicessi collected information in the Yapeyú neighborhood in the city of Córdoba. According to the information, a young man had approached the vehicle and fired on it with a pistol, without injuring the van's occupants.¹¹

17. The Office of the Special Rapporteur received information on a series of attacks on and threats against journalist Mario Sánchez that started in June in the city of Centenario in the province of Neuquén. According to the information, on June 19, Sánchez's home was burglarized and set on fire days after several bottles containing flammable liquid had been thrown into the house's yard without exploding; on June 25, a brick was thrown into the home wrapped in a piece of paper containing the text "the one who attacks the MPN. Death;" and finally, during the closing days of June the journalist received several intimidating phone calls. Sánchez is a journalist with municipal radio station *Sayhueque* and is a correspondent in *Centenario* for radio station *AM LU5*. The journalist has commented to several media outlets that he does not know the origin of the threats and has not worked on any stories related to the Movimiento Popular Neuquino (MPN) party, which governs the province. The Neuquén governor condemned the attacks, offered protection to the journalist's family and committed to collaborating with the judicial investigation.¹²

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2010. *Police purge after beating of an El Ciudadano photographer in Rosario*. Available at: <http://www.unosantafe.com.ar/santafe/Purga-policial-tras-una-golpiza-a-un-fotografo-de-El-Ciudadano-en-Rosario-20101217-0017.html>; *El Ciudadano*. May 4, 2011. *Two police officers charged for abusing photographer*. Available at: <http://www.elciudadanoweb.com/?p=206183>

⁹ Argentine Journalism Forum (FOPEA in its Spanish acronym). December 29, 2010. *Photographers attacked by police officers while covering suppression of a demonstration*. Available at: http://www.ifex.org/argentina/2010/12/29/fotografos_atacados/es/; Argenpress. December 20, 2010. *CISPREN condemns grave police intimidation against photographer for Indymedia Córdoba*. Available at: <http://www.argenpress.info/2010/12/argentina-cordoba-el-cispren-repudia.html>; Indymedia. December 19, 2010. *Press workers attacked by Córdoba police*. Available at: http://www.youtube.com/watch?v=jCYsj936oCA&feature=player_embedded

¹⁰ Reporters Without Borders. May 24, 2011. *Danish embassy urged to react after security guards assault young photographer*. Available at: http://en.rsf.org/argentina-danish-embassy-urged-to-react-24-05-2011_40340.html; Argentine Journalism Forum (FOPEA) May 26, 2011. *Photographer assaulted by security guards*. Available at: http://www.ifex.org/argentina/2011/05/26/herr_attacked/

¹¹ Argentine Journalism Forum (FOPEA)/IFEX November 1, 2011. *Journalism vehicle fired on in Córdoba*. Available at: http://www.ifex.org/argentina/2011/11/01/canal_doce_ataque/es/; EFE News Service. November 2, 2011. *IAPA condemns attacks against journalists in Argentina, Chile and Honduras*. Available at: <http://noticias.terra.com/crimenes/la-sip-condena-atentados-contra-periodistas-en-argentina-chile-y-honduras.afb36cceb563310VgnVCM20000099f154d0RCRD.html>

¹² Reporters Without Borders. July 4, 2011. *Death threats and attacks on Neuquén radio journalist*. Available at: http://en.rsf.org/argentina-death-threats-and-attacks-on-04-07-2011_40580.html; Argentine Journalism Forum. June 28, 2011.

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18. The Office of the Special Rapporteur learned of a series of alleged acts of sabotage against a number of radio broadcasters. On September 10, unknown armed individuals damaged the equipment of community radio station *FM Pajsachama*, in El Retiro, Santiago del Estero province, threatening the broadcaster's staff. The broadcaster is owned by the Peasant Movement of Santiago del Estero Peasant Way (MOCASE-VC). The broadcaster suffered an arson attack in 2008.¹³ On December 30, an individual with his face covered threw flammable liquid on the radio station *FM Estación 93.3* in Zárate, Buenos Aires province, and set it on fire. According to the information, the fire caused near total damage; however, the broadcaster was broadcasting again shortly afterward with a lower signal strength through a piece of auxiliary equipment. The attack also affected broadcaster 100.5 which has not been able to return to broadcasting.¹⁴ On October 3, several unknown individuals cut the support cables on the radio and television antenna of *Norte Visión Satelital* on February 20 Hill in Salta, causing it to fall and damage the equipment of another 15 broadcasters. The broadcaster reestablished its signal shortly afterwards with low-power equipment while a new antenna was installed. On September 15, the facilities of *Norte Visión Satelital* suffered an arson attack that kept the broadcaster off the air for four hours.¹⁵ The Salta provincial government expressed its support for the broadcaster and offered help for improving the security of the broadcast equipment installed on February 20 Hill.¹⁶

19. According to information received, presumed drug traffickers threatened to kill Gloria Seco and Claudio Ruiz, hosts with *Radio Ciudad* in San Ramón de la Nueva Orán, Salta province, after two programs were broadcast questioning the quickness with which the authorities released individual suspected of trafficking drugs. The Office of the Special Rapporteur was informed that on September 24, a local drug dealer warned Seco that her safety and that of Ruiz were at risk. Three days later, the threat was repeated in a phone call minutes after an interview addressing the subject. The local authorities have assigned a police detail to the radio hosts' houses and the radio station.¹⁷

20. According to information received, in the early morning hours of November 7, unknown individuals entered the press room of newspaper *La Verdad*, in the Junín locality, Buenos Aires province, and set fire to the printing press control panel. At that time, nobody was in the building. The paper had to be printed in another city for 10 days while the damage was repaired. The newspaper's management connected the attack with articles published on drug trafficking and abuse of authority in the region.¹⁸

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Serious attacks and threats against Neuquén radio journalist. Available at: http://www.foepea.org/Inicio/Graves_ataques_y_amenazas_a_periodista_radial_de_Neuquen

¹³ World Association of Community Broadcasters (AMARC). September of 2011. *If you touch one, you touch us all. Stop the violence against MOCASE-VC.* Available at: <http://legislaciones.item.org.uy/index?q=node/3169>; Reporters Without Borders. October 12, 2011. *Salta broadcaster repeatedly sabotaged, other attacks on radio stations.* Available at: <http://es.rsf.org/argentina-misterio-en-torno-a-una-serie-de-12-10-2011.41176.html>

¹⁴ La Nación. September 30, 2011. *Zárate radio station suffers arson attack.* Available at: <http://www.lanacion.com.ar/1410766-una-radio-de-zarate-sufrio-un-ataque-incendiaro-intencional>; De Radios. No date. *Arson attack against Radio FM Estación 93.3 in Zárate.* Available at: <http://www.deradios.com/nota.php?ID=2573>

¹⁵ Reporters Without Borders. October 12, 2011. *Salta broadcaster repeatedly sabotaged, other attacks on radio stations.* Available at: <http://en.rsf.org/argentina-salta-broadcaster-repeatedly-12-10-2011.41177.html>; Foro de Periodismo Argentino (FOPEA)/IFEX. October 6, 2011. *Foepa issues alert on intentional toppling of radio and television antenna in Salta.* Available at: http://www.ifex.org/argentina/2011/10/06/norte_vision_satelital/es/

¹⁶ El Tribuno. October 4. *Government manages security on February 20 Hill.* Available at: <http://www.eltribuno.info/salta/81140-El-Gobierno-gestiona-seguridad-en-el-cerro-20-de-Febrero.note.aspx>

¹⁷ Informate Salta. September 30, 2011. *Orán journalists threatened by drug traffickers.* Available at: <http://www.informatesalta.com.ar/noticia.asp?q=29725>; Reporters Without Borders. October 4, 2011. *City in Salta rallies to defence of journalists threatened by drug traffickers.* Available at: <http://en.rsf.org/argentina-city-in-salta-rallies-to-defence-04-10-2011.41107.html>

¹⁸ El Día. November 8, 2011. *Attack on Junín newspaper La Verdad denounced.* Available at: <http://www.eldia.com.ar/edis/20111108/denuncian-ataque-diario-verdad-junin-laprovincia27.htm>; La Gaceta. November 8, 2011. *La Verdad in Junín attacked.* Available at: <http://www.lagaceta.com.ar/nota/464037/Politica/Ataque-Verdad-Junin.html>; El Entreríos. November 8, 2011. *Attackers try to set La Verdad in Junín on fire.* Available at: <http://elentrerios.com/index.php/sociedad/informacion-general/23474-quisieron-incendiar-el-diario-la-verdad-de-junin>

21. Unknown individuals insulted journalist Jorge Lanata and threw rocks at him while he was giving a press conference in a courtyard at the Universidad de Palermo on November 4 together with several colleagues, including Magdalena Ruiz and Gabriel Michi. According to the information received, when the journalists addressed the public, insults toward Lanata were heard for his connection with the newspaper *Clarín* and later several rocks fell on the audience.¹⁹

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

23. The Office of the Special Rapporteur received information on hostile comments made by senior government officials toward journalists and media. On October 31, former economy minister and vice president-elect Amado Boudou accused newspapers *Clarín* and *La Nación* of "permanently (...) creating hostile environments" and called both media outlets "enemies of the government and enemies of Argentine interests," in an interview given to Radio Continental on the media's criticism of the government over efforts to decrease demand for dollars.²⁰

C. Impediments to the distribution of newspapers

24. The Office of the Special Rapporteur was informed of a series of incidents in which private parties blocked the entrances and exits to buildings where the newspapers *Clarín* and *La Nación* are printed, obstructing the newspapers' circulation. According to reports, the blockades carried out by union organizations took place on December 13 and 14, 2010, January 15, January 28, and March 27, 2011.²¹ While the companies claimed the protests were part of a campaign of harassment against the newspapers for their criticism of the government, the authorities expressed that the incidents were the result of an internal labor conflict. As a result of an *amparo* action brought by *La Nación*, on May 24, the Chief Justice of National Civil Court No. 64 handed down a restraining order that ordered the union organizations responsible for the blockades to "refrain from carrying out any 'blockade' and/or all other conduct that would imply blocking or obstructing the normal and regular entry and exit of people and goods to and from the printing facility of S. A. *La Nación*."²² Similar rulings to prevent blockades on *Clarín* were issued in December of 2010.²³ For its part, the government of the Autonomous City of Buenos Aires issued Necessary and Urgent Decree 2/11 punishing those who block or obstruct the operations of the media or attack or threaten its directors, journalists, workers or delivery persons with up to 10 days in

¹⁹ Infobae. November 4, 2011. *Jorge Lanata attacked*. <http://www.infobae.com/notas/615101-Agredieron-a-Jorge-Lanata.html>; Perfil. November 5, 2011. *Throw them at me*. Available at: http://www.perfil.com/ediciones/2011/11/edicion_624/contenidos/noticia_0020.html

²⁰ Clarín. November 1, 2011. *For Boudou, "There have been attempts to cause collective hysteria."* Available at: http://www.ieco.clarin.com/economia/Boudou-intentos-generar-histeria-colectiva_0_583141709.html; La Nación. November 1. *Boudou accuses media over tension*. Available at: <http://www.lanacion.com.ar/1419486-boudou-acuso-a-los-medios-por-la-tension>

²¹ Committee to Protect Journalists. March 29, 2011. *Argentina should halt obstruction of top dailies*. Available at: <http://cpi.org/2011/03/argentina-should-halt-obstruction-of-top-dailies.php>; Inter-American Press Association (IAPA). January 17, 2011. *IAPA concerned at renewed blockade of Argentine newspapers*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4508&idioma=us; La Nación. December 15, 2010. *Delivery of La Nación and Clarín delayed*. Available at: <http://www.lanacion.com.ar/1333721-atrasan-la-salida-de-la-nacion-y-clarin>

²² Judicial Branch of the Nation. May 24, 2011. *Ruling prevents "blockades" to printing facility of newspaper La Nación*. Available at: <http://www.cij.gov.ar/nota-6864-Fallo-impide--bloqueos--a-la-planta-impresora-del-diario-La-Nacion.html>

²³ La Nación. January 2, 2011. *Blockade of printing facility prohibited*. Available at: <http://www.lanacion.com.ar/1338068-prohiben-bloquear-una-planta-impresora>; Knight Center for Journalism in the Americas. January 3, 2011. *Argentine judge bars protesters from blocking news printer*. Available at: <http://knightcenter.utexas.edu/blog/argentine-judge-bars-protestors-blocking-news-printer>

prison and fines of up to 50,000 pesos (about US \$12,000 dollars).²⁴ In response to a request for information from this Office of the Special Rapporteur, the Argentine State reiterated its respect for freedom of expression and the press reflected in reforms like the one concluded on November 28, 2009, decriminalizing slander and defamation when matters of public interest are at issue. The State indicated that the incidents in the printing facilities of *Clarín* and *La Nación* originated from a union dispute, that the blockades did not prevent copies of the newspaper from going out for delivery, and that the State respects the right to assemble, and therefore avoids using repressive methods against social protests.²⁵

25. On April 3, a blockade by newspaper delivery people obstructed the distribution of the newspapers *La Voz del Interior* and *Día a Día de Córdoba*. According to the information, the group of delivery people positioned themselves in the exits and entrances of the building where the newspapers are printed. Intervention by the authorities was able to lift the blockade by midday; however, according to the information received, close to 70% of the day's edition was not distributed. The protest was based on the delivery peoples' complaints over print run delays that made their job more difficult.²⁶

D. Prior conditioning

26. At the time this report went to press, a bill from the Executive Branch submitted in 2010 that proposes declaring the production, commercialization and distribution of newsprint to be in the public interest is still being processed in Congress.²⁷ As this office indicated in its 2010 report, issues related to newsprint are of such importance for the inter-American system that Article 13 itself of the American Convention establishes that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its free production. This regimen must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. The Office of the Special Rapporteur hopes that given its notable importance for the exercise of freedom of expression, the matter mentioned herein is resolved in keeping with international standards on the subject.

²⁴ Government of the Autonomous City of Buenos Aires Boletín Oficial. April 11, 2011. *Necessary and Urgent Decree No. 2/11*. Available at: <http://www.scribd.com/doc/52874010/Decreto-libertades-de-prensa-y-expresion>; City of Buenos Aires. April 12, 2011. *En defensa de la libertad de expresión y de prensa, Macri fijó penas por decreto para quienes atenten contra ellas*. Available at: http://www.ccqsm.gov.ar/noticias/?modulo=ver&idioma=es&item_id=10337&contenido_id=56208

²⁵ Permanent Mission of the Argentine Republic to the Organization of American States. Received on May 16, 2011. OEA 174.

²⁶ Argentine Journalism Forum (FOPEA in its Spanish acronym). April 8, 2011. *FOPEA concerned over blockade of newspapers La Voz del Interior and Día a Día*. Available at: http://www.ifex.org/argentina/2011/04/08/bloqueo_vendedores/es/; Perfil.com. April 3, 2011. *Newspapers La Voz del Interior and Día a Día blockaded*. Available at: http://www.perfil.com/contenidos/2011/04/03/noticia_0011.html; La Voz Noticias. April 3, 2011. *Unanimous rejection of blockade that prevented distribution of La Voz and Día a Día*. Available at: <http://www.lavoz.com.ar/noticias/politica/unanime-rechazo-al-bloqueo-que-impidio-salida-voz-dia-dia>

²⁷ According to the bill passed in committee, the production of paper for newspapers would be considered "in the public interest," an "equitative final price" is established for all domestic newspapers, and a regulatory body is created under the Executive Branch. Also, the bill mandates that no company that holds more than a 10% share in a print or audio-visual media company can own a company that produces newsprint. As of the publication deadline of this report, the recommendation by the Commission has not been addressed by the Chamber of Deputies. Honorable Chamber of Deputies of the Nation. Bill to declare the production, commercialization and distribution of newsprint in the public interest. File 7381-D-2010. Published in Parliamentary Proceeding No. 150. October 7, 2010. Available at: (Proyectos-Búsqueda general) <http://www.diputados.gov.ar/>; Inter-American Press Association (IAPA). October, 2011. *Information by Country: Argentina*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inforid=819&idioma=us

27. The Office of the Special Rapporteur was informed of concern among private sector media with regard to the absence of established standards for placing government advertisement and the increase in the budget for this advertisement, which in 2010 rose to 1.225 billion pesos, 47.7% higher than the previous year.²⁸ However, with regard to this, on March 2, 2011, the Supreme Court of Justice had already handed down a ruling reiterating the State obligation to adopt a government advertising policy that is nondiscriminatory and uses objective standards.²⁹

28. The Office of the Special Rapporteur was informed that radio broadcasters *FM Norte* and *FM Futuro*, in Pampa del Infierno, Chaco province, were searched and had their equipment confiscated on December 30 and 31, 2010, in compliance with an order issued by a justice of the peace in Pampa del Infierno. In addition, on December 31, Claudio Herrera - the owner of *FM Norte*, and Raúl Gerardo Abregu, an employee of *FM Futuro*, were arrested after they tried to go back to broadcasting. They were both released on January 3 and 4, 2011. The court order was based on an application of the Misdemeanor Code of the province of Chaco, which punishes those who distribute false information or information that "it is unfair to a person or institution" with jail time of up to 120 days. The action against the broadcasters took place after they insisted they knew the source of special funds received by the Pampa del Infierno Municipality.³⁰ On February 17, a judge in Campo Largo overturned the measure issued by the judge in Pampa del Infierno and ordered the equipment returned.³¹

29. On September 15, National Criminal Economic Court No. 4 asked newspapers *Clarín*, *El Cronista*, *La Nación* and *Ámbito Financiero* to provide the names, addresses and telephone numbers of the journalists who had published articles in those newspapers from 2006 to the present on inflation indices in Argentina that differed from the numbers provided by government agencies. In addition, the court asked the newspapers to report if whether during that same period of time they had invoiced spaces for two people and the company being investigated by the State for publishing inflation figures that differed from the ones published by the government.³² The Office of the Special Rapporteur takes note of the important controversy sparked by this decision regarding the exercise of the right to freedom of expression. On one hand, some organizations, after emphasizing the importance of protecting the confidentiality of their source, argued that the judge in the case is investigating the crime of speculation via false news items and thus ordered certain newspapers to report if companies that had provided them with economic indicators different from the ones the government provides had paid for the publication of certain information. In this sense, they indicated that no legal provision excuses journalists from testifying

²⁸ Poder Ciudadano. December 3, 2011. *Dimensions of Government Advertising in Argentina*. Available at: <http://poderciudadano.org/2011/12/dimension-de-la-publicidad-oficial-en-la-argentina/>. According to this report, the federal government spent \$829 million pesos on official publicity in 2009 and \$1,224,700 pesos in 2010.

²⁹ Regarding this subject, see IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). Para. 46 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

³⁰ Article 59 subparagraph G) of the chapter entitled "misdemeanors against public reputation" of the Misdemeanor Code of the province of Chaco establishes that: "They will be punished with up to 20 days in jail or cash fine equivalent to up to 20 monthly minimum wages, food and transportation those G) who, through through the written, oral or televised media distribute false news items to the population on some fact or circumstance tending to be unfair to a person or institution, as long as it is not qualified as a crime." Chamber of Deputies of Chaco. Republic of Argentina. Law 42019. Misdemeanor Code. Available at: <http://legislatura.chaco.gov.ar/InformacionLegislativa/datos/textos/word/00026269.DOC>; Argentine Journalism Forum (FOPEA). January 18, 2011. *Judge uses Misdemeanor Code to order searches and arrests at two broadcasters*. Available at: http://www.ifex.org/argentina/2011/01/18/pampa_del_infierno/es/

³¹ Radiodifusióndata. February 27, 2011. *Equipment confiscated from two radio stations in Pampa del Infierno returned*. Available at: <http://www.radiodifusiondata.com.ar/2011/feb11/fm-pampadelinfierno-decomiso.htm>

³² National Criminal Economic Court. Note to manager in charge of legal issues for newspaper Clarín. September 15, 2011. Available at: http://www.clarin.com/politica/inflacion-juez_Catania-consultoras_privadas-indices_alternativos-Guillermo_Moreno-periodistas_0_559144275.html; La Nación. September 23, 2011. *Consultants keep a low profile*. Available at: <http://www.lanacion.com.ar/1408523-las-consultoras-se-aferran-al-bajo-perfil>; Argentine Journalism Forum (FOPEA)/IFEX September 22, 2011. *FOPEA concerned over scope of judicial request regarding journalists covering economic issues*. Available at: http://www.ifex.org/argentina/2011/09/27/pedido_judicial/es/

as witnesses.³³ On the other hand, other organizations questioned the court summons. According to them, these are unnecessary investigations and summonses that should be approached by making the official inflation indices as transparent and trustworthy as possible.³⁴ In this regard, the Office of the Special Rapporteur considers it important to recall that all investigations must respect source confidentiality as an essential guarantee for the free exercise of journalism, as well as the obligation to respect the distribution of information even when it is offensive or contrary to the interests of public servants and the obligation of the media to submit itself to strict ethical standards that can in no case be imposed by the State.

E. Access to information

30. The Office of the Special Rapporteur observes with concern that during 2011, the Chamber of Deputies neither discussed nor voted on the Access to Information Act, which had been passed by the Senate in September of 2010.³⁵

31. According to information received, the government of the City of Buenos Aires did not respond to a request submitted by a nongovernmental organization for information on spending on government advertising between January and May of 2011. According to the information, as of the expiration of the legal deadline to respond, the city government had not requested the deadline extension provided for in the law regulating access to public information and maintained its silence. The petitioner organization submitted an action of *amparo* before the Contentious, Administrative and Tax Jurisdiction of the City of Buenos Aires.³⁶

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

2. Bolivia

A. Developments

33. According to information received, on June 10 the Office of the Public Prosecutor reportedly issued Resolution 0902317 ordering the dismissal of charges against Daniel Villavicencio, of the newspaper *Correo del Sur*, and independent television reporter Mario Delfín Ustarez, for the offenses of publicly instigating a crime and advocating crime. The dismissal was based on insufficient evidence. The journalists were reportedly accused of instigating acts of violence that took place in Sucre on May 24, 2008 against indigenous persons and peasant farmers. Nevertheless, the Office of the Public Prosecutor

³³ Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS). September 23, 2011. *Posición del CELS frente al pedido de información sobre periodistas realizado por el juez Alejandro Catania*. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=&idc=1434>

³⁴ Forum for Argentinian Journalism (Foro de Periodismo Argentino, FOPEA)/IFEX. September 22, 2011. *Preocupación de FOPEA por los alcances de un pedido judicial acerca de periodistas que cubren temas económicos*. Available at: http://www.ifex.org/argentina/2011/09/27/pedido_judicial/es/; Poder Ciudadano. September 23, 2011. *Las consecuencias de no tener estadísticas confiables*. Available at: <http://poderciudadano.org/2011/09/las-consecuencias-de-no-tener-estadisticas-confiables/>

³⁵ Regional Alliance for the Freedom of Expression and Access to Information. October 24, 2011. *Regional State Report on the Situation of Access to Public Information*. P. 15. Available at: http://www.adc.org.ar/sw_contenido.php?id=851; El Cívico. November 20, 2011. *More than 500 bills will not pass due to the low number of sessions in the Chamber of Deputies in 2011*. Available at: <http://www.elcivico.com/notas/2011/11/20/proyectos-caeran-pocas-sesiones-camara-diputados-76384.asp>

³⁶ Association for Civil Rights (ADC according to its Spanish acronym). July 15, 2011. *Buenos Aires government does not turn over information on official advertising*. Available at: http://www.adc.org.ar/sw_contenido.php?id=836

reportedly found sufficient evidence to proceed against Roger González, director of *Canal 13 Televisión Universitaria*.³⁷

34. The Office of the Special Rapporteur notes that the Office of the District Prosecutor of Potosí declined jurisdiction to prosecute journalist Mario Caro Martínez, of *Radio Kollasuyo*, for the alleged offense of *desacato* [criminal defamation] on April 5, 2011. The criminal complaint was reportedly filed in March by Felipe Castro, the former Secretary of the Environment of the departmental government of Potosí, after the journalist published information about alleged irregularities in that secretary's office. According to the information available, the Prosecutor's Office declined jurisdiction on grounds that the Press Law, according to which public servants attacked in the press must bring their claims before a Press Jury and not before a regular court, is fully in force.³⁸

B. Assaults and threats

35. The Office of the Special Rapporteur learned of the violent death of journalist David Niño de Guzmán. According to the information received, the journalist had disappeared on the night of Tuesday, April 19, when he left his apartment after having received a phone call. His body was found on Thursday, April 21 in a riverbed in La Paz, destroyed by an explosive charge. David Niño, 42, was the News Editor at *Agencia de Noticias Fides*, a media outlet affiliated with the Company of Jesus, of the Catholic Church in Bolivia. He had worked for over 15 years with various Bolivian media, such as *Presencia*, *Última Hora*, *La Razón* and *El Diario*.³⁹ The State informed the Office of the Special Rapporteur that the government of President Evo Morales had reportedly ordered an exhaustive and immediate investigation of the tragic incident.⁴⁰ On August 8, the Office of the Public Prosecutor requested that the case be closed. It considered the journalist's death to be a suicide, based on the examination of the evidence gathered and the forensic reports.⁴¹ However, the companion of David Niño requested that the investigation be reopened.⁴² The Prosecutor's Office reportedly denied the complaint; however, if there is any new evidence in the case within one year, it may be reopened.⁴³

³⁷ Correo del Sur. August 11, 2011. *Fiscalía admite que no hay pruebas contra periodistas*. Available at: <http://www.correodelsur.com/2011/0811/37.php>; Los Tiempos. August 10, 2011. *Acusan formalmente a periodista en Sucre por instigar hechos racistas*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20110810/acusan-formalmente-a-periodista-en-sucre-por-instigar-hechos_137264_280515.html; National Press Association. Undated. Alert No. 113-2011. *Periodista podría ser juzgado en la vía ordinaria*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=282&Itemid=28

³⁸ Knight Center for Journalism in the Americas. March 14, 2011. *Periodista boliviano es acusado de desacato por difundir información sobre autoridades públicas*. Available at: <http://knightcenter.utexas.edu/es/blog/periodista-boliviano-es-acusado-de-desacato-por-difundir-informacion-sobre-autoridades-publicas>; FM Bolivia. April 8, 2011. *Fiscal reconoce vigencia de la Ley de Imprenta*. Available at: <http://www.fmbolivia.com.bo/noticia50482-fiscal-reconoce-vigencia-de-la-ley-de-imprenta.html>; National Press Association (ANP)/IFEX. March 11, 2011. *Procesan a periodista en Potosí*. Available at: http://ifex.org/bolivia/2011/03/11/caro_martinez/es/; ANP/IFEX. April 12, 2011. *ANP celebra decisión del fiscal en caso de periodista que enfrentaba querrela por desacato*. Available at: http://www.ifex.org/bolivia/2011/04/12/declinado_competencia/es/; Los Tiempos. Undated. *Press Law of January 19, 1925*. Available at: http://www.lostiempos.com/media_pdf/2010/10/05/178909_pdf.pdf

³⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 29, 2011. Press Release R36/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Violent Death of Journalist in Bolivia*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=838&IID=2>; Committee to Protect Journalists (CPJ). April 22, 2011. *Hallaron muerto a un periodista boliviano*. Available at: <http://cpj.org/es/2011/04/hallaron-muerto-a-un-periodista-boliviano.php>; National Press Association (ANP)/IFEX. April 25, 2011. *Periodista aparece muerto*. Available at: http://www.ifex.org/bolivia/2011/04/25/nino_de_guzman_killed/es/; Public University of El Alto (UPEA). April 12, 2011. *David Niño de Guzmán era parte de la UPEA*. Available at: <http://www.enlaupea.com/2011/04/david-nino-de-guzman-era-parte-de-la.html>

⁴⁰ Communication from the Permanent Mission of the Plurinational State of Bolivia to the OAS. April 28, 2011. OEA-CIDH-083-11.

⁴¹ Bolivian News Agency (ABI). August 9, 2011. *Fiscalía considera que periodista Niño de Guzmán se suicidó y pide archivo de obrados*. Available at: <http://www2.abi.bo/nucleo/noticias.php?i=2&j=20110809062001>; La Razón. August 8, 2011. *Fiscalía concluye que periodista David Niño de Guzmán se suicidó*. Available at: <http://www.la-razon.com/version.php?ArticleId=135261&EditionId=2615>

⁴² Los Tiempos. August 30, 2011. *Piden la reapertura del caso Niño de Guzmán*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20110808/piden-la-reapertura-del-caso-nino-de-guzman_136980_279882.html; Knight Center for Journalism in the Americas. August 10, 2011. *Piden reapertura de caso de* Continued...

36. The Office of the Special Rapporteur received information about several assaults carried out against journalists while they covered social protests. On April 15, in Apacheta, on the Altiplano 20 kilometers from La Paz, a group of journalists were reportedly beaten by police officers and protesters during their coverage of confrontations between teachers and the police. According to reports, police attacked cameraman Israel Gutiérrez of *Red Uno*; cameraman Carlos Saavedra of *Bolivisión*; and Henry Ponce, a photographer from the newspaper *Página Siete*. The first two reportedly had their equipment destroyed, and Ponce—who was allegedly struck with the butt of a rifle—was reportedly forced to turn over two photographic memory cards containing hundreds of images. The protesters, for their part, reportedly attacked cameraman Vladimir Rojas of *Universal de Televisión*, and photographer Juan Mamani Karita, of *AP* (the Associated Press), whose photographic equipment they allegedly stole and destroyed. On April 19, Vice President Álvaro García Linera apologized for the physical and verbal police attacks on the media workers.⁴⁴

37. On January 18, two municipal employees of the city of El Alto reportedly struck journalist Rosío Flores of *El Diario* of La Paz, when she sought information regarding an alleged irregular act that took place in the municipal council. Following this attack, the newspaper filed a criminal complaint of assault.⁴⁵ On February 14, milk producers reportedly assaulted José Rocha, a photographer for the newspaper *Los Tiempos*, *Tele C* journalist Verónica Sarmiento, and *Red Uno* cameraman Marcelo Dalence, while they were covering a protest across from a milk processing plant in Cochabamba.⁴⁶ In Lomas de Andalucía, Cochabamba, on March 6, alleged squatters reportedly kicked and hit with sticks and stones at least five journalists and media workers from the newspaper *Los Tiempos* and from the television stations *Red Uno* and *Univalle*.⁴⁷

38. The Office of the Special Rapporteur was informed of several assaults on journalists from state and private media on September 25 and 28, during the coverage of the indigenous march against the building of a highway that would cut through protected parkland. As stated in the reports received, at least a dozen media workers were reportedly assaulted, threatened, or intimidated, in some cases by protesters and in others by police officers. Laura Ibáñez, Franco Colchari, David Alanoca and Raúl Crespo, of the state-run *Canal 7*, were reportedly beaten by opponents of the Government, while Bernabé López, of the *PAT* television network, Ramiro Amaru, of *Radio Fides* and reporters from the Confederation of Indigenous Peoples of Bolivia were reportedly intimidated and physically pushed away

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periodista suicida en Bolivia. Available at: <http://knightcenter.utexas.edu/es/blog/piden-reapertura-de-caso-de-periodista-suicida-en-bolivia>

⁴³ Opinión. August 7, 2011. *Fiscalía cree que David Niño de Guzmán se quitó la vida*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0807/noticias.php?id=20679>; *Los Tiempos*. August 30, 2011. *Piden la reapertura del caso Niño de Guzmán*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20110808/piden-la-reapertura-del-caso-nino-de-guzman_136980_279882.html

⁴⁴ National Association of Journalists (ANP)/IFEX. April 19, 2011. *Periodistas fueron golpeados por policías y manifestantes*. Available at: http://www.ifex.org/bolivia/2011/04/19/apacheta_periodistas_golpeados/es/; Reporters Without Borders. April 19, 2011. *Cinco periodistas fueron agredidos por la policía y manifestantes*. Available at: http://es.rsf.org/bolivia-cinco-periodistas-fueron-agredidos-19-04-2011_40056.html; National Association of Journalists (ANP)/IFEX. April 25, 2011. *Vicepresidente pide disculpas por agresiones, pero no anuncia sanciones*. Available at: http://www.ifex.org/bolivia/2011/04/25/apacheta_disculpas/es/

⁴⁵ National Association of Journalists (ANP)/IFEX. January 24, 2011. *Periódico anuncia querrela penal por agresión a una de sus periodistas*. Available at: http://www.ifex.org/bolivia/2011/01/24/flores_assaulted/es/; *El Diario*. January 23, 2011. *Prensa cruceña repudia ataque a periodista de El Diario*. Available at: http://www.eldiario.net/noticias/2011/2011_01/nt110123/0_03ptd.php

⁴⁶ National Association of Journalists (ANP)/IFEX. February 17, 2011. *Lecheros apedrean a tres periodistas*. Available at: http://www.ifex.org/bolivia/2011/02/17/cochabamba_assault/es/; FMBolivia. February 17, 2011. *Lecheros apedrean a tres periodistas bolivianos*. Available at: <http://www.fmbolivia.com.bo/noticia46784-lecheros-apedrean-a-tres-periodistas-bolivianos.html>

⁴⁷ *Televisión, Radio y Periódicos*. March 9, 2011. *Loteadores apalean a periodistas y camarógrafos*. Available at: <http://televisionbolivia.blogspot.com/2011/03/loteadores-apalean-periodistas-y.html>; National Association of Journalists (ANP)/IFEX. March 10, 2011. *Ocupantes de tierras agreden a periodistas*. Available at: http://www.ifex.org/bolivia/2011/03/10/los_tiempos_attacks/es/

from the scene by police. In addition, César Tamayo, of *Radio Fides*; Jorge Figueroa, of the *Erbol* network, and photographer Samy Schwartz were reportedly assaulted by protesters who attempted to block the march.⁴⁸

39. The Office of the Special Rapporteur learned that journalist Carlos Torres reportedly received death threats on January 3 and January 9 in the city of Sucre. Torres is a correspondent for *Radio Panamericana*, and the Secretary General of the Federation of Press Workers' Unions of Chuquisaca. The intimidating messages were reportedly related to Torres' organization of protests against two articles of the Law against Racism and All Forms of Discrimination. The journalist reported the threats to the police and the authorities promised to thoroughly investigate the calls and messages.⁴⁹

40. According to information received, journalist Mónica Oblitas reportedly received numerous anonymous threats beginning in April with telephone calls, text messages, and emails, after publishing an investigative piece in the newspaper *La Prensa* on April 3. The article exposed the alleged sale of false forensic certificates to individuals who were the alleged victims of violent acts.⁵⁰

41. The ninth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Arrests and judicial proceedings

42. On January 17, judicial authorities reportedly ordered the arrest of journalist Luis Zabala Farell, for allegedly using the radio station *La Voz del Pueblo* to incite a group of residents to attack the police post of Minero in Santa Cruz de la Sierra on January 6. According to reports, the journalist turned himself in voluntarily to the police to explain what happened and to face charges of attempted murder, public instigation to commit a crime, criminal conspiracy, and aggravated robbery; nevertheless, an investigating judge ordered his pretrial detention because he was considered to be a flight risk. On April 14, the journalist was granted conditional release, but was prohibited from speaking about the case.⁵¹ A

⁴⁸ National Press Association (ANP). Undated. Alert No 97-2011. *Canal estatal de TV denuncia agresiones a sus periodistas*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=268&Itemid=28; National Press Association (ANP)/IFEX. October 5, 2011. *Policías agreden a periodistas y camarógrafos, detienen a marchistas*. Available at: http://www.ifex.org/bolivia/2011/10/05/periodistas_agredidos/es/; FM Bolivia. September 27, 2011. *Bolivia TV denuncia intento de linchamiento a su periodista*. Available at: <http://www.fmbolivia.com.bo/noticia64467-bolivia-tv-denuncia-intento-de-linchamiento-a-su-periodista.html>; Noticias BO. October 5, 2011. *Periodistas agredidos y amenazados en Bolivia*. Available at: <http://www.noticiasbo.com/noticia/periodistas-agredidos-y-amenazados-en-bolivia.html>; EA Bolivia. September 28, 2011. *Federación de periodistas rechaza exceso policial y crítica desinformación de medios*. Available at: <http://www.eabolivia.com/social/9434-federacion-de-periodistas-rechaza-exceso-policial-y-critica-desinformacion-de-medios.html>; National Press Association (ANP)/IFEX. September 19, 2011. *Periodista golpeado por bloqueadores de marcha indígena*. Available at: http://www.ifex.org/bolivia/2011/09/19/tamayo_lesiones/es/

⁴⁹ On January 3, the journalist received a text message that read: "Death. If you keep lying and saying that you have gathered 1 million signatures, I'm going to pay a *chorro* [criminal] to pump you full of lead. Watch out, liar." The January 9 messages said: "If you're still talking to the media about the regulations to the Anti-racism Law, you had better shut up, because your death is near;" "Death. I'm going to kill you with a cap to the head. Don't complicate your life. It's better you resign as a leader of the sell-out press." *La Patria*. January 14, 2011. *Periodista presentó denuncia en la Fiscalía por amenazas de muerte*. Available at: <http://www.lapatriaenlinea.com/?nota=55129>; Correo del Sur. January 12, 2011. *Amenazan de muerte a periodista de Sucre*. Available at: <http://correodelsur.com/2011/01/12/34.php>

⁵⁰ Committee to Protect Journalists (CPJ). September 12, 2011. *Periodista boliviana quien investigó corrupción es amenazada*. Available at: <http://cpi.org/es/2011/09/periodista-boliviana-quien-investigó-corrupcion-es.php>; Reporters Without Borders. September 15, 2011. *RSF pide protección para Mónica Oblitas*. Available at: <http://www.rsf-es.org/news/bolivia-rsf-pide-proteccion-para-monica-oblitas/>

⁵¹ Andean Group for Freedom of Information (EL GALI). May 24, 2011. *Periodista boliviano dejó de trabajar para reunir pruebas que le restituyan libertad plena en un juicio*. Available at: <http://www.elgali.org/monitoreo/bolivia/periodista-boliviano-dejo-trabajar-reunir-pruebas-que-le-restituyan-libertad-ple-0>; *El Diario*. April 16, 2011. *Periodista pese a estar libre no puede declarar sobre su proceso*. Available at: http://www.eldiario.net/noticias/2011/2011_04/nt110416/5_13nal.php; Knight Center for Journalism

court of first instance acquitted Zabala of all of the charges, and on September 26 the acquittal was affirmed on appeal.⁵²

43. The Office of the Special Rapporteur received information about several accusations of *desacato*. On July 18, journalist Richard Romero Cossío was reportedly arrested in La Paz and charged with *desacato* for producing and selling a video entitled “The trade union dictatorship” about the Bolivian president’s background as a social leader. According to the information received, a magistrate’s court for criminal matters reportedly set the journalist’s bond at 5,000 bolivianos (US \$750) and granted supervised pretrial release. The terms of release required him to report to the court once a week, and prohibited him from voicing “defamatory words that may denigrate the character of the president and other authorities.”⁵³ The Criminal Code of Bolivia imposes a term of imprisonment ranging from one month to two years against any person who “through any medium, libels, slanders, or defames a public servant in the performance of his duties or as a result thereof.”⁵⁴ In November, a bill was introduced to decriminalize the offense of *desacato*.⁵⁵

44. According to the eleventh principle of the IACHR’s Declaration of Principles on Freedom of Expression “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.”

45. According to information received, on July 11, in the city of Cobija, the departmental capital, two public servants from the office of the governor of Pando reportedly confiscated 2000 copies of issue number 22 of the newspaper *Sol de Pando*, which contained information critical of the governor; they also reportedly intimidated the newspaper’s circulation manager.⁵⁶ Legal counsel from the governor’s office reportedly explained that the two public servants had taken the copies in order to try to distribute them themselves, as both had ties to the newspaper. The publication denied the government’s version of the events, demanded that the governor’s office return the copies, and reported the confiscation to the National Ombudsman, the justice system, and journalistic organizations.⁵⁷

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in the Americas. April 20, 2011. *Bolivian journalist freed after three months in jail but barred from discussing case*. Available at: <http://knightcenter.utexas.edu/blog/bolivian-journalist-freed-after-three-months-jail-barred-discussing-case>

⁵² National Press Association (ANP)/IFEX. October 7, 2011. *Radialista levanta autocensura tras fallo a su favor*. Available at: http://www.ifex.org/bolivia/2011/10/07/radialista_levanta_autocensura/es/; El Diario. October 7, 2011. *Radialista levanta autocensura*. Available at: http://www.eldiario.net/noticias/2011/2011_10/nt111007/2_09plt.php

⁵³ National Press Association (ANP)/IFEX. July 22, 2011. *Policía aprehende a individuo que vendía video sobre el presidente*. Available at: http://www.ifex.org/bolivia/2011/07/22/cossio_aprehendido/es/; Andean Group for Freedom of Information (EL GALI). July 24, 2011. *Aprehenden a un periodista acusado de difundir un video que afecta la imagen del presidente boliviano*. Available at: <http://www.elgali.org/monitoreo/bolivia/aprehenden-un-periodista-acusado-difundir-un-video-que-afecta-la-imagen-del-presid>; Unitel. July 20, 2011. *Periodista preso por producir documental denunciando a gobierno de Evo Morales*. Available at: <http://www.youtube.com/watch?v=xmVqRkYtBxo&feature=related>; Opinión. July 20, 2011. *Gobierno presenta querrela contra supuesto periodista por desacato*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0720/noticias.php?id=18328>

⁵⁴ See Criminal Code of Bolivia. Article 162. Available at: http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf

⁵⁵ Autonomous Departmental Government of Santa Cruz. November 22. *Gobernador presenta proyecto de ley para derogar el desacato de la legislación boliviana*. Available at: <http://ftp.santacruz.gob.bo/prensa/notas/contenido.php?IdNoticia=6456&IdMenu=901>

⁵⁶ National Press Association (ANP)/IFEX. July 29, 2011. *Periódico acusa a gobernador de Pando de confiscar dos mil ejemplares de una de sus ediciones*. Available at: http://www.ifex.org/bolivia/2011/07/29/sol_de_pando_confiscated/es/; El Diario. August 3, 2011. *Autoridades impiden circulación de publicación sin tuición alguna*. Available at: http://www.eldiario.net/noticias/2011/2011_08/nt110803/2_04plt.php

⁵⁷ Opinión. August 6, 2011. *Gobernación: dos empleados secuestraron la edición del Sol de Pando*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0806/noticias.php?id=20548>; Sol de Pando. July 31, 2011. *Carta a la CSTPB. Ante los ataques violentos de Richard Flores Roberts, hermano del gobernador: Tribunal de Imprenta*. Available at: http://soldepando.blogspot.com/2011_07_01_archive.html; La Razón. July 30, 2011. *Sol de Pando se querrela contra Flores*. Available at: <http://www.la-razon.com/verscion.php?ArticleId=134691&EditionId=2606>; Sol de Pando. August 26, 2011. *Denuncia de Sol de Pando al Defensor del Pueblo*. Available at: <http://soldepando.blogspot.com/2011/08/denuncia-de-sol-de-pando-al-defensor.html>

D. Legislative reforms

46. On January 5, the Government issued an executive order approving the regulations to the Law against Racism and All Forms of Discrimination, which provide for the suspension of media outlets that disseminate racist ideas. The suspension period ranges from 10 to 360 days depending on the degree and repercussions of noncompliance with the Law.⁵⁸ The maximum period of suspension would apply only in the case of repeated recurrence, on three or more occasions. The regulations did not include the possibility of permanently shutting down a media outlet. The regulations specify that racist and discriminatory messages do not give rise to liability on the part of a medium when they are published or disseminated as part of a news report without there being any defense of or praise for acts of racism, or when they are the result of third-party expressions broadcast on live programs or programs in which there is public participation, in which case the media outlet must caution the public to refrain from using such expressions.⁵⁹ A media outlet will not be liable when a racist expression is uttered on independent paid programming, but it has the obligation to issue a warning for the infraction and prevent it from being repeated.⁶⁰ The regulations additionally require the media to bring their internal rules into line with the “recognition [of, and] respect for differences, and the promotion of principles, values, and standards to eradicate racist conduct and all forms of discrimination,” as well as to disseminate specific quantities of their own communications, according to the type of media, with this objective.⁶¹

47. The Office of the Special Rapporteur considers the progress made through this regulatory order to be essential. Also, it finds that it would be appropriate for those provisions to be given the force of law, in order to ensure their stability and status. In this respect, in its last annual report, the Office of the Special Rapporteur noted that some provisions of that Law “are of concern” and that it was necessary to create the essential legal safeguards to satisfy both the right to equality and nondiscrimination and the right to freedom of expression.⁶² In addition, the Office of the Special Rapporteur finds it important to clarify the system of penalties in order to ensure proportionality in the event that they are imposed.⁶³

⁵⁸ See Article 17, Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁵⁹ See Article 16, Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁶⁰ Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>; La Razón. January 5, 2011. *El Gobierno aprobó la reglamentación de la ley antirracismo*. Available at: <http://www.la-razon.com/version.php?ArticleId=123501&EditionId=2398>

⁶¹ Article 13(2) provides that the media are required to “promote acts of prevention and education meant to safeguard respect for the dignity and equality of all persons, through the production of their own communications products, in official and alternative languages according to the region and audience” and requires that they be disseminated, at preferential times: 1) at least 20 minutes per month on television channels; 2) at least 40 minutes per month on radio stations; 3) at least one page per month in newspapers and at least half a page per month in magazines; and 4) at least one “space” per month in digital newspapers on the Internet. (“promover las acciones de prevención y educación destinadas a precautelar el respeto a la dignidad e igualdad de todas las personas, mediante la elaboración de productos comunicacionales propios, en idiomas oficiales y alternativos de acuerdo a la región y audiencia.”). Art. 13(2), Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁶² IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 53. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶³ IACHR. 2010 Annual Report. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 53 *et seq.* Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

48. The Office of the Special Rapporteur learned of the May 26 approval by a majority of the House of Representatives of the amendments to Article 82 of the Electoral System Law. The amendments repealed the provisions according to which candidates were prohibited from giving interviews to the media or expressing their opinions in “public forums, meetings, or other similar events,” and the media were prevented from disseminating any documents other than those put out by the Electoral Body, or referring to candidates positively or negatively.⁶⁴ According to the information received, the amendment allows candidates to the Judicature Council, the Plurinational Constitutional Court, the Supreme Court of Justice, and the Agro-environmental Court to take part in interviews or events held by the media or in “public spaces,” provided that they refrain from “campaigning or propagandizing,” “directly or indirectly”; “issuing an opinion” in their favor, or for or against other candidates; or “directing or hosting radio or television programs or writing news or opinion columns in the press.” President Evo Morales proposed changing the Law, and the amendment was passed on May 27. The Office of the Special Rapporteur takes note of these important changes that respond to the need for candidates to be heard prior to elections. Notwithstanding, there are still ambiguous prohibitions like those that keep the media from “creating opinion spaces of any type with regard to the candidates.”⁶⁵ Following the elections, journalistic organizations deplored the existing restrictions and the lack of information, which reportedly made it impossible to freely interview the 118 candidates for offices up for election.⁶⁶

49. The Office of the Special Rapporteur takes note of the August 8 enactment of the new Telecommunications, Information Technology and Communication Law, which was passed by the Senate on July 28, and by the House of Representatives on July 22.⁶⁷ According to the information received, the law provides for the allocation of frequencies among state, commercial, and community broadcasters,

⁶⁴ See Electoral System Law. Law No. 026 of June 30, 2010. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=1888>. Cf. Law No. 125 of May 27, 2011. Available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/10/page:2> (repealing sections (a) and (b) of Paras. II and IV of Article 82, and amending section (d))

⁶⁵ Plurinational Legislative Assembly. House of Representatives. May 26, 2011. *Modificaciones a la Ley 026 garantizan participación de candidatos en medios de comunicación*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=405:modificaciones-a-ley-026-garantizan-participacion-de-candidatos-en-medios-de-comunicacion&catid=1:ultimas-noticias&Itemid=89; Plurinational Legislative Assembly. House of Representatives. May 26, 2011. *Diputados aprueban por mayoría modificaciones al artículo 82 de la Ley del Régimen Electoral*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=403:-diputados-aprueban-por-mayoria-modificaciones-al-articulo-82-de-la-ley-del-regimen-electoral&catid=1:ultimas-noticias&Itemid=89; National Press Association (ANP)/IFEX. May 24, 2011. *Presidente anuncia modificación de norma que conculca libertad de expresión y de prensa*. Available at: <http://legislaciones.item.org.uy/index?q=node/2902>; Observador Global. May 28, 2011. *Morales promulga reforma a la ley de prensa en Bolivia*. Available at: <http://observadorglobal.com/morales-promulga-reforma-a-ley-de-prensa-en-bolivia-n23691.html>; FM Bolivia. May 30, 2011. *Artículo 82 de Ley Electoral sigue limitando la libertad de expresión*. Available at: <http://fmbolivia.com.bo/noticia54280-articulo-82-de-ley-electoral-sigue-limitando-la-libertad-de-expresion.html>; Reporters Without Borders. May 31, 2011. *Reforma incompleta de la Ley Electoral; temido proyecto de Ley de Telecomunicaciones*. Available at: http://es.rsf.org/bolivia-reforma-incompleta-de-la-ley-31-05-2011_40382.html

⁶⁶ National Press Association (ANP)/IFEX. October 17, 2011. *Organizaciones periodísticas lamentan restricciones, falta de información en elecciones judiciales*. Available at: http://www.ifex.org/bolivia/2011/10/17/elecciones_judiciales/es/; Plurinational Electoral Body. November 10, 2011. *Press Bulletin 086/11*. Available at: http://www.oep.org.bo/oep/archivos/noticias/86_PROCLAMACION%20DE%20RESULTADOS%20TSE.pdf

⁶⁷ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>; National Press Association (ANP)/IFEX. August 10, 2011. *Presidente promulga Ley de Telecomunicaciones*. Available at: http://www.ifex.org/bolivia/2011/08/10/new_telecommunications_law/es/; Plurinational Legislative Assembly. House of Representatives. July 22, 2011. *Pleno de diputados aprueba en grande y en detalle proyecto de Ley de Telecomunicaciones*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=582:-pleno-de-diputados-aprueba-en-grande-y-en-detalle-proyecto-de-ley-de-telecomunicaciones&catid=1:ultimas-noticias&Itemid=89; El País. July 28, 2011. *Senadores sanciona proyecto de Ley de Telecomunicaciones*. Available at: <http://www.bolivia.com/noticias/AutoNoticias/DetalleNoticia45535.asp>; Radio Nederland. July 29, 2011. *Bolivia aprueba nueva ley de telecomunicaciones*. Available at: <http://www.rnw.nl/espanol/bulletin/bolivia-aprueba-nueva-ley-de-telecomunicaciones>; Diario Crítico de Bolivia. July 23, 2011. *Nueva Ley de Telecomunicaciones es aprobada por el pleno de diputados*. Available at: <http://www.diariocritico.com/bolivia/bolivia/2011/Julio/noticias/281968/ley-de-telcomunicacionesprint.html>; Plurinational Legislative Assembly. House of Representatives. July 11, 2011. *Diputados inician debate del proyecto de Ley de Telecomunicaciones*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=547:-diputados-inician-debate-del-proyecto-de-ley-de-telecomunicaciones&catid=1:ultimas-noticias&Itemid=89; El Diario. July 28, 2011. *Senado inicia debate del proyecto de Ley de Telecomunicaciones*. Available at: http://www.eldiario.net/noticias/2011/2011_07/nt110728/3_07ecn.php

and the “native indigenous peoples, peasants, [and] intercultural and Afro-Bolivian communities.”⁶⁸ It thus recognizes the importance of the plurality and diversity that must exist in broadcasting. Also, and consistent with the spirit of the law and with international standards, the State must establish technical mechanisms to ensure the independence and autonomy of social and community radios and channels. In this respect, in its general report on broadcasting, the Office of the Special Rapporteur has already stated, *inter alia*, that, “The right to freedom of expression requires that the States not only refrain from performing acts that prevent the exercise of the right but also take measures to guarantee its exercise under conditions of equality and nondiscrimination,” that “in particular, community media are fundamental in order to guarantee effective respect for the freedom of expression and access to information of the indigenous peoples of our region,” and that, “the law must define appropriately the concept of community media, including its non-commercial and social purpose, and its financial and operating independence from the state and from economic interests.”⁶⁹ In addition, Article 111 of the law provides that, “in cases where the national security of the State is at risk, or there is an external threat, domestic disturbance, or natural disaster,” telecommunications and information technology operators and providers are required to provide their networks, services, broadcasts, transmissions, and reception to the State “free of charge and in a timely manner.”⁷⁰ Some critics of the law have reportedly maintained that Article 111 allows for the interception of communications without a court order.⁷¹ The Special Rapporteur notes that this provision interpreted in accordance with Article 25⁷² of the Constitution of Bolivia establishes the judicial guarantee in question.

3. Brazil

A. Progress

50. The Office of the Special Rapporteur expresses its satisfaction at the passage of the General Public Information Act by the Senate on October 25 and its signing by President Dilma Rousseff on November 18. The act will not enter into force until May 16, 2012, in order to provide time for drafting its regulations and for Brazilian institutions to make the necessary adjustments toward compliance with the provisions of the new legislation. The bill was submitted before Congress in 2009 and was passed by the Chamber of Deputies in 2010. According to information received, among its directives, the Act establishes as a general principle that all information held by the State is public, and secrecy is exceptional. The Act eliminates perpetual secrecy for government documents, limiting the maximum time period of confidentiality for documents classified as “ultra-secret” to 25 years, with one single extension possible; it creates the category of “classified” information, that can remain secret for 15 years, and “confidential” information that can remain so for five years. Access to information on human rights violations carried out by or under the authority of public officials cannot be restricted. Any person can

⁶⁸ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Art. 10. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>

⁶⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. December 30, 2009. Paras. 96, 105, 108. Available at: <http://www.oas.org/es/cidh/expresion/docs/publicaciones/Radiodifusion%20y%20libertad%20de%20expresion%20FINAL%20PORTADA.pdf>

⁷⁰ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Art. 111. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>

⁷¹ Knight Center for Journalism in the Americas. July 29, 2011. *Bolivia aprueba ley para aumentar control de medios y permitir intervenciones telefónicas*. Available at: <http://knightcenter.utexas.edu/es/blog/bolivia-aprueba-ley-para-aumentar-control-de-medios-y-permitir-intervenciones-telefonicas>; Jornada Net. July 29, 2011. *Aprueban Ley de Telecomunicaciones que permite escuchas telefónicas*. Available at: <http://www.jornadanet.com/n.php?a=66024-1>

⁷² Article 25 provides, *inter alia*: “All persons have the right to the inviolability of their homes and to the secrecy of all forms of private communications, except as judicially authorized. [...] Neither government authorities nor any person or body may intercept private conversations or communications through facilities that control or centralize them.” (“Toda persona tiene derecho a la inviolabilidad de su domicilio y al secreto de las comunicaciones privadas en todas sus formas, salvo autorización judicial. [...] Ni la autoridad pública, ni persona u organismo alguno podrán interceptar conversaciones o comunicaciones privadas mediante instalación que las controle o centralice.”) See: Constitution of the Plurinational State of Bolivia. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=469>

request access to public information, and the agency responsible must grant it immediately, free of charge, or provide a date on which the information will be turned over. The Act guarantees opportunities to appeal denials of access to information to higher instances. A Mixed Commission on Information Evaluation, comprised of ministers and representatives of the Legislative and Judicial Branches, will evaluate classification of information every four years and will be in charge of issuing final rulings on challenges to denials of access. The handling of personal information must be transparent and respect the privacy, private life, honor and image of persons. It shall be subject to a maximum period of restriction of 100 years except when consent is given by the person in question to reveal personal information or in the case of a court order, medical necessity, or statistical uses that do not reveal individual identification. The restriction on access to personal information cannot be invoked to the detriment of an investigation into irregularities in which the person in question could be implicated. Neither can it be invoked in response to actions toward recovering relevant historical information.⁷³

51. The Office of the Special Rapporteur notes with satisfaction the application of the National Program for the Protection of Human Rights Defenders (PPDDH in its Portuguese acronym) to journalists being threatened or facing circumstances of exceptional risk. According to information received, journalist Wilton Andrade dos Santos with broadcaster Milenius FM in the municipality of Itaporanga D'Ajuda received the protection of the Protection Program after being attacked on December 17, 2010, by two unidentified individuals who threw Molotov cocktails at his home and set his car on fire. According to the information, the journalist had alleged corruption at the municipality and received death threats. According to the information received, the journalist and his family have been protected by the Program since the attack and returned to Itaporanga D'Ajuda from Brasilia on March 19 accompanied by members of the National Police trained in the Program under the auspices of the Human Rights Secretariat, the National Secretariat of Public Safety, and the Federal District Military Police, institutions that continue to follow the case.⁷⁴

52. The Office of the Special Rapporteur learned of the December 22, 2010, capture of a person accused of having participated in the murder of journalist Aristeu Guida da Silva, owner of the newspaper *A Gazeta* in São Fidélis, Rio de Janeiro state, on May 12, 1995. According to the information received, the Police arrested Israel dos Anjos Rosa in Tres Rios, Rio de Janeiro state, as a suspect in several crimes, among them the murder of the journalist. Guida da Silva was murdered after having published a series of articles on incidents of corruption in the São Fidélis municipality. Judicial investigations into the crime revealed that the murder had been ordered by the individuals denounced and that it was executed by a local extermination group.⁷⁵

B. Murders

53. In 2011, the Office of the Special Rapporteur received worrying information on six cases of murders of communicators in Brazil that may be connect to the victims' professional activities. This Office reiterates the State's obligation to investigate the crimes, identify those suspected of having

⁷³ Presidency of the Republic. Law No. 12,527 of November 18, 2011. *General Access to Public Information Act*. Available at: http://www.planalto.gov.br/CCIVIL_03/_Ato2011-2014/2011/Lei/L12527.htm; Sociedade Maranhense de Defesa dos Direitos Humanos (SMDDH). November 17, 2011. *Dilma to sign Truth Commission and Access to Information Act this Friday*. Available at: <http://smdh.org.br/?p=124>. Federal Senate. October 26, 2011. *Senate rejects possibility of perpetual confidentiality for government documents*. Available at: <http://www.senado.gov.br/noticias/Jornal/noticia.asp?codNoticia=111536&dataEdicaoVer=20111026&dataEdicaoAtual=20111205&codEditoria=4068&>

⁷⁴ Jornal da Cidade. December 17, 2010. *Atentado: carro de radialista pega fogo e explode*. Available at: <http://2008.jornaldacidade.net/2008/noticia.php?id=86417>. Senoticias. March 18, 2011. *Força Nacional vai atuar na proteção de Wilton Andrade da Milenius FM*. Available at: <http://senoticias.com.br/se/?p=3755>; Human Rights Secretariat. *Proteção a Defensores de Direitos Humanos*. Available at: <http://www.direitoshumanos.gov.br/protecao/defensores>

⁷⁵ Inter-American Press Association (IAPA). December 23, 2010. *Individual accused of the murder of Aristeu Guida da Silva in prison 15 years later*. Available at: <http://www.impunidad.com/noticia.php?id=628&idioma=br>; Agencia Sierra. December 22, 2010. *Tres Rios: P2 captures journalist's murderer who had escaped justice*. Available at: http://www.agenciaserra.com.br/ler_noticia.php?acao=noticia&id=8563

committed them, bring them to trial, and provide adequate reparations to the relatives of the victims. These actions are crucial for preventing impunity and repetition of the facts.

54. The Office of the Special Rapporteur learned of the murder of journalist Luciano Leitão Pedrosa, which took place on April 9 in Vitória de Santo Antão, Pernambuco state. According to the information received, two unidentified individuals followed the journalist to a restaurant, where one of them shot him in the head. According to available information, the communicator was a host on the program “Ação e Cidadania” (Action and Citizenship) on TV Victória and also worked for Radio Metropolitana FM. He regularly covered police news and was known for constantly denouncing the actions of criminal groups and questioning local authorities. Family members stated that the journalist had received a number of death threats.⁷⁶

55. According to information received, on May 3 the owner of *Panorama Geral*, Valério Nascimento, who was also a reporter for the newspaper, was murdered in the town of Rio Claro, Rio de Janeiro state. According to the information, Nascimento was found dead at the entrance to his house with several gunshot wounds. Recently, the journalist had launched a new publication, and in its latest edition he revealed a series of alleged irregularities in the public administration of the town of Bananal.⁷⁷

56. On June 15, Brazilian communicator and politician Edinaldo Filgueira was murdered in the town of Serra do Mel, Ríó Grande do Norte state. According to the available information, three men approached Filgueira as he was leaving work and shot him at least six times. Filgueira had been president of the Workers Party in Serra do Mel and wrote a blog on politics and the region. He had recently published an article criticizing local authorities, for which he received death threats. On July 2 and 3, authorities captured five people possibly involved in the murder and confiscated guns and ammunition that could have been used in the attack. The prosecutors responsible for the investigation have told Brazilian media that Filgueira’s publications could have been the motive for the attack on him.⁷⁸

57. On July 22, journalist Auro Ida en Cuiabá was murdered in Mato Grosso state. According to information received, Auro Ida was in his car when at least one unidentified individual approached and asked the woman accompanying the journalist to get out of the vehicle. He then shot the communicator several times. José Riva, a deputy and president of the Legislative Assembly in Mato Grosso, told local media that the journalist had told him that he had been receiving threats for several weeks in connection with reports he was working on. Auro Ida was a political journalist and founder of the website *Mídia News*, as well as a columnist with online news outlet *Olhar Direto*. He had a long career during which he worked

⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2011. Press Release R44/11. *Office of the Special Rapporteur for Freedom of Expression Condemns the Murders of Two Journalists in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=842&IID=1>; Associação Nacional de Jornais (ANJ). April 13, 2011. *ANJ repudia assassinato do apresentador Luciano Pedrosa*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-repudia-assassinato-do-apresentador-luciano-pedrosa>; Committee to Protect Journalists (CPJ). April 11, 2011. *Brazilian radio and television journalist shot to death*. Available at: <http://cpi.org/es/2011/04/periodista-brasileno-de-radio-y-television-asesina.php>; Reporters Without Borders. April 22, 2011. *Un jornalista assassinado e investigacao nao avanca*. Available at: <http://es.rsf.org/brasil-um-jornalista-assassinado-a-22-04-2011.40087.html>

⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2011. Press Release R44/11. *Office of the Special Rapporteur for Freedom of Expression Condemns the Murders of Two Journalists in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=842&IID=1>; Committee to Protect Journalists (CPJ). May 4, 2011. *Brazilian newspaper owner shot dead*. Available at: <http://cpi.org/2011/05/brazilian-newspaper-owner-shot-dead.php>; Unesco. May 9, 2011. *Director-General condemns murder of Brazilian journalist Valério Nascimento*. Available at: <http://www.unesco.org/new/en/media-services/single-view/news/director-general-condemns-murder-of-brazilian-journalist-valerio-nascimento/>

⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 14, 2011. Press Release R69/11. *Office of Special Rapporteur Condemns Murder of Blogger in Brazil and Recognizes Authorities' Initiative in Investigating the Crime*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=854&IID=1>; DNonline. June 16, 2011. *Morte em Serra do Mel pode ter sido crime eleitoral, diz presidente do PT*. Available at: http://www.dnonline.com.br/app/outros/ultimas-noticias/38,37,38,47/2011/06/16/interna_cotidiano_73104/morte-em-serra-do-mel-pode-ter-sido-crime-eleitoral-diz-presidente-do-pt.shtml; Committee to Protect Journalists (CPJ). July 8, 2011. *Five suspects arrested in murder of Brazilian editor*. Available at: <http://cpi.org/2011/07/five-suspects-arrested-in-murder-of-brazilian-edit.php>; Portal Imprensa. July 7, 2011. *Grupo acusado de matar jornalista e preso no RN*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/39860/grupo+acusado+de+matar+jornalista+e+preso+no+rn/>

for the newspaper *A Gazeta*, for several radio stations and magazines, and as the communications secretary for the Cuiabá government.⁷⁹ On October 24, the State Secretariat on Public Security in Mato Grosso called the murder a crime of passion. According to reports, the Police arrested two individuals suspected of having participated in the journalist's murder, one of them being the perpetrator of the crime. They had allegedly been hired by the former partner of Ida's girlfriend.⁸⁰

58. The Office of the Special Rapporteur was informed of the September 1 murder of Brazilian radio journalist Vanderlei Canuto Leandro. The murder took place in the city of Tabatinga, Amazonas state. According to the information received, unidentified persons riding a motorcycle fired at the journalist as he returned home that night. Valderlei Canuto Leandro was the host of the program *Séñal Verde*, broadcast by bilingual radio station Radio Frontera, in Tabatinga, on Brazil's border with Colombia and Peru. He was known for his allegations of alleged acts of corruption in the local municipality. This past May, the journalist filed a criminal complaint with the Public Prosecutor over the serious death threats he received, allegedly from a municipal authority.⁸¹

59. On November 6, Gelson Domingos da Silva, a cameraman with TV Bandeirantes, was murdered while covering a police operation against alleged drug traffickers in the Antares favela, in Santa Cruz, city of Rio de Janeiro. According to his final recording, the cameraman was located behind a police officer participating in the operation and protected by a bulletproof vest, filming an intense firefight, when he was struck in the chest by a bullet that presumably came from one of the people the Police were pursuing. The bullet pierced the vest that he wore, and even though he was helped quickly, he died before arriving to a medical center. According to the information, the journalists and the Police were attacked in an area that minutes before had been declared safe. Likewise, the Office of the Special Rapporteur was informed of the Police's efforts to help the wounded cameraman and protect the other journalists covering this situation of extreme risk. The authorities captured several suspects and are investigating who committed the crime.⁸²

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

⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 28, 2011. Press Release R78/11: *Office of the Special Rapporteur Condemns Latest Murder of a Journalist in Brazil*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=858&IID=1>; Committee to Protect Journalists (CPJ). July 27, 2011. *Political journalist murdered in Brazil*. Available at: <http://cpj.org/2011/07/political-journalist-murdered-in-brazil.php>; Ihardireto. July 22, 2011. *Riva diz que Auro Ida sofria ameaças e cobra agilidade nas investigaciones*. Available at: <http://www.olhardireto.com.br/noticias/exibir.asp?id=193034>

⁸⁰ Associação Brasileira de Jornalismo Investigativo (Abraji). October 24, 2011. *Journalist shot in July was victim of a passion crime*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1805; SóNoticias. October 17, 2011. *Presos 2 por morte de jornalista Auro Ida; un sería o tirador*. Available at: <http://www.sonoticias.com.br/noticias/9/137507/presos-2-por-morte-de-jornalista-auro-ida-um-seria-o-atirador>

⁸¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 15, 2011. Press Release R102/11. *Office of the Special Rapporteur Condemns Murder of Radio Reporter in Brazil*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=868&IID=1>; Inter-American Press Association (IAPA). September 16, 2011. *Fifth murder of journalist in Brazil this year brings IAPA repudiation*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4613&idioma=us; Reporters Without Borders. September 13, 2011. *Concern that investigation could stall in Amazonian border journalist's murder*. Available at: http://en.rsf.org/brazil-concern-that-investigation-could-13-09-2011_40975.html

⁸² IACHR. Office of the Special Rapporteur for Freedom of Expression. November 10, 2011. Press Release R119/11. *Office of the Special Rapporteur Regrets Death of Cameraman in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=874&IID=1>; International Freedom of Expression Exchange (IFEX). November 9, 2011. *Journalist killed in crossfire while covering a police operation*. Available at: http://www.ifex.org/brazil/2011/11/09/domingos_da_silva_killed/; O Globo. November 6, 2011. *Veja como o cinegrafista da BAND foi morto durante operação do BOPE no Rio de Janeiro*. Available at: <http://www.youtube.com/watch?feature=endscreen&v=JMt70iM879c&NR=1>

C. Attacks on and threats toward the media and journalists

61. On March 23, an unidentified individual fired at Ricardo Gama, wounding him in the head. According to information received, the communicator was in the Copacabana neighborhood, Rio de Janeiro, when the aggressor attacked him from an automobile. Witnesses to the attack helped Gama and took him to a hospital, where they were able to save his life. Ricardo Gama, an attorney, publishes a blog under his own name where he writes about controversial political and law enforcement topics. In posts written prior to the attack, he commented on people who provide drugs in poor neighborhoods and criticized state and local government administration. As he has recovered, Gama has continued to update his website with posts on the same topics.⁸³

62. On January 4, the vehicle of journalist Jorge Chahad was fired on in Aguai, São Paulo. Chahad is a press advisor to the mayor's office and a reporter with weekly newspaper *O Imparcial*, where he writes on local politics and corruption.⁸⁴

63. The Office of the Special Rapporteur was informed of threats and attacks suffered on January 6 by a team from RBS TV in Indaial, Santa Catarina state, while it was investigating allegations of corruption among local businessmen. According to the information, reporter Francis Silvy and cameramen Marcio Ramos and Andreu Luis were threatened with a firearm, struck and chased when they tried to interview the individuals against whom the allegations have been raised.⁸⁵

64. The Office of the Special Rapporteur learned of a January 17 attack on the home of journalist Orley Antunes, director of the newspaper *Morretes Noticia*, in Paraná. According to the information received, unidentified individuals broke down the door of the house and tossed in a homemade bomb, which broke windows. The attack did not cause any injuries.⁸⁶

65. The Office of the Special Rapporteur was informed of an attack involving shots fired at a TV Globo helicopter in Rio de Janeiro on January 24, 2011. According to the information, a news team with the channel was covering a police operation in the city's *favelas* when it was shot at. No one was injured, but the helicopter had to make an emergency landing.⁸⁷

66. According to information received, journalist Víctor Soares, with *Victorpress Fotojornalismo*, was attacked on March 30 while covering an operation of the Federal Police in Manaus to

⁸³ Committee to Protect Journalists (CPJ). March 24, 2011. *Blogueiro brasileiro crítico baleado em Brasil*. Available at: <http://cpj.org/es/2011/03/blogueiro-brasileño-critico-baleado-en-rio-de-janei.php>; Reporters Without Borders. March 24, 2011. *Suspeita de represalia: Blogueiro é atacado a tiros no Rio*. Available at: <http://es.rsrf.org/brasil-suspeita-de-represalia-blogueiro-e-24-03-2011.39864.html>; O Globo. March 23, 2011. *Blogueiro Ricardo Gama é baleado em Copacabana*. Available at: <http://oglobo.globo.com/rio/mat/2011/03/23/blogueiro-ricardo-gama-baleado-em-copacabana-924069278.asp>. See also, Ricardo Gama's Blog. Available at: <http://ricardo-gama.blogspot.com/>

⁸⁴ Inter-American Press Association (IAPA). January 26, 2011. *IAPA condemns attack on Brazilian journalist*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?idioma=sp&seccion=detalles&id=4512; Associação Nacional de Jornais (ANJ). July 2011 *Relatorios de Atividades e de Liberdade de imprensa*. Pag. 54. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>

⁸⁵ Instituto Prensa y Sociedad (IPYS)/IFEX. January 14, 2011. *TV station news crew threatened and assaulted*. Available at: http://www.ifex.org/brazil/2011/01/14/rbs_tv_attack/; TV Globo. January 7, 2011. *TV Globo - RBS TV SC reporter is assaulted while reporting on Indaial*. Available at: <http://www.youtube.com/watch?v=2ZpXPf4Ldw>

⁸⁶ Folha. January 21, 2011. *Casa de director de jornal é alvo de bomba no Paraná*. Available at: <http://www1.folha.uol.com.br/poder/864229-casa-de-diretor-de-jornal-e-alvo-de-bomba-no-parana.shtml>; Inter-American Press Association (IAPA). January 26, 2011. *IAPA condemns attack on Brazilian journalist*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?idioma=us&seccion=detalles&id=4512

⁸⁷ Instituto Prensa y Sociedad (IPYS)/IFEX. January 27, 2011. *Drug traffickers open fire on TV Globo helicopter*. Available at: http://www.ifex.org/brazil/2011/01/27/tv_globo_shots/; Associação Nacional de Jornais (ANJ). January 2, 2011. *ANJ condemns attack on Globo helicopter*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-condena-ataque-a-helicoptero-da-globo/>

investigate fraud in that city. An attorney suspected of participating in the scheme threatened and attacked the journalist, damaging his photography equipment.⁸⁸

67. On June 3, a council member of the Paço do Lumiar municipality assaulted journalist Moreira Neto after she published articles on corruption in which the council member had allegedly participated. According to the information, the politician struck the journalist and damaged her photography equipment.⁸⁹

68. According to information received, Rodrigo Rangel, a journalist and editor with the magazine *Veja*, was threatened and assaulted by a lobbyist in a restaurant in Brasília on August 6. According to the information, the journalist interviewed the lobbyist to ask about allegations regarding corruption committed by public officials. The lobbyist threatened the communicator and his family, threw him against a table, struck him and took his notebook.⁹⁰

69. On October 3, in Russas, Ceará state, unidentified individuals fired on the home of journalist Francisco Cidimar Ferreira Sombra, the host of political and social programs on community radio station Araibu FM.⁹¹

70. The Office of the Special Rapporteur learned of an attack on the vehicle of journalist Sergio Ricardo de Almeida da Luz. On October 5, his vehicle was struck by six shots while in front of his home in Toledo, Paraná state. According to the information, the journalist is the owner of weekly newspaper *Gazeta do Oeste* and was investigating an apparently unjustified increase in the personal assets of a public functionary.⁹²

71. The Office of the Special Rapporteur learned that on March 3, a convoy of special tactical forces (ROTAM in the Portuguese acronym) vehicles of the Military Police of Goiás passed in front of newspaper *O Popular* with emergency lights and sirens on after that newspaper published information that day on a federal investigation into the existence of an extermination group involving members of that police force. According to the information received, the parade of police units was interpreted by the newspaper as an act of intimidation. According to the information, the Goiás ROTAM commander was removed from his position, ROTAM operations were suspended, and both the commander and the police officers who participated were subjected to disciplinary measures.⁹³

⁸⁸ A Crítica. April 2, 2011. *Agredido na operação Sol Dourado, fotojornalista denuncia advogado*. Available at: http://acritica.uol.com.br/manaus/Amazonas-Manaus-Amazonia-Agredido-Sol-Dourado-fotojornalista-advogado_0_455354505.html; Associação Nacional de Jornais (ANJ). July 2011. *Relatorios de Atividades e de Liberdade de imprensa*. Pag. 53. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>

⁸⁹ Associação Nacional de Jornais (ANJ). July 2011 *Relatorios de Atividades e de Liberdade de imprensa*. Pag. 54. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>; O Quarto Poder. June 3, 2011. *Vereador agride jornalista em Paço do Lumiar*. Available at: <http://oquartopoder.com/2011/06/03/vereador-agride-jornalista-em-paco-do-lumiar/>

⁹⁰ Associação Nacional de Jornais (ANJ). August 6, 2011. *ANJ condena agressão contra editor de Veja*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-divulga-nota-condenando-agressao-a-editor-de-veja/>; Instituto Prensa y Sociedad (IPYS)/IFEX. August 27, 2011. *Lobista agrade a editor de revista Veja*. Available at: <http://www.ipys.org/?q=alerta/769>

⁹¹ Ceará Agora. October 4, 2011. *Radialista de Russas sofre atentado na noite desta segunda-feira*. Available at: <http://www.cearaagora.com/noticias/policial/radialista-de-russas-sofre-atentado-na-noite-desta-segunda-feira/>; TV Russas. *Radialista Cid Ferreira sofre atentado em sua residencia*. Available at: <http://tvrussas.com.br/verNoticia.php?idNot=1343&idCat=19>

⁹² O Paraná. October 6, 2011. *Attack*. Available at: <http://www2.oparana.com.br/policia/atentado-3010/>; Knight Center for Journalism in the Americas. October 6, 2011. *Carro de periodista policial es baleado en atentado en Brasil*. Available at: <https://knightcenter.utexas.edu/es/blog/carro-de-periodista-policial-es-baleado-en-atentado-en-brasil>

⁹³ Associação Nacional de Jornais (ANJ). March 3, 2011. *ANJ repudia ação intimidatória da PM goiana contra O Popular*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-repudia-acao-intimidatoria-da-pm-goiana-contra-o-popular/>; Folha. March 4, 2011. *Chefe da PM em Goiás é afastado por suspeita de intimidar jornal*. Available at: <http://www1.folha.uol.com.br/poder/884312-chefe-da-pm-em-goias-e-afastado-por-suspeita-de-intimidacao-jornal.shtml>

72. The Office of the Special Rapporteur learned that in January, journalist Luis Cardoso had repeatedly received death threats after publishing articles on a warrant for the arrest of the mayor of the city of Barra do Corda, in Maranhão, who had escaped the authorities. During the calls, the perpetrator of the threats warned the journalist that he knew where he lived and that he would kill him.⁹⁴

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

D. Subsequent liability

74. The Office of the Special Rapporteur received information on an accusation submitted on June 28 to the Federal Police of São José do Rio Preto, in São Paulo state, against journalist Allan Abreu, with *Diário da Região*, for distributing information considered by law to be classified. The journalist refused to reveal the source of the information. The case originated with the journalist’s publication of two articles in May containing information from wiretaps carried out by the Police in a year-long investigation into a network of corruption. On July 18, the Federal Police of São José do Rio Preto decided for the moment to not charge the executive director of *Diário da Região*, Fabrício Carareto, who was under investigation for having authorized the publication of the articles.⁹⁵

75. Principle 8 of the Declaration of Principles of the IACHR establishes that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

E. Prior conditioning

76. According to information received, the July 15 edition of the newspaper *Daqui*, in Montes Claros, Minas Gerais state, was confiscated in enforcement of a restraining order handed down by Judge Marco Antônio Ferreira of the 3ra Corte Civil de Montes Claros and requested by the mayor of the municipality. The confiscated edition published a front-page report on information on alleged acts of corruption committed by the mayor using municipal funds. The removal of the newspaper from sales points coincided with a visit that the Minas Gerais governor was making that day to the municipality. According to the information, the order to seize the newspapers was executed by that city’s police.⁹⁶

77. The Office of the Special Rapporteur learned of an injunction handed down on September 2 by Appeals Court Judge Leonel Pires Ohlweiler, of the Ninth Civil Chamber of the Tribunal

⁹⁴ Inter-American Press Association (IAPA). April 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=46&infol=797&idioma=us; Sindicato dos Periodistas Profissionais do Amazonas. January 18, 2011. *Jornalista é ameaçado de morte após publicar decreto de prisão de prefeito no MA*. Available at: http://www.jornalistasam.com.br/index.php?option=com_content&view=article&id=1346&Itemid=68

⁹⁵ Inter-American Press Association (IAPA). October 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&infol=822&idioma=us; FM Diário. June 28, 2011. *Polícia Federal indiciou jornalista do diário*. Available at: <http://www.diaroweb.com.br/fmdiarario/Noticias/Cidades/66449,,Polícia+Federal+indiciou+jornalista+do+Diario.aspx>; Meionorte. June 30, 2006. *Jornalista é indiciado pela após se negar a revelar sua fonte*. Available at: <http://www.meionorte.com/noticias/policia/jornalista-e-indiciado-pela-pf-apos-se-negar-a-revelar-sua-fonte-136686.html>; Associação Nacional de Jornais (ANJ). July 2011. *Relatorios de Atividades e de Liberdade de imprensa*. Pag 59. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>

⁹⁶ *Daqui*. August 26, 2011. *Censored*. Available at: http://daquimoc.blogspot.com/2011_08_01_archive.html; *Daqui*. July 14, 2011. *Prefeito lingua solta e desmoralizado*. Available at: http://daquimoc.blogspot.com/2011_07_01_archive.html; Associação Nacional de Jornais (ANJ). July 2011. *Relatorios de Atividades e de Liberdade de imprensa*. Pag 60. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>; Inter-American Press Association (IAPA). October 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&infol=822&idioma=us

of Justice of Rio Grande do Sul prohibiting the newspaper *Zero Hora* and other media with the RBS group from publishing the name or image of a municipal councilperson from Dom Pedro de Alcântara on pain of receiving a daily fine of 1000 reais. The councilperson had been mentioned in articles on allegations of corruption that were being leveled and investigated by the Office of the Public Prosecutor. On appeal, the measure was overturned on September 15.⁹⁷

78. According to information received, on September 6, Substitute Judge Adriana García Rabelo, with the First Instance Court of Novo Lima, Belo Horizonte metropolitan region, Minas Gerais, issued an injunction ordering magazine *Viver Brasil* to remove an article on alleged acts of corruption by the Novo Lima mayor from its print editions and the Internet. In the injunction, the judge orders the magazine “to refrain from carrying out any act that could offend the image and the honor of the petitioner in any way” and abstain from distributing the copies of editions 65 of the magazine *Viver* in the city of Novo Lima.⁹⁸

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

F. Legal reforms

80. The Office of the Special Rapporteur learned that on November 30, the Senate passed in an initial vote proposed constitutional amendment PEC 33/2009 reestablishing the requirements that a higher education diploma must be had as a requirement for exercising the profession of journalist.⁹⁹ The measure passed despite the fact that on June 17, 2009, the Supreme Federal Tribunal ruled that the requirement for journalists to have a diploma as a condition for the exercise of journalism activity was unconstitutional. Based expressly on the inter-American standards in force, the Tribunal found that the provision is contrary to Article 13 of the American Convention on Human Rights.¹⁰⁰ Nevertheless, the new proposal was passed by the Chamber of Deputies and now by the Senate.¹⁰¹ The amendment must go to

⁹⁷ Associação Brasileira de Jornalismo Investigativo (Abraji). September 2, 2011. *Abrajo condemns court censorship of RBS group*. Available at: http://abraji.org.br/?id=90&id_noticia=1719; Associação Nacional de Jornais (ANJ). September 2, 2009. *ANJ condena decisão da Justiça do Rio Grande do Sul que determina a não citação de vereador em noticiário*. Available at: <http://oglobo.globo.com/politica/anj-condena-decisao-da-justica-do-rio-grande-do-sul-que-determina-nao-citacao-de-vereador-em-noticiario-2702920>; Portal Imprensa. September 16, 2011. *Justiça derruba censura ao Grupo RBS, que denunciava “Farra das Diárias”*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/44543/justica+derruba+censura+a+publicacoes+do+grupo+rbs+que+denunciavam+f+arra+das+diarias/>; Associação Brasileira de Jornalismo Investigativo (Abraji). September 15, 2011. *Rio Grande do Sul judge suspends RBS censorship*. Available at: http://abraji.org.br/?id=90&id_noticia=1731

⁹⁸ *Viver Brasil*. September of 2011. *Lei da mordaca*. Available at: <http://www.revistaviverbrasil.com.br/80/materias/01/imprensa/lei-da-mordaca/>; Estadão. September 15, 2011. *Em Minas Gerais, revista é obrigada a recolher edição*. Available at: <http://www.estadao.com.br/noticias/impreso-em-minas-gerais-revista-e-obrigada-a-recolher-edicao,772713.0.htm>; Associação Brasileira de Jornalismo Investigativo (Abraji). September 14, 2011. *Abraji condena censura judicial a revista de MG*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1728

⁹⁹ Federal Senate. No date. *Propuesta de Emenda a Constituição. PEC 33/2009*. Available at: http://www.senado.gov.br/atividade/materia/Consulta.asp?STR_TIPO=PEC&TXT_NUM=33&TXT_ANO=2009&Tipo_Cons=6&IND_COMPL=&FlagTot=1

¹⁰⁰ IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51. December 30, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 62. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

¹⁰¹ Agência Câmara de Notícias. July 14, 2010. *Comissão aprova obrigatoriedade de diploma para jornalistas*. Available at: <http://www2.camara.gov.br/agencia/noticias/149724-COMISSAO-APROVA-OBRIGATORIEDADE-DE-DIPLOMA-PARA-JORNALISTAS.html>; Knight Center for Journalism in the Americas. December 1, 2011. *Senado brasileiro aprova proposta que restabelece exigência de diploma para jornalistas*. Available at: <http://knightcenter.utexas.edu/pt-br/blog/senado-brasileiro-aprova-proposta-que-restabelece-exigencia-de-diploma-para-jornalistas>

a second vote by the full Senate, but as of the publication deadline for this report, the vote had not yet been scheduled. If the Senate passes the proposal in the second vote, it will be sent once again to the Chamber of Deputies.¹⁰²

81. Principle 6 of the Declaration of Principles of the IACHR establishes that, “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.”

4. Canada

82. The 2010 Annual Report of the Office of the Special Rapporteur contained information about the imposition of significant limitations on the exercise of freedom of expression and the excessive use of police force against peaceful participants in the G20 Summit in Toronto, on June 26 and 27, 2010.¹⁰³ With respect to this matter, the Office of the Special Rapporteur takes note of the report of the House of Commons Standing Committee on Public Safety and National Security of the Canadian Parliament on the events that occurred in Toronto, as well as the reports of the Ombudsman of Ontario and the Canadian Civil Liberties Association (CCLA) and the National Union of Public and General Employees (NUPGE). The Canadian Parliament report recommended a public, independent, and exhaustive judicial investigation, “with sufficiently broad terms of reference to allow it to investigate all levels of government, all decision making processes and all the events that occurred that led to property damage, civil rights violations, and bodily harm,” and with the power to make recommendations stemming from its findings to ensure similar events are never repeated.¹⁰⁴ The report of the Ombudsman of Ontario established that the Ministry of Community Safety and Correctional Services, based on the Public Works Protection Act, implemented and used Regulation 233/10 to reinforce security during the G20 Summit. The Ombudsman considered the regulation to be unconstitutional and maintained that it should never have been enacted.¹⁰⁵ According to the Ombudsman, the effect of the regulation was to limit freedom of expression, and to grant police the power to make arrests without just cause and conduct unreasonable searches. The Ombudsman further noted that the public was not duly informed of the enactment of Regulation 233/10, and therefore many people were arrested simply for exercising their rights, unaware of the limits imposed by that regulation.¹⁰⁶ Among other recommendations, the Ombudsman proposed that the Public Works Protection Act be revised or replaced, and that the powers granted to the police under this law be reviewed.¹⁰⁷ The Ministry of Community Safety and Correctional Services of Ontario reportedly agreed to comply with all of the Ombudsman’s recommendations.¹⁰⁸ Finally, the CCLA and

¹⁰² G1. November 30, 2011. *Senado aprova em primeiro turno exigencia de diploma para jornalista*. Available at: <http://g1.globo.com/politica/noticia/2011/11/senado-aprova-exigencia-de-diploma-para-jornalista.html>

¹⁰³ In 2010 the Office of the Special Rapporteur learned that hundreds of individuals had reportedly been arrested during the G20 Summit in Toronto, and that the Police had allegedly used excessive force to make arrests and control the public, including peaceful demonstrators in protected areas. IACHR. 2010 Annual Report. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 99. <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

¹⁰⁴ See Recommendation 7, House of Commons. Canada. March 11, 2011. *Report of the Standing Committee on Public Safety and National Security*. Issues Surrounding Security at the G8 and G20 Summits. p. 19. Available at: http://publications.gc.ca/collections/collection_2011/parl/XC76-403-1-1-04-eng.pdf

¹⁰⁵ The Ombudsman’s Report indicated that Regulation 233/10 expired before a court of competent jurisdiction could rule on its compatibility with the constitution. Ombudsman of Ontario. December 7, 2010. *Caught in the Act*. pp. 99 et seq. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁶ Ombudsman Ontario. December 7, 2010. *Caught in the Act*. p. 100. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁷ Ombudsman Ontario. December 7, 2010. *Caught in the Act*. p. 102. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁸ Response of the Government of Canada to the request for information. “*Special Hearing Concerning the Situation of the Right to Freedom of Expression, Assembly, Association and Movement in Canada*.” January 31, 2011. p. 24.

NUPGE report concluded that the majority of the arrests made during the G20 Summit were “arbitrary and excessive” and recommended a joint federal/provincial public inquiry and improvements to police policy and police training.¹⁰⁹

83. The Office of the Special Rapporteur recognizes the Canadian government's efforts in providing the Commission with detailed information regarding the security services' response to the 2010 G20 protests and the actions undertaken by the government to review this response. The Office of the Special Rapporteur takes note of the many proceedings initiated, both *ex officio* and in response to formal complaints, at the municipal, provincial and federal levels of government to examine the policing of the G20 summit. The Rapporteurship will continue to monitor these proceedings with great interest. The Rapporteurship further notes that, based on the government's explanation of the scope of the “unlawful assembly” prohibition in Section 63 of Canada's Criminal Code,¹¹⁰ it continues to share the UN Human Rights Committee's concern regarding the practical implementation of this provision¹¹¹ and its potential chilling effect on social protest.

84. The Office of the Special Rapporteur recognizes the October 19 decision of the Supreme Court of Canada in the case of *Crookes v. Newton*, which considered whether a person may be liable for defamation if his or her website links to another site containing content that defames (or is alleged to defame) someone's character. In order to establish defamation, it must be shown that there was publication, and the Court was asked to consider whether creating a link constituted publication. The Court held that it does not, arguing that doing so would create “a presumption of liability for all hyperlinkers,” which would “seriously restrict the flow of information on the Internet and, as a result, freedom of expression.” Therefore, “only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be ‘published’ by the hyperlinker.”¹¹² The Office of the Special Rapporteur recalls that, “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).”¹¹³

85. The Office of the Special Rapporteur also took note of the decision of the Superior Court of Justice of Ontario on a motion brought in the case of *Morris v. Johnson*. The case involves a

¹⁰⁹ Canadian Civil Liberties Association (CCLA) National Union of Public and General Employees (NUPGE). February 2011. *Breach of the Peace*. pp. 50 et seq. Available at: <http://ccla.org/wordpress/wp-content/uploads/2011/02/Breach-of-the-Peace-Final-Report.pdf>

¹¹⁰ See Response of the Government of Canada to the request for information. “*Special Hearing Concerning the Situation of the Right to Freedom of Expression, Assembly, Association and Movement in Canada*.” January 31, 2011. pp. 6-7. The Government explained the following regarding the courts' interpretation of Section 63:

“the “common purpose” of the assembly does not have to be unlawful in and of itself, nor is there a requirement to show that an individual member of the assembly intended to commit an offence. Thus, an individual member of the assembly can be found guilty of the offence of unlawful assembly if the prosecution shows beyond a reasonable doubt that the person was aware that certain individuals conducted themselves in a manner as to cause, in the vicinity of the assembly, on reasonable grounds, fear that they would disturb the peace tumultuously. Evidence of “reasonable grounds to fear a tumultuous disturbance of the peace” may be direct or circumstantial.” [internal citations omitted]

¹¹¹ UN Human Rights Committee. *Concluding Observations of the Human Rights Committee: Canada*. CCPR/C/CAN/CO/5. April 20, 2006. Para. 20. Available at: [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)

¹¹² Supreme Court of Canada. October 19, 2011. *Crookes v. Newton*. 2011 SCC 47. Available at: <http://csc.lexum.org/en/2011/2011scc47/2011scc47.pdf>

¹¹³ United Nations Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression, African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=849&IID=2>

defamation suit brought by the former mayor of the municipality of Aurora based on comments posted on a local Aurora blog which criticized her work in office. As part of her lawsuit, she brought a motion asking the Court to order the known parties to reveal identifying information about an anonymous blogger(s). The Superior Court found that the former mayor is not entitled to the identifying information she was seeking because she had not established a *prima facie* case of defamation. As the former mayor had not laid out the particular statements she alleged were defamatory, the Court held that they could not determine whether her case was, on its surface, sufficient to establish defamation. The Court also noted that the bloggers in this case had a reasonable expectation of anonymity since they did not have to identify themselves in order to participate in the blog. The Court concluded that, “[i]n the circumstances of this case, where the Plaintiff has not established a *prima facie* case, the public interest favouring disclosure clearly does not outweigh the legitimate interests in freedom of expression and the right to privacy of the persons sought to be identified.”¹¹⁴

86. According to information received, on December 31, 2010, a judge of the Supreme Court of British Columbia ordered Elaine O’Connor, a reporter from the newspaper *The Province*, to identify a confidential source in order to determine the intent or malice with which that source had acted. The source had been used in an article on the alleged excessive spending of a former legislator during an electoral campaign. The judge ruled that the confidentiality of the source must be protected if the motivation for providing information to a journalist is civic duty or the protection of the integrity of the government, but not if that action arises from an interest in gaining an advantage in a family dispute or a plan to personally defame or discredit an elected politician. In the judge’s opinion, knowing the identity of the source is relevant in determining the state of mind under which he or she acted. Two prior judgments of the Supreme Court of Canada, issued in 2010, had held that, “The public’s interest in being informed about matters that might only be revealed by secret sources (...) is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public’s interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence.”¹¹⁵

87. The Rapporteurship recalls that principle 8 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that: “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

88. Finally, the Rapporteurship has received information about alleged difficulties in exercising the right to access to public information in Canada. According to a study published by the Canadian Journalists for Free Expression (CJFE), 44% of requests for access at the federal level were not adjudicated within the 30-day time period established under the Access to Information Act,¹¹⁶ and the average length of time for a decision on a request is 395 days.¹¹⁷ Additionally, according to the report, applicants receive all of the requested information in only 15% of cases decided.¹¹⁸

89. The Rapporteurship recalls that, in accordance with principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression, “Access to information held by the state is a

¹¹⁴ Superior Court of Justice of Ontario. *Morris v. Johnson*. 2011 ONSC 3996. Decision of July 20, 2011. Available at: <http://canlii.org/en/on/onsc/doc/2011/2011onsc3996/2011onsc3996.html>

¹¹⁵ Supreme Court of British Columbia. December 31, 2010. *Lougheed v. Wilson 2010 BCSC1871*. Available at: <http://www.courts.gov.bc.ca/jdb-txt/SC/10/18/2010BCSC1871.htm>; The Canadian Journalism Project. January 13, 2011. *CJFE concerned that Vancouver journalist may be forced to reveal her source*. Available at: <http://j-source.ca/article/cjfe-concerned-vancouver-journalist-may-be-forced-reveal-her-source>

¹¹⁶ Access to Information Act. Section 7. Available at: <http://laws-lois.justice.gc.ca/eng/acts/A-1/page-3.html>

¹¹⁷ Canadian Journalists for Free Expression. *Review of Free Expression in Canada 2010/2011*. May 10, 2011. pp. 24-26. Available at: <http://www.cjfe.org/resources/features/review-free-expression-canada-2011>

¹¹⁸ Canadian Journalists for Free Expression. *Review of Free Expression in Canada 2010/2011*. May 10, 2011. p. 26. Available at: <http://www.cjfe.org/resources/features/review-free-expression-canada-2011>

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. Chile

90. On the subject of social protest and with regard to the student demonstrations carried out in Chile during 2011, a thematic hearing was held during the 143rd period of sessions. During that hearing, the petitioners alleged abusive use of force by police and documented their statements with a series of videos and testimony from students.¹¹⁹ For its part, the State indicated that although some violence had taken place in the context of the demonstrations in Chile, it guaranteed the full exercise of social protest, manifested by the authorized participation of 2 million people in protest marches during 2011, of which only some had been arrested.¹²⁰

91. With regard to these facts, both in the hearing and in its communications with the State, the IACHR took note of the broad-based social participation in the demonstrations that took place in 2011 and the existing guarantees that project the freedom to hold protests, but it expressed its profound concern for the acts of violence that were reported, some of which were very serious.¹²¹ In this regard, the Commission recalled that the rights to assembly, demonstration and freedom of expression are fundamental rights guaranteed in the American Convention on Human Rights. Given the importance of these rights for the consolidation of democratic societies, the Commission has found that any restriction on them must be justified by imperative social interest. In this sense, the Commission indicated that the State can place a reasonable limitation on demonstrations in order to ensure they are carried out peacefully and it may disperse demonstrations that become violent, as long as the limitations are guided by the principles of legality, necessity and proportionality.

92. For their part, the actions of State agents must not provide a disincentive to the rights to assembly, demonstration and free expression, meaning that the clearing of a demonstration must be justified according to the duty to protect persons. Security operations implemented in this context must involve measures that are the safest and least damaging to the fundamental rights in question. The use of force in public demonstrations must be exceptional and applied only in circumstances where it is strictly necessary according to well-known international principles. Security operations carried out by the authorities must always take the higher interests of the child into consideration and take all necessary measures to ensure children are protected against all types of violence.

93. The Office of the Special Rapporteur expresses its concern over a series of attacks on and arrests of communicators carried out during police actions in the course of the large demonstrations that took place in 2011. On February 2, a journalist with online newspaper *El Mostrador*, Jorge Molina Sanhueza, was arrested while he was filming confrontations between Carabineros (Chile’s militarized police force) and people demonstrating against an increase in public transportation fees. According to the information, the police arrested Molina without explaining their reasons and took him to the capital’s First Precinct, where he remained for four hours until he was released with a citation from the Office of the Public Prosecutor for alleged “disturbances.”¹²² On February 25, Carabineros arrested journalist Patricio

¹¹⁹ With regard to the hearing, the IACHR issued Press Release 87/11: *IACHR Expresses Concern for Violence Against Student Protests in Chile*. August 6, 2011. Available at: <http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm>

¹²⁰ The State representative said that these numbers represent an improvement over previous years. Audio and video of the thematic hearing. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

¹²¹ With regard to the hearing, the IACHR issued Press Release 87/11: *IACHR Expresses Concern for Violence Against Student Protests in Chile*. August 6, 2011. Available at: <http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm>

¹²² Nación.cl. February 3, 2011. *Carabineros arrest journalist during protest against Transantiago*. Available at: <http://www.lanacion.cl/noticias/site/artic/20110203/pags/20110203081632.html>; *El Mostrador*. February 2, 2010. *El Mostrador journalists arrested for recording demonstration in downtown Santiago*. Available at: <http://www.elmostrador.cl/noticias/2011/02/02/periodista-de-el-mostrador-detenido-por-grabar-manifestacion-en-el-centro-de-santiago/>

Mery, director of online news site Panorama News, while he was covering a demonstration against a thermoelectric energy project.¹²³ The Office of the Special Rapporteur learned of the January 13 arrest of photographer Marcela Rodríguez, with online newspaper Mapuexpress, during a demonstration in Temuco against a hydroelectric project. In a hearing held on June 22, the Office of the Public Prosecutor declined to press charges because the alleged crime did not affect the public interest.¹²⁴

94. On September 8, Carabineros arrested journalist Raúl Flores Castillo, director of online media outlet Dilemas, while he was covering a day of protests in Santiago. According to the information received, he was arrested while photographing a demonstration and although he identified himself as a journalist, he was placed in a police vehicle where the images and audio he had recorded were erased. He remained in detention for six hours.¹²⁵ On September 29, Carabineros arrested and beat journalist Nicolás Salazar, with the media outlets of the student Federation of the Universidad de Concepción *Metiendo Ruido*, while he was attempting to use a camera to record police officers as they entered the university. According to the information, the police beat and arrested Salazar, knocking down his camera and removing its battery.¹²⁶ On August 4, police officers arrested Ítalo Retamal and Dauno Tótoro, producers with *CEIBO Producciones*, while there were recording confrontations between police and demonstrators in Santiago. According to the information, both communicators were arrested with violence, but as was recorded in a video of the incident, when the Carabineros tried to put them in a police vehicle, other journalists and protesters were able to pull them away and free them in the midst of a struggle and deployment of teargas.¹²⁷ In the early morning hours of August 25, Carabineros tried violently to break into the facilities of community television channel *Señal 3* in La Victoria, Santiago. According to the information received, neighbors and the channel's employees prevented the police from entering. During the struggle, recorded in a video, several people were struck and the broadcaster's equipment was damaged.¹²⁸ On September 11, in a March in remembrance of the 1973 *coup d'état*, an Argentine public television news team was attacked by masked individuals while covering clashes

¹²³ Panorama News. February 25, 2011. *Panorama News director arrested for covering demonstration along with documentarian Chao Pescao*. Available at: <http://www.pnews.cl/2011/02/25/director-de-panoramas-news-y-documentalista-de-chao-pescao-son-detenido-por-cubrir-manifestacion/>; Professional Journalist Association of Chile. February 26, 2011. *Journalist Professional Association of Chile asks Hinzpeter to explain arrest of professionals*. Available at: http://www.colegiodeperiodistas.cl/index.php?option=com_content&view=article&id=61&Itemid=6

¹²⁴ Radio Biobío. May 14, 2011. *Young person accuses Temuco Carabiniro of mistreatment and abuse of authority after marches on HidroAysén*. Available at: <http://www.biobiochile.cl/2011/05/14/joven-denuncia-maltrato-y-abuso-de-autoridad-contracarabiniro-de-temuco-tras-marchas-por-hidroaysen.shtml>; Mapuexpress. May 14, 2011. *Mapuexpress photographer arrested and humiliated*. Available at: <http://www.mapuexpress.net/?act=news&id=6905>; Reporters Without Borders. June 24, 2011. *Calm debate on environment needed after charges against photographer withdrawn*. Available at: http://en.rsf.org/chile-press-freedom-cases-highlight-17-05-2011_40290.html

¹²⁵ Instituto Igualdad [Equality Institute]. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Dilemas. September 8, 2011. *Arrest over journalism work described*. Available at: http://www.dilemas.cl/index.php?option=com_content&task=view&id=1002&Itemid=35; Reporters Without Borders. September 15, 2011. *Mounting abuses and violence against journalists amid continuing student protests*. Available at: http://en.rsf.org/chile-mounting-abuses-and-violence-15-09-2011_40995.html

¹²⁶ Instituto Igualdad [Equality Institute]. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. October 19, 2011. *RSF expresses concern at attacks on journalists during student demonstrations*. Available at: <http://www.rsf-es.org/news/chile-rsf-manifiesta-su-preocupacion-por-las-agresiones-a-los-medios-en-las-manifestaciones-estudiantiles/>; RadioterraTV. October 18, 2011. *Police violence: Testimony of Nicolás Salazar*. Available at: <http://www.youtube.com/watch?v=v5KpRXT9gMA>

¹²⁷ El Puelche. August 5, 2011. *Video shows arrests of video producers in Santiago*. Available at: <http://www.elpuelche.cl/?p=1931>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Medios Latinos. Fundación Konrad Adenauer. November 14, 2011. *Police aggression against journalists in Chile denounced*. Available at: <http://www.kas.de/wf/en/221.353/>

¹²⁸ Señal 3. August 27, 2011. *Paro Nac. Chile - Carabineros attack in La Victoria*. Available at: <http://www.youtube.com/watch?v=F-uMEGc6Wxs>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

between demonstrators and police.¹²⁹ On October 6, Carabineros arrested and assaulted Panorama News director Patricio Mery while he was covering the arrest of a demonstrator. According to the information received, Mery repeatedly identified himself as a journalist. Upon his arrest, Mery was handcuffed, threatened and struck by a Carabinero. Two and a half hours later, he was taken to a hospital.¹³⁰ On October 6, a Carabinero wearing a helmet head butted Gonzalo Barahona, a cameraman with Chilevisión, while he and a journalist from that channel, Luis Narváez, were reporting on demonstrations in Santiago. Narváez tried to get the attacker's identification; he was arrested by the police and taken away in a police vehicle.¹³¹

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

96. The Office of the Special Rapporteur learned of a bill seeking to regulate the exercise of social protest in such a way that it would conflict with inter-American standards on the subject.¹³² Nevertheless, as of the publication deadline of this report, the bill had not moved forward in the legislative chambers.

97. The Office of the Special Rapporteur was informed of the charges filed against Marcelo Núñez Fuentes, director of community broadcaster *Radio Tentación* in Paine on May 10 and against communicator Mireya Manquepillán Huanquil with radio station Kimche Mapu in Puquiñe Lumaco on November 15. They are accused of having violated Article 36(b) of the General Telecommunications Act, which establishes prison sentences for broadcasting operations that do not have the corresponding licenses.¹³³ According to the information, Núñez rejected the Office of the Public Prosecutor's offer to suspend the prosecution if he accepts the charges, does not return to broadcasting, and donates his equipment to communication schools.¹³⁴ The plaintiffs and their defense attorneys have argued that currently, many radio broadcasters could be charged, as regulations at the time of the events have not

¹²⁹ Televisión Pública Argentina, Canal 7. September 11, 2011. *Visión Siete: Visión 7 news team attacked in Chile*. Available at: http://www.youtube.com/watch?feature=player_embedded&v=2avrSTqi-HA#; Knight Center for Journalism in the Americas. September 14, 2011. *Equipo periodístico argentino es atacado en Chile durante marcha por aniversario del golpe militar*. Available at: <http://knightcenter.utexas.edu/es/blog/equipo-periodistico-argentino-es-atacado-en-chile-durante-marcha-por-aniversario-del-golpe-mili>

¹³⁰ Panorama News. October 6, 2011. *IMG03361*. Available at: <http://www.youtube.com/watch?v=JZ70vG2Qjfg>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹³¹ Chilevisión. October 6, 2011. *Video of arrest of CHV journalist*. Available at: <http://www.youtube.com/watch?v=TYcAksW-7N4>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹³² The aforementioned bill "that strengthens the preservation of public order" was sent to the Chamber of Deputies by President Sebastian Piñera on September 27, 2011 by means of Message 196-359. Available at: <http://www.elmostrador.cl/media/2011/10/Proyecto-de-ley-que-fortalece-el-resguardo-del-orden-p%C3%BAblico.pdf>

¹³³ Radio Chile. December 2, 2011. *Two community radio broadcasters risking prison*. Available at: <http://radio.uchile.cl/noticias/132553/>; El Mercurio Digital. November 26, 2011. *Chile: Persecution alleged against Mapuche community radio station*. Available at: <http://www.elmercuriodigital.net/2011/11/chile-denuncian-persecucion-una-radio.html>; Mapu Express. November 22, 2011. *Persecution alleged against Mapuche community radio station "Kimche Mapu"*. Available at: <http://www.mapuexpress.net/content/news/print.php?id=7824>; OCLACC. November 24, 2011. *Mapuche community radio station Kimche Mapu alleges persecution*. Available at: <http://oclacc.org/noticia/radio-comunitaria-mapuche-kimche-mapu-denuncia-persecucion>; Radio Placeres. May 16, 2011. *Two community radio broadcasters charged under article 36 B*. Available at: <http://www.radioplaceres.cl/2011/05/16/formalizan-a-dos-radialistas-comunitarios-por-articulo-36-b/>

¹³⁴ A third plaintiff, Radio 24 director Miguel Silva, decided to accept the Office of the Public Prosecutor's offer to suspend the trial. World Association of Community Broadcasters (AMARC). May 10, 2011. *Trial begun against Radio Tentación in Paine municipality*. Available at: http://ifex.org/chile/2011/05/13/juicio_emisoras/es/; Radio Tierra. May 10, 2011. *"I am going to trial in defense of freedom of expression in Chile"*. Available at: <http://www.radiotierra.com/node/3043>

been established under the Community Citizen Radio Broadcasting Services Act (Law 20,433), passed on May 4, 2010. The case originated on November 9, 2010, when police authorities raided community radio stations *Tentación* and *Radio 24*, in Paine in the Santiago metropolitan area.¹³⁵

98. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.¹³⁶

99. In the same sense, in its 2010 annual report, the Office of the Special Rapporteur expressed that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions or disproportionate penalties, such as use of criminal law.¹³⁷

6. Colombia¹³⁸

100. The Inter-American Commission on Human Rights has received information concerning the situation of the right to freedom of expression in Colombia, which included data supplied by civil society and by the State. On December 27, 2011, the Colombian State addressed memorandum MPC/OEA No.1829 to the IACHR, forwarding note DIDHD.GAIID No. 79338/1665, dated December 23, 2011 from the Office of the Director of Human Rights and International Humanitarian Law, part of the Ministry of Foreign Affairs, in which reference is made to the situation of freedom of expression in Colombia and information is provided regarding the specific cases reported to the IACHR and presented in this report.

A. Gains

101. The IACHR takes note of the passage by the Congress of the Republic of Colombia of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, according to which in the future the limitations period for homicides of journalists, human rights defenders, and members of trade unions is extended from 20 to 30 years.¹³⁹ In 2011, the limitations period expires in at least seven cases of journalists.¹⁴⁰

¹³⁵ Radio Placeres. May 16, 2011. *Formalizan a dos radialistas comunitarios por artículo 36 B*. Available at: <http://www.radioplaceres.cl/2011/05/16/formalizan-a-dos-radialistas-comunitarios-por-articulo-36-b/>

¹³⁶ Cf. IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Vol II: *2010 Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chap. II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

¹³⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 112 to 116. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

¹³⁸ This section corresponds to the section on freedom of expression in Colombia in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹³⁹ Congress of the Republic of Colombia. December 29, 2010. *Ley No. 1426 de 2010*; Inter-American Press Association (IAPA)/IFEX. January 18, 2011. *Satisface a la SIP reforma legal que permite luchar contra la impunidad*.

¹⁴⁰ Arsenio Hoyos, assassinated September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, assassinated May 20, 1991, in Florencia, Caquetá; and Julio Daniel Chaparro and Jorge Enrique Torres, assassinated April 24, 1991, in Segovia, Antioquia. Also soon to prescribe are the assassinations of Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena, and Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca. Fundación para la Libertad de Prensa (FLIP). September 14, 2011. With respect to Julio Daniel Chaparro and Jorge Enrique Torres, both from the newspaper *El Espectador*, on April 12 the Office of the Attorney General of Colombia decided not to continue the investigation into their assassinations. The Office of the Attorney General is said to have alleged that the persons suspected of assassinating the journalists were guerrillas, that they died in combat with the Army in 2000 and 2002, and that the assassinations could not be

102. According to the information received, the Attorney General of Colombia, Viviane Morales Hoyos, announced that the department that handles crimes against journalists within the National Unit of Human Rights and International Humanitarian Law will be strengthened with the aim of expediting investigations into the threats that have been made against journalists. According to the information received, that department will take charge of all the cases that different offices of the Public Ministry currently handle independently. In 2010, the Office of the Attorney General had recorded some 50 complaints of threats against journalists.¹⁴¹

103. Politicians Ferney Tapasco González and Dixon Tapasco Triviño were said to have been the subject of an order for preventive detention without the benefit of release in March 2009 for the assassination of journalist Orlando Sierra, assistant director of the daily newspaper *La Patria*, which occurred on January 30, 2002. In its observations to the IACHR, the State reported that on July 25, charges were brought against three persons, “among them Mr. Francisco Ferney Tapasco González, who is currently incarcerated serving the sentence he was given upon his conviction for the crime of aggravated conspiracy to commit crime. However, the prosecutor dropped the case against Mr. Dixon Ferney Tapasco Triviño.”¹⁴² In its report, the State commented that “three persons have thus far been convicted” of the murder of journalist Orlando Sierra.¹⁴³

104. The IACHR learned that the Office of the Attorney General ordered the preventive detention, without benefit of release, of Jaime Arturo Boscan Ortiz, allegedly responsible for the assassination of journalist Jaime Rengifo Ravelo in 2003 in Maicao, department of Guajira.¹⁴⁴

105. In its observations to the IACHR, the State wrote that “the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation currently has 49 assigned cases involving crimes committed against journalists: 39 are active cases involving a total of 106 suspects, 67 persons charged and 58 in detention pending trial. Thus far, 18 convictions have been won, involving 26 persons.”¹⁴⁵

...continuation

characterized as crimes against humanity. [Prescribe caso del periodista Arsenio Hoyos, asesinado hace 20 años en Granada, Meta](#); Fundación para la Libertad de Prensa (FLIP). May 21, 2011. [Homicidios de los periodistas Carlos Julio Rodríguez y José Libardo Méndez prescriben a pesar de los llamados a la Fiscalía](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Planeta. April 25, 2011. [Prescripción de asesinatos de periodistas causa indignación](#); Terra Noticias. April 18, 2011. [La SIP preocupada por prescripción de delitos contra periodistas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Tiempo. April 17, 2011. [A punto de prescribir proceso por asesinato de Daniel Chaparro](#).

¹⁴¹ Office of the Attorney General. February 9, 2011. [La Fiscal General anuncia fortalecimiento investigativo por amenazas a periodistas](#); Colprensa/Europapress. February 10, 2011. [La Fiscalía colombiana agilizará las investigaciones sobre amenazas contra periodistas](#); RCN Radio. Undated. [Unidad especial de la Fiscalía asume investigación de 50 casos de amenazas contra periodistas](#).

¹⁴² In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011, “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”, p. 14. See also, El Tiempo. July 26, 2011. [Llaman a juicio a Ferney Tapasco por crimen de Orlando Sierra](#); Office of the Attorney General of the Nation. March 29, 2011. [Por el crimen de Orlando Sierra asegurados los Tapasco](#); *Semana*. March 29, 2011. [Profieren medida de aseguramiento a Ferney y Dixon Tapasco por el asesinato de Orlando Sierra](#).

¹⁴³ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

¹⁴⁴ Office of the Attorney General of the Nation. January 28, 2011. [Detención preventiva por homicidio de periodista](#); El Informador. February 1, 2011. [Medida de aseguramiento contra aspirante a la Alcaldía de Maicao](#).

¹⁴⁵ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

106. According to the information received, on February 24, the 23rd Municipal Court of Bogotá absolved journalist Claudia López of the criminal offenses of *injuria* (libel) and *calumnia* (slander). She was facing a complaint lodged by former president Ernesto Samper, who alleged that a column of hers published in the newspaper *El Tiempo* had been injurious to his honor. The judges in the case absolved her, and in so doing referenced the inter-American doctrine and case-law.¹⁴⁶

107. The IACHR learned of the decision of the 16th Criminal Law Judge of Bogotá in September 2011, who had exonerated journalists Darío Arizmendi Posada, Clara Elvira Ospina, Vicky Dávila, Juan Carlos Giraldo, and Héctor Rincón Tamayo, who had been sued by former presidential adviser José Obdulio Gaviria for the criminal offenses of *calumnia* and *injurias* after the publication of articles in June 2009.¹⁴⁷

108. The Commission recognizes the importance of the issuance of Law No. 1474 of July 12, 2011, “by which provisions are issued aimed at strengthening the mechanisms for preventing, investigating, and punishing acts of corruption and effective government oversight,” in which rules are established on expenditures for official publicity.¹⁴⁸

B. Assassination

109. On June 30, 2011, journalist Luis Eduardo Gómez was assassinated in the municipality of Arboletes. He was engaged in independent work for daily newspapers such as *El Heraldo de Urabá* and *Urabá al Día*, where he covered issues related to tourism and the environment. Luis Eduardo Gómez was known for his investigations into the management of the public resources by the local government, giving impetus to the investigation into the death of his son, and his demands that the State make gains in that investigation, as well as his role as a witness before the Office of the Attorney General in cases of infiltration of paramilitaries in the police in the region.¹⁴⁹ In a communication to the Office of the Special Rapporteur, the Colombian State expressed that it “laments and rejects the homicide that took the life of Mr. Gómez, and reports that it has taken the necessary actions within its legal order with a view to the persons responsible for this act being duly identified and taken before the competent authorities.”¹⁵⁰

C. Attacks on and threats against media and journalists

110. In mid-February, unknown persons were reported to have thrown an incendiary bomb at the home of Rodolfo Zambrano, a journalist with the newspaper *Magangué Hoy*, in Magangué, which caused harm to the façade of the home. According to the information received, at the time of the attack several of his family members were in the home; none suffered any injury.¹⁵¹

¹⁴⁶ Instituto Prensa y Sociedad (IPYS). February 25, 2011. [Juez absuelve a la columnista Claudia López en caso de injuria y calumnia](#); El Universal. February 25, 2011. [Absuelta columnista Claudia López de injuria y calumnia](#); El Espectador. February 24, 2011. [Columnista Claudia López es absuelta](#).

¹⁴⁷ El Espectador. September 14, 2011. [Demanda de José Obdulio Gaviria contra varios periodistas no prosperó](#); La F.M. September 14, 2011. [Precluyó investigación contra periodistas denunciados por José Obdulio Gaviria](#).

¹⁴⁸ Article 10 of the Law restricts the use of official publicity to carrying out the purpose of the agency and to satisfying citizens’ right to information. Contracts entered into for official publicity activities should answer to pre-established criteria of effectiveness, transparency, and objectivity. The Law prohibits the use of official publicity or any other means of disseminating official programs and policies for the promotion of public servants, political parties, or candidates, or that make use of their voice, image, name, symbol, logo, or any other identifiable element that may induce confusion. Congress of the Republic of Colombia. July 12, 2011. [Ley. No 1474 de 2011](#).

¹⁴⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 7, 2011. Press Release R66/11. [Special Rapporteurship on Freedom of Expression Condemns Murder of Journalist in Colombia](#); Fundación para la Libertad de Prensa (FLIP). July 2, 2011. [La FLIP condena asesinato del periodista Luis Eduardo Gómez en Arboletes, Antioquia](#).

¹⁵⁰ Ministry of Foreign Affairs of Colombia. Communication DIDHD. GAPID 41308/1809. July 13, 2011. In files of the Office of the Special Rapporteur.

¹⁵¹ El Universal. February 18, 2011. [Atacada casa de periodista Rodolfo Zambrano](#); Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. [Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa](#).

111. The IACHR received information concerning the attack with sticks and stones suffered on March 18 by CM& correspondent Ana Mercedes Ariza, and cameraman Armando Camelo by populations in a mining zone in the municipality of California, Santander. Days later the authorities detained four suspects in the attacks which were taped on the video equipment of Cameo.¹⁵²

112. On May 26, 2011, Héctor Rodríguez, a journalist with the radio station *La Veterana* in Popayán, Cauca, was said to have been attacked by two unknown persons who were said to have shot a firearm when he was entering his workplace. He did not suffer any injury, due to the intervention of police bodyguards who were said to have accompanied him for three months due to the situation of risk he faced.¹⁵³

113. The IACHR learned of a large number of cases of threats against journalists. On December 2, 2010, journalist Ramón Sandoval Rodríguez received several calls to his cell phone; in one of those calls he was told: “the cup has spilled. You should shut up and leave Sabana de Torres, or assume the consequences. You are not the first dog we’ve killed in this town.” Sandoval relates the threat by presenting information he has published about the alleged acts of corruption in the municipal administration.¹⁵⁴ In addition, according to the information received by the Office of the Special Rapporteur, on February 17, 2011, several Colombian non-governmental organizations received an email purportedly sent by the self-styled “Bloque Capital de las Águilas Negras” (“Capital Bloc of the Black Eagles”), which announced: “the time has come to exterminate and annihilate all those persons and organizations who pass themselves off as defenders of human rights, and even more so those who infiltrate as international NGOs, journalists...”¹⁵⁵ Next the message mentioned persons and entities among which were included the Federación Colombiana de Periodistas (“FECOLPER”) and the journalists Eduardo Márquez González, Claudia Julieta Duque, Daniel Coronell, Hollman Morris, and Marcos Perales Mendoza.¹⁵⁶ According to what was reported, on February 18 representatives of various journalists’ organizations held a meeting in Bogotá with the Committee on Regulation and Evaluation of Risks, which addressed the threat received, and at which possible measures for ensuring the security of persons in danger were discussed.¹⁵⁷ On March 14 once again an alleged threat from the “Bloque Capital de las Águilas Negras” was circulated reiterating the warnings.¹⁵⁸ In this respect, the Office of the Special

¹⁵² According to the information received, journalists were collecting different versions concerning the decision of a foreign company to postpone a mining project when the neighbors lashed out against the team of journalists with sticks and stones, as they were upset by the delay in the project. Both journalists were assisted by the Police and taken to a hospital. Vanguardia. March 19, 2011. [Periodista agredida está bajo pronóstico reservado](#); Knight Center for Journalism in the Americas. March 19, 2011. [Periodista y camarógrafo hospitalizados tras agresión de pobladores con piedras y palos en Colombia](#); RCN. March 18, 2011. [Capturadas cuatro personas por agresión a equipo periodístico en Santander](#).

¹⁵³ The bodyguards along with other police from the local post (CAI: Comando de Atención Inmediata) are said to have pursued the assailants, one of whom was said to have been wounded in the exchange of gunfire and taken to a clinic, while the other assailant was said to have been detained and brought before the Departmental Office for Criminal Investigation of the National Police (SIJIN). Rodríguez notes that he had received threats since he reported on his new program “En Línea FM Noticias” on the involvement of members of the FARC in the elections for mayor of Patía, in southern Cauca. Fundación para la Libertad de Prensa (FLIP). May 26, 2011. [Atentado contra periodista Héctor Rodríguez en Popayán – Cauca](#); El Tiempo. May 26, 2011. [Farc podrían estar tras atentado a periodista en Popayán](#).

¹⁵⁴ El Tiempo. No date. [Amenazan a periodista en Sabana de Torres \(Santander\)](#); Fundación para la Libertad de Prensa (FLIP). December 10, 2010. [Periodista es amenazado en Sabana de Torres, Santander](#).

¹⁵⁵ Anonymous email originating from the email address fenixaquilasnegrass@gmail.com. February 16, 2011. In files of the Office of the Special Rapporteur for Freedom of Expression.

¹⁵⁶ Círculo de Periodistas de Caldas. February 18, 2011. [FECOLPER rechaza amenaza de muerte contra su presidente Eduardo Márquez](#); Fundación para la Libertad de Prensa (FLIP)/IFEX. February 18, 2011. [Circula panfleto que amenaza a FECOLPER y cuatro periodistas](#); Reporters Without Borders. February 18, 2011. [Apoyo a cinco periodistas declarados “objetivos militares” en un mail atribuido a las “Águilas Negras”](#).

¹⁵⁷ Telephone interview by the IACHR with representatives of Colombian organizations of journalists. February 22, 2011.

¹⁵⁸ World Association of Community Broadcasters (AMARC). March 21, 2011. [Las “Águilas Negras” amplían su campaña de amenazas contra periodistas y ONG: las autoridades tardan en reaccionar](#); Fundación para la Libertad de Prensa (FLIP). March 22, 2011. [Circula nuevo panfleto contra FECOLPER y cuatro periodistas](#).

Rapporteur consulted the State on the measures adopted to ensure the lives and integrity of the persons threatened, in a note sent March 4.¹⁵⁹ In its response of April 13, 2011, the State conveyed to the Special Rapporteurship its repudiation of the threats made against the journalists, reiterated its commitment to defend freedom of expression, highlighted the operation of the Protection Program of the Ministry of Interior and Justice, and noted that measures have even been put in place to protect journalists in zones of violence and in dangerous missions. In its communication, the State recalled that the number of journalists who were beneficiaries of the Program had increased from 14 in the year 2000 to 175 in 2010, while total deaths of journalists have been reduced from 27 from 2001 to 2003 to two from 2008 to 2010. The State explained that the cases of threats mentioned in the communication of March 14 “have been made known to the respective judicial authorities so that they may further the respective investigations.” Finally, it indicates that in the case of journalists Hollman Morris and Claudia Julieta Duque, measures have already been implemented on their behalf in the context of the Protection Program mentioned above.¹⁶⁰

114. The IACHR learned that in late March three pamphlets circulated in the department of El Cauca attributed to the “Águilas Negras, Rastrojos, and Autodefensas Unidas de Colombia-AUC,” in which they declared the “11 journalists and 11 community radio stations” are “permanent military targets.”¹⁶¹ In addition, in August journalist Mary Luz Avendaño, correspondent for the newspaper *El Espectador*, in Medellín, had been forced to leave the country given her elevated risk, even though she was receiving protection from the Municipal Police.¹⁶² The risk was said to have originated after the publication of articles on violence between bands of drug traffickers and the collusion of members of the Police, due to which she is said to have received several threatening phone calls as of June 22, 2011.¹⁶³ Indeed, with the information received, on September 29 an alleged member of a criminal band was said to have called the radio station Radio Guatapurí, in the city of Valledupar, to warn that they had been ordered to attack a series of persons in that city, including journalist Ana María Ferrer, who worked with the television program “La Cuarta Columna” on Channel 12 in Valledupar.¹⁶⁴

115. In the last week of May unknown persons broke in, through a window, to the apartment of journalist Gonzalo Guillén while he was outside the country and were said to have stolen an external hard drive with 1,000 gigabytes and a laptop computer. The equipment stolen contained data from journalistic investigations over the last 15 years. Among the information stolen is said to be documentation on issues such as extrajudicial executions, expenditures of the State that are kept secret, and corruption in State

¹⁵⁹ Communication from the Office of the Special Rapporteur for Freedom of Expression to the Permanent Mission of Colombia to the OAS. March 4, 2011. Washington D.C.

¹⁶⁰ Ministry of Foreign Affairs. Republic of Colombia. April 13, 2011. Note FIDHD. GAPID No.22090/0955.

¹⁶¹ According to the information received, the pamphlet threatened journalists Silvio Sierra, Fredy Calvache, Antonio Palechor, Ricardo Mottato, Eli Alegría, Gustavo Molina, Carlos Pito, Gustavo Alzate, José Fernando Conejo, Carlos Andrés Gómez, and Darío Patiño, and radio stations Guambía Estéreo, Uswal Nasa Yuwe, Nuestra Voz Estéreo, Renacer Kokonuco, Radio Nasa de Tierradentro, Aires del Pueblo Yanacona, Radio Payumat, Radio Libertad, Voces de Nuestra Tierra, Nasa Estéreo, and Radio Inzá. Asociación de Cabildos del Cauca Indígenas del Norte del Cauca. April 6, 2011. [Colombia: Paramilitares amenazan a periodistas indígenas](#); Reporters Without Borders/IFEX. April 6, 2011. [Once periodistas y diversas estaciones de radio indígenas son blancos de los paramilitares](#).

¹⁶² Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [Periodista de Antioquia se ve obligada a salir del país](#); *El Espectador*. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

¹⁶³ Fundación para la Libertad de Prensa (FLIP). June 25, 2011. [Grave amenaza contra la vida de periodista de El Espectador en Medellín](#); *El Espectador*. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

¹⁶⁴ According to the information provided, the alleged paid gunman had indicated that the order to assassinate Ferrer was due to information that she disclosed on a functioning criminal group. She is also the director of communications of the Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. In that function she is said to have written numerous articles regarding alleged mismanagement of funds from the mining industry. Police authorities are said to have initiated an investigation and to have offered her measures of protection. Committee to Protect Journalists (CPJ). October 5, 2011. [Periodista provincial recibe amenazas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). October 4, 2011. [Confiesan plan para asesinar a una periodista en Valledupar, Cesar](#); Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. Website: <http://www.comitederegaliascesar.org/Comite/Publico/ComiteEsp.php>

security agencies. He asked the Office of the Attorney General to conduct an investigation.¹⁶⁵ The Office of the Special Rapporteur requested information from the Colombian State in the wake of these events and the threats that Guillén was said to have received.¹⁶⁶ In its response of August 4, 2011, the State reported that journalist Guillén has been a beneficiary of the Ministry of Interior and Justice's Protection Program since July 2007, and that he currently has a mobile protection scheme. He also reported that with respect to the larceny of the journalistic information from Mr. Guillén's residence, the Office of the 113th Local Prosecutor's Office (Fiscalía 113 local) is pursuing an investigation into the alleged offense of aggravated larceny (*hurto calificado y agravado*), which is in the inquiry stage to determine who the person or persons responsible might be.¹⁶⁷ As of the preparation of this report, no progress had been reported in that investigation.

D. Espionage against and harassment of journalists by the DAS

116. In its 2009 and 2010 reports, the IACHR reported the information that it had received on illegal activities involving espionage, harassment, and discrediting of journalists, and even death threats against journalists, which were carried out by the Administrative Department of Security (DAS: Departamento Administrativo de Seguridad) from 2002 to 2008. In its annual report last year the Commission followed up, in particular, on the cases of some of the most besieged journalists: Daniel Coronell, Claudia Julieta Duque, Carlos Lozano, and Hollman Morris.¹⁶⁸

117. During 2011, the IACHR continued following up on the judicial proceedings under way in relation to the illegal activities of espionage and harassment of the above-mentioned journalists. The information received by the Office of the Special Rapporteur indicates that there has yet to be any criminal conviction related specifically to the unlawful acts directed against these journalists. At the same time, the IACHR takes note of the significant progress in the investigation into some of these cases. In the case of journalist Claudia Julieta Duque, for example, the Office of the Third Prosecutor of the National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General found documents in the offices of the DAS that include information on Ms. Duque updated as of November 2008. Duque has been the target of repeated threats that may have caused her extreme suffering and she is the beneficiary of precautionary measures granted by the IACHR in November 2009. In August 2011, after publishing an article in the *Washington Post* on the abuses of the DAS and U.S.-Colombian relations¹⁶⁹, Duque was possibly targeted by stigmatizing accusations by former President Álvaro Uribe.¹⁷⁰ Former President Uribe also potentially made stigmatizing statements against the *Washington Post* correspondent in Colombia, Juan Forero, for the publication of an article on alleged gross

¹⁶⁵ Letter from Gonzalo Guillén to the Attorney General, Viviane Morales. June 2, 2011. Archive of the Office of the Special Rapporteur for Freedom of Expression; *El Espectador*. July 2, 2011. "[Un expresidente me entregó el libreto de la Operación Jaque](#)"; Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. "[Ciento catorce ataques contra periodistas durante el primer trimestre del 2011: grupos paramilitares el mayor depredador de la prensa](#)."

¹⁶⁶ Communication from the Office of the Special Rapporteur to the Colombian State of July 8, 2011, with respect to: "Situation of journalist Gonzalo Guillen." In files of the Office of the Special Rapporteur.

¹⁶⁷ Ministry of Foreign Affairs of the Republic of Colombia. Communication DIDHD.GAPDH No. 46620/2034. August 4, 2011. In files of the Office of the Special Rapporteur.

¹⁶⁸ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 140-168; IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Vol. II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). December 30, 2009. Paras. 135-148.

¹⁶⁹ *Washington Post*. August 20, 2011. [U.S. Aid Implicated in Abuses of Power in Colombia](#).

¹⁷⁰ Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists "terrorism sympathizers"](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

irregularities said to have been committed by his administration.¹⁷¹ The press organizations expressed reasonable concern over the possible consequences of those statements.¹⁷²

118. The Colombian State wrote that it had complied with all the protection measures ordered by the IACHR in the case of journalist Claudia Julieta Duque Orrego, who on November 26, 2004, “filed a criminal complaint with the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation owing to the threats allegedly made against her since 2001.” According to the information reported by the State, the journalist said “that she was the victim of an abduction committed in the course of a criminal practice known as the ‘millionaire’s walk’ or the ‘millionaire’s tour’; and that she had been stalked and harassed and her e-mails intercepted by members of State Security agencies (DAS) because of her investigations into and her documentary on the killing of journalist Jaime Garzón.” In its observations on the IACHR’s draft report, the State commented that the investigative work conducted by the Human Rights and International Humanitarian Law Unit of the Attorney General’s Office had “succeeded in implicating State agents in the commission of the crime and is currently focusing on establishing the identity of the agents in order to prosecute them in the Colombian courts. Thus far the investigation has not determined whether any high-ranking government officials had knowledge of or participated in the crimes committed against the journalist.” The State underscored the measures that the Prosecutor on the case had taken to ensure the journalist’s life and personal safety, “and compliance with the orders of the Inter-American Commission on Human Rights regarding the precautionary measures for the journalist and her daughter.”¹⁷³

E. Judicial Actions

119. On May 25, 2011, the Constitutional Court of Colombia issued Judgment C-442-11, by which it found that the judges who sit in cases regarding *injurias* and *calumnias* should narrowly interpret these definitions of criminal conduct so as to favor an “expansive interpretation of the freedom of expression” (“la vis expansiva de la libertad de expresión”), which enjoys a privileged place in the Colombian legal order. It noted that “only willful conduct is subject to sanction,” i.e., that the attribution of certain conduct to a certain person must be done knowingly and with the intent of producing harm. Finally, it reiterated the importance of abiding by the inter-American standards of freedom of expression.¹⁷⁴

120. Despite the judgment mentioned in the previous paragraph, on September 12, 2011, the director of the newspaper *Cundinamarca Democrática*, Luis Agustín González, was said to have been found guilty of the crimes of *injuria* and *calumnia* by the first criminal law judge of Fusagasugá. He had been sued by former governor Leonor Serrano de Camargo, who considered publication of an editorial in 2008 calling into question Serrano’s candidacy for the Senate to harm her honor and good name, for which she was seeking 50 million Colombian pesos in compensation (equivalent to US \$26,000 dollars).¹⁷⁵

F. Regulation of the press during electoral periods

¹⁷¹ Reporters Without Borders. September 22, 2011. [En espera de una respuesta presidencial ante el temor de asesinato de una periodista víctima del “dasgate”](#); Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists “terrorism sympathizers”](#).

¹⁷² Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists “terrorism sympathizers”](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

¹⁷³ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights, concerning Human Rights Developments in Colombia in 2011”. p. 15.

¹⁷⁴ Constitutional Court of Colombia. [Judgment C-442-11](#). May 25, 2011.

¹⁷⁵ Fundación para la Libertad de Prensa (FLIP). September 13, 2011. [Condenan al periodista Luis Agustín González por cuestionar a la ex gobernadora Leonor Serrano de Camargo](#); Periódico Metronet. September 14, 2011. [Fallo Contra Periódico Cundinamarca Democrática](#).

121. The IACHR takes note of Decree 3569 of 2011, “by which provisions of law are issued for preserving public order during the period of elections of Territorial Public Authorities and Legislative Bodies and other provisions are issued.”¹⁷⁶ This new decree preserves, in general, the language of Decree 1800 of 2010,¹⁷⁷ with respect to which the IACHR expressed concern in its 2010 Annual Report.¹⁷⁸

122. In this respect, the IACHR observes first that Decree 3569 maintains the prohibition, on election-day, of “all types of publicity, statements, communiqués, and interviews for political-electoral purposes” by any means of communication.¹⁷⁹ Second, with respect to the “information on election results,” Decree 1800 of 2010 established that on election day, while the election is taking place, the media “may only provide information on the number of persons who have voted...”¹⁸⁰ The wording of the relevant article has been modified in Decree 3569 of 2011, eliminating the word “only” to establish that the media “may provide information on the number of persons who have voted...”¹⁸¹ Finally, the foregoing decree established that “as regards public order, the media shall broadcast, on election day, only information confirmed by official sources.”¹⁸² Decree 3569 of 2011 strikes out the word “only,” providing that “in respect of public order, on election-day the media shall broadcast the information confirmed by official sources.”¹⁸³

123. The IACHR reiterates what it indicated in its 2010 Annual Report to the effect that during electoral periods there may be special restrictions on the right to freedom of expression, yet that constitutional and international guarantees must be strictly respected, particularly those enshrined in Article 13(2) of the Convention. According to this provision, the exercise of the right to freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” In application of this provision, the IACHR and the Court have already indicated that any restriction must be established in a law both materially and formally and that the restrictions must be clear and precise in scope. In that sense, the IACHR notes that in this case general restrictions were established relying on administrative provisions that are not compatible with the conditions noted above.¹⁸⁴

G. Right of Access to Information

124. The IACHR takes note of the approval, by the Congress of the Republic, of the bill “by which provisions of law are issued to strengthen the legal framework that allows the agencies engaged in intelligence and counter-intelligence activities to perform their constitutional and statutory mission, and

¹⁷⁶ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#).

¹⁷⁷ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). The Office of the Special Rapporteur took note, moreover, of the judicial proceeding that was brought by various Colombian organizations through a *tutela* action seeking to annul the articles of Decree 1800 of 2010, which were considered to violate the freedom of expression, press, and information. The domestic courts upheld the legality of the decree. Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [El Acceso a la información en Colombia-Entre el Secreto y la Filtración](#); Council of State, Judgment of July 29, 2010. Writing for the court: Bertha Lucía Ramírez de Páez. Case No. 25000-23-15-000-2010-01.

¹⁷⁸ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

¹⁷⁹ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 3; Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 3.

¹⁸⁰ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 7.

¹⁸¹ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 6.

¹⁸² Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 9.

¹⁸³ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 8.

¹⁸⁴ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

issuing other provisions.”¹⁸⁵ According to the information received, the provision of law approved is under prior review by the Constitutional Court, which is called for as a statute of constitutional rank (*ley estatutaria*).¹⁸⁶

125. The IACHR expresses concern about some aspects of said law on intelligence and counter-intelligence that could disproportionately affect the right of access to information. First, the provision adds to the Criminal Code the crime of “Revelation of a secret by a private person,” which provides: “One who makes known a confidential public document shall be subject to imprisonment of five to eight years, unless it is done pursuant to a constitutional or statutory duty.”¹⁸⁷ Nonetheless, in Chapter VI (Confidentiality of Intelligence and Counter-intelligence Information) the law provides: “The mandate that it be confidential is not binding on journalists or the media when they are performing their journalistic function of serving as a check on governmental power, in the context of the self-regulation of journalism and the constitutional case-law; they in any event are obligated to keep their sources confidential.” The IACHR recalls in this regard that the public authorities and public servants have the exclusive responsibility of protecting the confidentiality of any secret information legitimately under their control. Other individuals, including journalists and representatives of civil society, should never be subject to sanctions for the mere publication or subsequent dissemination of this information, independent of whether it has been leaked, unless they commit fraud or another offense in order to obtain the information.¹⁸⁸ The IACHR further recognizes the partial protection that the law grants for whistleblowers¹⁸⁹ and recalls that whistleblowers who in good faith disclose information on statutory violations, gross cases of mismanagement of public agencies, grave threat to health, safety, or the environment, or a violation of human rights or humanitarian law should be protected from statutory, administrative, or labor sanctions.¹⁹⁰

126. In its observations on this report, the State wrote that “with regard to freedom of information and the intelligence and counterintelligence services provided by the Colombian State (...), the statutory law on intelligence and counterintelligence meets the specifications set by the Constitutional Court for classifying certain information: (i) clearly and precisely stated terms; (ii) a written explanation of the rationale and proportionality of the decision to deny access to certain information; (iii) the time period that the information will be kept classified; (iv) the system for custodianship of that information; (v) the checks on such decisions, and (vi) the existence of judicial remedies and actions by which to challenge a decision to classify certain information.” The State underscored the fact that “the law does not violate either freedom of the press or freedom of expression.” It also observed that paragraph 4 of Article 33 provides that “the classification period is not binding upon either journalists or the communications media when they are engaging in watchdog journalism, following the rules by which the media and journalists regulate themselves and provided they are acting in accordance with constitutional jurisprudence; in all

¹⁸⁵ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, Bill No. 195 of 2011 of the House, “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011.

¹⁸⁶ The Constitution of Colombia establishes at Article 153: “The approval, amendment, or derogation of *leyes estatutarias* will require the absolute majority of the members of Congress and shall be done in a single legislature. This process shall include a prior review by the Constitutional Court of the constitutionality of the proposed legislation. Any citizen may come forward to defend or challenge it.”

¹⁸⁷ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House: “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 45.

¹⁸⁸ Joint Declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE (2004). Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=2>

¹⁸⁹ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 39: “[...] In any event, the public servants of the agencies that undertake intelligence and counterintelligence activities may report the criminal activities of which they come to learn directly or through a representative of the intelligence agency, and in conditions that make it possible to ensure their security and integrity, guaranteeing the protection of sources, means, and methods....”

¹⁹⁰ [Joint declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE \(2004\)](#).

events, journalists and the media would be required to guarantee the confidentiality of their sources.” For the State, this provision elevates the Constitutional Court’s jurisprudence on the subject to the rank of statutory law. That jurisprudence holds that “classification is not binding upon the media, who are liable only if they reveal their sources.” In its observations, the State explained that the justification for the provision, “as the Court itself has explained, is that the responsibility of the media is to serve as the watchdog of public power. This function could not be properly performed if the media were limited to the information provided to them.” The State explained that the “exception to the classification principle is made for journalists but not for all organizations in civil society, since the general principle of intelligence is that it must be kept confidential because it has a close bearing on national security and defense. However, lawmakers were of the view that because of the watchdog function that the media perform, journalists must be allowed to use classified information without committing a crime. On the other hand, if any organization in civil society was allowed to use classified information without committing an offense, no matter how many mechanisms were instituted to keep that information secure any person could gain access to that information by unlawful means and publish it, thereby jeopardizing national security, national defense, international relations and other national interests.” The State observed that the Constitutional Court has sanctioned the creation of the classified information system “to ensure protection of the fundamental rights of third parties that may be disproportionately affected if certain information is made public and given the need to keep certain information confidential in order to safeguard national security and defense.” The State added that “public officials who have access to this information are thus obligated not to disclose it; if they disclose such information they will face criminal and disciplinary consequences.” It also pointed out that the Constitutional Court held that “disclosure [of classified information] shall have criminal and disciplinary consequences only for the official who discloses the information.”¹⁹¹

127. Furthermore, in 2011 the IACHR received information on the exercise of the right of access to information by groups of small farmers in the department of Atlántico. The various groups of small farmers requested information from the Colombian Rural Development Institute (“INCODER” *Instituto Colombiano de Desarrollo Rural*) with respect to the implementation of agrarian programs in their respective subdivisions, including programs in training, social services, physical infrastructure, rural housing, adaptation of lands, technical assistance, financing, and legal support.¹⁹² On several occasions the groups of small farmers have pursued the special constitutional remedy known as *acción de tutela* after receiving responses from INCODER to their filings in exercise of their right to petition that they considered unsatisfactory. Those actions were resolved favorably in the cases of the subdivisions of Los Guayacanes of the municipality of Repelón,¹⁹³ Banco Totumo of the municipality of Repelón,¹⁹⁴ and Maramara of the municipality of Baranoa.¹⁹⁵ The judicial rulings in these cases, considering the “generic and incomplete nature of the response” from INCODER, order “INCODER to address each and every one of the petitions filed, making a clear pronouncement on them ... without the use of evasive or elusive language, so as to consider the subject matter of the petition and be in keeping with what is requested” within 48 hours.¹⁹⁶ INCODER was said to have challenged the judicial decisions in three of these

¹⁹¹ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. pp. 14 and 15.

¹⁹² Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁹³ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁹⁴ Thirteen Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011.

¹⁹⁵ Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011.

¹⁹⁶ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

cases;¹⁹⁷ in the case of the subdivision of Los Guayacanes, the ruling in the *tutela* action was already upheld on appeal.¹⁹⁸

128. The IACHR recalls that principle 4 of the Declaration of Principles on Freedom of Expression establishes that “Access to information held by the state is a fundamental right of every individual” and recognizes as a good practice the judicial response of guaranteeing the exercise of this right in the cases mentioned. At the same time, and without prejudice to the possible rulings on first and second appeal in these proceedings, the IACHR expresses its concern given indicia of the repeated failure of INCODER to respect the right of access to information.

7. Costa Rica

129. The Office of the Special Rapporteur was pleased to receive two judgments from the Constitutional Chamber of the Supreme Court of Costa Rica that strengthen the right to access to public information and freedom of expression. Judgment No. 03320 of March 18, 2011 ordered the Ministry of Labor to provide the newspaper *El Financiero* with a list of companies and individuals to whom warnings had been issued for failing to pay minimum wage to its employees between August and December 2010. According to the information received, the Ministry of Labor had refused to give this information to journalist Alejandro Fernández of *El Financiero*. Nevertheless, the Constitutional Chamber ruled that “the requested information is of clear public interest, in that it refers to violations for the failure to pay minimum wage.”¹⁹⁹

130. On March 29, 2011, the Constitutional Chamber handed down Judgment No. 04160, which found that a decision made by the Board of Governors of the University of Costa Rica on February 1, 2011 amounted to a threat to freedom of expression and a violation of academic freedom. The decision was to prevent James Watson, Nobel Laureate in Medicine, from giving a conference on genetics and DNA at the university because in the past he had made discriminatory statements against various minorities. According to the information received, James Watson was ultimately able to give the conference, and the University Board of Governors subsequently acknowledged that the prohibition of this academic activity had been inordinate. The Constitutional Chamber found that the actions of the university authorities amounted to a “threat to violate freedom of expression and academic freedom, given that the decision of the University Board of Governors to request the suspension of a conference was a way to silence *a priori* the speaker’s expressions of thought, ideas, opinions, beliefs, convictions, or value judgments, which constitutes prior censorship.”²⁰⁰

131. On June 27, the full session of the Legislative Assembly of Costa Rica resolved, by a majority, to table the Freedom of Expression and Press Act bill when it rejected a motion to keep the initiative on the parliamentary agenda for four more years, a decade after it was first introduced to

¹⁹⁷ Twelfth Civil Court of Barranquilla. Tutela Action 2011-00230. Motion to Appeal (Recurso de Impugnación). September 1, 2011. See also information sent by the Colectivo Mujeres al Derecho to the Rapporteurship on “events that constitute violations of the right of access to information of women and rural communities in the departments of Atlántico and Magdalena, Colombia, by the Colombian State,” received on August 8, 2011 and September 30, 2011. In the files of the Office of the Special Rapporteur.

¹⁹⁸ Superior Court, Judicial District of Barranquilla. Tutela Action on appeal. *Abelardo Prentz Norieg (sic) and Sergio Rafael Cabarcas Torrenegra*. October 4, 2011.

¹⁹⁹ Constitutional Chamber of the Supreme Court of Costa Rica. March 18, 2011. *Decision 2011003320*. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Sentencias%20por%20Despacho¶m2=30&strTipM=T&strDirSel=directo; *El Financiero*. March 18, 2011. *Sala IV ordenó al Gobierno a entregar listado de infractores del salario mínimo a El Financiero*. Available at: http://www.elfinancierocr.com/ef_archivo/2011/marzo/20/economia2719517.html

²⁰⁰ Constitutional Chamber of the Supreme Court of Costa Rica. March 29, 2011. *Decision 2011004160*. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=1&nValor1=1&nValor2=508396&strTipM=T&IResultado=1; *La Nación*. April 15, 2011. *Sala IV condena a la UCR por censura previa*. Available at: <http://www.nacion.com/2011-04-15/AldeaGlobal/UltimaHora/AldeaGlobal2749216.aspx>

Congress.²⁰¹ The bill proposed reforms to the Criminal Code that would introduce the doctrine of actual malice by establishing that statements alleged to be libelous, slanderous, or defamatory are only punishable when they have been “made with reckless disregard for the truth or knowledge of their falsehood.” The bill excludes the offense “when it involves the publication or reproduction of information or value judgments on matters of public interest that are offensive to honor or public credit, that have been voiced by other collective communications media, news agencies, public authorities, or private individuals with authorized knowledge of the facts, provided that the publication indicates the source of the information.” The initiative also would have incorporated professional secrecy for journalists, as well as the conscience clause, into Costa Rican law. The original version of the bill, introduced in 2001 by media directors, was tabled in 2005 upon the expiration of the four-year term. In that year, a special joint committee again took up the text of the bill, passed it, and forwarded it to the full legislature; however, it was never voted on.²⁰²

132. The Office of the Special Rapporteur learned that two cameramen from Channels 7 and 6 were assaulted by police on December 30, 2010, while they were covering a police operation in a neighborhood in southern part of San José. According to reports, one of the reporters was held down and hit by a police officer while the other was assaulted with a metal baton. Costa Rican Police authorities considered the actions of their subordinates to be “abusive,” “excessive,” and unacceptable, and announced that the officers involved would be subjected to disciplinary proceedings.²⁰³

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

134. On July 19, the Constitutional Chamber of the Supreme Court of Costa Rica rejected on the merits a writ of *amparo* [petition for a constitutional remedy] filed by the newspaper *Extra* against the Honor and Ethics Tribunal of the Association of Journalists. According to what this Office of the Special Rapporteur has learned, the Honor and Ethics Tribunal issued a communiqué condemning the graphic content of a report on a traffic accident and joined “many people” in protesting this publication. The newspaper *Extra* alleged that the Honor and Ethics Tribunal infringed its right to a defense and to freedom of expression by joining in the protests of one segment of the public and by issuing a decision without providing the paper with an opportunity to defend itself, which reportedly resulted in financial harm. The Constitutional Chamber held that the decision of the Honor and Ethics Tribunal of the Journalists’ Association “is not punitive in nature” and is “a mere expression of disagreement (...) stemming from the protest of many people who are displeased with the graphic content” of the report. Therefore, in the opinion of the Constitutional Chamber, “the appellee is not required to give notice to the appellant of its intentions, or of its way of thinking, with respect to the publications regarding the traffic accident.”²⁰⁴ In relation to the same case, on August 26, 2011, the Constitutional Chamber of the

²⁰¹ La Nación. June 29, 2011. *Diputados entierran ley sobre libertad de expresión*. Available at: <http://www.nacion.com/2011-06-28/EIPais/diputados-entierran-ley-sobre-libertad-de-expresion.aspx>; Primera Plana. July 1, 2011. *El proyecto de libertad de expresión y prensa se archivó a consecuencia de una sacada de clavo por las denuncias de corrupción*. Available at: http://www.primeraplana.or.cr/app/cms/www/index.php?pk_articulo=4073

²⁰² Legislative Assembly of the Republic of Costa Rica. August 11, 2005. *Proyecto de Ley de Libertad de Expresión y Prensa*. No. 15974 Available at: http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/default.aspx; La Nación. Undated. *Proyecto de Ley de Libertad de Expresión y Prensa*. Available at: http://www.nacion.com/ln_ee/ESPECIALES/libertad/reforma_ley.html

²⁰³ La Nación. December 31, 2010. *Investigan golpiza de policías contra periodistas*. Available at: <http://www.nacion.com/2010-12-31/Sucesos/UltimaHora/Sucesos2637551.aspx>; Knight Center for Journalism in the Americas. January 18, 2011. *Autoridades costarricenses investigan golpiza policial a periodistas de televisión*. Available at: <http://knightcenter.utexas.edu/es/blog/autoridades-costarricenses-investigacion-golpiza-policial-periodistas-de-television>

²⁰⁴ The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica ruled in the following terms: “The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica joins the protest of many people over the content, especially the graphic content, of the article in the newspaper *Diario Extra* on the accident in which soccer player Dennis Marshall and his wife lost
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Supreme Court dismissed three *amparo* petitions filed by the Association of Journalists against the newspaper *Diario Extra*, the television station *TV Extra 42*, and the newspaper *La Prensa Libre*, all of which are owned by the Extra Group. According to reports, the three media outlets released news items critical of the Honor and Ethics Tribunal of the Association of Journalists without consulting with representatives of that organization with regard to their position. The Honor and Ethics Tribunal requested the right of reply or correction, but the media outlets did not acquiesce. In view of this situation, the Honor and Ethics Tribunal filed a writ of *amparo* before the Constitutional Chamber, which was dismissed because the petitioners failed to describe in detail how the publications had affected their honor and reputation, or which information was false or inaccurate.²⁰⁵

8. Cuba²⁰⁶

135. The IACHR learned of a hunger strike being staged by journalists Pedro Argüelles Morán and Albert Santiago Du Bouchet Hernández, both members of the “Group of 75” dissidents detained in 2003 and the subject of IACHR Case 12,476 (Oscar Elías Biscet *et al.*). Argüelles Morán had allegedly gone on a hunger strike to protest the pressure being exerted by the authorities to get him to leave the country if they released him. He went off his hunger strike when the authorities promised that he and ten other dissidents being held could remain in Cuba once released. For his part, Du Bouchet Hernández’ hunger strike had allegedly lasted 23 days, and was to honor the first anniversary of the death of dissident Orlando Zapata and to call attention to his own imprisonment and that of other political prisoners.²⁰⁷

136. The Office of the Special Rapporteur for Freedom of Expression received information to the effect that temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the Government. According to the information received, another common practice is to stage acts of censure in front of the homes of political dissidents, as a way to harass them and prevent them from going out in public. These events, during which government slogans are yelled and patriotic anthems and revolutionary music are played full blast, tend to be accompanied by arrests and attacks on the members of the opposition. According to the reports received, Cuban dissident organizations reported between 2,668 and 2,784 arrests between January and September 2011, averaging at least 333 detentions a month in the first eight months of 2011. However, the dissident organizations reportedly saw

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their lives on the highway to Limón. This tribunal condemns such action in view of Article 20(d) of Organic Law No. 4420 of the Association of Journalists, as said media outlet has crossed the line of acceptable reporting on accidents by disregarding ethics and failing to respect human suffering and the sentiments of the relatives. Neither the editors nor the owners of the media, nor the journalists, should consider themselves the owners of the information; it should not be treated as merchandise, but rather as a fundamental right of the citizens.” Association of Journalists of Costa Rica, Honor and Ethics Tribunal. June 30, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Supreme Court of Costa Rica. Constitutional Chamber. July 19, 2011. *Judgment* 09319. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=516466&strTipM=T&strDirS=el=directo; Association of Journalists of Costa Rica. August 10, 2011. *Sala rechaza amparo de la Extra*. Available at: <http://www.colper.or.cr/comunicados/sala.htm>; La Nación. June 24, 2011. *Diario Extra recibe fuertes críticas por portada sobre muerte de jugador*. Available at: <http://www.nacion.com/2011-06-24/EIPais/diario-extra-recibe-fuertes-criticas-por-portada-sobre-muerte-de-jugador.aspx>

²⁰⁵ Supreme Court of Costa Rica. Constitutional Chamber. August 26, 2011. *Judgment* 11576. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=525193&strTipM=T&strDirS=el=directo; Supreme Court of Costa Rica. Constitutional Chamber. Undated. *Matters of the Constitutional Chamber regarding Freedom of Expression and the Press*. Available at: <http://www.poder-judicial.go.cr/salaconstitucional/votos%20por%20tema.htm>; *Diario Extra*. September 10, 2011. *Sala IV defiende libertad de prensa*. Available at: <http://www.diarioextra.com/2011/setiembre/10/nacionales01.php>

²⁰⁶ This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

²⁰⁷ Reporters Without Borders. February 4, 2011. [Jailed Journalists on Hunger Strike](#); Committee to Protect Journalists (CPJ). February 9, 2011. [Press Cuba to keep promise to free journalists](#); Agence France Presse (AFP). February 10, 2011. [Un preso político cubano levanta su huelga de hambre de ocho días](#). [One Cuban political prisoner ends eight-day hunger strike]

a sizeable increase in arrests in September, with between 486 and 563 persons taken into custody. According to reports received, 80 persons were allegedly either convicted or tried on political grounds; 63 of these were reported to be in prison.²⁰⁸ The increase in arrests prompted a public communiqué from the British Embassy in Cuba, in which the diplomatic mission called upon the State to allow peaceful protests and expressed concern over the short-term detentions of political and human rights activists, and the aggressive treatment against opposition organizations like the *Damas de Blanco* [Ladies in White].²⁰⁹

137. According to information the Commission received, at least a dozen journalists who collaborated with the independent news agency *Hablemos Press* had reportedly been taken into temporary custody or attacked in the days before and during the Sixth Congress of the Cuban Communist Party, held in Havana April 16 – 19, 2011. On April 15, the *Hablemos Press* correspondent in Guantánamo, Enyor Díaz Allen, had allegedly been attacked by two persons who started by yelling pro-government slogans at him and then fractured one of his arms and inflicted a head injury on him. He was later allegedly detained by the Police, treated in a hospital and then jailed for four days.²¹⁰ Raúl Arias Márquez and Elier Muir Ávila, correspondents in the provinces of Morón and Ciego de Ávila, were detained in Márquez' home on April 5 and 6 by Police and State Security agents. They had reportedly been warned that they would be jailed if they continued to practice their journalistic activities.²¹¹ On March 31, State Security agents allegedly arrested the *Hablemos Press* correspondent Idalberto Acuña Carabeo at his home in Havana when he refused to turn over photographs he had taken just hours earlier at a protest at the *Central de Trabajadores de Cuba* (CTC).²¹² On April 16, a group of police and State Security agents had allegedly kept the *Hablemos Press* correspondent in Mayabeque province, Luis Roberto Arcia Rodríguez, trapped inside his home for 12 hours to prevent him from going to Havana to cover the Communist Party Congress.²¹³ Something similar happened on April 16, when the home of the *Hablemos Press* correspondent in Melena del Sur, Sandra Guerra Pérez, was surrounded for two days by some 20 police and State Security agents to prevent her from travelling to Havana.²¹⁴ On April 15, two State Security agents showed up at the offices of *Hablemos Press* in Havana, to warn journalists Robert de Jesús Guerra Pérez, Magaly Norvis Otero Suárez, Ignacio Estrada Cepero and José Alberto Álvarez not to go outside while the Communist Party Congress was in session or they would be jailed.²¹⁵

²⁰⁸ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. October 3, 2011. [Algunos actos de represión política registrados en Cuba durante septiembre de 2011](#) [Some acts of political repression recorded in Cuba in September 2011]; Centro de Información Hablemos Press. October 3, 2011. [Informe mensual de violaciones de los derechos humanos](#). [Monthly report on human rights violations]; EFE News Service. October 4, 2010. [Septiembre malo para la disidencia](#). [A Bad September for the dissident movement]; Inter-American Press Association (IAPA). September 29, 2011. [IAPA condemns increased harassment in Cuba](#); Reuters. October 3, 2011. [Grupo disidente Cuba reporta histórica cifra detenciones mensuales](#). [Cuban dissident group reports historic figure on monthly arrests]

²⁰⁹ Embassy of Great Britain in Cuba. September 29, 2011. [Recent reports of short term detentions in Cuba, British Ambassador Dianna Melrose Comments on the Situation](#).

²¹⁰ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

²¹¹ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

²¹² Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#) [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹³ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹⁴ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹⁵ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

138. According to the information received, journalist and political dissident Guillermo Fariñas has reportedly been held in custody for hours on several different occasions since December 2010. In December, the State refused to give Fariñas authorization to travel to Strasbourg, France, to receive the Sakharov Prize, which the European Parliament awards each year for freedom of conscience.²¹⁶ On January 27, Fariñas was allegedly arrested twice within 24 hours, along with other dissidents, accused of making a “public scandal” for their participation in anti-government protests.²¹⁷ On February 23, Fariñas was detained yet again, together with another 46 activists in Santa Clara, who were attempting to mark the first anniversary of the death of another dissident, Orlando Zapata. Fariñas was released 27 hours later. In addition to being detained, some 200 Government sympathizers had allegedly surrounded the women of the opposition group known as “Damas de Blanco” [Ladies in White] to hurl insults and slogans in support of the government. On April 6, Fariñas was arrested yet again, along with a dozen activists from the *Foro Antitotalitario* and the Santa Clara Central Coalition, after showing up at a prison to protest the arrest of various members of the opposition who had been detained just moments earlier. The authorities kept Fariñas under house arrest and took away his passport.²¹⁸ Fariñas and another 26 dissidents were reportedly detained on September 15 in Santa Clara, as they were preparing for a demonstration. Fariñas and the others were released some hours later.²¹⁹

139. On November 1 2011, Guillermo Fariñas was detained again when he tried to access the provincial hospital “Arnaldo Milian Castro” to know about the health situation of Alcides Rivera, a dissident who was hospitalized by a hunger strike he initiated a month ago. A group of security men impeded his way to the hospital. He was beaten, handcuffed and was transferred in a police car to the police unit. He was released on November 3, 2011.

140. As the detentions increased and the harassment of political and human rights activists was heating up, various leaders of dissident groups were allegedly arrested. According to the information received by the Office of the Special Rapporteur, on September 9, former political prisoners Ángel Moya Acosta, José Daniel Ferrer and Raunel Vinajera were reportedly detained again in Palma de Soriano, in eastern Cuba.²²⁰ On September 15, opposition leaders and former political prisoners Librado Linares García and, again, Ángel Moya Acosta, were detained, as was the leader of the Central Opposition Coalition, Idania Yáñez Contreras. The arrests were allegedly made as the activists were preparing for the march called “Boitel and Zapata Live,” which would go through a number of Cuban cities.²²¹ On September 27, leaders of the Red Cubana de Comunicadores Comunitarios [Cuban Network of Community Journalists], Martha Beatriz Roque and Arnaldo Ramos Lauzarique were detained, as was Berta Soler, one of the founders of the Damas de Blanco [Ladies in White] and wife of former political prisoner Ángel Moya Acosta. The three were detained as they were on their way to a police station to

²¹⁶ Europa Press. December 14, 2010. [Guillermo Fariñas no logra el permiso para salir de Cuba](#). [Guillermo Fariñas not given permission to leave Cuba]; *El Mundo*. December 13, 2010. [Fariñas responsabiliza a Fidel y no a Raúl por no dejarle recoger el premio Sájarov](#). [Fariñas blames Fidel, not Raúl for not allowing him to go to receive his Sakharov Prize]

²¹⁷ Inter-American Press Association (IAPA). January 28, 2011. [IAPA calls for end to repression in Cuba](#); Agence France Presse (AFP). January 28, 2011. [Cuba: Guillermo Fariñas liberado tras segundo arresto en 24 horas](#). [Cuba: Guillermo Fariñas released after second arrest in 24 hours]

²¹⁸ La Voz de Galicia. April 7, 2011. [El opositor cubano Fariñas, en arresto domiciliario tras otra detención](#). [Cuban dissident Fariñas under house arrest after being detained again]; EFE News Service. April 7, 2011. [Disidente cubano Guillermo Fariñas, de nuevo preso](#). [Cuban dissident Fariñas jailed again]

²¹⁹ Europa Press. September 19, 2011. [Arrestan a unos 150 opositores cubanos en los últimos días](#). [Some 150 members of Cuban opposition arrested in recent days]; EFE News Service. September 16, 2011. [Más de 20 opositores fueron detenidos en Cuba](#). [More than 20 members of Cuban opposition arrested in Cuba]

²²⁰ EFE News Service. September 9. [Esposas de dos expresos del grupo de los 75 denuncian detención](#). [Wives of two former prisoners of Group of 75 denounce arrest]; Net for Cuba. September 12, 2011. [Two ex-prisoners of conscience remain arbitrarily arrested](#).

²²¹ Diario de Las Américas. March 17, 2011. [Marcha por la Libertad cobra fuerza en Cuba](#). [March for Freedom Gains Momentum in Cuba]; ABC. October 5, 2011. [Ofensiva de los Castro con 600 encarcelados en un mes](#). [Castro brothers' offensive with 600 persons arrested in one month]; Tellus Folio. September 19, 2011. [La missione de la Dame in Bianco: Lottare per la libertà del popolo cubano](#); La revolución de los gladiolos. September 10, 2011. [Idania Yáñez Contreras, presidenta de la Coalición Central Opositora](#).

intercede for a number of persons previously arrested; they were reportedly beaten as they were being transported in police vehicles.²²²

141. The IACHR received information concerning detentions, acts of aggression and harassment against the Damas de Blanco, an organization made up of women related to political prisoners. According to the report received, on September 9, at least 22 women from the Damas de Blanco were allegedly detained for several hours in Havana and Santiago, while they were participating in a celebration marking the feast of Our Lady of Charity, also known as Our Lady of Cobre.²²³ On September 24, several dozen Ladies in White met at a member's home to organize a peaceful march and attend mass at the Church of La Merced, in Havana. However, between 200 and 300 people had gathered outside the house to yell pro-government slogans and prevent the group of women from leaving the house. When the members of the Ladies in White attempted to get the peaceful march underway, there was reportedly a struggle with the pro-government demonstrators; a number of the women were beaten.²²⁴ On October 22, 11 Ladies in White were allegedly detained and beaten in Palma Soriano, as they were attempting to attend mass at the cathedral in Santiago. According to the information received, the activists were released some hours later.²²⁵

142. The information received states that on April 7, Spanish journalist Carlos Hernando, collaborator with the *Intereconomía* press group and the creator of a documentary on Guillermo Fariñas was allegedly detained and expelled from the country by Cuban authorities, who accused him of “counter-revolutionary activity”.²²⁶ In the first week of September, Cuban authorities reportedly took away the press credentials of Mauricio Vicent, who for 20 years had been the Spanish newspaper *El País* correspondent in Cuba. Without his press credentials, he cannot practice journalism in Cuba. The International Press Center, part of the Ministry of Foreign Affairs, had allegedly justified the decision by pointing to Vicent's coverage, which it claimed conveyed “a biased and negative image” of Cuban reality.²²⁷

143. In 2011, the Internet was well out of reach of the majority of the population, owing to the high cost of internet service, the slow connection speeds, and restrictions that limit or obstruct the connection.²²⁸ The situation reported in the 2010 report has not changed in any significant way.²²⁹

²²² Inter-American Press Association (IAPA). September 29, 2011. [IAPA Condemns Increased Harassment in Cuba](#); El Nuevo Herald. September 28, 2011. [Brutal agresión a líderes de la disidencia cubana](#). [Leaders of Cuban dissident movement face brutal aggression]

²²³ Milenio. September 9, 2011. [Liberados opositores cubanos tras ser detenidos temporalmente en procesión](#). [Leaders of Cuban opposition released after being detained temporarily in march]; La Verdad.Es. September 19, 2011. [26 disidentes detenidos en Santiago y La Habana](#). [26 dissidents detained in Santiago and Havana]

²²⁴ Agence France Presse (AFP). September 24, 2011. [Seguidores del Gobierno cubano acosan e impiden a Damas de Blanco ir a misa](#). [Supporters of Cuban Government harass Ladies in White and prevent them from attending mass]; EFE News Service. September 24, 2011. [Oficialistas acosan a Damas de Blanco y les impiden ir a misa por día Merced](#). [Government supporters harass Ladies in White and prevent them from attending mass on the feast of Our Lady of Mercy]

²²⁵ Cubaencuentro. October 2, 2010. [Detienen y golpean a mujeres en Palma Soriano](#) [Women detained and beaten in Palma Soriano]; Radio Martí. No date. [Entrevista al ex preso político José Daniel Ferrer García](#). [Interview with former political prisoner José Daniel Ferrer García]

²²⁶ El Mundo. April 8, 2011. [Carlos Hernando: “Se me ha pasado pero han sido momentos muy difíciles”](#). [Carlos Hernando: It happened, but there were some very difficult moments]; Intereconomía. April 7, 2011. [Carlos Hernando detenido por “contrarrevolucionario”](#). [Carlos Hernando detained as counterrevolutionary]

²²⁷ El País. September 5, 2011. [Apoyo de FAPE y Reporteros sin Fronteras al corresponsal de El País en Cuba](#). [FAPE and Reporters Without Borders Come to Defense of El País correspondent in Cuba]; Knight Center for Journalism in the Americas. September 5, 2011. [Unhappy with “negative” coverage, Cuba revokes press credentials of foreign correspondent](#).

²²⁸ There are two webs in Cuba: one domestic, with limited access to information resources, and the other international. The average hourly cost of connecting to the domestic network is close to US\$1.63, while the average hourly cost of connection to the international network is US\$5.48, in an economy where the average monthly salary is US\$20. In January the government reportedly announced an improvement in satellite connections that would increase connectivity by 10%. Reporters Without Borders. 2010. [Internet Enemies](#); Cf. Inter-American Press Association (IAPA). April 2011. [Country reports: Cuba](#).

²²⁹ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc.5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 186 et seq.

144. In February 2011, the government announced that Cuba would be connecting to a submarine fiber optic cable installed in cooperation with Venezuela, which would increase internet data transmission speed by 3,000 times, and would increase the percentage of persons with access to the net, whereas just 3% of the population has access at the present time; it would also lower the cost of international calls. However, thus far there are no reports that the fiber optic cable has been made accessible to the general public; the high rates and usage and connection restrictions reported in previous years still persist.²³⁰

145. Resolution 179/2008 reportedly was still in effect in the Cuban legal system in 2011. That resolution establishes a set of “Regulations for public internet service providers that offer internet services in hotels, post offices and other entities in the country, and where internet search engines and national and international e-mail services are offered to natural persons.”²³¹ One provision that called the IACHR’s attention was the following requirement for providers: “take the measures necessary to block access to sites whose content is inimical to social and moral interests and good conduct; as well as the use of applications that affect the integrity or security of the State.” That same provision states, *inter alia*, that: “providers shall observe the orders issued by the institutions charged with the country’s defense in the event of emergency situations, and perform the immediate functions necessary to secure the defense and security of the State.” Under Article 21 of that resolution, when a service provider fails to comply with these regulations, it may have its license and any contracts signed temporarily or permanently suspended.

146. Resolution 55/2009, which took effect in June 2009, remained in effect in 2011. That resolution established the same regulations referenced in the preceding paragraph, but this time for the so-called Internet Service Providers for Storage, Hosting, and Applications.²³² According to this resolution, the regulations include those Cuban legal persons who have received an operating license as a Public Service Provider for Internet Access, including those that rent physical space so that the client can place its own computer there; those who provide the site-hosting service, applications, and information; and those who provide applications services to third parties.

147. Here, the IACHR must reiterate that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”²³³

9. Ecuador

148. The Office of the Special Rapporteur views positively the importance placed upon the hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. on October 25, 2011. It was attended by

²³⁰ BBC News. February 9, 2011. [Cuba welcomes new Internet cable link with Venezuela](#); Generación Y. August 30, 2011. [¡Dame Cable! \[Give Me Cable!\]](#).

²³¹ Ministry of Information Technology and Communications. [Resolución No 179/2008](#); Ministry of Information Technology and Communications. [Resolución 55/2009](#).

²³² Ministry of Information Technology and Communications. [Resolución 55/2009](#).

²³³ IACHR. Annual Report 1999: [Annual Report of the Special Rapporteur for Freedom of Expression 1999](#). Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere: D. The Internet and Freedom of Expression.

high-ranking officials of the Ecuadorean State and members of various civil society organizations. This office found it to be a productive hearing, at which both the state and civil society had the opportunity to express their positions, concerns, and criteria with respect to the situation of freedom of expression in the country. The information obtained as a result of the hearing is set forth in the corresponding sections of this report.

A. Assaults and attacks on media or journalists

149. The Office of the Special Rapporteur received information that Guido Manolo Campaña, the sports writer for the newspaper *El Universo* of Guayaquil, was apparently kidnapped, beaten, and threatened on December 2, 2010, while doing research in the coastal area of Esmeraldas. According to that information, the journalist was investigating a case of identity theft allegedly perpetrated by a soccer player. The reporter received documents in the town of Muisne that would prove the allegation, but upon his return by bus to the city of Esmeraldas, two armed men in a pickup truck intercepted the bus. They pointed their weapons at the journalist and took him to an unknown location where they bound his hands and feet, beat him, threatened to kill him, and interrogated him about the facts he was investigating and the sources who had provided the information. The kidnappers allowed Campaña to answer a phone call from the newspaper on his cell phone, and forced him and his editors to promise not to publish the information. Police and judicial authorities in Esmeraldas launched an operation to try to find the journalist, but early that night he was released in an Esmeraldas neighborhood. The kidnappers had destroyed his camera, tape recorder, cell phone, and notes and documents he had gathered. The newspaper published the investigation days later.²³⁴

150. According to information received, at least five shots were fired on May 7 in the city of Manta at the exterior of the building where the *Ediasa* publishing group is headquartered. *Ediasa* owns the newspapers *El Diario* and *La Marea*, as well as the television channel *Manavisión*. The media company reported the act so that a police investigation would be opened.²³⁵

151. The Office of the Special Rapporteur was informed that on December 17 a group of armed police officers entered and searched the Quito offices of the magazine *Vanguardia*, and reportedly confiscated some 40 computers and searched journalists and their personal belongings for weapons. According to information provided to the Office of the Special Rapporteur, the Police entered with a warrant for the preventive seizure of assets because the magazine allegedly owed \$14,000 in rent payments on the property. The warrant allowed for a three-day period in which to make the payment, but the police executed it immediately. The magazine's director, Juan Carlos Calderón, is co-author of the book *El Gran Hermano [Big Brother]*, and has been sued in civil court by President Correa, who requested compensation of \$10 million from the two journalists who wrote the book.²³⁶ Days after the search, a supervisory criminal court in Guayas ordered that the magazine's representatives be allowed to copy the hard drives of the computers in order to recover journalistic material; nevertheless, on December

²³⁴ Committee to Protect Journalists (CPJ). December 7, 2010. *Reportero deportivo ecuatoriano golpeado y amenazado*. Available at: <http://cpi.org/es/americas/ecuador/>; Fundamedios/IFEX. December 7, 2010. *Periodista secuestrado, amenazado de muerte*. Available at: http://www.ifex.org/ecuador/2010/12/07/campana_death_threats/es/

²³⁵ El Diario. May 7, 2011. *Balean medios Ediasa en Manta*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/190854-balean-oficina-de-ediasa-en-manta/>; Andean Group for Freedom of Information (EL GALI). June 3, 2011. *Disparan contra oficinas de grupo periodístico*. Available at: <http://www.elgali.org/monitoreo/ecuador/disparan-contra-oficinas-grupo-periodistico?page=7>

²³⁶ International Freedom of Expression Exchange (IFEX) December 21, 2010. *Materiales periodísticos embargados en aparatoso operativo policial*. Available at: http://www.ifex.org/ecuador/2010/12/21/vanguardia_desalojo/es/; Inter-American Press Association (IAPA). December 20, 2010. *Condena la SIP atropello desproporcionado contra revista ecuatoriana*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4493. Hoy. December 21, 2010. *Vanguardia presenta pedido de protección*. Available at: <http://www.hoy.com.ec/noticias-ecuador/vanguardia-pide-revocatoria-del-operativo-de-desalojo-448675.html>; Knight Center for Journalism in the Americas. December 21, 2010. *Fiscalía Investigará Embargo a Revista Opositora en Ecuador*. Available at: <http://knightcenter.utexas.edu/es/blog/fiscalia-investigara-embargo-revista-opositora-en-ecuador/>; El Ciudadano. January 10, 2011. *Fideicomiso: Si Vanguardia paga, se resuelve el problema coactivo*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=20194:fideicomiso-si-vanguardia-paga-se-resuelve-el-problema-&catid=1:archivo&Itemid=34

24, the court-appointed bailees in possession of the equipment reportedly refused to comply with the judge's order, alleging that they had not been notified.²³⁷

152. On March 24, inhabitants of the El Topo indigenous community prevented a group of journalists from covering a public assembly, and assaulted the journalists. According to the information received, journalists David Torres, of Gama TV; Washington Benalcázar, correspondent from the newspaper *El Comercio* in Imbabura; Christian Tinajero, of *Ecuavisa* and Enrique Portilla of *RTS* went to the community to report on the arrest and punishment of an alleged criminal. The reporters were allowed to listen to part of the assembly, and then were asked to leave. When they withdrew, a group of residents reportedly followed them and attacked them with rocks and nettle branches.²³⁸

153. On May 10, 2011, after testifying at a hearing in a case against former Police Hospital director César Carrión about events that took place on September 30, 2010, journalist Holger Guerrero was verbally attacked by journalists and Carrión sympathizers.²³⁹

154. The Office of the Special Rapporteur was informed that in July 2011, journalist Emilio Palacio reportedly shouted "I do not give declarations to fascists" at a reporter from the official state channel *Ecuador TV* and asked him to leave the place where he was making his statements. The journalist from *Ecuador TV* indicated that Mr. Palacio reportedly had lowered the microphone when he realized that he was from that media outlet.²⁴⁰

155. According to the information received, on September 20, 2011, there was a confrontation between public servants and followers of the President, on one hand, and the directors of the newspaper *El Universo* and their followers, on the other hand. The run-in reportedly occurred because the latter were not permitted to enter the room where a hearing was going to be held in the case President Correa had brought against that newspaper, and the directors reportedly verbally assaulted a member of the presidential staff who blocked their way.²⁴¹

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

B. Legal proceedings and arrests

²³⁷ International Freedom of Expression Exchange (IFEX). December 30, 2010. *Se impide que revista recupere materiales periodísticos de discos duros embargados*. Available at: http://www.ifex.org/ecuador/2010/12/30/magazine_personnel_blocked/es/

²³⁸ International Freedom of Expression Exchange (IFEX). March 31, 2011. *Periodistas son agredidos e impedidos de realizar cobertura por comuneros indígenas*. Available at: http://www.ifex.org/ecuador/2011/03/31/el_topo/es/; Ecuador en Vivo. March 25, 2011. *Indígenas agreden a palos, piedras y ortiga a periodistas*. Available at: http://www.ecuadorenvivo.com/2011032569306/sociedad/indigenas_agreden_con_palos_piedras_y_ortiga_a_periodistas_.html

²³⁹ Fundamedios. October 2011. *El 30 de septiembre, un antes y un después en las agresiones contra la prensa*. Available in the archives of the Office of the Special Rapporteur and at: http://www.ifex.org/ecuador/2011/10/03/ecuador_fundamedios_informe.pdf

²⁴⁰ Statement of Emilio Palacio. July 21, 2011. Available at: http://www.youtube.com/watch?v=uR_09xDsd5A; Office of the President of the Republic of Ecuador. September 24, 2011. *Enlace Ciudadano 239*. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=1006 and at: <http://www.youtube.com/watch?v=hbS1b4clkLo>; Presidential Speech of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVbQs&feature=related>

²⁴¹ Office of the President of the Republic of Ecuador. September 24, 2011. *Enlace Ciudadano 239*. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=1006 and at: <http://www.youtube.com/watch?v=hbS1b4clkLo>; Presidential Speech of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVbQs&feature=related>

157. The Office of the Special Rapporteur is concerned about the consistent tendency of high-ranking public officials to rebuke, arrest, and prosecute citizens who criticize them at public events. On February 25, Marcos Luis Sovenis shouted “fascist” when President Rafael Correa was traveling through the town of Babahoyo. According to Sovenis, at least seven officers who were accompanying the president forced him into a vehicle, where they threatened and assaulted him. Sovenis filed a complaint before the Office of the Public Prosecutor on March 2 denouncing the actions of members of the presidential escort,²⁴² and President Rafael Correa announced that he would file a criminal complaint against Sovenis alleging *desacato* [insult].²⁴³

158. On April 12, an individual named German Ponce was arrested in the town of Salcedo for having allegedly insulted the President as the presidential motorcade passed by. He was arrested for this act, and the Flagrant Offenses Prosecutor of Cotopaxi requested 30 days of pretrial detention, which the judge granted based on Article 230 of the Criminal Code,²⁴⁴ offenses against the government, under the chapter on rebellion and attacks on public servants. Ponce was released after 72 hours in custody, after making a public apology. Even so, according to the information received, the case against him is going forward.²⁴⁵

159. The Office of the Special Rapporteur also learned that on April 13, days prior to the referendum called by the government, President Rafael Correa reportedly ordered the arrest of Irma Parra, who allegedly made an obscene gesture at the leader in Riobamba. Parra insisted before the media that she only made a “NO” sign with her hand to express her opposition to the referendum. After several hours in custody, she apologized to the president and was released.²⁴⁶ President Correa justified Parra’s arrest based on the need to respect the integrity of the president.²⁴⁷

²⁴² Instituto de Prensa y Sociedad (IPYS). March 7, 2011. *Ciudadano agredido por escolta presidencial*. Available at: <http://www.ipys.org/index.php?q=alerta/360>; Article 19. November 19, 2011. *Ecuador: Article 19’s Submission to the UN Universal Periodic Review*. Available at: <http://www.article19.org/resources.php/resource/2859/en/ecuador:-article-19%E2%80%99s-submission-to-the-un-universal-periodic-review>

²⁴³ With respect to this matter, President Rafael Correa reportedly stated: “(...) I assure you that there are people behind this because of the electoral campaign. (...) The appropriate legal action will also be taken, because to insult the President, to call him a fascist, etcetera, is criminal, it is a criminal offense, it’s called *desacato*. Whether we like it or not, it is defined as an offense in the Criminal Code, and it gives rise to pain and suffering; it affects my honor (...)” Ecuador Times. March 4, 2011. *Correa demandará a Sovenis por el incidente “fascista”*. Available at: <http://www.ecuadortimes.net/es/2011/03/04/correa-interpondra-demanda-contra-sovenis/>; Ciudadanía Informada. March 4, 2011. *Correa anuncia acciones legales contra quienes le bloquearon el paso en Esmeraldas*. Available at: http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir_a_ciudadania-informada/article//correa-anuncia-acciones-legales-contra-quienes-le-bloquearon-el-paso-en-esmeraldas.html

²⁴⁴ “Art. 230.- Anyone who with threats, meanaces, or defamation should offend the President of the Republic or another person exercising Executive functions, shall be punished with a term of imprisonment ranging from six months to two years, and a fine ranging from sixteen to seventy-seven United States dollars” (El que con amenazas, amagos o injurias, ofendiere al Presidente de la República o al que ejerza la Función Ejecutiva, será reprimido con seis meses a dos años de prisión y multa de dieciséis a setenta y siete dólares de los Estados Unidos de Norte América”). Available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf

²⁴⁵ Andean Group for Freedom of Information (EL GALI). June 2, 2011. *Dos ciudadanos son detenidos por supuestamente insultar y hacer señales obscenas*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-ciudadanos-son-detenidos-supuestamente-insultar-y-hacer-senales-obscenas>; Hoy. April 14, 2011. *Presos dos acusados de ofender a Correa*. Available at: <http://www.hoy.com.ec/noticias-ecuador/presos-dos-acusados-de-ofender-a-correa-469700.html>

²⁴⁶ Office of the President of the Republic of Ecuador. April 16, 2011. *Enlace Ciudadano No 217, Milagro – Guayas* (minutes 1:37:00 and 2:26:00). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=startdown&id=811; Andean Group for Freedom of Information (EL GALI). June 2, 2011. *Dos ciudadanos son detenidos por supuestamente insultar y hacer señales obscenas*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-ciudadanos-son-detenidos-supuestamente-insultar-y-hacer-senales-obscenas>

²⁴⁷ El Ciudadano. April 14, 2011. *Presidente pide respetar su integridad*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=23393:presidente-rafael-correa-reitero-que-irma-parra-le-ofendio-audio&catid=40:actualidad&Itemid=63

160. The Office of the Special Rapporteur received information concerning the arrest of indigenous leader José Acacho, former director of the community radio station *La Voz de Arutam*, on February 1. He was accused of violating the terms of his conditional release in a case in which he was accused of sabotage and terrorism because of messages he reportedly broadcast on that station during a day of indigenous protests, on September 30, 2009. According to reports, on February 8, the Provincial Court of Pichincha granted a writ of *habeas corpus* in Acacho's favor and ordered his release.²⁴⁸

161. Official Letter No. 05303 from the Office of the Attorney General contains the Ecuadorean State's response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR's headquarters in Washington, D.C. on October 25, 2011. In that letter, the Ecuadorean State addressed the concern raised at the hearing with respect to the use of the offense of sabotage and terrorism as a vaguely defined criminal offense that could infringe upon the freedom of expression of individuals who engage in social protest. The State indicated that those offenses are enshrined in Articles 156-166 of the Criminal Code and that "they do not aim to limit the right to freedom of expression, impose prior censorship, curtail social protest, or impose any other unlawful limitation of rights." To the contrary, according to the State, they "pursue the preservation of the general welfare and other rights inherent to the individual" and do not constitute a vague criminal statute.²⁴⁹

162. The Office of the Special Rapporteur observes with concern the increased use of criminal *desacato* and insult laws and civil provisions that could lead to the imposition of disproportionate penalties against persons who publicly express criticism of the highest ranking public dignitaries in Ecuador.

163. On April 27, journalist Wálter Vite Benítez was arrested in Esmeraldas when a judgment became final that sentenced him to a year in prison and a \$500 fine for the offense of criminal defamation against the mayor of that town, who had filed a complaint against him in 2008. According to information provided to the Office of the Special Rapporteur, the mayor was apparently offended by critical remarks made by Vite on an opinion program on *Radio Iris*. The journalist alleges that he never specifically mentioned the mayor of Esmeraldas.²⁵⁰ The journalist went on a hunger strike from the time of his arrest, and was later transported to the Delfina Torres de Concha Hospital, where he remained at the time of his release on May 18, 2011. His release was ordered when a motion to set aside the warrant for his arrest and incarceration was admitted based on the expiration of the criminal statute of limitations, according to which the judgment should have been handed down prior to November 18, 2010. The plaintiff appealed this decision, and the appeal was admitted.²⁵¹

²⁴⁸ In December 2009, the National Telecommunications Council cancelled the license of the radio station *La Voz de Arutam*, alleging that the station had taken part in inciting an indigenous uprising against the Water Act, which left one person dead. However, that decision was corrected once it was demonstrated that the audio had not been properly translated into the Ashuar language. Oclacc.org. Radio Evangelización. January 27, 2010. *Conatel decide no clausurar Radio Arutam; SIGNIS Ecuador aplaude medida*. Available at: <http://oclacc.org/noticia/conatel-decide-no-clausurar-radio-arutam-signis-ecuador-aplaude-medida>; Second Chamber for Labor and Juvenile Matters. Case No. 2011-0084. Habeas Corpus. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>; International Freedom of Expression Exchange (IFEX). February 11, 2011. *Ex director de radio acusado de terrorismo y sabotaje recupera su libertad*. Available at: http://www.ifex.org/ecuador/2011/02/11/acacho_released/es/; Official News Agency of Ecuador and Latin America (ANDES). February 8, 2011. *Corte Provincial de Pichincha concedió hábeas a favor de indígenas Shuar*. Available at: <http://andes.info.ec/actualidad/corte-provincial-de-pichincha-concedio-habeas-corporus-a-favor-de-indigenas-amazonicos-avance-49481.html>

²⁴⁹ Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. P. 11. Available in the Archives of the Office of the Special Rapporteur.

²⁵⁰ Committee to Protect Journalists (CPJ). May 2, 2011. *Reportero ecuatoriano preso por difamación*. Available at: <http://cpi.org/es/2011/05/reportero-ecuadoriano-presos-por-difamacion.php>; International Freedom of Expression Exchange (IFEX). May 4, 2011. *Periodista de radio condenado a un año de prisión por injurias calumniosas*. Available at: http://www.ifex.org/ecuador/2011/05/04/vite_jailed/es/

²⁵¹ Third Court of Criminal Guarantees of Esmeralda. Case No. 08253-2008-0150. November 11, 2008. Serious calumnious and non-calumnious defamation. Available at: <http://www.funcionjudicial-esmeraldas.gob.ec/index.php/nombre>; International Freedom of Expression Exchange (IFEX). May 25, 2011. *Periodista preso por injurias recupera libertad*. Available at: http://www.ifex.org/ecuador/2011/05/25/vite_released/es/

164. According to information received, on March 21 the President of the Republic filed a criminal complaint before the 15th Criminal Court of Guayas alleging the criminal defamation offense of “serious calumnious and non-calumnious defamation” [*injuria calumniosa y no calumniosa grave*] against the corporation *El Universo* (the publisher of the newspaper) and its board members Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga and César Enrique Pérez Barriga, as well as against Emilio Palacio, the editor of *El Universo*’s opinion section. The President asked the trial court judge to sentence the four defendants to three years in prison with an indemnization of \$50 million, as well as an additional \$30 million indemnization to be paid by the newspaper’s parent company.²⁵² The case stemmed from a column of Palacio’s, published on February 6, 2011, entitled *No a las mentiras* [“No to Lies”].²⁵³ In the course of the proceedings the Fifteenth Court of Criminal Guarantees of Guayas commissioned to be surrendered as evidence more than 27 reports and expert opinions. The information requested included: payroll lists and reports on the payments to each of the defendants in all of the places they have worked; a list of assets of the company and of each of the individual defendants; income tax returns; details on the shareholdings and partners in the company; reports on payments, benefits and the financial position of the company; purchases and investments abroad; and detailed information on the foreign travel of each of the defendants over the past five years.²⁵⁴ The defendants, for their part, complained of irregularities in the proceedings.²⁵⁵

165. On July 7, 2011, newspaper columnist and opinion editor Emilio Palacio of *El Universo* reportedly submitted his irrevocable resignation in order to “prevent the company from going bankrupt.” He made his decision public in an open letter on July 11, 2011, in which he again assumed all responsibility for the publication of the article that had given rise to the lawsuit.²⁵⁶ According to the information received, the president made clear that the case would continue in spite of the journalist’s resignation.²⁵⁷

²⁵² Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; Committee to Protect Journalists (CPJ). March 31, 2011. *Presidente de Ecuador demanda a diario crítico por difamación*. Available at: <http://www.cpj.org/es/2011/03/presidente-de-ecuador-demanda-a-diario-critico-por.php>; Reporters Without Borders. April 1, 2011. *Reporteros Sin Fronteras pide al presidente Rafael Correa retirar dos demandas exorbitantes contra la prensa*. Available at: <http://es.rsf.org/ecuador-reporteros-sin-fronteras-pide-al-01-04-2011.39939.html>

²⁵³ Emilio Palacio’s opinion column suggested to President Correa, whom he called “The Dictator,” that in order to exonerate those who had taken part in the armed uprising of September 30, 2010, it would be more appropriate to decree an amnesty rather than a pardon, since, he alleged, the president made so many mistakes and the evidence of an attempted *coup d’état* was so undermined, that it would be better to declare a “legal amnesia” than a unilateral pardon. President Correa expressed particular annoyance at Palacio’s suggestion that a pardon would enable another president in the future to prosecute him for having committed a crime against humanity by ordering an armed attack on the hospital where he had been held—a reference that the president characterized as defamatory, false, and an affront to his honor. *El Universo*. February 6, 2011. *NO a las mentiras*. Available at: <http://www.eluniverso.com/2011/02/06/1/1363/mentiras.html>

²⁵⁴ Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63

²⁵⁵ Andean Group for Freedom of Information (EL GALI). July 6, 2011. *Defensa de Diario el Universo denuncia irregularidades en juicio por \$80 millones que les sigue el Presidente de la República*. Available at: <http://www.elgali.org/monitoreo/ecuador/defensa-diario-el-universo-denuncia-irregularidades-juicio-80-millones-que-les-sig>

²⁵⁶ Andean Group for Freedom of Information (EL GALI). July 13, 2011. *Articulista renuncia para evitar que demanda de presidente por \$80 millones quiebre al medio*. Available at: <http://www.elgali.org/monitoreo/ecuador/articulista-renuncia-evitar-que-demanda-presidente-80-millones-quiebre-al-medio>; *El Universo*. July 11, 2011. *Emilio Palacio renuncia a editoría de Opinión y a su columna en este Diario*. Available at: <http://www.eluniverso.com/2011/07/11/1/1355/emilio-palacio-renuncia-editoria-opinion-columna-diario.html?p=1354&m=638>

²⁵⁷ *El Ciudadano*. July 10, 2011. *Emilio Palacio renuncia a Universo*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=25996:emilio-palacio-renuncia-a-diario-el-universo&catid=40:actualidad&Itemid=63; Office of the President of the Republic of Ecuador. July 9, 2011. *Enlace Ciudadano No. 228, Caluma – Bolívar (minute 0:50:30)*. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=937

166. The information received by the Office of the Special Rapporteur indicates that, in view of the defamation suit brought by the president against *El Universo*, the paper's employees announced a peaceful sit-in in the city of Guayaquil to express their support for the company. In addition, in his *Enlace Ciudadano* program No. 229 of July 16, 2011, President Correa reportedly called his sympathizers to a demonstration in support of his criminal complaint.²⁵⁸ Thus, the Office of the Special Rapporteur was informed that on the scheduled hearing date, the demonstrators convened by the president appeared.²⁵⁹

167. On July 20, 2011 the judgment of first instance²⁶⁰ was handed down by a an interim judge in Ecuador against *El Universo*, three members of its Board of Directors, and journalist Emilio Palacio. The judgment sentenced the board members and the journalist to three years in prison for the offense of "calumnious defamation" [*injurias calumniosas*] of an authority, and ordered them to pay a total of US \$40 million in compensation to President Rafael Correa. This was broken down as US \$30 million to be paid jointly by the convicted individuals, and US \$10 million by the newspaper's parent company. The defendants were additionally ordered to pay US \$2 million in attorneys' fees to the president's attorneys. The conviction was based on Articles 489, 491, and 493 of the Ecuadorean Criminal Code.²⁶¹ Notice was subsequently given on September 23, 2011 of the appeal judgment handed down by the Second Chamber for Criminal and Traffic Matters of the Provincial Court of Guayas, which affirms in its entirety the criminal conviction and civil judgment against journalist Emilio Palacio, three members of the Board of Directors of *El Universo de Ecuador*, and the newspaper itself.²⁶²

²⁵⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano No. 229*. July 16, 2011. (minute 0:52:19). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=938; El Comercio. July 20, 2011. *Simpatizantes de Correa copan edificio de la Judicatura en Guayaquil*. Available at: http://www.elcomercio.com/politica/simpatizantes-Rafael_Correa-manifestaciones-Guayaquil-El_Universo_0_520148052.html

²⁵⁹ Andean Group for Freedom of Information (EL GALI). August 1, 2011. *El Universo acepta rectificar, pero abogados de Presidente se niegan a cualquier conciliación en juzgamiento contra el medio*. Available at: <http://www.elgali.org/monitoreo/ecuador/el-universo-acepta-rectificar-pero-abogados-del-presidente-se-niegan-cualquier-con>

²⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 21, 2011. Press Release R72/11. *Office of the Special Rapporteur Expresses Profound Concern Regarding Conviction of Journalist, Directors and Media Outlet in Ecuador*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=857&IID=2>; Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-quayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; National Secretariat of Communication. Judgment in the case of El Universo. Official Document. July 20, 2011. Available at: http://www.secom.gov.ec/audios/sentencia_casouniverso.pdf

²⁶¹ Art. 489.- Defamation shall be considered calumnious when it falsely accuses an individual of a crime, and non-calumnious when it is expressed to discredit, dishonor or scorn another person, or is part of other actions seeking the same object. ("La injuria es: Calumniosa, cuando consiste en falsa imputación de un delito; y No calumniosa, cuando consiste en toda otra expresión proferida en descrédito, deshonra o menosprecio de otra persona, o en cualquier acción ejecutada con el mismo objeto".)

Art. 491.- Any person convicted of calumnious defamation shall be punished by a term of imprisonment ranging from six months to two years and fines ranging from from six to twenty-five United States dollars when such accusations are made in public places or meetings; in the presence of 10 or more individuals; in writing, printed or not printed, or through images or emblems affixed, distributed or sold, offered for sale, or displayed in public view; or through unpublished writings addressed or communicated to other parties, including letters ("El reo de injuria calumniosa sera reprimido con prisión de seis meses y multa de seis a veinte y cinco dólares de los Estados Unidos de Norte América, cuando las imputaciones hubieren sido hechas: En reuniones o lugares públicos; En presencia de diez o más individuos; Por medio de escritos, impresos o no, imágenes o emblemas fijados, distribuidos o vendidos, puestos en venta, o expuestos a las miradas del público; o, Por medio de escritos no publicados, pero dirigidos o comunicados a otras personas, contándose entre éstos las cartas").

Art. 493.- Any person who makes accusations against an authority that constitutes calumnious defamation shall be punished by a term of imprisonment ranging from one to three years. If accusations directed at the authorities are not considered calumnious defamation but nonetheless serious, the penalty shall be a term of imprisonment ranging from six months to two years and fines ranging from from six to nineteen United States dollars ("Serán reprimidos con uno a tres años de prisión y multa de seis a veinte y cinco dólares de los Estados Unidos de Norte América, los que hubieren dirigido a la autoridad imputaciones que constituyan injuria calumniosa. Si las imputaciones hechas a la autoridad constituyeren injurias no calumniosas, pero graves, las penas serán de prisión de seis meses a dos años y multa de seis a diecinueve dólares de los Estados Unidos de Norte América").

²⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. September 21, 2011. Press Release R104/11. *Special Rapporteur Expresses Concern Regarding Confirmation of Conviction against Journalist, Directors and Media Outlet in Ecuador* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=870&IID=2>; Provincial Court of Justice of Guayas. Second Criminal Chamber. Notice of Decision. Case No. 0525-2011. September 26, 2011. Available at: <http://www.funcionjudicial->

168. The information received indicates that both the lower court's judgment and the appeal judgment convict the three members of *El Universo's* Board of Directors in their capacity as "accomplices."²⁶³ In particular, the judgment of the 15th Court of Criminal Guarantees held that "matters concerning so-called press offenses [...] involve not only the person who writes the defamatory article but also [...] the owner or directors of the medium become accomplices or necessary cooperators in the offense, because without their assistance the publication of the defamatory article would not have been possible."²⁶⁴

169. The Office of the Special Rapporteur was informed that on September 26, 2011 the Second Criminal Chamber of the Provincial Court of Guayas responded to a request from President Correa to clarify and expand upon the judgment. The request asked the court, among other things, to clarify the declaration of abandonment of the motions to vacate and appeal by some of the interested parties, who were neither present nor represented at the hearing on the motion. The Provincial Court of Guayas ruled that journalist Emilio Palacio Urrutia's motion to vacate and appeal had been abandoned, and ordered the lower court judge to enforce the judgment against him.²⁶⁵ When this report went to press, the case was awaiting a decision on cassation.

170. According to the information received by the Office of the Special Rapporteur, on February 28, 2011 President Rafael Correa filed suit for non-pecuniary damages in the Fifth Civil Court of Pichincha against investigative journalists Juan Carlos Calderón and Christian Zurita for the 2010 publication of the book *El Gran Hermano [Big Brother]*.²⁶⁶ In the book, the journalists make reference to contracts awarded by the state to companies tied to Fabricio Correa, the president's brother. The president claims that he never had knowledge of the contracts, and that as soon as he found out about them he terminated them unilaterally. The president alleges in his lawsuit that the book contains "false facts" that tarnish his good name, and he seeks damages in the amount of US \$10 million from the book's authors. At the time of this writing, the case was still pending.²⁶⁷

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guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; Copies of the documents available in the archives of the Office of the Special Rapporteur.

²⁶³ Article 42 of the Criminal Code of Ecuador provides: "Perpetrators shall be understood as: persons who have committed the offense, directly or indirectly, by advising or instigating another to commit it, when their advice has determined the perpetration of the offense; persons who have hindered or sought to hinder the prevention of its execution; persons who have determined the perpetration of the offense and carried it out by using other persons, regardless of whether such persons are liable to be accused, by means of a price, gift, promise, order or any other fraudulent and direct means; persons who have aided in carrying out the offense, in a significant manner, deliberately and intentionally undertaking some act without which the commission of the crime would not have been possible; and those persons who, through physical violence, abuse of authority, threat, or other coercive means, force another to commit the punishable act, even if the force applied for that purpose cannot be characterized as irresistible." ("Se reputan autores los que han perpetrado la infracción, sea de una manera directa e inmediata, sea aconsejando o instigando a otro para que la cometa, cuando el consejo ha determinado la perpetración del delito; los que han impedido o procurado impedir que se evite su ejecución; los que han determinado la perpetración del delito y efectuándolo valiéndose de otras personas, imputables o no imputables, mediante precio, dádiva, promesa, orden o cualquier otro medio fraudulento y directo; los que han coadyuvado a la ejecución, de un modo principal, practicando deliberada e intencionalmente algún acto sin el que no habría podido perpetrarse la infracción; y los que, por violencia física, abuso de autoridad, amenaza u otro medio coercitivo, obligan a otro a cometer el acto punible, aunque no pueda calificarse como irresistible la fuerza empleada con dicho fin"). Available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf

²⁶⁴ Fifteenth Court of Criminal Guarantees of Guayas. Case No. 0457-2011. Judgment of July 20, 2011. Available at: http://www.funcionjudicial-quayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63

²⁶⁵ Provincial Court of Justice of Guayas. Second Criminal Chamber. Notice of Decision. Case No. 0525-2011. September 26, 2011. Available at: http://www.funcionjudicial-quayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63. Copies of the documents are available in the archives of the Office of the Special Rapporteur.

²⁶⁶ Fifth Civil Court. Fifth Court of the Province of Pichincha, File No. 2011-0265. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/pichincha/index.php/consulta-de-procesos>

²⁶⁷ The book *El Gran Hermano* ["Big Brother"] is a journalistic investigation that documents the awarding of million-dollar State contracts to companies linked to Rafael Correa's brother, Fabricio Correa. Hoy. March 17, 2011. *Correa demanda a los periodistas Juan Carlos Calderón y Christian Zurita*. Available at: <http://www.hoy.com.ec/noticias-ecuador/correa-demanda-a-los-periodistas-juan-carlos-calderon-y-christian-zurita-464630.html>; America Economía. March 22, 2011. *Rafael Correa demanda por*
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171. In 2008, journalist Freddy Aponte was convicted of criminal defamation for having called the mayor of Loja a “thief.” Aponte served a six-month prison sentence, but stated that he did not have the US \$55,000 he was supposed to pay as compensation. In August of 2011 he was convicted by a trial court and sentenced to five years in prison for the offense of “fraudulent insolvency.” At the time of this writing, the case was on appeal. The journalist has reiterated that he does not have the funds to pay the compensation. This is one of several cases that the mayor of Loja has brought against Aponte in recent years.²⁶⁸

172. The Office of the Special Rapporteur learned of a criminal case alleging defamation offenses [*injurias calumniosas y no calumniosas graves*] brought by prosecutor Gloria Alexandra Bravo Cedeño against journalists and media executives Pedro Eduardo Zambrano Lapentti, José Childerico Cevallos Caicedo, Paúl Julio Jefferson Bernal, Freddy Antonio Solórzano Catagua, Evelina Amarilis Zambrano Vera, and attorney Edison Nevi Cevallos Moreira.²⁶⁹ The media outlets allege that the defendants limited themselves to repeating the complaint or opinion of a private citizen, and that she is the party against whom the accusation should be made.²⁷⁰ On May 14, a group of alleged pro-government sympathizers had verbally assaulted Jaime Ugalde, editor of the media group *Ediasa*, while he was traveling around the town of Portoviejo. According to reports, individuals with banners for the pro-government movement *Alianza País* insulted Ugalde from a pickup truck, while another vehicle blocked his way for several minutes. Moments earlier the president’s Saturday radio program, *Enlace Ciudadano* had been held in the neighboring town of Manta, in which the president expressed his support for Prosecutor Bravo Cedeño’s lawsuit against the journalists and executives of *Ediasa*.²⁷¹

173. According to the information received by the Office of the Special Rapporteur, on November 24 the 14th Court of Criminal Guarantees of Pichincha convicted Mónica Chuji, an indigenous leader and former Secretary of Communications, of the offense of criminal defamation. She was sentenced to one year in prison and ordered to pay a fine of a US \$100,000. The case was based on statements given to the media in which she criticized a public servant, and reportedly stemmed from an interview published in an Ecuadorean newspaper on February 6, 2011, in which Chuji said that Vinicio Alvarado, the Minister of Public Administration, was a “*nouveau riche*” who had gotten rich during his time

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US\$10 millones a dos periodistas ecuatorianos. Available at: <http://www.americaeconomia.com/politica-sociedad/politica/rafael-correa-demanda-por-us10-millones-dos-periodistas-ecuatorianos>; Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

²⁶⁸ IACHR. 2008 Annual Report. OEA/SER.L/V/II. 134 Doc.5. February 25, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 104. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=742&IID=2>; *El Diario EC*. May 2, 2009. *Dos periodistas fueron encarcelados por denunciar casos de corrupción*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/117213-dos-periodistas-fueron-encarcelados-por-denunciar-casos-de-corrupcion/>; Provincial Court of Justice of Loja. Criminal Chamber. Case No. 2010-0641. August 26, 2010. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>; Second Court of Criminal Guarantees of the Superior Court of Justice of Pichincha. Case No. 2011-0010. August 9, 2011. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>; Third Court of Criminal Guarantees of Loja. Case No. 2008-0156. February 17, 2011. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>

²⁶⁹ Eleventh Criminal Court of Manabí. Case No. 13261-2011-0065. Criminal Complaint No. 049-2011. Serious calumnious and non-calumnious defamation. April 29, 2011. Available at: <http://www.funcionjudicial-manabi.gov.ec/index.php/consulta-de-causas>

²⁷⁰ Actualidad. May 13, 2011. *Una fiscal demanda a Ediasa por injurias*. Available at: <http://www.hoy.com.ec/noticias-ecuador/una-fiscal-demanda-a-ediasa-por-injurias-475001.html>; Andean Group for Freedom of Information (EL GALI). June 3, 2011. *Fiscal pide prisión y \$1.5 millones a directivos y periodistas de grupo de medios en Manabí*. Available at: <http://elgali.org/monitoreo/ecuador/fiscal-pide-prision-y-15-millones-periodistas-y-directivos-grupo-medios-manabi>

²⁷¹ Associated Press News Agency. May 14, 2011. *Correa a favor de demanda a tres medios de comunicación del grupo Ediasa*. Available at: <http://www.terra.com.ec/noticias/noticias/act2847832/correa-favor-demanda-tres-medios-comunicacion-grupo-ediasa.html>; Office of the President of Ecuador. May 14, 2011. *Enlace Ciudadano* No. 220, Manta, Manabí. (minute 0:16:10). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=832; Explored. com.ec. May 17, 2011. *Agresión verbal a editor de El Diario*. Available at: <http://www.explored.com.ec/noticias-ecuador/una-agresion-verbal-a-editor-de-el-diario-475702.html>

in government.²⁷² The Office of the Special Rapporteur was informed that, after the judgment was handed down, Minister Alvarado reportedly announced that he had decided to “forgive” Chuji through the concept of a “pardon.”²⁷³ Nevertheless, the indigenous leader reportedly indicated that she would appeal the decision. The Office of the Special Rapporteur was informed that on December 7, 2011, the 14th Court of Guarantees dismissed the case at the request of the plaintiff, rendering moot the sentence and Chuji’s grounds for appeal.²⁷⁴

174. President Correa reportedly requested to lift the legislative immunity of opposition Assemblyman Galo Lara, for purposes of bringing a case against him for criminal defamation. The president’s request allegedly stemmed from a statement broadcast on channel RTU during the 119th legislative session, in which the assemblyman asserted, “There is no agreement for democracy, only for buying consciences, Mr. President; here there is solid opposition to the regime led by Rafael Correa, who commands and protects the corruption from Carondelet.” President Correa accused Lara of having committed the criminal defamation offenses [*injuria calumniosa y no calumniosas*] defined in Articles 489, 490 and 494 of the Criminal Code. Accordingly, he requested—pursuant to Article 128(2) of the constitution—that the National Court of Justice (CNJ) ask the National Assembly for authorization to open a criminal case against the assemblyman. On November 10, the Second Criminal Chamber of the CNJ issued an official letter to Fernando Cordero, President of the National Assembly, requesting to lift Assemblyman Lara’s immunity. A response to the request must be provided at a plenary session of the National Assembly by December 10, 2011. In the event that there is no response by that deadline, it will be understood to have been granted under the terms of Article 128 of the constitution.²⁷⁵ At the time this report went to press, the Special Rapporteur was informed that the National Assembly had denied the request to lift Assemblyman Lara’s immunity.²⁷⁶

²⁷² 14th Court of Criminal Guarantees of Pichincha. Case No. 2011-0350. Judgment of November 24, 2011. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>

²⁷³ El Ciudadano. November 30, 2011. “*Decidimos asumir la valentía de enfrentar a las injurias*”. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=29102:decidimos-asumir-la-valentia-de-enfrentar-las-injurias-&catid=40:actualidad&Itemid=63; El Comercio. November 26, 2011. *Alvarado perdona a Chuji, pero dice que no aceptará más injurias*. Available at: http://www.elcomercio.com/politica/Alvarado-perdona-Chuji-aceptara-injurias_0_597540425.html

²⁷⁴ 14th Court of Criminal Guarantees of Pichincha. Case No. 2011-0350. Judgment of December 7, 2011. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>

²⁷⁵ Constitution of the Republic of Ecuador. October 2008. Available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf

Article 128.- Assembly persons shall enjoy parliamentary immunity from legal proceedings by the National Court of Justice during the performance of their duties; they shall not be held civilly or criminally liable either for the opinions they give or for the decisions or actions they carry out in the performance of their duties, inside or outside the National Assembly.

To file criminal proceedings against an Assembly person, prior authorization from the National Assembly shall be required, except in those cases that are not related to the performance of their duties. If the petition filed by the competent judge requesting authorization for trial proceedings is not answered within a term of thirty (30) days, it shall be construed as granted. During the periods of recess, the time-limits indicated above shall be suspended. Assembly persons can only be arrested and imprisoned in case of a felony or final judgment of conviction [...] (“Las asambleístas y los asambleístas gozarán de fuero de Corte Nacional de Justicia durante el ejercicio de sus funciones; no serán civil ni penalmente responsables por las opiniones que emitan, ni por las decisiones o actos que realicen en el ejercicio de sus funciones, dentro y fuera de la Asamblea Nacional. // Para iniciar causa penal en contra de una asambleísta o de un asambleísta se requerirá autorización previa de la Asamblea Nacional, excepto en los casos que no se encuentren relacionados con el ejercicio de sus funciones. Si la solicitud de la jueza o juez competente en la que pide la autorización para el enjuiciamiento no se contesta en el plazo de treinta días, se entenderá concedida. Durante los períodos de receso se suspenderá el decurso del plazo mencionado. Solo se les podrá privar de libertad en caso de delito flagrante o sentencia ejecutoriada”).

²⁷⁶ El Ciudadano. December 3, 2011. “*Mientras yo sea Presidente, aplicaremos la Ley y defenderemos el Bien Común*”. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=29176:mientras-yo-sea-presidente-aplicaremos-la-ley-y-defenderemos-el-bien-comun&catid=40:actualidad&Itemid=63. Hoy. December 2, 2011. *Correa pide levantar inmunidad a Lara*. Available at: <http://www.hoy.com.ec/noticias-ecuador/noticias-ecuador/correa-pide-levantar-inmunidad-a-lara-518482.html>; ANDES, Official news agency of Ecuador and South Latin America. December 9, 2011. *70 votos evitaron que el legislador Galo Lara responda penalmente por supuesta injurias*. Available at: <http://andes.info.ec/politica/70-votos-evitaron-que-legislador-galo-lara-responda-penalmente-por-supuestas-injurias-119567.html>

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

176. The Inter-American Court has also examined, in specific cases, the disproportionate nature of *desacato* laws and the prosecution of individuals for this offense. For example, in the case of *Palamara Iribarne v. Chile*,²⁷⁷ the Inter-American Court examined the case of a civilian employee of the Chilean Armed Forces who had made critical statements in the media about the operation of the military criminal justice system. As a result, Palamara Iribarne was prosecuted for the offense of *desacato*. In the opinion of the Inter-American Court, in this case "by pressing a charge of contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne's right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The [Inter-American] Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism levelled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression."²⁷⁸

177. In the case of *Tristán Donoso v. Panama*, the Inter-American Court underscored the positive fact that, subsequent to Tristán Donoso's conviction of criminal defamation for speaking out against a high-ranking government figure, Panama did away with penalties for *desacato* and other restrictions on freedom of expression.²⁷⁹

178. In addition, in the case of *Herrera Ulloa*, in its examination of the use of criminal law against persons who express critical opinions or circulate information that implicates the highest-ranking public servants, the Inter-American Court held:

In a democratic society public servants are more exposed to scrutiny and the criticism of the public.²⁸⁰ This different threshold of protection is due to the fact that they have voluntarily exposed themselves to a stricter scrutiny. Their activities go beyond the private sphere to enter the realm of public debate.²⁸¹ This threshold is not based on the nature of the individual, but on the public interest inherent in the actions he performs.²⁸²

²⁷⁷ I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

²⁷⁸ I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 88.

²⁷⁹ I/A Court H.R. *Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 133.

²⁸⁰ See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

²⁸¹ See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

²⁸² See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

179. In the same vein, in the case of *Palamara Iribarne*, the Court found that:

*It is logical and appropriate that statements concerning public officials and other individuals who perform public services are afforded, as set forth in Article 13(2) of the Convention, greater protection, thus allowing some latitude for broad debate, which is essential for the functioning of a truly democratic system.*²⁸³

180. In this respect, in a democratic society, public officials and those who aspire to be public officials have a distinct threshold of protection that exposes them to a greater degree of scrutiny and public criticism. This is justified by the public interest nature of the activities they engage in, as they have exposed themselves voluntarily to heightened scrutiny, and because they have an enormous capacity to call information into question through their power to appeal to the public.²⁸⁴

181. Also, the Inter-American Court has indicated that “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”²⁸⁵

182. In Official Letter No. 05303 from the Office of the Attorney General, which contains the State’s response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011, the Ecuadorean State addressed the scope of the doctrine and the decisions of the Inter-American Court of Human Rights and the Commission within the framework of the new Constitution of 2008. The State begins by indicating that “The Ecuadorean State considers the doctrine and the case law of the Inter-American System to be a secondary source of public international law.” Nevertheless, it indicates that once a State accepts the jurisdiction of the Court, it is required to enforce the Court’s decisions in its particular cases. In this respect, the State highlighted that the Constitutional Court of Ecuador has applied the inter-American case law in multiple judgments as an “auxiliary sources.” In terms of the force and hierarchical status of international human rights standards, the State indicated that “international human rights law, having the same hierarchical status as the Constitution in benefit of the validity of human rights, is applied as a secondary source of international law. In this context, and because the Ecuadorean State has agreed to be bound by the decisions of the Inter-American Court, the Constitution of the Republic, beginning with its preamble, establishes guidelines that guarantee the rights enshrined in the American Convention and confer constitutional status upon the reports and judgments of the Inter-American Commission and the Inter-American Court of Human Rights, respectively.” The State reported that the Constitution of Ecuador establishes expressly that “International human rights instruments enjoy constitutional status insofar as they best favor the full validity of rights [...] they shall be directly and immediately enforced.” The State concluded that the rights enshrined “in international human rights

²⁸³ I/A Court H.R. *Case of Palamara Iribarne*, Judgment of November 22, 2005. Para. 82.

²⁸⁴ I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177. Paras. 86-88; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135. Para. 83; *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73. Para. 69; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74. Paras. 152 & 155; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 83; *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Paras. 125-129; *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 87; *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009 Series C No. 193. Para. 115.

²⁸⁵ I/A Court H.R. *Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

instruments are enforceable against any public servant,” and that public servants “are responsible for implementing the standards of the Inter-American System for the Protection of Human Rights.”²⁸⁶

183. With respect to criminal law provisions that existed prior to the Constitution, such as criminal defamation [*injuria*], the State indicated that Article 289 of the Criminal Code protects people’s right to honor in general. In addition, it maintains that the type of protection of honor and dignity “provided for in the criminal law is set forth in Chapter Six of the Constitution, which establishes the rights to liberty. Those rights are understood as moral integrity; the right of all persons wronged by information disseminated by the media without evidence or based on inaccurate facts, to the appropriate correction, reply, or response, which shall be immediate, mandatory, and free of charge, in the same space or time slot; and the right to honor and to one’s good name. Finally, it establishes that ‘the Law shall protect the image and voice of the individual.’” The State additionally considered that the protection of honor is provided for in general bodies of law, under which those provisions could be subject to (i) constitutional challenge, or (ii) repeal or the enactment of a new body of law by the National Assembly pursuant to Article 52 of the Organic Law on the Legislature.²⁸⁷

184. In reference to the issue of protecting the honor of all citizens from the statements of public servants, the Ecuadorean State indicated that Article 489 of the Criminal Code generally protects the right of all persons to their honor, by establishing the offense of criminal defamation [*injurias*]. However, the State indicated that Article 493 of the Criminal Code establishes special protection when the criminal defamation is directed toward public servants. The State further noted that Title III of the Criminal Code, entitled “crimes against public administration,” provides special protection reserved for the honor of the authorities, and that the articles that are currently the subject of a constitutional challenge before the Constitutional Court are included in this title.²⁸⁸

185. In this respect, the State underscored that “Two constitutional challenges that were consolidated are currently pending before the Constitutional Court of Ecuador [...] seeking to eliminate Articles 230, 231, 232 and 233 of the Criminal Code, which are part of the crimes against public administration.” The State indicated that in this case the Office of the Attorney General, in its capacity as the State’s legal representative, maintained that “in spite of the fact that it does not agree with the plaintiffs’ arguments, it does not object to the elimination of those offenses, while preserving the general protection of the right to honor through the offense of criminal defamation [*injurias*].” The Ecuadorean State concluded that “The criminal laws that protect the honor of public servants could be eliminated through a declaration of unconstitutionality by the Constitutional Court of Ecuador, keeping only those provisions that guarantee the protection of the honor of all citizens in general.”²⁸⁹

C. Presidential broadcasts and government interruptions of news programs

186. According to the information received, mandatory government broadcasts have been ongoing in Ecuador in recent years, in addition to the programs *Enlace Ciudadano* [Citizen Connection] and *Diálogo con el Presidente* [Dialogue with the President].²⁹⁰

²⁸⁶ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 4-7. Available in the Archives of the Office of the Special Rapporteur.

²⁸⁷ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 7-8. Available in the Archives of the Office of the Special Rapporteur.

²⁸⁸ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 10-11. Available in the Archives of the Office of the Special Rapporteur.

²⁸⁹ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 9. Available in the Archives of the Office of the Special Rapporteur.

²⁹⁰ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 224. Available at:

187. During 2011, a new way of employing the power to conduct mandatory presidential broadcasts has been pioneered. As mentioned below, the government has made use of this power to order certain media outlets to publish the government's opinion regarding their editorials or news articles. In effect, according to information received, during 2011 there have been repeated governmental interruptions of critical news programs by presidential radio and television broadcasts that transmit the official message only on the station broadcasting the information or opinion that the government objects to. According to the reports received by the Office of the Special Rapporteur, on January 18, 25, and 31, the government interrupted the signal of the *Teleamazonas* channel to insert messages during the morning program "*Los Desayunos 24 Horas*," hosted by journalist María Josefa Coronel. The presidential broadcasts, which only affected *Teleamazonas*, criticized Coronel's responses to the government messages and her opinions and interviews that questioned the referendum and plebiscite advocated by President Rafael Correa, which sought to make legal and constitutional changes.²⁹¹ On February 10, a presidential speech interrupted the interview and opinion program "*En Contacto Directo*" on the *Ecuavisa* network for ten minutes. According to reports, the guest on the program that day was former President Lucio Gutiérrez, and the message from the government criticized the former president's administration.²⁹² On February 15, a presidential broadcast reportedly interrupted the signals of the *Radio Quito* and *Platinum* radio stations of the *Ecuadoradio* network for 15 minutes, in order to call into question Fabio Chambers, who had been interviewed the previous day by journalist Miguel Rivadeneira. Chambers was the auditor in charge of investigating the contracts entered into between the state and the president's brother, Fabricio Correa. The government message criticized the colloquial tone of the interaction between the journalist and the interviewee.²⁹³ The following day, February 16, the government inserted a message that was nearly 10 minutes long into the news and opinion program on *Radio Democracia* hosted by journalist Gonzalo Rosero, for purposes of refuting opposition assemblyman Galo Lara, who had been interviewed on the show the previous day.²⁹⁴ On February 28 and on March 2, the government reportedly dedicated two other presidential broadcasts—which were only on the *Ecuavisa* station—to refuting remarks made by journalist Alfredo Pinoargote, of the news program "*Contacto Directo*," and an interview conducted on February 27 with the mayor of Guayaquil, Jaime Nebot, in which reforms that were to be approved by the referendum were called into question.²⁹⁵ On March 28, the government disputed journalists Juan Carlos Calderón and Cristian Zurita, authors of the book "*El Gran Hermano*"

...continuation

<http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>; Presentation of César Ricaurte (Fundamedios) at the hearing on the Situation of the Right to Freedom of Expression in Ecuador, held before the IACHR in Washington D.C. on March 23, 2010. The information presented was not disputed by the State.

²⁹¹ Committee to Protect Journalists (CPJ). February 2, 2011. *Gobierno ecuatoriano interrumpe programas para refutar críticas*. Available at: <http://cpi.org/es/2011/02/gobierno-ecuatoriano-interrumpe-programas-para-ref.php>; La República. February 1, 2011. *Ecuador: Gobierno interrumpe programa para criticar a presentadora*. Available at: <http://www.larepublica.pe/01-02-2011/ecuador-gobierno-interrumpe-programa-para-criticar-presentadora>; Government of the Republic of Ecuador. January 31, 2008. *Respuesta a María Josefa Coronel, de Teleamazonas*. Available at: <http://www.youtube.com/watch?v=JH9o5a6H3og>

²⁹² Andean Group for Freedom of Information (EL GALI). February 10. *Cadena interrumpe por casi 10 minutos programa de entrevistas para descalificar a opositor*. Available at: <http://www.elgali.org/monitoreo/ecuador/cadena-interrumpe-casi-diez-minutos-programa-entrevistas-descalificar-opositor>

²⁹³ El Comercio. February 16, 2011. *La señal de Ecuadoradio fue interrumpida*. Available at: http://www4.elcomercio.com/politica/senal-Ecuadoradio-interrumpida_0_428357163.html; Andean Group for Freedom of Information (EL GALI). February 16, 2011. *Dos cadenas de radio interrumpen noticieros de radio para criticar a periodistas y oposición*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-cadenas-gubernamentales-interrumpen-noticieros-radio-criticar-periodistas-y-op>

²⁹⁴ El Comercio. February 17, 2011. *El gobierno no solo interrumpe los noticieros de TV; sigue con la radio*. Available at: http://www.radiocolosal.com/sitio/index.php?option=com_content&view=article&id=7849%3Ael-gobierno-no-solo-interrumpe-los-noticieros-de-tv-sigue-con-la-radio&catid=37%3Anacionales&Itemid=1; Andean Group for Freedom of Information (EL GALI). February 16, 2011. *Dos cadenas de radio interrumpen noticieros de radio para criticar*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-cadenas-gubernamentales-interrumpen-noticieros-radio-criticar-periodistas-y-op>

²⁹⁵ Ecuador Inmediato. March 1, 2011. *Alfredo Pinoargote se ratifica en críticas al gobierno y lo responsabiliza de la inseguridad*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=144774&umt=Alfredo%20Pinoargote%20se%20ratifica%20en%20cr%EDticas%20al%20Gobierno%20y%20lo%20responsabiliza%20de%20la%20inseguridad

["*Big Brother*"] on a national television network. According to the information received, the official message denied that President Rafael Correa had any knowledge of the contracts that his brother Fabricio had been awarded by the state. The broadcasts stressed that the journalists should retract their assertions.²⁹⁶ That same day, the journalists presented the second edition of their book and dismissed the possibility of any retraction.²⁹⁷ On April 3, the government aired a second official broadcast related to the same issue.²⁹⁸

188. The government had also reportedly warned the *Ecuavisa* network that it was risking sanctions for having displayed the text "*Government Broadcast*" while an official message was being broadcast on February 17. According to the information received, National Communications Secretary Fernando Alvarado sent a note to Fabián Jaramillo, the Superintendent of Telecommunications, in which he indicated that the station had "*arbitrarily*" altered the content of the government message by including that text since, according to Alvarado, licensees of state broadcasting frequencies are required to air the messages in their entirety, without altering, editing, or modifying in any way the audiovisual materials delivered to them. According to reports, the station's executives agreed to rebroadcast the message without any alteration.²⁹⁹

189. According to the information received by the Office of the Special Rapporteur, on June 29, 2011 the program "*La Mañana en 24 Horas*" on the *Telemazonas* television station was interrupted by a national broadcast link-up directed at that channel only. In it, the program's interviewer, Jeannette Hinostroza, was accused of having a conflict of interest because she interviewed Assemblyman Galo Lara, who had denounced irregularities in the Ministry of Economic and Social Inclusion concerning life insurance and the non-payment of a "human development" bonus to beneficiaries. The 12-minute link-up disparaged the interviewer because her husband's father was the owner of an insurance company, and it attempted to discredit the assemblyman for having been named a defendant in some lawsuits.³⁰⁰

190. At the public hearing held on October 25, 2011 at the IACHR, the government of the Republic of Ecuador indicated that it is respectful of freedom of expression, but not of the right to make false accusations, lie, or offend, which it would respond to under the laws currently in force. The state indicated that during President Correa's administration the number of Internet users has doubled, and an increase in the allocation of frequencies has been verified. It further emphasized that the government's decision to create public media has reportedly become a threat to the large media outlets, which have used every possible resource to combat this state decision. Moreover, the state asserted that in Ecuador

²⁹⁶ Government of the Republic of Ecuador. March 28, 2011. *Los autores del libro El Gran Hermano mienten*. Available at: <http://www.youtube.com/watch?v=MfoZQJ4PPws>; Expreso/Ecuador Inmediato. March 28, 2011. *Fabricio Correa se salvó de ser demandado*. Available at: [http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=146580&umt=EXPRESO%20\(Guayaquil\)%20Fabricio%20Correa%20se%20salv%20de%20ser%20demandado](http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=146580&umt=EXPRESO%20(Guayaquil)%20Fabricio%20Correa%20se%20salv%20de%20ser%20demandado)

²⁹⁷ Entérate Ecuador. March 28, 2011. *Periodistas Calderón y Zurita no se retractan. Presentan la segunda edición del libro El Gran Hermano*. Available at: <http://www.enterateecuador.com/frontEnd/main.php?idSeccion=47598>

²⁹⁸ Fundamedios. April 4, 2011. *Gobierno dedica otra cadena para interrumpir y criticar a su presentadora*. Available at: http://www.facebook.com/note.php?note_id=10150147116452027

²⁹⁹ Enlace Ecuador/El Comercio. *Críticas por investigación a Ecuavisa*. Available at: <http://www.enlaceecuador.com/component/content/article/10798-el-comercio-criticas-por-investigacion-a-ecuavisa.html>; El Comercio.com. May 20, 2011. *Conatel abre expediente contra Ecuavisa por presuntamente no transmitir cadenas*. Available at: http://www.elcomercio.com/politica/Ecuavisa-medios_de_comunicacion-Secretaria_de_Comunicacion-Ecuador-cadenas_presidenciales_0_484151672.html

³⁰⁰ Andean Group for Freedom of Information (EL GALI). June 30, 2011. *Gobierno Interrumpe Programa de Entrevistas y Descalifica a su Entrevistadora*. Available at: <http://www.elgali.org/monitoreo/ecuador/gobierno-interrumpe-programa-entrevistas-y-descalifica-su-entrevistadora>; International Freedom of Expression Exchange (IFEX). August 10, 2011. *Presidente de la república insta a legisladores a que enjuicien a periodista*. Available at: http://www.ifex.org/ecuador/2011/08/10/hinostroza_harassed/es/; Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

prior censorship does not come from the state but rather from the media owners themselves toward their own journalists.³⁰¹

191. For its part, Fundamedios indicated at that hearing that journalists and the media both have been subject to constant disparagement, insults, accusations, and stigmatizing speech from high-ranking government officials, and particularly by the head of state. It stated that most of the attacks come from public servants through their use of stigmatizing speech, as well as administrative, legislative, and judicial decisions.³⁰²

192. After the hearing, the government issued at least two official speeches on radio and television questioning the people who had participated in the hearing, particularly about Cesar Ricaurte, the director of the organization Fundamedios.³⁰³

193. On November 3, 2011, the Inter-American Commission on Human Rights requested information from the State of Ecuador with respect to the aforementioned state's radio and television broadcasting. In particular, the IACHR requested information about alleged offensive, stigmatizing, and threatening messages conveyed through social networks against the representatives of the organization Fundamedios.³⁰⁴

194. The state sent its response to the request for information on November 18, 2011. In that response, the state made some clarifications about the situation of the media in Ecuador, and answered the questions posed by the IACHR. The State indicated that there are significant private media powers in Ecuador that act against the government and manipulate freedom of expression in the country. It stressed that the greatest concentration of media is found in the private sector and that those private media "are aligned with Fundamedios." Additionally, the state considered that "freedom of expression is in a troubled state in the Republic of Ecuador," and therefore limitations should be placed not on public servants, but rather on the "private media that misinform, lie, and restrict freedoms, since they represent important national and international sectors that seek to destabilize democracy in the country."³⁰⁵

195. In response to the IACHR's questions, the state maintained that the purpose of the presidential speech aired on November 1, 2011—which referred to Fundamedios Director César Ricaurte—was to properly inform the Ecuadorean public about events that are not published in the privately-owned media. The state alleged that the private media impose a kind of media censorship that prevents the Government from adequately communicating matters of public interest. It emphasized that broadcasting mandatory presidential speeches is a power granted to the state under Article 59 of the Broadcasting and Television Act to report on the activities of government bodies—in this case, the activities surrounding the visit of several public servants to the October 25, 2011 hearing at the IACHR and the arguments made at the hearing. The state also indicated that the speech was aired in accordance with the requirements of the regulations to the Broadcasting and Television Act, stressing

³⁰¹ IACHR. 143rd Period of Sessions. October 25, 2011. *Public hearing on the Situation of the Right to Freedom of Expression in Ecuador*. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

³⁰² IACHR. 143rd Period of Sessions. October 25, 2011. *Public hearing on the Situation of the Right to Freedom of Expression in Ecuador*. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

³⁰³ Statement of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVbQs&feature=related>; Hora. December 19, 2011. *Más de 100 minutos en un mes solo para las cadenas*. Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101253770>

³⁰⁴ Inter-American Commission on Human Rights. November 3, 2011. Request for information addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. IACHR archives.

³⁰⁵ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

that such broadcasts are not limited in duration when they are requested by the President of the Republic.³⁰⁶

196. With respect to the verification of the information broadcast in the presidential speech and the possibility of recourse for affected parties to dispute the statements made in such broadcasts, the state indicated that the presidential broadcasts are informational forums in which no accusations of any kind are made, and that they contain “completely objective” facts with clearly verifiable sources. As such, in the state’s opinion, it was not appropriate to request “a forum for clarifications within the same compulsory programming system.” Nevertheless, the state indicated that “it has made corrections to its official programming, as requested under the protection of Ecuadorean law, when the information aired has been inaccurate, and it is willing to do so at any time.”³⁰⁷

197. The Office of the Special Rapporteur is grateful to the State of Ecuador and to the civil society organizations for the information they submitted, and once again it acknowledges the importance granted to the October 25 hearing, which was attended by high-ranking officials of the Ecuadorean State.

198. In addition, the Office of the Special Rapporteur has acknowledged the authority of the President of the Republic and other high-ranking government officials to use the media for purposes of informing the public of significant issues of public interest that must be reported urgently through the independent media. Indeed, the Inter-American Court has held that “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”³⁰⁸

199. Nevertheless, the exercise of this authority is not absolute. The information that governments transmit to their citizens through mandatory presidential broadcasts must be strictly necessary in order to address an urgent need for information regarding issues of clear and genuine public interest. They must be aired for the period of time strictly necessary for the conveyance of such information. In this respect, both the IACHR and its Office of the Special Rapporteur,³⁰⁹ as well as some national bodies of States parties to the American Convention, applying international standards, have indicated that “not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.” Principle 5 of the Declaration of Principles explicitly establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”³¹⁰

³⁰⁶ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

³⁰⁷ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

³⁰⁸ I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182 para. 131; IACHR. 2008 Annual Report. Volume II: 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: *Inter-American Legal Framework of the Right to Freedom of Expression.* Para. 202. OEA/Ser.LV/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008sp/INFORME%20ANUAL%20RELE%202008.pdf>

³⁰⁹ CIDH. *Report on the Situation of Human Rights in Venezuela.* Para. 487. OEA/Ser.LV/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm>

³¹⁰ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 226. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>

200. The Office of the Special Rapporteur also recalls, as the Inter-American Court of Human Rights has established, that state authorities are not only justified in speaking out on matters of public interest but also have the duty to do so on certain occasions. However, in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based. It must do so with a greater degree of diligence than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public servants, they are guarantors of the fundamental rights of the individual and, therefore, their statements cannot disregard such rights.³¹¹ This duty of special care is particularly heightened in situations involving major social conflict, public disturbances, or social or political polarization, precisely because of the risks entailed for certain people or groups at a given time.³¹²

201. The Inter-American Court has also held that risky situations can be exacerbated if they are “the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”³¹³

D. Disparaging Statements

202. The Office of the Special Rapporteur learned of several disparaging statements made by senior state authorities against media outlets and reporters critical of the government. According to the information received by the Office of the Special Rapporteur, these statements are common. Some examples are cited below. According to reports, on February 2, during a discussion held with the press at the Carondelet Palace, President Rafael Correa characterized the *Teleamazonas* television channel as a “corrupt” station because of the manner in which it had expressed its opposition to the referendum called by the government. In response to a question posed by the journalist who was interviewing him, the president reportedly stated: “(...) no doubt, there is a corrupt press. And if the shoe fits, wear it! And a large part of that corruption is at *Teleamazonas*.”³¹⁴

203. On February 12, during his Saturday program *Enlace Ciudadano*, President Rafael Correa reportedly characterized media outlets critical of his administration as “assassins of ink.”³¹⁵ On February 28, Communications Minister Fernando Alvarado repeated the same description when calling into question articles published by various critical media.³¹⁶ On another edition of *Enlace Ciudadano*, on February 26, President Correa reportedly reiterated his stigmatizing remarks by calling critical journalists and media outlets “corrupt,” “sensationalist,” and “manipulative,” and stated that the newspaper *El*

³¹¹ I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182. Para. 131.

³¹² I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 195. Para. 151.

³¹³ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 194. Para. 143.

³¹⁴ Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión.* Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

³¹⁵ On this same occasion, defending two of his ministers in an alleged corruption case, the president reportedly stated: “The corrupt ones are not in the citizens’ revolution; the corrupt ones are in the press. The shameless crooks that have always wanted to run this country.” Office of the President of the Republic of Ecuador. February 12, 2011. *Enlace Ciudadano 208.* Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=showdown&id=788

³¹⁶ Hoy. March 1, 2011. *Alvarado emula a Correa y ataca a la prensa.* Available at: <http://www.hoy.com.ec/noticias-ecuador/alvarado-emula-a-correa-y-ataca-a-la-prensa-461420.html>; *El Ciudadano*. February 28, 2011. “*En el país hay 99,9% de periodistas decentes y honestos.*” Available at http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=21873:fernando-alvarado-gen-el-pais-hay-999-de-periodistas-decentes-y-honestosq&catid=2:politica&Itemid=43

Universo is a “conspiratorial” and “irresponsible” newspaper after it published information on possible changes to the police structure.³¹⁷ One week later, according to reports, the president reportedly called several private media outlets “manipulators,” “mediocre,” “corrupt,” “conspiratorial,” and “hit men with ink.”³¹⁸ He reportedly repeated similar expressions on the *Enlace Ciudadano* of July 2, 2011.³¹⁹

204. The information received also notes multiple statements against non-governmental organizations critical of the government. According to that information, on the program *Enlace Ciudadano* on June 25, President Correa alleged that two nongovernmental human rights organizations (*Fundamedios* and *Participación Ciudadana*) receive financing from USAID, implying that they serve the interests of others.³²⁰ *Fundamedios* has maintained that there are no limitations on the financing of NGOs with international funds, that these kinds of statements are intended to be disparaging, and that in any case, it has not received such support.³²¹ According to the information received, on June 28, 2011, Communications Secretary Fernando Alvarado issued an “Open Letter to Fundamedios,” which was reprinted by various newspapers around the country, stressing that the actions of this non-governmental organization—which are limited to reporting events relating to issues of freedom of expression, and the content of which has not been refuted by the authorities—more closely resembled “political strategies and military tactics designed to create confusion or promote public opinion trends favorable to the interests of some of its financial backers.” It further indicated that the institution “receives direct funding from USAID” and from the National Endowment for Democracy (NED).³²² Likewise, the state-owned newspaper *El Telégrafo* announced that journalist Emilio Palacio and the executive director of *Fundamedios*, Cesar Ricaurte, had taken part in an event in Washington organized by the NED, an entity that—according to the newspaper—is tied to the CIA.³²³

205. In relation to these events, the Office of the Special Rapporteur expresses its concern over the statements of public servants that could stigmatize journalists, media outlets, or nongovernmental organizations that publicize information critical of the state’s actions. In this respect, public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, media outlets, and human rights defense organizations. They must also bear in mind the context in which they express themselves, in order to ensure that their statements do not amount to, in the words of the Court, “a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of [their] thought.”³²⁴

³¹⁷ Office of the President of the Republic of Ecuador. February 26, 2011. *Enlace Ciudadano* 210. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=select&id=169; *El Ciudadano*. February 26, 2011. *Presidente Correa pide a policías judiciales cuidarse de mentiras de diario El Universo*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=21834:presidente-correa-pide-a-policias-judiciales-cuidarse-de-mentiras-de-diario-el-universo&catid=40:actualidad&Itemid=63; Instituto Prensa y Sociedad (IPYS). March 1, 2011. *Rafael Correa acusa al diario de conspirador*. Available at: <http://www.ipys.org/index.php?q=alerta/344>

³¹⁸ Knight Center for Journalism in the Americas. March 9, 2011. *Presidente de Ecuador arrecia críticas contra la prensa en medio de crecientes denuncias de censura*. Available at: <http://knightcenter.utexas.edu/es/blog/presidente-de-ecuador-arrecia-criticas-contra-la-prensa-en-medio-de-crecientes-denuncias-de-cen>; HispanTV. March 5, 2011. *Correa censura la tergiversación de la prensa*. Available at: <http://www.hispantv.com/Detail.aspx?id=150772>

³¹⁹ Office of the President of the Republic of Ecuador. July 2, 2011. *Enlace Ciudadano* 227. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=918

³²⁰ Office of the President of Ecuador. June 25, 2011. *Enlace Ciudadano* No 226, Quito-Pichincha. (minute 0:33:40). Available at: http://www.presidencia.gov.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=917

³²¹ Fundamedios. June 25, 2011. *Fundamedios ante las declaraciones del Presidente Correa sobre su Financiamiento*. Available at: http://www.facebook.com/note.php?note_id=10150217208582027

³²² Fernando Alvarado Esquivel. June 28, 2011. *Carta abierta a Fundamedios*. Available at: <http://www.fernandoalvaradoespinel.com/?p=368>

³²³ *El Telégrafo*. June 29, 2011. *Palacio y Ricaurte disertan en entidad vinculada a la CIA*. Available at: http://www.eltelegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=8223&Itemid=2

³²⁴ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 139; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

206. As the Office of the Special Rapporteur has stated on prior occasions, diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.³²⁵

E. Constitutional amendment and legislative proposals

207. During 2010, the government advanced a legislative reform bill that had as one of its main objectives the creation of an administrative body with jurisdiction to regulate the content of all media, establish the grounds for liability and the applicable sanctions, and serve as an authority on enforcement of said laws. The Office of the Special Rapporteur intervened on two occasions to point out the problems raised by this bill. President Rafael Correa decided to include a question on this issue in the referendum held on May 7, 2011. He also decided to include in that referendum a question aimed at barring the directors, owners, or shareholders of media outlets from having financial interests in any other sector of the economy besides communications. The questions in the popular referendum related to freedom of expression were as follows:

*Question 3. Do you agree with prohibiting private financial institutions, as well as national private communications companies, their directors, and main shareholders, from being owners or shareholders of companies outside the financial or communications fields, respectively, amending the Constitution as established in attachment 3?*³²⁶

*Question 9. Do you agree with having the National Assembly, without delay, within the period of time set forth in the Organic Law on the Legislature, issue a Communications Act creating a Regulatory Council to regulate the dissemination of television, radio, and print media content containing messages that are violent, explicitly sexual, or discriminatory, and establishing criteria for the subsequent imposition of liability against the issuing media or journalists?*³²⁷

208. After the votes were counted, the questions obtained a majority of 47,187% and 44,964%, respectively, against a minority of 41,886% and 42,044%, respectively.³²⁸

³²⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 207. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>

³²⁶ According to Schedule 3 to Question 3 of the Referendum, Article 312 of the Constitution of Ecuador would be amended to read: "The institutions of the private financial system, as well as private national communications companies, their board members and principal shareholders, may not hold, directly or indirectly, shares or interests in companies unrelated to the financial or communications business, as the case may be. The respective oversight bodies shall be in charge of regulating this provision." ("Las instituciones del sistema financiero privado, así como las empresas privadas de comunicación de carácter nacional, sus directores y principales accionistas, no podrán ser titulares, directa ni indirectamente, de acciones y participaciones, en empresas ajenas a la actividad financiera o comunicacional, según el caso. Los respectivos organismos de control serán los encargados de regular esta disposición"). In addition, the twenty-ninth transitional provision of the Constitution shall read as follows: "The shares or interests held by institutions of the private financial system, as well as private national communications companies, their board members and principal shareholders, in companies not related to the sectors in which they participate, shall be alienated within one year of the enactment of this amendment by referendum." (Las acciones y participaciones que posean las instituciones del sistema financiero privado, así como las empresas de comunicación privadas de carácter nacional, sus directores y principales accionistas, en empresas distintas al sector en que participan, se enajenarán en el plazo de un año contado a partir de la aprobación de esta reforma en referendo"). Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

³²⁷ Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

³²⁸ National Electoral Council. *Resultados Votación Total*. Available at: <http://app2.cne.gob.ec/resultados/resultadosn.aspx?prv=0>. With regard to question 3: 5,226% of the ballots were blank and 5,701% were invalid, and with respect to question 9: 7,73% of the ballots were blank and 5,262% were invalid.

209. The Office of the Special Rapporteur provided its opinion regarding the pending draft Communications Law on three occasions through letters to the National Assembly.³²⁹ The points addressed by the Office of the Special Rapporteur are still under debate. Among other issues, the Office of the Special Rapporteur indicated that the establishment of a media registry without any distinctions, in which “the medium’s editorial line” must be registered, could constitute an excessive and unnecessary requirement that could have disproportionate effects on certain media and a chilling effect on certain speech. The registration of “editorial and news policies,” as the Office of the Special Rapporteur stated, could give rise to a similar effect.

210. The Office of the Special Rapporteur also found that the grounds for liability provided in the bill are drafted in ambiguous terms that refer to conduct to which it would be particularly difficult to apply the elements of the criminal offense. This grants excessive discretion to the body in charge of enforcing these provisions (the Communication and Information Council), which could be incompatible with the American Convention.³³⁰

211. Furthermore, the Office of the Special Rapporteur has called attention to the fact that the single punitive administrative system in the draft bill covers all media, without making relevant distinctions. In particular, what is lawful in the limited sphere of broadcasting given the use of a public good such as open radio and television frequencies, may not be lawful when applied to subscriber-based television, the written press in general, specialized print media, or the Internet.³³¹ In this respect, the Office of the Special Rapporteur has recalled that only in the case of radio spectrum regulatory authorities is it admissible to establish administrative oversight over the exercise of some aspects of freedom of expression. Additionally, the Office of the Special Rapporteur has indicated that in any case it must be an administrative authority that is fully independent and autonomous, and its punitive powers must be limited to the exercise of police powers for the irregular use of frequencies granted. It must also meet all of the due process requirements inherent in every punitive system, including the opportunity for judicial review.³³²

212. With respect to penalties, the Office of the Special Rapporteur has maintained that the imposition of a penalty for the abuse of freedom of expression or the satisfaction of the right of correction is the responsibility of judges. Nevertheless, in certain cases, as previously stated, media that use frequencies on the electromagnetic spectrum can be subject to administrative controls for the misuse of those frequencies. In any case, when this occurs, the media have the right to an effective judicial remedy for the review of the administrative decision.

213. At the time of this writing, the National Assembly of the Republic of Ecuador was debating the draft Communications Law.

214. In addition, according to the information received by this Rapporteurship, on October 14, 2011, the President of the Republic introduced two new legislative bills to the Ecuadorean National Assembly for its consideration: the draft of the Telecommunications and Postal Services Act, and the draft

³²⁹ See: Communications from the Office of the Special Rapporteur to the National Assembly of Ecuador dated December 8, 2009 and August 10, 2010. Available in the archives of the Office of the Special Rapporteur.

³³⁰ The Office of the Special Rapporteur has called attention, for example, to the obligations to differentiate between opinion and news (Article 28), not to disseminate information “without proof” (Article 20), and not to publish information that “[...] endangers human rights” (Article 102 g).

³³¹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=849&IID=2>

³³² See IACHR. 2009 Annual Report. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). Paras. 50 *et seq.* Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

of the Comprehensive Criminal Code Act. At the time of this writing, those bills had not yet been debated in the Assembly. According to the information received, the bills have reportedly heightened the tension between the President of the Republic and the media.³³³

215. In its 2009 and 2010 Annual Reports, the Office of the Special Rapporteur had congratulated the government of Ecuador on the drafting of a Criminal Code initiative “that would eliminate, *inter alia*, the offenses of insulting public servants, *desacato*, and certain types of defamation [*injuria*].³³⁴ The Office of the Special Rapporteur considered this positive development as an initiative that takes account of the inter-American doctrine and case law on the criminal offense of *desacato*.³³⁵

216. The Office of the Special Rapporteur takes a positive view of the fact that the recently introduced draft of the Comprehensive Criminal Code Act establishes penalties for those public servants who arbitrarily infringe upon freedom of expression.³³⁶ However, the draft of the Comprehensive Criminal Code Act prescribes prison terms of up to 3 years for persons who make accusations against authorities that amount to calumnious and non-calumnious defamation [*injurias calumniosas o no calumniosas*];³³⁷ it prohibits the defense of *exceptio veritatis*;³³⁸ and it imposes criminal liability against foreign authors or

³³³ National Assembly of the Republic of Ecuador. Legislative Bills. Available for consultation at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf; CONATEL/SENATEL. October 14, 2011. *Proyecto de Ley de Telecomunicaciones y Servicios Postales*. Available at: http://www.conatel.gob.ec/site_conatel/files/leyes/Proyecto%20de%20Ley%20Org%C3%A1nica%20de%20Telecomunicaciones%20y%20de%20Servicios%20Postales2011.pdf; BBC Mundo. October 29, 2011. *Ecuador: nuevos proyectos de ley avivan pugna entre Correa y los medios*. Available at: http://www.bbc.co.uk/mundo/noticias/2011/10/111028_ecuador_ley_telecomunicaciones_aa.shtml

³³⁴ Communication delivered on November 17, 2009 by the State to the Office of the Special Rapporteur for Freedom of Expression. Note 4-2-321/2009; Ministry of Justice and Human Rights. November 19, 2009. *Anteproyecto de Código Orgánico de Garantías Penales. Borrador para discusión*. Available at: http://www.minjusticia-ddhh.gov.ec/index.php?option=com_content&task=view&id=305&Itemid=210%20target=

³³⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II. Para. 199. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>

³³⁶ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 91.- *Violation of freedom of expression and worship*.- Any public or private authority that, through arbitrary or violent means, restricts the free expression of thought shall be punished by a term of imprisonment ranging from three to five years” (“La autoridad pública o privada que por medios arbitrarios o violentos, coartare la facultad de expresar libremente el pensamiento, será sancionada con pena privativa de libertad de tres a cinco años”).

³³⁷ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 119.- *Calumnious accusations against an authority*.- Any person who makes accusations against an authority that constitute calumnious defamation shall be punished by a term of imprisonment ranging from one to three years, and a fine ranging from one to ten times the general minimum monthly wage.

If the accusations against the authority constitute serious, but non-calumnious defamation, the term of imprisonment shall range from six months to two years, and the fine shall range from one to ten times the general minimum monthly wage” (Serán reprimidos con pena privativa de libertad de uno a tres años y multa de una a diez remuneraciones básicas unificadas del trabajador privado en general, los que hubieren dirigido a la autoridad imputaciones que constituyan injuria calumniosa.// Si las imputaciones hechas a la autoridad constituyeren injurias no calumniosas, pero graves, las penas privativas de libertad serán de seis meses a dos años y multa de una a diez remuneraciones básicas unificadas del trabajador privado en general”).

³³⁸ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

facilitators of “defamatory” articles that are reprinted in Ecuador,³³⁹ as well as against those responsible for publishing or reprinting such information,³⁴⁰ among other provisions. In contrast to the current proposed bill, the previously drafted provisions were consistent with the Inter-American standards on freedom of expression and would prevent the occurrence of some of the acts reported herein.³⁴¹

217. In its response to the to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011, the Ecuadorean State addressed the concern that individuals who offend the honor of a public servant could be prosecuted under the regulations to the new draft Comprehensive Criminal Code. The State indicated that it could not make a conclusive statement on the issue, as it dealt with a bill introduced to the legislature that “is not binding in nature, and does not give rise to rights or obligations for or against any person; nor is it even a mere expectation, given that the content of a law can change substantially in the debate process.” The State emphasized that “Any provision enacted following the appropriate procedures will be consistent with a reading of the Ecuadorian legal system as a whole.”³⁴²

F. Communications Media

218. According to the information provided to the Office of the Special Rapporteur, on April 3 police officers in the town of Macas, in the province of Morona-Santiago, closed the radio station *La Voz de la Esmeralda Oriental Canela*, cutting cables and confiscating transmission equipment in compliance with a shutdown order from the National Council of Telecommunications (CONATEL). Since September, CONATEL had refused to renew the license for the frequency on which the station was operating, awarded ten years earlier, alleging noncompliance with technical requirements.³⁴³ The owner of the

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“Article 123.- *Inadmissibility of evidence.*- In the case of a defendant charged with non-calumnious defamation, evidence of the truth of the accusations shall not be admissible” (“Al acusado de injuria no calumniosa, no se admitirá prueba sobre la verdad de las imputaciones”).

³³⁹ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 124.- *Defamation published abroad.*- Defamatory statements, whether calumnious or not, published in foreign media may result in the prosecution of the persons who send such articles, or order their placement, or contribute to the introduction or distribution of such media in Ecuador” (“Las injurias, calumniosas o no, publicadas en órganos de publicidad del extranjero, podrán ser perseguidas contra las personas que hubieren enviado los artículos o la orden de insertarlos, o contribuido a la introducción o a la distribución de tales órganos en el Ecuador”).

³⁴⁰ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 125.- *Reproduction of defamatory publications.*- Persons who reproduce defamatory articles, images, or symbols, are also liable for defamation in any of its forms. Neither in this case, nor in the case of the previous article, may it be alleged as grounds for justification or excuse that such articles, images, or symbols are only reproductions of publications made in Ecuador or abroad” (“Son también responsables de injurias, en cualquiera de sus clases, los reproductores de artículos, imágenes o emblemas injuriosos, sin que en este caso, ni en el del artículo anterior, pueda alegarse como causa de justificación o excusa que dichos artículos, imágenes o emblemas no son otra cosa que la reproducción de publicaciones hechas en el Ecuador o en el extranjero”).

³⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II. Para. 199. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20Abril.pdf>; IACHR. 2009 Annual Report. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 190. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

³⁴² Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 9-10. Available in the Archives of the Office of the Special Rapporteur.

³⁴³ Article 9 of the Law of Radio and Television of Ecuador establishes that “the concesión of the same channel or channels will be renewable successively for the same periods without other requirements apart from the confirmation of the

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station, Wilson Cabrera, maintained that the shutdown occurred while an appeal was still pending, without any prior notice and based on incorrect grounds by CONATEL.³⁴⁴

219. In public statements, the State indicated that it made the decision not to renew the license of the radio station “due to the fact that in administrative proceedings against these stations, the recommendations of the Comptroller General were not heeded” and emphasized that “when the station was inspected, it was operating within the parameters authorized in the contract, and it was considered that its activities were being carried out in observance of the Law and Regulations; however, in the administrative proceedings brought against this station from 2000 to 2010, various sanctions were discovered for failure to comply with the recommendations made by the Comptroller General in the general report of the National Council of Radio Broadcasting and Television, which are binding upon public entities.”³⁴⁵ In particular, in its Resolution No. RTV-545-17-CONATEL-2010,³⁴⁶ CONATEL decided not to renew the concesión “for having operated a radio station without the required authorization from a competent authority in application of the observations of the Comptroller General of the State [...] and Article 11(c) of the General Regulations to the Law of Radio Broadcasting and Television³⁴⁷; and in compliance with Article 67(a) of the Law of Radio Broadcasting and Television³⁴⁸ and to declare that the

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Superintendent of Telecommunications, based on the regular technical and administrative controls that it applies, to ensure that the station carries out its activities in observance of the Law and its regulations. To obtain this renewal it is not necessary to enter into a new contract. The Superintendent cannot suspend the operation of the station during this process.” (“concesión será renovable sucesivamente con el o los mismos canales y por períodos iguales, sin otro requisitos que la comprobación por la Superintendencia de Telecomunicaciones, en base a los controles técnicos y administrativos regulares que lleve, de que la estación realiza sus actividades con observancia de la Ley y los reglamentos. Para esta renovación no será necesaria, la celebración de nuevo contrato. La Superintendencia no podrá suspender el funcionamiento de la estación durante este trámite”). Nevertheless, the law does not establish the technical and administrative requirements that should be observed, and these are set out in broad and ambiguous terms. Similarly, in this case, the procedures established in Article 71 of the same law, regarding the imposition of sanctions, were not observed. Among these procedures is the minimum guarantee that “the Superintendent will give prior notice to the concession holder, letting the person know of any infractions received, in order that the holder may present proof that the law has been followed within a period of eight days.” (“la Superintendencia notificará previamente al concesionario haciéndole conocer la falta o faltas en que hubiere incurrido, para que, en el término de ocho días, presente las pruebas de descargo que la Ley le faculta”). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

³⁴⁴ Committee to Protect Journalists (CPJ). April 5, 2011. *El CPJ condena clausura de radio provincial en Ecuador*. Available at: <http://cpj.org/es/2011/04/el-cpj-condena-clausura-de-radio-provincial-en-ecu.php>; Hoy. April 5, 2011. *Equipos de Radio Canela son incautados*. Available at: <http://www.hoy.com.ec/noticias-ecuador/la-radio-canela-de-macas-fue-clausurada-467947.html>; Reporters Without Borders. April 5, 2011. *La radio La Voz de la Esmeralda condenada al silencio: “una agresiva medida cuyos motivos son poco claros”*. Available at: http://es.rsf.org/ecuador-el-cierre-de-una-emisora-urge-a-07-01-2011_39250.html

³⁴⁵ National Assembly of the Republic of Ecuador. October 19, 2011. *Superintendente de Telecomunicaciones explicó sanciones a ciertas radios se debió a que incumplieron recomendaciones de la Contraloría*. Available at: <http://asambleanacional.gov.ec/201110196632/noticias/boletines/superintendente-de-telecomunicaciones-explico-sanciones-a-ciertas-radios-se-debio-a-que-incumplieron-recomendaciones-de-la-contraloria.html>

³⁴⁶ National Council of Telecommunications (CONATEL). Resolución RTV-545-17-CONATEL-2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=845:resoluciones-julio-septiembre-2010&catid=243:resoluciones-2010&Itemid=201

³⁴⁷ Article 11: “Without prejudice to Article 10 of the Law of Radio and Television Frequency, radio and television frequencies will not be granted in the following cases: c) to natural or legal persons who have established radio or television frequencies without prior authorization from CONATEL or the Superintendent of Telecommunications.” (Sin perjuicio a lo establecido en el Art. 10 de la Ley de Radiodifusión y Televisión no se concederá frecuencias de radiodifusión o televisión, en los siguientes casos: c) A personas naturales o jurídicas que sin autorización del CONATEL o de la Superintendencia de Telecomunicaciones, hayan puesto en funcionamiento estaciones de radiodifusión o televisión”). General Regulations for the Law of Radio and Television Frequencies. Decree No. 3398. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

³⁴⁸ Article 67(a) of the Law of Radio and Television Frequencies states that the “concesión of a channel or frequency for the installation and operation of a radio or televisión station ends: a) When the term of the concesión has expired, Nules the concesión holder has a right to renewal, in the terms of this Law” (“concesión de canal o frecuencia para la instalación y funcionamiento de una estación de radiodifusión y televisión, termina: a) Por vencimiento del plazo de la concesión, salvo que el concesionario tenga derecho a su renovación, de acuerdo con esta Ley”). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

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concession has ended because the period of its contract has expired [footnotes are not original].” CONATEL later dismissed the extraordinary motion for reconsideration that was filed to challenge this decision.³⁴⁹

220. The Office of the Special Rapporteur reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision.³⁵⁰ In this same respect, it is appropriate to recall that “The criteria that should guide the assignation of licenses must be clearly and precisely provided for in the relevant laws, in such a way as to protect petitioners from arbitrary action. The procedures must be transparent, clear and have predetermined deadlines. Likewise, the requirements for obtaining a license should be set forth in clear and precise laws that prevent discriminatory political factors that could, for example, affect assignation on account of the political, religious or other ideas of the person requesting the license.” On this point, principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that, “The exercise of power [...] by the state [...] [and] the concession of radio and television broadcast frequencies [...] with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”³⁵¹ The Office of the Special Rapporteur additionally recalls that principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

221. In addition, this Office of the Special Rapporteur has been informed that, “According to the Radio and Television Frequency Audit Commission, the media landscape in Ecuador is largely dominated by eight main groups.”³⁵² One such group was the so-called “Isaías Group,” which has been state-run since July 8, 2008.³⁵³

222. In this respect, the information received indicates that part of the media considered “private” are reportedly being classified by the government as “seized” private media, in spite of the fact that they are administered and used directly by the state. According to that information, in recent years the government has reportedly created a media network and has become one of the key actors in the administration and ownership of communications media in Ecuador.³⁵⁴

...continuation

Decree	No.	256-A.	Available	at:
http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103				

³⁴⁹ National Council of Telecommunications (CONATEL). Resolution RTV-808-26-CONATEL-2010. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2010/RTV-808-26-CONATEL-2010.pdf

³⁵⁰ IACHR. Annual Report 2009. *Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. P. 196. Para. 668. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>

³⁵¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009. Para. 63. Available at: <http://www.cidh.org/pdf%20files/Estandares%20para%20radiodifusion%20incluyente.pdf>

³⁵² United Nations Educational, Scientific and Cultural Organization (UNESCO). *Análisis del Desarrollo Mediático en Ecuador – 2011*. p. 15. Available at: <http://unesdoc.unesco.org/images/0019/001925/192563s.pdf>

³⁵³ United Nations Educational, Scientific and Cultural Organization (UNESCO). *Análisis del Desarrollo Mediático en Ecuador – 2011*. p. 15. Available at: <http://unesdoc.unesco.org/images/0019/001925/192563s.pdf>

³⁵⁴ Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpi.org/es/CPJ.es.ecuador.9.1.11.pdf>

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

224. In Official Letter No. 05303 from the Office of the Attorney General, which contains the Ecuadorean State's response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador, the Ecuadorean State discussed the anti-monopoly rules that are in effect in Ecuador with respect to the media for purposes of maintaining democratic debate. The State indicated that the third section of the Constitution of the Republic provides for "equal access to the use of radio spectrum frequencies for the management of public, private and community radio and television stations," and prohibits the "direct or indirect oligopolistic or monopolistic ownership of the media and use of frequencies." The State underscored that the 2009 Frequency Audit Report of the Frequency Audit Commission considered that the "concentration of radio and television frequencies in Ecuador, in clear violation of the constitutional provisions currently in force, is the result of the sale of corporate assets, that is, frequencies, by private licensees, both natural persons and legal entities, in a true process of improper appropriation of public goods, apparently justified,"³⁵⁵ and that therefore it was necessary to democratize the media, which the State considered to be in the "imperative public interest of the Ecuadorean State."³⁵⁶

225. The State indicated that this was the basis for enacting the Twenty-third Amendment and Repeal Provision of the Organic Law for the Regulation and Control of the Market, which "restricts shareholdings in companies other than communications companies for those persons who possess more than 6% of the stock or shares of a national media outlet." It additionally stated that the second debate of the Communications Act before the National Assembly of Ecuador aims to "develop the constitutional precepts" previously mentioned. The State stressed that it considered it "improper to discuss a legislative bill whose text has not yet been determined."³⁵⁷

226. The State noted that its Constitution incorporated the right to communication into the legal system as a fundamental economic, social, and cultural right in addition to the rights to freedom of expression, information, and opinion. The State underscored that the structural change is meant to decentralize ownership of the "frequency licenses held by the private/commercial sector [...] to the detriment of the public and community sectors." The State emphasized that the principles contained in Articles 1, 2, 3, 4, 25 and 26 of the Draft Communications Act "promote access to a democratic, inclusive, participatory, pluricultural, and intercultural debate."³⁵⁸

³⁵⁵ Frequency Audit Commission. 2009 Frequency Audit Report. Cited in the Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 2. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁶ Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 1-2. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁷ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 2. Available in the Archives of the Office of the Special Rapporteur. The Office of the Special Rapporteur has had the opportunity to refer to the different legislative bills on the issue in letters addressed to the President of the National Assembly of Ecuador dated September 15, 2011; August 10, 2010, and December 8, 2009. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁸ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 3-4. Available in the Archives of the Office of the Special Rapporteur.

10. El Salvador

A. Progress

227. According to information received, the San Salvador Trial Court for Organized Crime Matters convicted three individuals on March 9 for their direct involvement in the September 2, 2009 murder of Christian Poveda, a Franco-Spanish documentary filmmaker. The sentences handed down by the court range from 20 to 30 years in prison. According to what the Office of the Special Rapporteur learned, two individuals were convicted as the direct perpetrators and masterminds of the crime against Poveda, and one person was convicted as an accomplice. In the same trial, eight other people accused of participating in the crime were given lesser sentences of four years in prison for having belonged to gangs or illegal groups, and 20 suspects were acquitted. In 2008, the journalist had produced the documentary “La Vida Loca,” which depicts the daily life of gangs in El Salvador. The individuals who killed Poveda were members of one of the groups he had filmed.³⁵⁹

228. The Office of the Special Rapporteur expresses its satisfaction at the enactment of Access to Public Information Act by the Legislative Assembly of El Salvador on March 3. According to the information received, the Act entered into force on May 5, and citizens will be able to use it to request information beginning in January 2012, after the public institutions take the necessary actions to put it into practice.³⁶⁰ The Act had originally been passed by the Legislative Assembly on December 2, 2010, but the President remanded it with remarks that were then partially accepted by Congress.³⁶¹ The Access to Public Information Act recognizes the right of every citizen to request and receive truthful and timely information generated by, managed by, or in the possession of the State. The law establishes the criteria for defining the concepts of public, confidential, and classified information; it creates administrative structures within state agencies to receive and process requests for information, and it defines the procedures for appealing denials. It also creates the Institute for Access to Public Information, which oversees the defense and enforcement of the right to access to information, and is composed of five members selected by the President of the Republic from short lists presented by civil society organizations.³⁶² The regulations to the Act took effect on September 10.³⁶³ Journalistic and civil society

³⁵⁹ Reporters Without Borders/IFEX. March 11, 2011. *RSF reacts to guilty verdict for filmmaker's killers with mixture of relief and frustration*. Available at: http://www.ifex.org/el_salvador/2011/03/11/poveda_murder/es/. El País. March 10, 2011. *Condenados a prisión 11 pandilleros por el asesinato de Christian Poveda*. Available at: http://www.elpais.com/articulo/internacional/Condenados/prision/pandilleros/asesinato/Christian/Poveda/elpepuint/20110310elpepuint_21/Tes

³⁶⁰ Office of the President of El Salvador. September 29, 2011. *Gobierno se prepara para implementar la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1445-gobierno-se-prepara-para-implementar-la-ley-de-acceso-a-la-informacion-publica.html>; EFE News Service. March 3, 2011. *El Congreso salvadoreño ratifica la Ley de Acceso a la Información Pública*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5hRILi4OZyvnY9UllvsUaFQAKGqQA?docId=1477676>

³⁶¹ La Prensa Gráfica. January 6, 2011. *Funes observa Ley de Acceso a la Información*. Available at: <http://www.laprensagrafica.com/el-salvador/politica/162741-funes-observa-ley-de-acceso-a-la-informacion.html>; Associated Press/Prensa Libre. January 6, 2011. *Presidente de El Salvador veta Ley de Acceso a la Información*. Available at: http://www.prensalibre.com/internacionales/Presidente-Salvador-Ley-acceso-Informacion_0_403759837.html

³⁶² Legislative Assembly of the Republic of El Salvador. December 2, 2010. *Avalan Ley de Acceso a la Información*. Available at: <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/avalan-ley-de-acceso-a-la-informacion>; Legislative Assembly of the Republic of El Salvador. December 2010. *Ley de Acceso a la Información Pública*. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=ley%20de%20acceso>; Knight Center for Journalism in the Americas. December 12, 2010. *Salvadoran Congress approves public information access law*. Available at: <http://knightcenter.utexas.edu/es/blog/asamblea-salvadorena-aprueba-ley-de-acceso-la-informacion-publica>; Office of the President of El Salvador. September 29, 2011. *Gobierno se prepara para implementar la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1445-gobierno-se-prepara-para-implementar-la-ley-de-acceso-a-la-informacion-publica.html>

³⁶³ Office of the President of El Salvador. September 7, 2011. *Funes manda publicar reglamento de la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1402-presidente-funes-manda-a-publicar-reglamento-de-la-ley-de-acceso-a-la-informacion-publica.html>; Office of the President of El Salvador. September 1, 2011. *Executive Order No. 136. Regulations to the Access to Public Information Act*. Available for consultation at: (archives download site) <http://www.presidencia.gob.sv/novedades/publicaciones/decretos-ejecutivos.html>

organizations have called into question the content of the regulations, asserting that they establish grounds for the classification of information that would limit the enforcement of the law (Article 29 of the regulations); they also take issue with the fact that Article 73 grants the President the power to veto the short lists of candidates presented by civil society for membership in the Institute for Access to Public Information. Article 29 of the regulations establishes the following grounds for classifying information: "National Security and/or Political Security", "national interests, especially if they pertain to public health, or international affairs, and the economic or trade interests of the country"; or when "the proper performance of the duties of the requested body is affected", particularly in judicial investigations and proceedings, or deliberations leading up to the adoption of resolutions, measures, or policies.³⁶⁴

229. On September 8, the Legislative Assembly approved an amendment to the Criminal Code that replaces prison sentences for crimes against honor with monetary penalties, and establishes criteria for a balancing test in situations where there is a conflict between the rights to information and freedom of expression and rights to honor, privacy, and image. In addition, the bill introduces an amendment according to which the dissemination of allegedly defamatory, libelous, or slanderous messages is understood as legitimate when it "satisfies the function of the free flow of information in a democratic society; when the facts refer to a person with some kind of public relevance, and its disclosure is of general interest; and when it refers to facts made public by individuals engaged in the practice of news reporting, who disclose it without having knowledge of the falsehood of the information, and having diligently verified the sources." On September 30, Salvadoran President Mauricio Funes remanded the bill to Congress with partial remarks referring to six of the proposed reforms.³⁶⁵ At the time of this writing, the Legislative Assembly has not made a decision with respect to the matter.³⁶⁶

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

231. The Office of the Special Rapporteur learned that on July 22, 2011 the Third Criminal Chamber of the First Central Division dismissed a lawsuit alleging criminal defamation against three directors and a journalist from the newspaper *La Prensa Gráfica*, which had been filed by a member of

³⁶⁴ Office of the President of El Salvador. September 1, 2011. Executive Order No. 136. *Regulations to the Access to Public Information Act*. Available for consultation at: (archives download site) <http://www.presidencia.gob.sv/novedades/publicaciones/decretos-ejecutivos.html>; Fundación de Estudios para la Aplicación del Derecho (FESPAD). September 13, 2011. *Organismos en desacuerdo con Reglamento de Ley de Acceso a la Información*. Available at: <http://www.fespad.org.sv/organismos-critican-reglamento-de-ley-de-acceso-a-la-informacion-publica>; El Mundo. September 12, 2011. *Críticas a reglamento de información pública*. Available at: <http://www.elmundo.com.sv/politica/16905-criticas-a-reglamento-de-informacion-publica.html>. El Salvador.com. September 29, 2011. *Reglamento anula Ley de Acceso a la Información Pública*. Available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=6245239

³⁶⁵ Office of the President of El Salvador. September 30, 2011. *Presidente observa Decreto Legislativo referido a reformas sobre la crítica en los medios de comunicación*. Available at: <http://www.presidencia.gob.sv/novedades/noticias/item/1447-presidente-observa-decreto-legislativo-referido-a-reformas-sobre-la-critica-en-los-medios-de-comunicacion>; Legislative Assembly of the Republic of El Salvador. Undated. Decree No. 836. *Reforms to the Criminal Code*. Available at: http://www.observatoriolegislativo.org.sv/attachments/article/1556/dict105_leg_2011.pdf

³⁶⁶ On November 9, 2011, the Legislative Assembly partially approved the observations presented by President Mauricio Funes and confirmed the text of the law that established fines instead of prison terms for those who are sentenced for the crimes of libel, slander or defamation. Legislative Assembly of the Republic of El Salvador. November 9, 2011. *Aprueban parcialmente observaciones presidenciales sobre delitos contra el honor*. Available at: <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/aprueban-parcialmente-observaciones-presidenciales-sobre-delitos-contra-el-honor>; Official Bulletin (Diario Oficial). Republic of El Salvador. December 7, 2011. Decree No. 836. Vol. 393. No. 229. P. 5 *et seq.* Available at: <http://www.diariooficial.gob.sv/diarios/do-2011/12-diciembre/07-12-2011.pdf>

the military referred to in an article published on November 30, 2010. The case arose when *La Prensa Gráfica* published that unidentified sources from the United States Drug Enforcement Administration (DEA) and the National Civilian Police of El Salvador reportedly revealed the names of two members of the military—one active and one retired—under investigation for alleged ties to organized crime. According to the information received, the Sixth Trial Court of San Salvador had ruled the claim inadmissible at the first instance, as it failed to find criminal intent in the publication, and considered that the matter involved the conveyance of information from third parties. Subsequently, the Third Criminal Chamber dismissed the motion for appeal.³⁶⁷

B. Assaults and threats against journalists and the media

232. The Office of the Special Rapporteur learned of the murder of press photographer Alfredo Hurtado, which occurred on the night of April 25 on the highway between Ilopango and San Salvador. According to the information received, the journalist was on his way to work when two armed men boarded the bus he was riding and shot him several times. The murderers did not steal any of his belongings, and reportedly escaped to an area in which criminal groups are known to operate. Hurtado was working as a night cameraman for the news program *Teleprensa*, of *Canal 33*, and had more than 20 years of experience. He reported daily on criminal acts and information surrounding acts of gang violence. The Salvadoran police authorities have suggested several theories on the motive for the murder. Spokespersons from the company where he worked and Salvadoran journalism organizations do not rule out the possibility that the crime could be related to his professional activities as a cameraman.³⁶⁸

233. The Office of the Special Rapporteur urges the Salvadorian authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.

234. The Office of the Special Rapporteur was informed of several threats reportedly received by the *Victoria* community radio in the department of Cabañas during the first half of the year. On January 11, an anonymous note reportedly warned the station's staff to leave their jobs or they would be killed. "The question is who will be the third one," said the note, in reference to two environmental activists who had been murdered in December of 2010.³⁶⁹ On April 30, and May 2, the station again received

³⁶⁷ Judiciary of El Salvador. Third Criminal Chamber of the First Central Division. July 22, 2011. Judgment of 10:42 a.m. on July 22, 2011. REF 128-11. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; *La Prensa Gráfica*. July 27, 2011. *Victoria de la libre expresión fallos a favor de LPG*. Available at: <http://m.laprensagrafica.com/2011/07/27/victoria-de-la-libre-expresion-fallos-a-favor-de-lpg-2/>; *El Mundo*. July 26, 2011. *No admiten demanda contra publicación La Prensa Gráfica*. Available at: <http://www.elmundo.com.sv/nacionales/14235-no-admiten-demanda-contra-publicacion-la-prensa-grafica.html>; Latin American Observatory for Freedom of Expression. Undated. Report 1127. *El Salvador. Sala Penal rechaza demanda por calumnia contra diario La Prensa Gráfica*. Available at: http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=1305:reporte-1127-&catid=15:ola&Itemid=46; *La Prensa Gráfica*. November 30, 2010. *DEA vincula a ex militares con Los Zetas*. Available at: <http://m.laprensagrafica.com/2010/11/29/dea-vincula-a-ex-militares-con-los-zetas/>; *Diario CoLatino*. July 29, 2011. "Si tuviera participación con los Zetas no estaría aquí". Available at: <http://www.diariocolatino.com/es/20110729/nacionales/95004/%C2%ABSi-tuviera-participaci%C3%B3n-con-los-Zetas-no-estuviera-aqu%C3%AD-Soy-inocente%C2%BB-Teniente-Coronel-Rodr%C3%ADquez-Mart%C3%ADnez.htm>

³⁶⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release R38/11- Office of the Special Rapporteur Condemns the Murder of a Cameraman in El Salvador*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=839&IID=2>; Reporters Without Borders. April 26, 2011. *El Salvador: Asesinado el cámara de televisión Alfredo Hurtado*. Available at: <http://www.rsf-es.org/news/el-salvador-asesinado-el-camara-de-television-alfredo-hurtado/>; Inter-American Press Association (IAPA). April 27, 2011. *Murder of cameraman in El Salvador brings IAPA condemnation, call for investigation*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4551&idioma=sp

³⁶⁹ World Association of Community Radio Broadcasters (AMARC). January 14, 2010. *AMARC repudia amenazas a personal de Radio Victoria de El Salvador*. Available at: <http://www.agenciapulsar.org/nota.php?id=16564>; *Diario CoLatino*. February 1, 2011. *Radio Victoria denuncia nuevas amenazas de muerte en PDDH*. Available at: <http://www.diariocolatino.com/es/20110201/nacionales/89026/>

threatening messages signed by an organization that called itself the “Extermination Group.” Members of the station believe that the threats are the consequence of pro-environmental positions expressed on the radio, and its criticism of mining projects.³⁷⁰

235. According to the ninth principle of the IACHR’s 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. 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.”

11. United States

A. Positive developments

236. On December 21, 2010, the Federal Communications Commission (FCC) declared network neutrality, by enacting a series of rules to ensure equal access rights to the Web for providers and consumers, to prevent providers from regulating traffic, and to ensure that users can access content of their choice without being blocked.³⁷¹ According to the FCC, “The Internet has thrived because of its freedom and openness – the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views.”³⁷² According to the information received, the rules require all broadband providers to publicly disclose their network management practices, restrict the blocking of Internet content and applications, and refrain from engaging in unreasonable discrimination in transmitting lawful content. The FCC explained that the decision was necessary in view of evidence of acts by providers that posed potential risks to the openness of the Internet, by blocking or discriminating against certain content and applications without making those practices transparent to consumers. It also cited the fact that providers may have financial interests in services that could compete with other online services and content. According to the FCC, the purpose of these rules is to ensure that consumers are able to continue making their own decisions about the applications, services, and content that they access and use, create, or share with others. In the FCC’s view,³⁷³ this openness promotes competition and reinforces a virtuous circle of investment and innovation.

237. On December 17, 2010 the U.S. House of Representatives and the U.S. Senate passed the Local Community Radio Act, which makes it easier to obtain frequency licenses and opens space on the dial to more stations by reducing the required distance between one frequency and another to prevent interference. According to the information received, the reform not only will allow new stations to emerge in rural areas—where the regulations on distance between frequencies was not justified, due to the lower

³⁷⁰ German Press Agency (DPA)/La Prensa Gráfica. May 4, 2011. *El Salvador: Periodistas de radio comunitaria reciben amenazas de muerte*. Available at: <http://www.laprensagrafica.com/el-salvador/lodeldia/189099-el-salvador-periodistas-de-radio-comunitaria-reciben-amenazas-muerte.html>; Etcétera. May 4, 2011. *AMARC-ALC. Escuadrones de la Muerte amenazan nuevamente a periodistas de Radio Victoria*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=7566>

³⁷¹ See IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 245. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

³⁷² Federal Communications Commission (FCC). December 21, 2010. *FCC acts to preserve Internet freedom and openness*. Available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.pdf

³⁷³ Federal Communications Commission (FCC). December 21, 2010. *FCC acts to preserve Internet freedom and openness*. Available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.pdf; Wall Street Journal. December 22, 2010. *Internet Gets New Rules of the Road*. Available at: <http://online.wsj.com/article/SB10001424052748703581204576033513990668654.html>; Knight Center for Journalism in the Americas. December 24, 2010. *New FCC rules guarantee open and free Internet in the U.S.* Available at: <http://knightcenter.utexas.edu/blog/new-fcc-rules-guarantee-open-and-free-internet-us>

density of stations—but also will make it possible for new radio stations to emerge in urban areas. President Barack Obama signed the law on January 7, 2011.³⁷⁴

238. The Office of the Special Rapporteur notes with satisfaction that the masterminds of the murder of journalist Chauncey Bailey were tried and convicted. In 2007, journalist Chauncey Bailey, the then-Editor in Chief of *The Oakland Post*, was shot to death after investigating alleged financial irregularities at a local bakery in Oakland, California. A few days after the incident, the perpetrator of the murder, Devaughndre Broussard, confessed.³⁷⁵ The masterminds of the murder, Yusuf Bey IV and Antoine Mackey, were found guilty by a jury on June 9, 2011 and sentenced to life in prison on August 26 for having ordered the journalist's murder.³⁷⁶ After his death, local media workers organized an *ad hoc* coalition called "The Chauncey Bailey Project," in order to establish the facts of the murder and finish the investigative journalism story that Bailey had begun. It reportedly played an important role in the investigation leading to the eventual conviction of the perpetrators.³⁷⁷ According to reports, Chauncey Bailey was the first journalist to be killed in the United States because of his work since 1976.

239. The Office of the Special Rapporteur learned that the Hawaii state legislature approved a two-year extension of a law that protects journalists and bloggers from revealing their sources or their work-related notes and documents. This law, called the "Shield Law," was originally enacted in 2008 and will now be in effect until 2013.³⁷⁸

240. On March 2, the Department of State released documents concerning the policies of the administration of former President George W. Bush with respect to the detention of "enemy combatants" at Guantánamo Bay and the "significant risks" to the general public if the detainees were released. The information was turned over to the organization Judicial Watch after it filed a Freedom of Information Act (FOIA) request in 2009.³⁷⁹

B. Actions in response to leaks of classified government information

³⁷⁴ Congress of the United States of America. December 17, 2010. H.R. 6533: *Local Community Radio Act of 2010*. Available at: <http://thomas.gov/cgi-bin/query/z?c111:H.R.6533:#>; The Washington Post. January 7, 2011. *Advocates rejoice as Obama signs Local Community Radio Act*. Available at: http://voices.washingtonpost.com/posttech/2011/01/advocates_rejoice_as_obama_sig.html

³⁷⁵ See IACHR. 2007 Annual Report. OEA/Ser.L/V/II.131, Doc. 34 ver. 1. March 8, 2008. Vol. II: *Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 104 & 237. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

³⁷⁶ Reporters Without Borders. August 29, 2011. *Cadena perpetua para el autor intelectual del asesinato de Chauncey Bailey y su cómplice: "La justicia perdió demasiado tiempo"*. Available at: <http://es.rsf.org/estados-unidos-cadena-perpetua-para-el-autor-29-08-2011.40868.html>; Chauncey Bailey Project. August 26, 2011. *Life terms for two men who murdered journalist Chauncey Bailey*. Available at: <http://www.chaunceybaileyproject.org/2011/08/26/life-terms-for-two-men-who-murdered-journalist-chauncey-bailey/>

³⁷⁷ International Freedom of Expression Exchange (IFEX). June 15, 2011. *Justice served in Chauncey Bailey case thanks to journalist collective*. Available at: http://www.ifex.org/united_states/2011/06/15/bailey_murderers_sentenced/; Knight Center. September 7, 2011. *Dos personas son condenadas a cadena perpetua por el asesinato en 2007 de periodista en California*. Available at: <http://knightcenter.utexas.edu/es/blog/dos-personas-son-condenadas-cadena-perpetua-por-el-asesinato-en-2007-de-periodista-en-californi>

³⁷⁸ The law, HB 2557, protects journalists and news hosts currently or previously linked to any media outlet, including digital media, from being compelled by a legislative, executive, judicial, or other official to reveal his or her sources or work-related notes. Star Advertiser. April 28, 2011. *Legislators extend Shield law protecting journalists' sources*. Available at: <http://www.staradvertiser.com/news/breaking/120944789.html>; House of Representatives, State of Hawaii. HB No. 2557. Available at: http://www.capitol.hawaii.gov/session2008/Bills/HB2557_CD1_.htm; Bloomberg Businessweek. April 29, 2011. *Journalist shield law extension passes in Hawaii*. Available at: <http://www.businessweek.com/ap/financialnews/D9MTDO600.htm>; Knight Center for Journalism in the Americas. May 4, 2011. *Hawaii aprueba extensión de dos años a ley que protege el secreto periodístico*. Available at: <http://knightcenter.utexas.edu/es/blog/hawaii-aprueba-extension-de-dos-anos-ley-que-proteje-el-secreto-periodistico>

³⁷⁹ Judicial Watch. March 2, 2011. *Judicial Watch Obtains Bush Defense Department Documents Detailing Terrorist Threat Posed By Guantanamo Detainees*. Available at: <http://www.judicialwatch.org/news/2011/mar/judicial-watch-obtains-bush-defense-department-documents-detailing-terrorist-threat-po>; Reporters Without Borders. March 4, 2011. *NGO gains access to Guantanamo documents but double standard still prevails*. Available at: <http://en.rsf.org/united-states-ngo-gains-access-to-guantanamo-04-03-2011.39675.html>

241. On May 23, in the case brought by the Department of Justice against Jeffrey Sterling, a former Central Intelligence Agency (CIA) agent accused of leaking classified documents,³⁸⁰ *New York Times* reporter James Risen was subpoenaed by the federal district court in Alexandria, Virginia at the request of the Department of Justice to testify against Sterling and reveal the sources of information used in his book.³⁸¹ According to the information received, the journalist, who had included information from an anonymous source in his book *State of War*, invoked his right to maintain the confidentiality of the source under the First Amendment of the Constitution. In July, the judge ruled that Risen's testimony was covered by reporter's privilege. According to the information received, on October 19th, the Department of Justice appealed the disposition of the subpoena to a federal court of appeals, which will decide whether to uphold the protection of Risen's privileged sources.³⁸²

242. In December 2010, the press reported, based in part on statements by the U.S. Attorney General, that the Justice Department was investigating the publication of classified government information by the organization WikiLeaks with a view to prosecuting its founder, Julian Assange.³⁸³ In addition, on December 14, 2010, the Department of Justice obtained a court order against the parent company of the social networking site Twitter directing it to turn over information on WikiLeaks account users and the accounts of individuals allegedly associated with that group, including founder Julian Assange and Icelandic parliamentary representative Birgitta Jónsdóttir. The requested information included: subscriber names or user names; email, residential, and business addresses; connection records and duration times; data transfer volume; source and destination of the communication; and sender and receiver Internet protocol (IP) addresses, as well as telephone numbers and means of payment.³⁸⁴ The objections filed by the affected parties were denied by a federal court on November 10, 2011.³⁸⁵

243. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

³⁸⁰ Indictment. *U.S. v. Sterling*. Case No. 1:10CR485 (LMB). December 22, 2010. Available at: <http://cryptome.org/0003/sterling/sterling-001.pdf>; Cf. Defendant's Opposition to Government's Motion for Pretrial Detention. *U.S. v. Sterling*. Case No. 1:10CR485 (LMB). January 21, 2011. Available at: http://www.politico.com/static/PPM195_sterlingrsmotn.html; Reuters. January 6, 2011. *Ex CIA officer charged with giving reporter secrets*. Available at: <http://www.reuters.com/article/2011/01/07/us-usa-security-cia-idUSTRE7055S520110107>; ABC. January 7, 2011. *Arrestan a ex agente de CIA acusado de divulgar documentos secretos*. Available at <http://www.abc.es/agencias/noticia.asp?noticia=645722>

³⁸¹ Reporters Without Borders. May 26, 2011. *Department of Justice wants reporter to betray source but spares one of its own whistle-blowers*. Available at: http://en.rsf.org/united-states-department-of-justice-wants-26-05-2011_40357.html; New York Times. May 24, 2011. *Subpoena Issued to Writer in C.I.A.-Iran-Leak Case*. Available at: <http://www.nytimes.com/2011/05/25/us/25subpoena.html>

³⁸² Memorandum Opinion. *United States v. Sterling*. Case 1:10cr485 (LMB). July 29, 2011. Available at: <http://www.documentcloud.org/documents/229733-judge-leonie-brinkemas-ruling-quashing-subpoena.html>; Committee to Protect Journalists (CPJ). October 25, 2011. *Appeal against Risen keeps source protection in focus*. Available at: <http://www.cpj.org/blog/2011/10/appeal-against-risen-keeps-source-protection-in-fo.php>; Politico. October 19, 2011. *Department of Justice still wants New York Times reporter's sources*. Available at: <http://www.politico.com/news/stories/1011/66424.html>

³⁸³ New York Times. December 1, 2011. *U.S. Weighs Prosecution of WikiLeaks Founder, but Legal Scholars Warn of Steep Hurdles*. Available at: <http://www.nytimes.com/2010/12/02/world/02legal.html>; New York Times. December 7, 2011. *U.S. Prosecutors Study WikiLeaks Prosecution*. Available at: <http://www.nytimes.com/2010/12/08/world/08leak.html>

³⁸⁴ United States Department of Justice. December 14, 2010. MISC. NO. 10GJ3793. Available at: <http://www.webcitation.org/5vfUQIMUS>; El País. August 1, 2011. *EEUU pide a Twitter información de las cuentas de colaboradores de WikiLeaks*. Available at: http://www.elpais.com/articulo/internacional/EE/UU/pide/Twitter/informacion/cuentas/colaboradores/Wikileaks/elpeuint/20110108elpeuint_10/Tes

³⁸⁵ See Memorandum Opinion. In re Application of the United States of America for an order Pursuant to 18 U.S.C. § 2703(d). U.S. District Court for the Eastern District of Virginia. Case 1:11-dm-00003-TCB-LO Doc. 85. Filed 11/10/11. Available at: http://www.wired.com/images_blogs/threatlevel/2011/11/twitter_wikileaks_ruling.pdf

244. As the IACHR and UN Special Rapporteurs have already indicated,³⁸⁶ public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. Government "whistleblowers" releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.³⁸⁷

245. With regard to the disclosure of classified information that could affect legally protected rights or interests, the IACHR and UN Special Rapporteurs maintained in the same Joint Statement that ethical codes for journalists should provide for an evaluation of the public interest in obtaining such information. Self-regulatory mechanisms for journalists have played an important role in fostering greater awareness about how to report on and address difficult and controversial subjects. Special journalistic responsibility is called for when reporting information from confidential sources that may affect valuable interests such as fundamental rights or the security of other persons. Such codes can also provide useful guidance for new forms of communication and for new media organizations, which should likewise voluntarily adopt ethical best practices to ensure that the information made available is accurate, fairly presented and does not cause substantial harm to legally protected interests such as human rights.³⁸⁸

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

C. The right to access to information

247. The Office of the Special Rapporteur learned of an order issued on July 5 directing *The Daily*, a digital newspaper, to take down a video of the deposition of Tony Hayward, CEO of British Petroleum, relating to the oil spill in the Gulf of Mexico in 2010. *The Daily* refused to comply with the order, citing the "there is tremendous public interest in the complete disclosure of all of the surrounding facts" with respect to the oil spill. The judge handling the case lifted the order on July 11.³⁸⁹

³⁸⁶ Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

³⁸⁷ Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

³⁸⁸ Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

³⁸⁹ Knight Center. July 11, 2011. *Periódico digital estadounidense rechaza orden judicial de retirar video con testimonio de director de BP*. Available at: <http://knightcenter.utexas.edu/es/blog/periodico-digital-estadounidense-rechaza-orden-judicial-de-retirar-video-con-testimonio-de-dire>; The Daily. July 7, 2011. *The Video BP Doesn't Want You to See: The Daily refuses judge's order to censor CEO grilling*. Available at: <http://www.thedaily.com/page/2011/07/07/070711-news-daily-bp-1-4/>; Washington Post. July 7, 2011. *The Daily refuses to take down BP CEO Tony Hayward's deposition video, despite judge's order*. Available at: http://www.washingtonpost.com/blogs/blogpost/post/the-daily-refuses-to-take-down-bp-ceo-tony-haywards-deposition-video-despite-judges-order/2011/07/07/gIQAkTQA2H_blog.html; The Louisiana Record. July 18, 2011. *Magistrate vacates order that called on YouTube and The Daily to pull Hayward clips*. Available at: <http://www.louisianarecord.com/news/236956-magistrate-vacates-order-that-called-on-youtube-and-the-daily-to-pull-hayward-clips>

248. The Office of the Special Rapporteur received information regarding a federal judge's refusal, on August 1, to hold the Central Intelligence Agency (CIA) in contempt of court for destroying approximately 92 videotapes of detainee interrogations, including tapes that allegedly depicted prisoners being waterboarded. The ruling, by a judge from the US district court for the Southern District of New York, arose out of a 2007 motion by the ACLU for the CIA to produce the videotapes. According to the information received, the judge requested that the CIA publish its document-destruction policies and ordered the CIA to pay attorneys' fees.³⁹⁰

249. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

D. Assaults and arrests of journalists covering public protests

250. The Office of the Special Rapporteur received information concerning restrictions on freedom of expression in the context of a series of social protests beginning last September 17. Members of a political movement called "Occupy Wall Street" began to camp in Zuccotti Park, a private park in New York City, on September 17 in protest of political and economic policies. When on September 24 protesters marched, allegedly without a permit,³⁹¹ videos circulated on news outlets and social media sites showing police using physical force on various protesters.³⁹² According to reports, those detained included at least one professional journalist, as well as numerous citizen journalists and passersby who attempted to document the protests and arrests with audio and video recording devices.³⁹³ Subsequently, similar protests to "Occupy Wall Street" occurred in other cities, resulting in significant numbers of arrests within the framework of social protests.³⁹⁴

251. With regard to those protests, the Office of the Special Rapporteur was informed of arrests and assaults on some journalists and media workers. According to the information received, at least three journalists have reportedly been assaulted since this past October by police officers, and two

³⁹⁰ Reporters Without Borders. August 5, 2011. *Judge refuses to hold CIA in contempt of court for destroying torture tapes*. Available at: http://en.rsf.org/united-states-judge-refuses-to-hold-cia-in-05-08-2011_40758.html; ACLU. August 1, 2011. *Court Sanctions CIA to Pay Fees over Torture Tapes*. Available at: <http://www.aclu.org/blog/national-security/court-sanctions-cia-pay-fees-over-torture-tapes>; Court motions and procedural documents. Available at: <http://www.aclu.org/national-security/aclu-v-department-defense>; Reporters Without Borders. March 5, 2009. *CIA Destroyed 92 Interrogation Videos*. Available at: http://en.rsf.org/united-states-cia-destroyed-92-interrogation-05-03-2009_30486.html

³⁹¹ See ABC News. September 24, 2011. *Occupy Wall Street Movement Reports 80 Arrested Today in Protests*. Available at: <http://abcnews.go.com/blogs/headlines/2011/09/occupy-wall-street-movement-reports-80-arrested-today-in-protests/>; NY Daily News. September 25, 2011. *Wall Street protesters cuffed, pepper-sprayed during 'inequality' march*. Available at: http://www.nydailynews.com/news/national/2011/09/24/2011-09-24_nasty_wall_streetfight_protesters_cuffed_peppersprayed_during_inequality_march.html; NY Times. September 26, 2011. *Wall Street Demonstrations Test Police Trained for Bigger Threats*. Available at: <http://www.nytimes.com/2011/09/27/nyregion/wall-street-demonstrations-test-police-trained-for-bigger-threats.html>

³⁹² NY Daily News. September 25, 2011. *Wall Street protesters cuffed, pepper-sprayed during 'inequality' march*. Available at: http://www.nydailynews.com/news/national/2011/09/24/2011-09-24_nasty_wall_streetfight_protesters_cuffed_peppersprayed_during_inequality_march.html; ABC News. September 24, 2011. *Occupy Wall Street Movement Reports 80 Arrested Today in Protests*. Available at: <http://abcnews.go.com/blogs/headlines/2011/09/occupy-wall-street-movement-reports-80-arrested-today-in-protests/>. See also: Occupy Wall Street. Available at: <https://occupywallst.org/>; Adbusters. *Occupy Wall Street*. Available at: <http://www.adbusters.org/campaigns/occupywallstreet>

³⁹³ WNET. September 27, 2011. *Observations of a Jailed Journalist*. Available at: <http://www.thirteen.org/metrofocus/news/2011/09/observations-of-a-jailed-journalist/>

³⁹⁴ See generally, Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpi.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; Wall Street Journal. November 18, 2011. *Protesters Clash with Police: Several Hundred Arrested Around U.S. on Movement's Two-Month Anniversary*. Available at: <http://online.wsj.com/article/SB10001424052970203699404577043970206021872.html>

others by people taking part in the demonstrations. In addition, at least a dozen journalists have reportedly been arrested in spite of having identified themselves as reporters.

252. According to reports, journalist Dick Brennan of the *Fox 5* station and his cameraman Roy Isen were assaulted on October 5 in New York City while covering the Occupy Wall Street demonstrations.³⁹⁵

253. The Office of the Special Rapporteur learned of alleged attacks against Scott Campbell, an independent journalist, on November 7 in Oakland. According to reports, police officers allegedly shot a rubber bullet at Campbell without any provocation or warning. Campbell disclosed the video that recorded the attack.³⁹⁶

254. Other reports indicate that on October 28, reporter John Huddy of the *Fox 5* station was allegedly assaulted by a protester while covering the Occupy Wall Street demonstration in New York,³⁹⁷ and on November 10, cameraman Randy Davis of station *KGO* was reportedly beaten severely by protesters in Oakland who prevented him from capturing images of a crime that had occurred minutes earlier. The assailants reportedly beat the journalist until other protesters intervened to protect him.³⁹⁸

255. With respect to the arrests, according to the information available, journalist John Farley of station *WNET/Thirteen* blog *MetroFocus*, was detained for 8 hours on September 24 in New York while he was interviewing two youths who had allegedly been assaulted. According to reports, the police detained him because he did not have the press credentials given out by the police themselves.³⁹⁹ Kristen Gwynne, a journalist from *AlterNet*, was arrested on October 1 on the Brooklyn Bridge in New York after police closed the street and arrested everyone there.⁴⁰⁰ Freelance journalist Natasha Lennard, who was

³⁹⁵ Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; Fox 5. October 11, 2011. *Occupy Wall Street Arrests; Fox 5 Crew and Protesters Hit by Pepper Spray, Batons*. Available at: <http://www.myfoxny.com/dpp/news/occupy-wall-street-protest-broadens-scope-20111005>

³⁹⁶ New York Daily News. November 8, 2011. *Oakland police officer caught on video shooting protester with beanbag*. Available at: <http://www.nydailynews.com/news/national/oakland-police-officer-caught-video-shooting-protester-beanbag-article-1.974171?localLinksEnabled=false>; Mercury News/Oakland Tribune. November 7, 2011. *Experts in police use of force shocked by Oakland video*. Available at: http://www.mercurynews.com/top-stories/ci_19284774; Huffington Post. November 8, 2011. *Scott Campbell Films Police Shooting at Occupy Oakland: Video Sparks National Outrage* (Video). Available at: http://www.huffingtonpost.com/2011/11/08/scott-campbell-films-police-shooting_n_1082393.html; CPJ. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁷ Fox 5. October 28, 2011. *Occupy Wall Street Protester Threatens Fox 5 News Reporter*. Available at: <http://www.myfoxny.com/dpp/news/fox-5-news-reporter-assaulted-at-ows-20111028-KC>; Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁸ Media Bistro/ABC. November 11, 2011. *Occupy Oakland Protestors Attack KGO Cameraman For Shooting Video of Murder Scene*. Available at: http://www.mediabistro.com/tvspy/kg0-cameraman-attacked-while-shooting-murder-scene-at-occupy-oakland_b28970; New York Times/Bay Citizen. November 12, 2011. *Occupy Oakland and News Media Coexist Uneasily*. Available at: <http://www.nytimes.com/2011/11/13/us/occupy-oakland-and-news-media-coexist-uneasily.html>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁹ Salon/Metrofocus. September 28, 2011. *Jailed for covering the Wall Street protests*. Available at: http://www.salon.com/2011/09/28/wall_street_protest_arrested/; WNET. September 27, 2011. *Observations of a Jailed Journalist*. Available at: <http://www.thirteen.org/metrofocus/news/2011/09/observations-of-a-jailed-journalist/>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>. See also: New York Police Department. *Press Relations: Press Card Application*. Available at: http://www.nyc.gov/html/nypd/html/press_relations/credentials.shtml#eligibility

⁴⁰⁰ AlterNet. October 1, 2011. *NYPD Mass Arrests of Occupy Wall Street Protesters: Firsthand Account from AlterNet Staffer Trapped on Bridge*. Available at: http://www.alternet.org/newsandviews/article/674824/nypd_mass_arrests_of_occupy_wall_street_protesters%3A_firsthand_account_from_alternet_staffer_trapped_on_bridge/; International Freedom of Expression Exchange (IFEX)/IPI. November 8, 2011. *Journalists arrested while covering Occupy Wall Street protests in multiple cities*. Available at: http://www.ifex.org/united_states/2011/11/08/occupy_arrests/. Cf. Committee to Protect Journalists (CPJ). November 11, 2011. *At*

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reporting for the *New York Times*, was also arrested and charged with disorderly conduct. The charge was apparently later dismissed in court because she had been acting in her professional capacity as a journalist.⁴⁰¹

256. The Office of the Special Rapporteur also learned of the arrest of Jonathan Meador, of the weekly *Nashville Scene*, on October 29 in Nashville, Tennessee, as he was recording video of the forced removal of the demonstrators from the “Occupy Nashville” group. According to the information received, Meador told authorities repeatedly that he was a journalist.⁴⁰² Information was also received that student journalist Malina Chavez-Shannon of Middle Tennessee State University was reportedly arrested while photographing the arrest of protesters. According to reports, the judge in her case dropped and expunged all the criminal charges filed against the protesters.⁴⁰³ The arrests had reportedly been the result of new restrictions on the right to demonstrate in Tennessee. Those restrictions were challenged and are reportedly no longer being enforced following the issuance of a temporary restraining order by a federal judge.⁴⁰⁴

257. The Office of the Special Rapporteur learned of the arrest of Ian Graham, a photographer from *RVA Magazine*, on October 31 in Richmond. According to reports, the journalist was arrested and charged with “trespassing after having been forbidden to do so,”⁴⁰⁵ after he questioned an order to remain in a designated “press area” while covering the eviction of the “Occupy Richmond” group. The journalist was ordered to appear in court and, through his attorneys, has challenged the constitutionality of his arrest.⁴⁰⁶

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Occupy protests, U.S. journalists arrested, assaulted. November 11, 2011. Available at: <http://cpi.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

⁴⁰¹ New York Times. October 1, 2011. *Police Arrest More Than 700 Protesters on Brooklyn Bridge*. Available at: <http://cityroom.blogs.nytimes.com/2011/10/01/police-arresting-protesters-on-brooklyn-bridge/>; International Freedom of Expression Exchange (IFEX)/IPI. November 8, 2011. *Journalists arrested while covering Occupy Wall Street protests in multiple cities*. Available at: http://www.ifex.org/united_states/2011/11/08/occupy_arrests/; et al.

⁴⁰² Washington Post. October 31, 2011. *Occupy Nashville: federal Judge halts arrests after reporter Jonathan Meador records his own* (Video). Available at: http://www.washingtonpost.com/blogs/blogpost/post/occupy-arrests-reporter-jonathan-meador-records-own-arrest-video/2011/10/31/gIQAgwbiZM_blog.html; Nashville Scene. October 29, 2011. *Breaking: Scene Reporter Arrested in Troopers' Crackdown on Occupy Nashville*. Available at: <http://www.nashvillescene.com/pitw/archives/2011/10/29/breaking-scene-reporter-arrested-in-troopers-crackdown-on-occupy-nashville>; Nashville Scene. October 29, 2011. *A Scene reporter arrested by the state sees Nashville under occupation – but whose? Can I Go Home Now?* Available at: <http://www.nashvillescene.com/nashville/a-scene-reporter-arrested-by-the-state-sees-nashville-under-occupation-but-whose/Content?oid=2668260>; The Tennessean. October 30, 2011. *No overnight arrests made at Occupy Nashville*. Available at: <http://www.tennessean.com/article/20111030/NEWS01/111030003/No-overnight-arrests-made-Occupy-Nashville>

⁴⁰³ MTSU Sidelines. November 5, 2011. *Photography student arrested at Occupy Nashville*. Available at: <http://www.mtsusidelines.com/photography-student-arrested-at-occupy-nashville-1.2684784>; Nashville City Paper. November 14, 2011. *All charges against Occupy Nashville protesters dropped*. Available at: <http://nashvillecitypaper.com/content/city-news/all-charges-against-occupy-nashville-protesters-dropped>

⁴⁰⁴ The Tennessean. November 1, 2011. *Occupy Nashville arrests end*. Available at: <http://www.tennessean.com/article/20111101/NEWS03/310310047/Occupy-Nashville-arrests-end>; Nashville City Paper. November 14, 2011. *All charges against Occupy Nashville protesters dropped*. Available at: <http://nashvillecitypaper.com/content/city-news/all-charges-against-occupy-nashville-protesters-dropped>; ACLU. October 31, 2011. The pleadings filed before the court by the ACLU are available at: <http://www.aclu-tn.org/pdfs/OccupyNashvilleMotionTRO.pdf>; <http://www.aclu-tn.org/pdfs/OccupyNashvilleComplaint.pdf>

⁴⁰⁵ See § 18.1-119 of the Virginia Criminal Code. Available at: <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+18.2-119>

⁴⁰⁶ Augusta Free Press. November 4, 2011. *ACLU to represent magazine photographer arrested at Occupy Richmond rally*. Available at: <http://augustafreepress.com/2011/11/04/aclu-to-represent-magazine-photographer-arrested-at-occupy-richmond-rally/>; Style Weekly. October 31, 2011. *Photographer Arrested: RVA Magazine contributor charged with trespassing while taking photos of police raid on Occupy Richmond encampment*. Available at: <http://www.styleweekly.com/TheReportersNotebook/archives/2011/10/31/photographer-arrested>; ACLU Virginia. November 4, 2011. *ACLU To Represent Press Photographer Arrested at “Occupy” Demonstration in Richmond*. Available at: <http://acluva.org/8154/aclu-to-represent-press-photographer-arrested-at-%e2%80%9coccupy%e2%80%9d-demonstration-in-richmond/>; RVA Magazine. November 1, 2011. *Trespassing in public: RVA Police break up the occupation and arrest our*
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258. The Office of the Special Rapporteur was also informed that Susie Cagle, a freelance reporter and cartoonist for *Alternet*, *Truthout* and *Citizen Radio*, was arrested and charged with “presence at the scene of a riot” on November 3 in Oakland. According to reports, Cagle identified herself as a journalist at the time of her arrest, but was held for some 15 hours and ordered to appear at a hearing at the end of November.⁴⁰⁷

259. According to the information received, *Milwaukee Journal Sentinel* photographer Kristyna Wentz-Graff was reportedly arrested on November 2 in Milwaukee while photographing a demonstration near the University of Wisconsin, with her official press credential visible. The journalist was released, presumably without charges.⁴⁰⁸

260. The Office of the Special Rapporteur was informed that during the night of November 15, 2011, at least seven journalists were arrested while covering the eviction of protesters from Zuccotti Park in New York, even though they had official credentials. The journalists in question were: Julie Walker of *NPR*;⁴⁰⁹ Patrick Hedlund and Paul Lomax of *DNAinfo.com*;⁴¹⁰ Doug Higginbotham, freelance cameraman for *TV New Zealand*;⁴¹¹ Jared Malsin of *The Local*;⁴¹² Karen Matthews and Seth Wenig of the *Associated Press*, and Matthew Lysiak of the *New York Daily News*.⁴¹³

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photographer. Available at: <http://rvamag.com/articles/full/12881/trespassing-in-public-rva-police-break-up-the-occupation-and-arrest-our-photogra>

⁴⁰⁷ Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; *Alternet*. November 6, 2011. *Police State in Oakland? One Reporter's Arrest Contradicts Official Story*. Available at: http://www.alternet.org/story/152990/police_state_in_oakland_one_reporter_s_arrest_contradicts_official_story/?page=entire; *Comics Beat*. November 4, 2011. *Cartoonists and the law: Susie Cagle arrested, charged with misdemeanor*. Available at: <http://www.comicsbeat.com/2011/11/04/cartoonists-and-the-law-susie-cagle-arrested-charged-with-misdemeanor/>

⁴⁰⁸ *Milwaukee Journal Sentinel*. November 4, 2011. *Mayor says it's 'very clear' arrested photographer was journalist*. Available at: <http://www.jsonline.com/news/milwaukee/flynn-seeks-meeting-with-media-after-arrests-133183378.html>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

⁴⁰⁹ Walker was reportedly charged with “disturbing the peace.” *NPR*. November 15, 2011. *New York Police Clear Occupy Wall Street Protesters from Park*. Available at: <http://www.npr.org/blogs/thetwo-way/2011/11/15/142336656/new-york-police-clear-occupy-wall-street-protesters-from-park?print=1SafariHTML%5CShell%5COpen%5CCommand>; *New York Daily News*. November 16, 2011. *Showdown at Zuccotti Park: The NYPD's raid on Occupy Wall Street NYC Live*. Available at: http://live.nydailynews.com/Event/Showdown_at_Zuccotti_Park_The_NYPDs_raid_on_Occupy_Wall_Street_NYC; *Washington Post/Associated Press*. November 15, 2011. *Journalists detained while covering Occupy Wall Street protests; several arrested, handcuffed*. Available at: http://www.washingtonpost.com/national/journalists-detained-while-covering-occupy-wall-street-protests-in-manhattan/2011/11/15/gIQAUvb1ON_story.html; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; *Reporters Without Borders*. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: <http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011,41371.html>

⁴¹⁰ According to reports, Hedlund was given a notice to appear (“desk appearance ticket”) at a hearing. *DNAinfo.com*. November 16, 2011. *DNAinfo.com Journalists Arrested While Covering OWS Police Raids*. Available at: <http://www.dnainfo.com/2011/11/15/downtown/dnainfo-journalists-arrested-while-covering-ows-police-raids>; *New York Observer*. November 15, 2011. *Occupy Wall Street's Diaspora Day, 3PM Update: Reporter Arrest Tally Adds Up As Court Ruling is Awaited*. Available at: <http://www.observer.com/2011/11/occupy-wall-streets-diaspora-day-3pm-update-reporter-arrest-tally-adds-up-as-court-ruling-is-awaited/>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>

⁴¹¹ According to reports, Higginbotham was arrested the following day while covering the protesters' return to the park. *Reporters Without Borders*. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: <http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011,41371.html>; *TVNZ*. November 16, 2011. *Tim Wilson: NYPD arrests my cameraman*. Available at: <http://tvnz.co.nz/world-news/tim-wilson-nypd-arrests-my-cameraman-4542886>

⁴¹² *New York Times/The Local*. November 15, 2011. Video: *Reporter for The Local Is Arrested During Occupy Wall Street Clearing*. Available at: <http://eastvillage.thelocal.nytimes.com/2011/11/15/video-reporter-for-the-local-is-arrested-during-occupy-wall-street-clearing/>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>. See also: *New York Times*. November 15,

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261. Some journalists reported having been assaulted or pushed by police.⁴¹⁴ According to reports, the mayor of New York stated at a press conference that the media were prohibited from entering the protest site, in order to “keep the situation from worsening” and “to protect the media.”⁴¹⁵

262. The American Declaration of the Rights and Duties of Man, the Declaration of Principles on Freedom of Expression, and the First Amendment to the Constitution of the United States provide broad protection for the exercise of freedom of expression. The protection and guarantee of this right requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned in the preceding paragraphs. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish guarantees and ensure full respect for the right to freedom of expression.

263. The Office of the Special Rapporteur received information that in September an agency within the Department of Health and Human Services reportedly removed a database of medical malpractice sanctions from its website. According to the information received, *Kansas City Star* newspaper reporter Alan Bavley used the database to write about the alleged malpractice of a neurosurgeon. He subsequently received a letter, dated September 1, from the Health Resources and Services Administration warning him that he could be fined up to \$11,000 for violating confidentiality. The Administration also shut down the database, alleging the need to protect the confidentiality of the information contained therein. According to the reports, the federal government reopened public access to the database on November 9, but made its use subject to new restrictions. The information cannot be used to identify doctors or entities; individuals must return, erase, or destroy copies of the information requested of the Administration; and the information may not be disclosed to third parties unless it is part of a strictly statistical analysis.⁴¹⁶

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2011. *Updates on the Clearing of Zuccotti Park*. Available at: <http://cityroom.blogs.nytimes.com/2011/11/15/updates-on-the-clearing-of-zuccotti-park/?src=tw&tw=cityroom#police-clear-church-owned-lot-arrest-about-2-dozen>

⁴¹³ Matthews, Wenig and Lysiak were reportedly released and their criminal charges were dismissed. NPR. November 15, 2011. *Journalists Detained at NYC Occupy Protests*. Available at: <http://www.npr.org/templates/story/story.php?storyId=142350228>; Wall Street Journal. November 15, 2011. *Journalists detained at NYC Occupy protests*. Available at: <http://online.wsj.com/article/AP7788a68e595d4722950196f35c6d4e5b.html>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>

⁴¹⁴ Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Reporters Without Borders. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011_41371.html; NBC New York. November 16, 2011. Video: *Media Pushed Back from Occupy Wall Street Raid*. Available at: <http://www.nbcnewyork.com/news/local/Media-Blackout-Occupy-Wall-Street-Raid-Protest-Press-133879523.html>; New York Times. November 15, 2011. *Reporters Say Police Denied Access to Protest Site*. Available at: <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>

⁴¹⁵ Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Wall Street Journal. November 15, 2011. *Journalists detained at NYC Occupy protests*. Available at: <http://online.wsj.com/article/AP7788a68e595d4722950196f35c6d4e5b.html>

⁴¹⁶ Knight Center. September 25, 2011. *Acusan a gobierno de Estados Unidos de intimidar a reportero y eliminar datos de negligencias médicas*. Available at: <http://knightcenter.utexas.edu/es/blog/acusan-gobierno-de-estados-unidos-de-intimidar-reportero-y-eliminar-datos-de-negligencias-medic>; New York Times. September 15, 2011. *Withdrawal of Database on Doctors Is Protested*. Available at: http://www.nytimes.com/2011/09/16/health/16doctor.html?_r=1; MSNBC. November 9, 2011. *Feds reopen malpractice database, with caveats*. Available at: http://www.msnbc.msn.com/id/45229861/ns/health-health_care/t/feds-reopen-malpractice-database-caveats/; Kansas City Star. November 10, 2011. *After protests, national doctor database reopens – with a catch*. Available at: <http://www.kansascity.com/2011/11/09/3257202/doctor-database-reopens-with-a.html>. See also: National Practitioner Data Bank. November 9, 2011. *Statement by HRSA Administrator Mary K. Wakefield, Ph.D., R.N. on the National Practitioner Data Bank Public Use File*. Available at: <http://www.npdb-hipdb.hrsa.gov/resources/publicDataStatement.jsp>

264. The Office of the Special Rapporteur learned of the March 2 judgment of the United States Supreme Court in the *Snyder v. Phelps* case, which held that the right to freedom of expression provided for in the Constitution protects the protests of a religious group opposed to homosexuality near the funerals of soldiers fallen in combat. In the Court's opinion, these protests are matters of public interest and are protected by the freedom of expression enshrined in the First Amendment of the Constitution.⁴¹⁷ According to the Court, "[freedom of] [s]peech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro [Baptist Church] from tort liability for its picketing in this case."⁴¹⁸

⁴¹⁷ According to the information received, the case arose based on the pickets that the Westboro Baptist Church of Topeka, Kansas has organized over the past 20 years to express their belief that God hates the United States for its tolerance of homosexuality. According to reports, the members of the congregation went to the funeral of a soldier fallen in combat, at a distance of some 300 meters, in a public place, peacefully and under police surveillance. They reportedly sang religious hymns and displayed signs with messages such as, "Thank God for Dead Soldiers," "You're Going to Hell," "God Hates You," and "Thank God for IEDs." The specific case arose from a civil suit filed by Albert Snyder, the father of the fallen soldier, against Pastor Fred Phelps, his daughters, and the Westboro Baptist Church. Fred Phelps and six other people had traveled to Maryland to attend the funeral of Matthew Snyder, son of Albert Snyder, who was killed in Iraq in March of 2006. The members of the congregation notified the church that they were arriving, positioned themselves to protest in a public place 300 meters from the church, and complied with police instructions. Albert Snyder sued them for defamation and intentional infliction of emotional distress, among other claims. A jury in the United States District Court for the District of Maryland agreed with Snyder and awarded him a total of \$2.9 million in compensatory damages and \$8 million in punitive damages. The District Court reduced the amount of punitive damages to \$2.1 million, but left the rest of the verdict intact. Subsequently, a Court of Appeals reversed the judgment, holding that the religious congregation's speech was protected by the First Amendment of the United States Constitution. That position was later affirmed by the Supreme Court. United States Supreme Court. March 2, 2011. *Snyder v. Phelps*. 131 S. Ct. 1207 (2011). Available at: <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>. See Time. March 3, 2011. *Why the Supreme Court ruled for Westboro*. Available at: <http://www.time.com/time/nation/article/0,8599,2056613,00.html>

⁴¹⁸ United States Supreme Court. March 2, 2011. *Snyder v. Phelps*. 131 S. Ct. 1207, 1220 (2011). Available at: <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>. See Time. March 3, 2011. *Why the Supreme Court ruled for Westboro*. Available at: <http://www.time.com/time/nation/article/0,8599,2056613,00.html>

12. Guatemala

265. The IACHR was pleased to learn that the State and civil society organizations agree on the need to protect, consolidate, and reinforce the Historical Archives of the National Police, and that they share the aspiration to turn the National Police Historical Archives Recovery Project into a state project. This evidences the government's willingness to guarantee the right to access to information. According to the information received, the Police Archives—discovered by chance in 2005—provide a record of the activities of the National Police of Guatemala over 15 years, between 1982 and 1997. They contain some 80 million pages, or 7,900 linear meters of documents. The work of preserving and systematizing the information contained therein has provided useful support to 124 judicial searches for persons who disappeared during the internal armed conflict (1960-1996). It has made it possible to put together 1260 investigation files relating to possible human rights violations, and to build 166 specific cases. The Police Archives have proven to have evidentiary value in the court cases that have resulted in convictions against the direct perpetrators of gross human rights violations. The IACHR notes the concern of the State and of civil society about the need to strengthen the National Police Historical Archives Recovery Project legally and institutionally. This is necessary to ensure its financial sustainability, the opportunity for any person to access the information preserved therein, the technical capacity of the personnel in charge of the project, and the proper preservation and systemization of the stored information. It will thus be possible to know the historical truth, establish the facts surrounding human rights violations, and support court cases that make it possible to serve justice, make victims whole, and take measures to prevent the repetition of such acts.⁴¹⁹

266. The Office of the Special Rapporteur condemns the crime committed against journalist Yensi Ordóñez, who was found murdered on May 19 in the town of Nueva Concepción, in the department of Escuintla. According to available information, Yensi Ordóñez's body was found inside her vehicle with stab wounds to her chest and neck. The journalist had apparently received threats from unknown sources because of her reporting. Reports also indicate that she had been the victim of extortion. The journalist, who was 24 years old, worked with the local *Canal 14* news channel, where she also worked as the host of musical and variety shows. In addition, Ordóñez was a teacher at a grade school in the town of El Reparo, in Nueva Concepción. The Office of the Special Rapporteur urges the Guatemalan authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.⁴²⁰

267. According to the ninth principle of the IACHR's 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. 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."

268. The Office of the Special Rapporteur received information concerning the persistence of assaults and threats against journalists in Guatemala during 2011. According to the information received, organizations advocating human rights and freedom of expression documented at least 15 acts involving attempts on the lives and personal safety of media workers during the first half of the year. Eleven of the

⁴¹⁹ See, Hearing on the protection and guarantee of access to the Historical Archives of the Guatemalan National Police, held before the IACHR on October 24, 2011, during the 143rd Period of Sessions.

⁴²⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 24, 2011. Press Release R48/11. *Office of Special Rapporteur Condemns Murder of Journalist in Guatemala*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=846&IID=2>; Committee to Protect Journalists (CPJ). May 20, 2011. *Periodista de televisión hallado muerto en Guatemala*. Available at: <http://cpj.org/es/2011/05/periodista-de-television-hallado-muerto-en-guatemala.php>; EFE News Service. May 20, 2011. *Localizan asesinado en la costa a periodista guatemalteco*. Available at: <http://www.adn.es/internacional/20110520/NWS-0014-Localizan-guatemalteco-periodista-asesinado-costa.html>

reported assaults reportedly took place outside the capital. In 2010, 10 assaults were documented during the entire year.⁴²¹

269. The Office of the Special Rapporteur observes with concern the threats received by media outlets from alleged drug trafficking gangs. On December 27, 2010, individuals who identified themselves as members of the criminal group “Los Zetas” reportedly delivered a message addressed to President Álvaro Colom to three stations in Cobán, in Alta Verapaz. They demanded that it be broadcast within an hour, warning that otherwise they would burn down the stations and kill their relatives of the station employees. The incident occurred in the context of a government offensive against organized crime.⁴²² Subsequently, on May 21, 2011, police detained three subjects who were attempting to hang several banners in the city of Quetzaltenango. The banners contained messages to the media, telling them to stop publishing articles about events related to drug trafficking. They also warned the press to tone it down: “before the war is with you. Anyone who informs is not a traitor, sincerely, Z-200.” The arrest of the subjects and the seizure of the banners took place days following the massacre of 29 peasant farmers in the department of Petén on May 15.⁴²³

270. Journalist Óscar de León, a correspondent for the television news program *Guatevisión* in the department of Quetzaltenango, was reportedly threatened and harassed on several occasions at the beginning of 2011. According to reports, de León began to receive threatening phone calls and text messages on January 13, after receiving an anonymous briefcase containing complaints against a local police authority and then trying to confirm them. On January 29, unknown persons reportedly fired shots at his vehicle on three occasions. Although the journalist did not make the investigation public, its content leaked and became public knowledge. The authority referred to in the accusation filed a complaint alleging defamation against León.⁴²⁴

271. In other reported cases, a member of the Public Prosecutor’s Office allegedly prevented cameramen Jenner Barrios, of *Noticias del Valle*, and Byron Castañón, of Canal 22 from doing their jobs and threatened to jail them while they were covering a raid on an underground bar in San Pedro Sacatepéquez, in the department of San Marcos, in mid-February.⁴²⁵ In the town of Retalhuleu, the director of the newspaper *El Defensor*, Carlos Salgado, complained of having received several threats

⁴²¹ Cerigua. July 2011. *Estado de situación de la libertad de expresión en Guatemala*. First Half of 2011. Available at: http://www.fileden.com/files/2008/2/26/1782822/estado_situacion_libertad_expresion_2011_primer_semestre.pdf; Cerigua. September 13, 2011. *Cerigua presenta informe de agresiones contra periodistas, en conjunto con PDH*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=4764:cerigua-presenta-informe-de-agresiones-contra-periodistas-en-conjunto-con-pdh-&catid=48:libertad-de-expresion&Itemid=10; Prensa Libre. September 14, 2011. *El eslabón más débil*. Available at: http://www.prensalibre.com/opinion/eslabon-debil_0_554344587.html

⁴²² El Periódico. December 29, 2010. *Supuestos “Zetas” amenazan con ataques y hablan de corrupción*. Available at: <http://www.elperiodico.com.gt/es/20101229/pais/187343>; Cerigua. May 21, 2011. *Supuestos Zetas dejan mensajes intimidantes en mantas a la prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2850:supuestos-zetas-dejan-mensajes-intimidantes-en-mantas-a-la-prensa-&catid=48:libertad-de-expresion&Itemid=10

⁴²³ Siglo XXI. May 21, 2011. *Detienen a 3 zetas cuando colocaban mantas en Quetzaltenango*. Available at: <http://www.s21.com.gt/nacionales/2011/05/21/detienen-3-zetas-cuando-colocaban-mantas-quetzaltenango>; Knight Center for Journalism. May 26, 2011. *Supuestos narcotraficantes mexicanos amenazan a la Prensa de Guatemala a través de mensajes en mantas*. Available at: <http://knightcenter.utexas.edu/es/blog/supuestos-narcotraficantes-mexicanos-amenazan-la-prensa-en-guatemala-traves-de-mensajes-en-mant>; Cerigua. May 21, 2011. *Supuestos Zetas dejan mensajes intimidantes en mantas a la prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2850:supuestos-zetas-dejan-mensajes-intimidantes-en-mantas-a-la-prensa-&catid=48:libertad-de-expresion&Itemid=10

⁴²⁴ Cerigua. February 7, 2011. *Periodista recibe amenazas, su hermano sufre atentado*. Available at: http://www.ifex.org/guatemala/2011/02/07/de_leon_threats/es/; Committee to Protect Journalists (CPJ). February 9, 2011. *Reportero guatemalteco amenazado tras investigar corrupción*. Available at: <http://www.cpi.org/es/2011/02/reportero-guatemalteco-amenazado-tras-investigar-c.php>

⁴²⁵ Cerigua. March 11, 2006. *Autoridades amenazaron e intimidaron a periodistas*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=1761:autoridades-amenazaron-e-intimidaron-a-periodistas-&catid=48:libertad-de-expresion&Itemid=10; El Periódico. May 4, 2011. *Seis periodistas amenazados durante 2011*. Available at: <http://www.elperiodico.com.gt/es/20110504/pais/194918/>

after publishing news critical of the local government.⁴²⁶ Also in Retalhuleu, *Guatevisión* TV correspondent Jorge Tizol was reportedly threatened on his Facebook page days after releasing, on April 12, a video in which three men were beating a driver who refused to buy a product they were selling on the street.⁴²⁷ On February 17, agents from the Criminal Investigations Service (SIC) reportedly insulted and detained *Telediario* correspondent Rolando Hernández Castejón in Chiquimula for 40 minutes while he was reporting on a police operation.⁴²⁸

272. On April 9, Vasni Vásquez, a journalist from the program “*Q´rollo*”, which is broadcast on the Internet, was reportedly arrested for his alleged involvement in a kidnapping. The reporter had gone to the place where the police were securing the victim’s release, and reportedly identified himself with his credential from the Chiquimula Journalists’ Network (RCS). Nevertheless, he was arrested with four other suspects, who reportedly denied that the journalist had been an accomplice to the kidnapping. On May 18, 2011, he was placed in pretrial custody and charged with “kidnapping, collusion and conspiracy.” Since then, the date of his hearing has been postponed twice, and his attorneys have reportedly filed several requests to present exculpatory evidence. On June 9, 2011, the Chiquimula Court apparently reported that Vásquez would remain in pretrial detention and be prosecuted for kidnapping.⁴²⁹ Nevertheless, on October 19, the Appeals Chamber of Zacapa reportedly released the journalist for lack of evidence against him.⁴³⁰

273. Environmental journalist Eduardo Villatoro of the newspaper *La Hora* reportedly began receiving intimidating phone calls on June 2, 2011, following the publication of articles about iron mining on Guatemalan beaches and the construction of a liquid gas storage facility. He reportedly received a death threat in one of the last calls. The unknown individuals allegedly also called the Guatemalan Journalists’ Association in order to reiterate the threats, and they linked the threats to the publication of his environmental articles. The journalist reportedly did not file a complaint with the Office of the Public Prosecutor.⁴³¹

⁴²⁶ Cerigua. April 25, 2011. *Periodista retalteco denunció violación a la libertad de prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68retalhuleu/index.php?option=com_content&view=article&id=2393:periodista-retalteco-denuncia-violacion-a-la-libertad-de-prensa&catid=48:libertad-de-expresion&Itemid=10; El Periódico. May 4, 2011. *Seis periodistas amenazados durante 2011*. Available at: <http://www.elperiodico.com.gt/es/20110504/pais/194918/>

⁴²⁷ The message against the journalist (posted to his page on the social networking site Facebook) warned him not to leave the house, because if he did, he would get a beating “until you’re unconscious, if you even come back.” Noticias.Com. April 18, 2011. *Amenazan por Facebook a periodista que cubrió captura de supuestos universitarios*. Available at: <http://noticias.com.gt/nacionales/20110418-amenazan-facebook-periodista-captura-universitarios.html>; Cerigua. April 15, 2011. *Amenazan a periodista en Retalhuleu*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2365:amenazan-a-periodista-en-retalhuleu&catid=48:libertad-de-expresion&Itemid=10; Regina Pérez, Cerigua. “*Intimidaciones y autocensura obstaculizan libertad de prensa en Guatemala*.” *Vistazo Especial*, May 3, 2011. Year 12 No. 2. 2nd Week of May, 2011. p. 1. Available at: <http://www.cerigua.org/servicios/boletines/vz-021211.pdf>

⁴²⁸ Cerigua. February 21, 2011. *Agentes detienen y maltratan verbalmente a periodista en Chiquimula*. Available at: <http://www.cerigua.org/servicios/diarios/c-210211.pdf>; Cerigua. March 11, 2006. *Autoridades amenazaron e intimidaron a periodistas*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=1761:autoridades-amenazaron-e-intimidaron-a-periodistas-&catid=48:libertad-de-expresion&Itemid=10

⁴²⁹ Reporters Without Borders/International Freedom of Expression Exchange (IFEX). June 14, 2011. *RSF expresa serias dudas sobre acusaciones contra periodista detenido*. Available at: http://ifex.org/guatemala/2011/06/14/vasni_vasquez/es/; Crónica Viva. June 13, 2011. *Guatemala: exigen libertad de reportero Vasni Vásquez*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/21534-guatemala-exigen-libertad-de-reportero-vasni-vasquez->

⁴³⁰ Mi Chiquimula. October 20, 2011. *Queda libre, confirma clausura del caso Vasni Vasquez*. Available at: <http://www.michiquimula.com/2011/10/queda-libre-confirma-clausura-del-caso-vasni-vasquez/>

⁴³¹ International Freedom of Expression Exchange (IFEX). June 6, 2011. *Columnista que escribe sobre temas ambientales recibe amenazas*. Available at: http://ifex.org/guatemala/2011/06/06/villatoro_amenaza/es/; Knight Center for Journalism in the Americas. June 7, 2011. *Periodista que escribe sobre medioambiente recibe amenazas telefónicas en Guatemala*. Available at: <http://knightcenter.utexas.edu/es/blog/periodista-que-escribe-sobre-medioambiente-recibe-amenazas-telefonicas-en-guatemala>

274. On July 13, 2011, following the publication of an article on alleged corrupt acts of the municipal government of Mazatenango, *Prensa Libre* correspondent Dánilo López was reportedly harassed and verbally assaulted by the mayor. On August 4, 2011, López and Ángel Ruiz, a correspondent from *Nuestro Diario*, were allegedly intimidated by supporters of the mayor, and threatened by his bodyguards.⁴³²

275. In mid-July 2011, journalists Astrid Blank and Jorge Hernández were reported to have been assaulted by an unidentified person in the La Florida neighborhood of Guatemala City. Blank and Hernández had gone to cover a news story about rumors of alleged vote-buying. At the scene, the unidentified person reportedly requested that they stop recording, and when they asked for his name, he verbally and physically assaulted them and destroyed their camera.⁴³³

276. On July 26, journalists Javier Solís, director of *Tele Noticias* of *Mega Visión Canal 3*, and Manolo Lú, of *Ultra Canal 51*, reported that they had been assaulted by two employees of the presidential program *Mi Familia Progres*a (MIFAPRO) from the town of Santa Cruz Muluá, when they went to request information about the implementation of this program in the town. According to reports, the person in charge of MIFAPRO in the town verbally assaulted the reporters and attempted to hit them, while a second staff member hurled threats at them.⁴³⁴

277. During the first round of the national elections on September 11, a poll worker in the community of Sololá reportedly assaulted Alfonso Guárquez, a *Cerigua* correspondent in that town, as well as *Noti7* correspondent Enrique Pablo de León, when they tried to photograph a polling place where some alleged anomalies had been reported by election observers from the University of San Carlos.⁴³⁵

278. On October 27, journalist Lucía Escobar reported that she had received threats following the October 19 publication of a column in *El Periódico* in which she spoke out against a “group of masked men” in the tourist city of Panajachel, called the Security Commission, which was allegedly responsible for violating the freedom and safety of some people. The journalist also identified the authorities who, in her opinion, had defended the masked men or had been indifferent to the events that took place. The threats were reportedly issued on a local television station that was broadcasting a meeting of the Security Commission, at which some of its members made disparaging and stigmatizing remarks against the journalist and reportedly called her “trash” that would have to “end up in the trash.”⁴³⁶

⁴³² International Freedom of Expression Exchange (IFEX). August 10, 2011. *Periodistas sufren persecución de alcalde de Mazatenango por publicación sobre corrupción*. Available at: http://www.ifex.org/guatemala/2011/08/10/mazatenango_threats/es/; *Prensa Libre*. August 13, 2011. *Alcalde de Mazate acosa a periodistas*. Available at: http://www.prensalibre.com.gt/suchitepequez/Alcalde-Mazate-acosa-periodistas_0_535146523.html

⁴³³ International Freedom of Expression Exchange (IFEX)/Cerigua. July 21, 2011. *Reporteros de televisión sufren agresiones por presunto trabajador del gobierno*. Available at: http://www.ifex.org/guatemala/2011/07/21/guatevision_agresiones/es/; *Periodistas en Español*. July 21, 2011. *Censura en Guatemala: agresiones contra ocho periodistas en el proceso electoral*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/censura-en-guatemala-agresiones-contra-ocho-periodistas-en-el-proceso-electoral>

⁴³⁴ Cerigua. July 26, 2011. *Dos periodistas de Retalhuleu agredidos y amenazados por trabajadores de Mifrapo*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=3951:dos-periodistas-de-retalhuleu-agredidos-y-amenazados-por-trabajadores-de-mifapro&catid=48:libertad-de-expresion&Itemid=10; *La Hora*. July 27, 2011. *Trabajadores de Mifrapo agreden a periodistas*. Available at: <http://www.lahora.com.gt/index.php/nacional/guatemala/departamental/4366-trabajadores-de-mifapro-agreden-a-periodistas>

⁴³⁵ Cerigua. September 11, 2011. *Fiscal agrede a periodistas en una mesa de votación*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=4717:fiscal-agrede-a-periodistas-en-una-mesa-de-votacion-en-solola-&catid=87:elecciones&Itemid=10

⁴³⁶ Instituto Prensa y Sociedad (IPYS). October 28, 2011. *Miembros de Comité de Seguridad amenazan a periodista en Guatemala*. Available at: <http://ipys.org/?q=noticia/942>; *El Periódico*. October 29, 2011. *Ataque a la libertad de expresión en Panajachel*. Available at: <http://www.elperiodico.com.gt/es/20111029/opinion/202881/>; *El Periódico*. October 19, 2011. *De cuervos, ojos y demonios*. Available at: <http://www.elperiodico.com.gt/es/20111019/lacolumna/202450/>

279. According to the ninth principle of the IACHR's 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. 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."

280. The Office of the Special Rapporteur notes with concern the appeal from Guatemalan freedom of expression organizations regarding the possible increase in the phenomenon of self-censorship. As evidence of this situation, they cite the fact that in departments where drug trafficking groups are known to operate, information about the problem is scarce. For example, according to the information received, in Alta Verapaz—where the government declared a state of siege in December 2010 due to the presence of the criminal group "Los Zetas"—only 35 articles about drug trafficking were published in the entire year in five newspapers. At the same time, in Chiquimula, where there is reportedly an even greater presence of drug trafficking groups, only five articles were published on the subject in 2010. The Guatemalan organizations theorize that once again there are issues that are not covered or published in Guatemala, and that journalists are again facing the rise of self-censorship because of new censors of freedom of expression, especially coming from the drug trafficking world.⁴³⁷ The Office of the Ombudsman has called the problema of self-censorship among journalists "serious" in light of the activities of organized crime.⁴³⁸

281. The Office of the Special Rapporteur notes that the bill for the Community Media Act introduced to the Congress of the Republic of Guatemala in August 2009 has been held up. The bill was ruled on favorably by the Indigenous Peoples' Commission on January 12, 2010, and was included on the agenda for the full legislative session as of February 2010.⁴³⁹ However, during 2010 changes were made to the bill that would restrict the geographic range of the community radios and impose discriminatory criteria for accessing frequencies—a concern expressed by the Office of the Special Rapporteur in its 2010 annual report.⁴⁴⁰ During 2011, the initiative has not been debated in a full legislative session, even

⁴³⁷ Regina Pérez, Cerigua. "Intimidaciones y autocensura obstaculizan libertad de prensa en Guatemala." *Vistazo Especial*. Year 12, No. 2. 2nd week of May, 2011. pp. 2-3. Received via email at the Office of the Special Rapporteur for Freedom of Expression. Available at: <http://www.cerigua.org/servicios/boletines/vz-021211.pdf>. See also: Melissa Vega, Cerigua. "Periodistas consideran que el Estado podría estar imponiendo la censura de temas riesgosos". June 10, 2011. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=3200:periodistas-consideran-que-el-estado-podria-estar-imponiendo-la-censura-de-temas-riesgosos&catid=48:libertad-de-expresion&Itemid=10; Cerigua. April 7, 2011. *Disminuyen las agresiones contra la prensa, pero crece la autocensura*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2200:disminuyen-las-agresiones-contra-la-prensa-pero-crece-la-autocensura&catid=48:libertad-de-expresion&Itemid=10; Cerigua. July 2011. *Estado de situación de la libertad de expresión en Guatemala*. First Half of 2011. Available at: http://www.fileden.com/files/2008/2/26/1782822/estado_situacion_libertad_expresion_2011_primer_semestre.pdf

⁴³⁸ La Hora. September 16, 2011. *Preocupa a PDH la autocensura y la desprotección de la prensa*. Available at: <http://168.234.202.47/index.php/nacional/guatemala/departamental/144147-preocupa-a-pdh-la-autocensura-y-la-desproteccion-de-la-prensa>; Periodistas en español. September 15, 2011. *Periodismo en Guatemala: autocensura y falta de protección en la prensa local*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/periodismo-en-guatemala-autocensura-y-falta-de-proteccion-en-la-prensa-local>

⁴³⁹ The bill contains the regulation of community media and recognizes the reservation of frequencies for community media outlets. It defines the objectives of the media, their coverage, their forms of support, and all matters pertaining to their operation. Congress of the Republic of Guatemala. January 12, 2010. *Dictamen favorable de la Comisión de Pueblos Indígenas sobre la iniciativa de Ley de Medios de Comunicación Comunitaria*. Available at: <http://www.congreso.gob.gt/manager/images/2AFE2678-528B-5313-7B70-050E060E5EAD.pdf>; Cerigua. July 14, 2011. *Radios comunitarias buscan aprobación de Ley de Medios de Comunicación Comunitaria*. Available at: http://cerigua.org/la1520/index.php/nota-diaria/46-mujeres/index.php?option=com_content&view=article&id=3739:radios-comunitarias-de-guatemala-buscan-aprobacion-de-ley-de-medios-de-comunicacion-comunitaria-&catid=48:libertad-de-expresion&Itemid=10

⁴⁴⁰ According to the information received, the amendments mean that the coverage of community radios would be reduced to the local level, with a range of barely 2.5 km., and only on the FM band. The Office of the Special Rapporteur reiterates its 2009 call to the Guatemalan State regarding the need to implement effective policies that ensure equal opportunity of access to radio and television broadcast frequencies. In addition, it reminds the State of its obligation to take all measures necessary, including positive acts, to ensure media access for minority groups and its effective enjoyment without discrimination. IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for*

though the law would realize aspirations set forth in the Constitution of the Republic of Guatemala, is in line with the commitments of the 1996 peace accords, and could implement the recommendations of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur for Freedom of Expression. Guatemalan organizations for the defense of freedom of expression and Frank La Rue, the United Nations Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, have criticized the reluctance to debate the bill, and have called into question the persistence of a status quo governed by a monopoly in the ownership of television channels and a high degree of concentration in the use and enjoyment of radio frequencies.⁴⁴¹

282. The Office of the Special Rapporteur reiterates its recommendation that, “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair. Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.”⁴⁴²

283. Principle 12 of the Declaration of Principles establishes that: “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur again urges the Guatemalan State to bring its legislative framework on broadcasting into line with international standards on freedom of expression.

13. Guyana

284. The Office of the Special Rapporteur was informed of the cancellation of the critical interview and opinion program, *Keeping Them Honest of CNS Channel 6*, through a Saturday, July 23 letter sent by the channel’s owner, Chandra Narine Sharma to one of the program’s hosts. The letter regretted having to cancel the program, stating: “This decision, which takes effect immediately, has been taken for regulatory reasons following a conversation I have had with the relevant authorities concerning the content of the program.” The note added, “I thank you most sincerely for choosing the People’s Station CNS6 for your hugely popular and useful program and I trust that you will understand the pressure to which my TV station has been subject over the past several years and the sensitivity of the authorities in the current politically charged environment.” According to the information available, the program’s hosts, Ramon Gaskin and Christopher Ram, spoke harshly of this decision at a press conference held on July 25, 2011. They alleged that it was the result of government pressure. Previously, in May of 2011, following the controversial broadcast of remarks by government critic Anthony Vieira, the

...continuation

Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 283. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁴⁴¹ Prensa Libre. August 18, 2011. *Periodismo y Ética*. Available at: http://www.prensalibre.com/opinion/Periodismo-etica_0_538146269.html; Prensa Libre. April 6, 2011. *Quedaron evidenciados*. Available at: <http://legislaciones.item.org.uy/index?q=node/2605>; Cerigua. September 30, 2011. *Gobierno no promovió regulación de la ley para impulsar pluralidad en la información*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=5029:gobierno-no-promovio-regulacion-de-la-ley-para-impulsar-pluralidad-en-la-informacion-&catid=48:libertad-de-expresion&Itemid=10

⁴⁴² IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 284. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

Advisory Committee in Broadcasting (ACB) had found *Channel 6* at fault for regulatory noncompliance and had made a recommendation to President Bharrat Jagdeo to close the station for 6 months. According to the information available, *Channel 6*'s license had already been suspended for a month in 2005, and for four months in April 2008, for charges relating to its programming content.⁴⁴³

285. The Office of the Special Rapporteur received information indicating that on May 17, the Chairman of the Ethnic Relations Commission filed a claim for Gy\$50 million (approximately US\$250,000) each for defamation, and for aggravated and punitive damages, both against commentator and government critic Anthony Vieira, and the owner of CNS6, Chandra Narine Sharma. The claims arose from statements made by Vieira on May 4, 2011, alleged to have harmed the chairman's reputation and caused distress, shame, public humiliation, and ridicule. According to reports, Sharma acknowledged the mistake and apologized to the chairman for not editing the program prior to its airing.⁴⁴⁴

286. The Office of the Special Rapporteur for Freedom of Expression sent two requests for information to the State of Guyana, in accordance with Article 18 of the Statute of the IACHR. The first request was sent on August 22, 2011, and was subsequently reiterated and supplemented by a second request for information dated October 12, 2011. Both letters referred to the aforementioned cancellation of the interview and opinion program *Keeping Them Honest* and the particular situation of the CNS *Channel 6* network.

287. On October 14, 2011, the Office of the Special Rapporteur received Note No. 893-11 from the State of Guyana⁴⁴⁵, dated October 13, 2011, in reference to the information requested by this office in both letters. It first provided background information on the state of communications in the country, and then answered the specific questions. In its response, the State indicated that under Guyanese law, media operators are licensed by the National Frequency Management Unit, and monitored by the Advisory Committee on Broadcasting (ACB). They stressed that in view of the unfortunate incidents of violence that erupted in Guyana following the 1997 and 2001 elections, where some media outlets used their forums to promote ethnic violence, both the party of the government and the opposition agreed to set up a bipartisan committee to define media policies in the country. This committee would be comprised by representatives of the main political parties in parliament and by media experts.

288. They indicated that the committee recommended the amendment of the Post and Telegraph Act and the creation of a supervising advisory body. Accordingly, the law was amended on June 23, 2001 and on November 17, 2001, to create a supervisory committee that would be assigned specific powers. That committee was formed in 2002, and was comprised of three people: one appointed by the President, another by the leader of the opposition, and the last one by civil society. The committee is charged with monitoring the media's compliance with the Constitution and the laws of Guyana.

289. The State reported that since 2006 the President has been the public official in charge of the telecommunications sector. It indicated that, following a lengthy debate, Broadcasting Act No. 17 of 2011 was enacted by the National Assembly on July 28, 2011, and signed into law on September 27,

⁴⁴³ The 2005 suspension reportedly occurred because of the alleged broadcast of false information, and the 2008 suspension was for airing a phone call in which, in the midst of a crime wave, a woman threatened to kill the president if anything happened to her children. Guyana Observer. July 26, 2011. *Hosts accuse Jagdeo of pressuring C.N. Sharma*. Available at: <http://www.guyanaobservernews.org/content/view/full/5621/94/>; Caricom News Network. July 25, 2011. *Guyana - Guyana TV station's pulling of controversial prog. points to Jagdeos's desperation*. Available at: http://caricomnewsnetwork.com/index.php?option=com_content&view=article&id=4534:guyana-guyana-tv-stations-pulling-of-controversial-prog-points-to-jagdeos-desperation-chris-ram&catid=54:latest-news; Guyana Times International. May 19, 2011. *Edghill sues Vieira, Sharma for Gy\$50M*. Available at: <http://www.guyanatimesinternational.com/?p=7010>

⁴⁴⁴ Guyana Times International. May 19, 2011. *Edghill sues Vieira, Sharma for Gy\$50M*. Available at: <http://www.guyanatimesinternational.com/?p=7010>; Stabroek News. May 18, 2011. *Edghill files \$25M libel suit against Sharma, Vieira*. Available at: <http://www.stabroeknews.com/2011/news/stories/05/18/edghill-files-25m-libel-suit-against-sharma-vieira/>

⁴⁴⁵ Note No. 893-11 from the Government of Guyana. Ministry of Foreign Affairs. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

2011. This law provides for the creation of a National Broadcasting Authority in charge of the regulations and operations for the sector. The Telecommunications Bill and the amendments to the Public Utilities Commission Bill are currently pending before parliament. Those three laws, once they are approved, will provide a completely new legal framework for communications in Guyana.

290. The State asserts that in 2006 the Guyana Elections Commission (GECOM) developed a media code of conduct, which was revised in 2011 with the cooperation of all of the media companies, and that it has been signed by both public and private media outlets. In addition, GECOM created a Media Monitoring Unit (MMU) that operates during election season. Added to this is the “peace accord” signed by the political parties in 2006. They indicated that all of these efforts have been acknowledged by the international observation missions, including from the OAS.

291. In response to the question regarding the cancellation of the program *Keeping Them Honest*, they maintained that the State does not interfere, and has not interfered, in agreements between private parties, as those agreements are strictly commercial. They asserted that the State did not play any role in the interruption of that program.

292. With respect to the suspensions of *CNS TV6*, the State indicated that it was suspended for a month, from January 22 to February 25, 2005, during a natural disaster that affected more than 300,000 people and 67% of the economy. The State provided the notice sent to the channel on that occasion, which indicated that it had violated the terms of its license in its broadcasting of programs that covered the floods in areas the President had declared disaster zones; in the State's opinion, the journalists misrepresented the situation by holding the government responsible for the suffering caused by the floods, and this rhetoric encouraged disorder and the creation of a hostile environment for the aid efforts. Consequently, the channel was given notice of the suspension and warned that another violation of its licensing terms could result in the revocation of its license.⁴⁴⁶

293. The channel's license was once again suspended for four months, from April 11 to August 28, 2008, because of the content of a live program aired on February 21, 2008, during which a viewer called in and threatened to kill the President. The State provided a copy of the letter sent to the channel indicating that it had violated the terms of its license and of the Post and Telegraph Act with its February 21, 22 and 23, 2008 broadcast of a program whose content advocated the death of the President, and for not having accurately presented statements made by the President on the subject of national security.⁴⁴⁷ They further stated that the channel had been warned by the Advisory Committee on Broadcasting (ACB) of numerous and repeated transgressions, and had been given the opportunity to respond to or correct them. They also indicated that in January of 2011 the channel's license was renewed for one year, like all the other licenses, and they provided a copy of the renewed license.⁴⁴⁸

294. In response to the question about the recent suspension of *CNS TV Channel 6*, the State indicated that on May 4, 2011, the channel had broadcast remarks by Anthony Vieira that defamed the President and his administration, as well as the Chairman of the Ethnic Relations Commission, and that it was an attack on various religious leaders. The Chairman of the Ethnic Relations Commission, Bishop Juan Edghill, filed a formal complaint in his own name before the ACB on May 10, 2011.⁴⁴⁹ The ACB provided notice of the complaint to the channel and indicated that it had violated Regulation 23 A (a-e) to the Post and Telegraph Act. The channel responded to the ACB stating that the broadcast of the remarks had been in error, and that they apologized to Bishop Edghill.

⁴⁴⁶ Attachment 4 to Note No. 893-11: Letter from the Office of the Prime Minister to CNS Television Station Channel 6, dated January 22, 2005.

⁴⁴⁷ Attachment 5 to Note No. 893-11: Letter from the Office of the President to CNS Channel 6, dated April 11, 2008.

⁴⁴⁸ Attachment 6 to Note No. 893-11: Renewal of License No. 332V/12/OT/2011 from January 1, 2011 to December 31, 2011. It includes the appendix with the terms and regulations governing the license.

⁴⁴⁹ Attachment 9 to Note No. 893-11: Formal complaint filed before the ACB by Bishop Edghill, dated May 10, 2011.

295. The State provided a copy of Regulation 23A, which specifies the necessary conditions for holding a television broadcast license. The amendment to the Post and Telegraph Act provides that section a) of Regulation 23 A was eliminated in 2001, and sections b) – i) were redesignated as a) –h). Accordingly, sections a) – e) of the regulation establish the following obligations: a) ensure that program content does not offend good taste or decency, or encourage or incite racial hatred, crime, or public disorder, or offend public sensibilities; b) act reasonably and in good faith to ensure that news is presented with due accuracy and impartiality; c) ensure that persons whose work deals with political matters, industrial controversies, or public policy issues maintain their impartiality; d) ensure that due responsibility is exercised with respect to programs with religious content and, in particular, that such programs do not involve any abusive or derogatory treatment of the religious views and beliefs of the persons belonging to a specific religion or religious denomination; and e) ensure that the programs broadcast by the licensee meet the highest possible standard.⁴⁵⁰

296. On May 27, 2011, the ACB found that *CNS TV Channel 6* was liable for the violation of Regulation 23A, and it recommended that the President impose a penalty that could involve the suspension of the channel's license for a minimum of 6 months, or any other period of time deemed appropriate. In this regard, the ACB found that the channel had violated sections a), b), c), and e) of Regulation 23A. In the ACB's opinion, the channel's statements had the potential to create and heighten ethnic and religious tensions in a multi-ethnic and multi-religious society. It reminded the licensee that the media must not be used to insinuate that one religious group benefits more or less than another religious group, without having specific evidence with regard to the matter. It also noted that the company demonstrated a historical pattern of violating Regulation 23A a), b), c), d) and e) since April of 2002.⁴⁵¹

297. According to the information provided, the President reportedly met with the owners of the channel in June of 2011. However, after this meeting, the channel again broadcast the offensive program. On September 23, the President met with the owners once again and informed them of his decision to suspend the channel for 4 months. Formal notice of the suspension was given on September 30, 2011, specifying that the suspension would take effect the same day at 6:00 p.m. However, on October 9, 2011, the President announced that he was postponing the start date for the suspension to December 1, 2011.

298. The Office of the Special Rapporteur is very grateful to the State of Guyana for the information it forwarded, and notes that the IACHR has acknowledged the authority of States to regulate broadcasting activity. This authority encompasses not only the ability to determine the manner in which licenses are granted, renewed, or revoked but also the power to design and implement public policies on broadcasting, provided that the guidelines imposed by the right to freedom of expression are respected.⁴⁵²

299. Additionally, the State confirmed that subsequent to filing his complaint before the ACB, Bishop Edghill filed suit in the Guyana courts against the author of the remarks, Anthony Viera, and the licensee, Mr. Sharma, seeking more than Gy\$50 million (approximately US \$250,000) in damages.

300. The Office of the Special Rapporteur finds it relevant to note that, according to principle 10 of the IACHR's Declaration of Principles on Freedom of Expression, "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

⁴⁵⁰ Attachment 2 to Note No. 893-11: Amendments to the law entitled "*Post and Telegraph Act*." June 27, 2001. Legal Supplement B.

⁴⁵¹ Attachment 8 to Note No. 893-11: Letter from the ACB to President Bharrat Jagdeo, dated May 27, 2011.

⁴⁵² CIDH. 2009 Annual Report. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI: Freedom of Expression and Broadcasting.* P. 414. Para. 9. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” In addition, principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato* laws,’ restrict freedom of expression and the right to information.”

301. On October 27, 2011 the Office of the Special Rapporteur for Freedom of Expression received Note No. 897-11 from the State of Guyana,⁴⁵³ in which the State offered its comments on the information issued by the Office of the Special Rapporteur in its 2010 Annual Report. In that report, the Office of the Special Rapporteur made reference to a defamation lawsuit filed by the President of Guyana against *Kaiteur News* columnist and Editor Freddie Kissoon.⁴⁵⁴

302. The State indicated that freedom of expression is subject to important limitations, and that the purpose of defamation laws is to establish a balance between this freedom and the right to privacy and honor. The State’s position with respect to the particular case that appears in the report is that Mr. Kissoon made libelous statements that were published for purposes of negatively affecting the reputation of President Jagdeo. They indicated that the information gave the impression that the President is racist. They stress that the article is defamatory *per se* and that—in spite of the fact that it was a statement of opinion—it was defamatory based on specific facts and on allegations regarding those facts, which are defamatory.

303. The State alleged that the statement against the President was unnecessary and that it gives rise to liability from the time of its publication; that is, from June 28, 2010. In their view, the President has demonstrated *prima facie* that his allegations of defamation are consistent with principles 10 and 11 of the IACHR’s Declaration of Principles on Freedom of Expression, as well as with other principles of that declaration.

304. The Office of the Special Rapporteur is especially grateful for the information provided by the State. In this respect, it finds it important to underscore that, indeed, one of the inter-American standards on the issue establishes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to violence or any other similar unlawful action against any person or group of persons, for any reason, including race, color, religion, language, or national origin, shall be prohibited by law. In this respect, the incitement of violence for racial reasons is not protected by the right to freedom of expression.⁴⁵⁵

305. In this respect, “The IACHR has said, following the settled international doctrine and jurisprudence on the subject, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitement to commit crimes, the breaking of public order or national security) must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was hard, unfair or disturbing), but that

⁴⁵³ Note No. 897-11 from the Government of Guyana. Ministry of Foreign Affairs. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁵⁴ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). P. 109. Para. 288-289. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁴⁵⁵ Without prejudice to the presumption of coverage *ab initio* of all forms of human expression by freedom of expression, there are certain types of speech that are excluded from this freedom’s scope of coverage by virtue of express prohibitions set forth in international human rights law. There are essentially three types of speech that do not enjoy protection under Article 13 of the American Convention, according to the treaties in force: *Propaganda for war and advocacy of hatred that constitute incitements to violence; direct and public incitement to genocide; and child pornography*. IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LV/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 57-60. Available at: <http://www.cidh.org/pdf%20files/Marco%20Juridico%20Interamericano%20estandares.pdf>

the person had the clear intention of committing a crime and the actual, real and effective possibility of achieving this objective.”⁴⁵⁶

306. In addition, when the matter concerns speech that does not incite violence, or statements that may be offensive to a public servant, the proper forum in which to allege liability must be the civil courts, bearing in mind the criteria of *actual malice* and the proportionality of the potential penalty. In this regard, principle 10 of the IACHR’s previously cited Declaration of Principles on Freedom of Expression establishes that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a 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.”

14. Haiti

307. The Office of the Special Rapporteur notes that one year after the earthquake that took place on January 12, 2010, the Haitian media was showing signs of reconstruction, although multiple difficulties persist. According to the information received, 25 of the 50 radio broadcasters in Port-au-Prince were back to broadcasting one month after the earthquake. After one year, audiovisual broadcasting in the capital was almost fully reestablished. The assistance of the Haitian State was relevant to these results. The State provided support for 30 broadcasters in the capital with a fund of two million American dollars, providing support that varied between US \$5,000 and \$25,000 dollars. However, assistance for rural broadcasters has been slower, particularly for those located in the most devastated towns. The Media Operating Center in Port-au-Prince continued to function. It was set up by international aid organizations and allowed dozens of local and foreign journalists to continue to work. As far as print media, the newspaper *Le Nouvelliste* was back in daily circulation by April of 2010, while *Le Matin* became a weekly edited in the Dominican Republic and was forced to dismiss half its employees. *Bon Nouvel*, the last newspaper in the creole language, has closed.⁴⁵⁷

308. The Office of the Special Rapporteur takes note of the bill submitted on May 5 to Senator Melius Hypolite by Haitian community broadcasters and the Entertainment and Social Communication Society (Saks) that would provide these broadcasters with a legal framework and guarantee them conditions that are equal to those of the other media. Marie Laurence Jocelyn Lassègue, the Minister of Culture and Communication, recognized the important role played by community broadcasters during natural disasters. She publicly expressed her support for the initiative, and before the parliamentary vote she also expressed a commitment to promoting the availability of funding for the bill.⁴⁵⁸

⁴⁵⁶ On this issue, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], No. 23168/94, ECHR 1999-IV; *Gerger v. Turkey* [GC], No. 24919/94, 8 July 1999; *Okçuoglu v. Turkey* [GC], No. 24246/94, 8 July 1999; *Arslan v. Turkey* [GC], No. 23462/94, 8 July 1999; *Erdogdu v. Turkey*, No. 25723/94, § 69, ECHR 2000 – VI. Also see I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 77. Cited in: IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 58. Available at: <http://www.cidh.org/pdf%20files/Marco%20Juridico%20Interamericano%20estandares.pdf>

⁴⁵⁷ Reporters Without Borders. January 11, 2011. *The reconstruction of the media does not yet include the resurrection of the press*. Available at: http://es.rsf.org/haiti-la-reconstruccion-de-los-medios-no-11-01-2011_39278.html; Committee to Protect Journalists (CPJ). February 15, 2011. *Attacks on the press 2010: Haiti*. Available at: <http://cpj.org/2011/02/attacks-on-the-press-2010-haiti.php>

⁴⁵⁸ World Association of Community Broadcasters (AMARC). May 6, 2011. *Haitian community radio stations submit bill to senator*. Available at: <http://legislaciones.item.org.uy/index?q=node/2798>; AlterPresse. May 5, 2011. *Haiti-Médias: Le ministère de la culture et de la communication s’engage à soutenir le projet de loi sur les radios communautaires*. Available at: <http://www.alterpresse.org/spip.php?article11002>

309. The Office of the Special Rapporteur received information on a variety of attacks on the media and journalists in the context of the elections held in November of 2010 and on March 20, 2011. On December 7, a group of people looted Radio Lebon FM, in the Les Cayes locality, and set it on fire. Its owner was a Senate candidate.⁴⁵⁹ On December 9, individuals presumed to be partisans of the winning candidate detained and intimidated journalist Esther Dorestal, with radio station Metropole, as she was on her way to work.⁴⁶⁰ Likewise, a cameraman with Haiti Press Network was attacked after being pointed out in front of the National Palace.⁴⁶¹ That same day Guyler C. Delva, a correspondent with the Reuters news agency and the secretary general of the Haitian organization SOS Journalistes, was attacked by officers who were providing guard services in front of the Karibe Convention Center after they denied him access to the auditorium where the candidates would be debating.⁴⁶² On March 20, 2011, alleged members of the party INITE attacked Jean Preston Toussaint, the correspondent for Radio Kiskeya on the Gonâve Island.⁴⁶³

310. On April 12, 2011, individuals who presumably sympathize with governing party INITE set community radio station *Têt Ansanm Karis* on fire, along with the premises of the Center for Culture and Development (SKDK), the Library of the Jacques Roumain Community, and six nearby homes, all in the community of Carice. According to the information received, armed men broke into the facilities after the broadcaster issued the final results of the legislative election that took place on March 20 and leveled accusations of fraud committed during the election. According to reports, the radio station personnel identified the perpetrators of the attack. The fire completely destroyed the equipment, building, and archives of the radio station and the other community organizations.⁴⁶⁴

311. The Office of the Special Rapporteur learned of death threats and incidents of sabotage against several journalists and media outlets in Port-au-Prince starting at the beginning of the second round of the election campaign. In response to this situation, on March 28, Patrick Moussignac, the president and general director of Radio Télévision Caraïbes (RTVC), asked for security assistance from the United Nations Stabilization Mission in Haiti (MINUSTAH) for its personnel and facilities.⁴⁶⁵ Information was also received on death threats received by nearly 15 communicators in different media

⁴⁵⁹ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010_39010.html; Última Hora. December 8, 2010. *Disturbances mark announcement of election results in Haiti.* Available at: <http://ultimahora.es/mallorca/noticia/noticias/internacional/disturbios-tras-anunciarse-los-resultados-electorales-en-haiti.html>

⁴⁶⁰ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010_39010.html; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

⁴⁶¹ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010_39010.html; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

⁴⁶² Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010_39010.html; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

⁴⁶³ Conseils Communication Construction. March 22, 2011. *Haiti dans la presse Nationale et Internationale-Mardi 22 Mars 2011.* Available at: <http://www.ctroisgroup.com/revue-de-presse/406-haiti-dans-la-presse-nationale-et-internationale-mardi-22-mars-2011.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

⁴⁶⁴ World Association of Community Broadcasters (AMARC). April 25, 2011. *Community radio station burned in Carice, Haiti.* Available at: <http://lists.amarc.org/pipermail/amarcinfoderechos/2011-April/000418.html>; Committee to Protect Journalists (CPJ). April 26, 2011. *Haitian radio station destroyed in arson attack.* Available at: <http://www.cpj.org/2011/04/haitian-radio-station-destroyed-in-arson-attack.php>

⁴⁶⁵ Radio Télévision Caraïbes (RTVC). March 30, 2011. *Radio Television Caraïbes sollicite la protection de la MINUSTAH contre des menaces de mort et de sabotage.* Available at: <http://www.radiotelevisioncaraibes.com/nouvelles/haiti/rtvc-sollicite-la-protection-de-la-minustah.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

outlets throughout the country during the election and in connection with news items that could have been considered unfavorable to certain candidates. Due to the warnings received, journalists Jean-Claude Dumény, of *Radio-Télé Ginen*, and Patrick Jeune, of *Radio One*, had to go into hiding to escape armed attacks from individuals trying to kill them.⁴⁶⁶

312. According to information received, on June 20, 2011, two hosts of the program “Les on dit” (They Said It) of Radio Prévention - Ernst Joseph and Wolf ‘Duralph’ François - were arrested. Joseph is the owner of the radio station. The authorities confiscated the transmitter and other radio equipment. According to the information, Joseph and François were called before a first instance court in Petit-Goâve on orders of the Public Prosecutor’s Office based on a petition signed by officials and members of civil society, including the mayor of the city, to answer questions related with information and opinion broadcast on the program. When the news emerged that the journalists were in the court, a large group of people gathered outside the building and threw rocks and clashed with police and United Nations security forces. The government commissioner had ordered the two journalists arrested on charges of “defamation,” “disturbance of the public order” and “damage to public property.”⁴⁶⁷

313. The Office of the Special Rapporteur received information according to which on April 5, 2011, five journalists with *Télévision Nationale d’Haïti (TNH)* were fired, and a criminal complaint for defamation against three of them was filed on April 8 by the general director of the State broadcaster, Pradel Henriquez. According to the information received, TNH’s editor-in-chief, Eddy Jackson Alexis, and journalists Josias Pierre and Jacques Innocent were fired after alleging that the broadcaster was biased in favor of the winning presidential candidate. Henriquez argued that he was the victim of a campaign of defamation carried out by the journalists and requested a prison term for Alexis and Pierre of up to three years and the payment of a fine of 50 million gourdes (some US\$1,100) for damages. The Minister of Culture and Communication of the Government, Marie Laurence Jocelyn Lassègue, asked the general director of the State television channel to dialogue with the dismissed employees and with media and journalist organizations.⁴⁶⁸

314. According to information received, the security detail of President Martelly was involved in a series of incidents with employees of the media. On May 22, 2011, police officers prevented at least three journalists from working, pushing them and damaging their equipment while they were covering the president’s visit to Gonaïves.⁴⁶⁹ On July 28, the president’s security personnel attacked journalists covering his visit to the city of Jacmel.⁴⁷⁰

⁴⁶⁶ Le Nouvelliste. May 2, 2011. *Deux journalistes contraints de prendre le maquis*. Available at: <http://www.lenouvelliste.com/article.php?PublID=1&ArticleID=91991&PubDate=2011-05-02>; Radio Métropole. May 4, 2011. *Cri d’alarme des associations à l’occasion de la journée de la presse*. Available at: http://www.metropolehaiti.com/metropole/full_une_fr.php?id=19078&action=print

⁴⁶⁷ Reporters Without Borders. June 29, 2011. *Two Petit-Goâve journalists detained arbitrarily*. Available at: http://es.rsf.org/haiti-detienen-de-forma-arbitraria-a-dos-29-06-2011_40552.html; Haitian-Truth.org. June 30, 2011. *Press Freedom Organization Condemns Arrest of Journalists in Petit-Goâve*. Available at: <http://www.haitian-truth.org/press-freedom-organization-condemns-arrest-of-journalists-in-petit-goave/>; Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=833&idioma=us

⁴⁶⁸ Reporters Without Borders. April 29, 2011. *President-Elect urged to help defuse tension, threats to media freedom*. Available at: http://en.rsf.org/haiti-president-elect-urged-to-help-28-04-2011_40128.html; Radio Kiskeya. April 14, 2011. *Dossier de la TNH: La ministre de la Culture et de la Communication, Marie Laurence Jocelyn Lassègue, demande au directeur de la télévision d’Etat de dialoguer avec les 3 journalistes révoqués*. Available at: <http://radiokiskeya.com/spip.php?article7674>; Reporters Without Borders. April 12, 2011. *State TV Chief Fires Three Journalists, Brings Criminal Defamation Suit Against Them*. Available at: http://en.rsf.org/haiti-state-tv-chief-fires-three-12-04-2011_40011.html

⁴⁶⁹ Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=833&idioma=us; Defend Haiti. October 11, 2011. *Haitian Journalist Assn, Shocked by Matelly ‘Gross’ Attitude Toward Press*. Available at: <http://defend.ht/news/articles/media/1785-haitian-journalist-assn-shocked-by-martelly-gross-attitude-toward-press>

⁴⁷⁰ Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=833&idioma=us; Defend Haiti. October 11, 2011. *Haitian Journalist Assn, Shocked by Matelly ‘Gross’ Attitude Toward Press*. Available at: <http://defend.ht/news/articles/media/1785-haitian-journalist-assn-shocked-by-martelly-gross-attitude-toward-press>

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

15. Honduras⁴⁷¹

316. The Inter-American Commission on Human Rights has received information relating to the situation of the right of freedom of expression in Honduras, from civil society as well as from the State of Honduras. In terms of the latter, on December 16, 2011, the State of Honduras sent Official Letter No. 1899-DGAE-11 to the IACHR, forwarding Official Letter No. SP-A-158-2011 from the Office of the Attorney General of Honduras, in which the State makes reference to the situation of freedom of expression in Honduras and provides information with respect to the particular cases that have been reported to the IACHR and which are addressed in this report.

A. Murders

317. The Special Rapporteur for Freedom of Expression of the IACHR has counted at least 13 murders of journalists and communicators in Honduras between 2010 and 2011, which could be related to their professional activities. The IACHR deplores these homicides and urges the State to conduct diligent and thorough investigations paying particular attention to the possibility of the motive of the crimes being the professional activities of the communicators. In addition, the IACHR appreciates the information provided by the State of Honduras with respect to the ongoing investigations into these murders and other acts of violence against journalists. It urges the State to follow up on these investigations diligently and to open the pertinent investigations in those cases where they have not yet been opened.

318. In its report to the IACHR, the State began by noting the murders of journalists in 2007 and 2009, years in which the murders of journalist Carlos Alberto Salgado (2007) and journalists Bernardo Rivera Paz, Rafael Munguía and Osman Rodrigo López (2009) were reported. The State also indicated that it is aware of its obligation to guarantee diligent and exhaustive investigations into acts that violate freedom of expression, and that the State “has requested the assistance of friendly countries to strengthen investigative teams with more personnel and with the necessary logistical resources.” In this same respect, the State specified that “between 2010 and 2011, the Office of the Public Prosecutor has documented 14 cases involving the deaths of journalists, in 9 of which the investigations have yielded specific theories and suspects.” As a result, those 9 cases have been brought before the courts.⁴⁷² In particular, the IACHR urges the State not to rule out the theory that the victims could have been murdered in retaliation for the exercise of their right to freedom of expression, and to thoroughly exhaust any line of investigation in this respect.

319. In an initial case reported to the IACHR, concerning the murder of journalist Henry Suazo on December 28, 2010 in the town of La Masica, Department of Atlantida, the information received indicates that two individuals shot the journalist several times as he was leaving his home in the morning. He reported on general news as a correspondent for radio HRN and was a reporter on the local television news program *Cable Visión del Atlántico*. A few days prior to the murder, journalist Suazo had filed a complaint that he had received a death threat in a text message on his cell phone.⁴⁷³ With regard to this

⁴⁷¹ This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

⁴⁷² Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷³ IACHR. Special Rapporteurship for Freedom of Expression. December 29, 2010. Press Release R125/10. [Special Rapporteurship for Freedom of Expression condemns murder of journalist in Honduras](#); Committee for the Protection of Journalists

case, the State indicated that “On January 21, 2011, the Office of the Public Prosecutor filed a criminal complaint against an individual alleged to be the direct perpetrator of the offense of murder, and on the same date, the corresponding Court issued a warrant for the suspect’s arrest.”⁴⁷⁴

320. On May 11, 2011, journalist Hector Francisco Medina Polanco, manager and anchor of *Omega Visión* television station, was murdered in Morazan, Department of Yoro. According to reports, when he was leaving the television station the night of May 10, the journalist was followed by two unknown individuals riding on a motorcycle, who shot him as they approached his home. Hector Medina was taken to a hospital alive in San Pedro Sula, where he passed away early in the morning of May 11. In addition to managing the local TV station *Omega Visión*, Hector Medina worked as a producer and anchor on TV9 news, where he had recently reported on alleged irregularities by local authorities and land ownership disputes. He had been telling his family for weeks prior to his murder that he was receiving death threats.⁴⁷⁵ In August, a brother of the murdered journalist, who is also in the same field, charged that he had been threatened to persuade him to stop demanding an investigation of the crime.⁴⁷⁶ In reference to this case, the Honduran State specified that “Various proceedings have been conducted, including the taking of statements from the channel’s employees, from relatives, and from eyewitnesses, as well as from individuals who worked with him as a community outreach worker for PROHECO [...]; inspections and other expert and scientific proceedings have also been conducted, and his cell phone records have been investigated. There are two theories in the case.”⁴⁷⁷

321. The Special Rapporteurship learned of the murder of the owner of *Canal 24* Luis Ernesto Mendoza Cerrato, in the City of Danli, El Paraíso, on May 19, 2011. Based on the available information, at least three hooded and heavily armed men ambushed Luis Mendoza and shot him several times at the entrance to the television station, when he came to work in the morning. Mendoza Cerrato died during the shooting while two women and a child, who were passing by, were wounded. The perpetrators fled in a vehicle, which was abandoned and set aflame later.⁴⁷⁸ The Honduran State indicated that the case is related to another case and that “various measures have been undertaken, such as telephone wiretaps, judicial and police background checks, and others.”⁴⁷⁹

...continuation

(CPJ). December 30, 2010. [Reportero hondureño abatido frente a su vivienda](#). [Honduran reporter gunned down in front of his home]; Reporters without Borders. December 29, 2010. [Honduras: Henry Suazo, décimo periodista asesinado en 2010](#). [Honduras: Henry Suazo, 10th journalist murdered in 2010]; Inter-American Press Society (SIP). December 29, 2010. [Condena la SIP asesinato de periodista en Honduras](#). [SIP condemns murder of journalist in Honduras]; El Nuevo Diario. December 28, 2010. [Asesinan a otro periodista en Honduras](#). [‘Another journalist is murdered in Honduras’]

⁴⁷⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷⁵ IACHR. Special Rapporteurship for Freedom of Expression. May 12, 2011. Press Release R45/10. [Relatoría Especial para la Libertad de Expresión deplora asesinato contra periodista en Honduras](#). [Special Rapporteur for Freedom of Expression deploras murder of journalist in Honduras]; Inter-American Press Association (IAPA). May 12, 2011. [La SIP repudia crimen y reclama al Gobierno hondureño cumplir compromiso para combatir violencia e impunidad](#). [SIP condemns crime and calls on Honduran Government to fulfill commitment to combat violence and impunity]; International Freedom of Expression Exchange (IFEX). May 18, 2011. [Asesinato de periodista destaca estado de país como uno de los peores para la prensa](#). [Murder of journalist highlights status of country as one of the worst for the press]; EFE News Agency. May 16, 2011. [Francia condena el asesinato del periodista hondureño Héctor Francisco Medina](#). [France condemns the murder of Honduran journalist Hector Francisco Medina]

⁴⁷⁶ El Herald. August 19, 2011. [Periodista denuncia amenazas de muerte](#). [Journalist denounces death threats]; Tiempo. August 10, 2011. [Familiares de comunicador asesinado denuncian amenazas](#). [Family of murdered journalist denounce threats]

⁴⁷⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷⁸ IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder of owner and manager of media outlets in Honduras]; Committee for the Protection of Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Murdered, Another Wounded]; La Tribuna. May 19, 2011. [Encapuchados ultimán a conocido empresario](#). [Hooded men murder well-known businessman]

⁴⁷⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

322. It was also reported that on July 14, 2011, journalist Nery Jeremías Orellana, Director of *Radio Jaconquera* and correspondent at *Radio Progreso*, was murdered in the municipality of Candelaria, Department of Lempira. According to the information in the file, journalist Orellana was riding on a motorcycle toward the radio station when he was intercepted by unknown individuals, who shot him several times in the head. He was transported alive to the hospital of Sensuntepeque but died a few hours later. As director of *Radio Jaconquera*, he had opened spaces of discussion on radio programs of the Catholic Church and of the National People's Resistance Front (FNRP) and had held a critical position of the 2009 *coup d'état*. Shortly before his murder, Orellana had confirmed his attendance at a meeting of community radio stations scheduled for July 15, 2011.⁴⁸⁰ The State of Honduras reported that "Several proceedings have been conducted, including the taking of statements from coworkers, relatives, and protected witnesses, inspections and other expert and scientific proceedings. Also, mutual legal assistance was requested from El Salvador, the place of his death. There is a theory and a suspect in the case."⁴⁸¹

323. Information was also received of the murder of the popular social communicator Medardo Flores, on September 8, 2011 in the community of Blanquito, Puerto Cortés. According to available information, several unidentified individuals murdered Medardo Flores with firearms in the town where he resided. Medardo Flores, who was a farmer by trade, was part of a group of volunteer popular communicators of *Radio Uno* of San Pedro Sula and was in charge of finances in the northern part of the country for the Broad People's Resistance Front (FARP).⁴⁸²

324. As the Inter-American Commission has held repeatedly, it is of paramount importance for the State to urgently conduct investigations through specialized independent agencies under special protocols of investigation that lead to conclusively determining whether or not the crimes are indeed connected to the practice of the profession and to enable the prosecution and conviction of the persons responsible for them. Additionally, it is essential for the State to put permanent mechanisms into place in order to ensure the lives and integrity of at-risk communicators. The persistence of impunity not only is a threat to the family members of the victims but also has an adverse effect on society as a whole, because it sows fear and leads to self-censorship.⁴⁸³

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

B. Assaults on journalists and media

⁴⁸⁰ IACHR. Special Rapporteurship for Freedom of Expression. July 18, 2011. Press Release R70/11. [Relatoría Especial para la Libertad de Expresión condena nuevo asesinato de periodista en Honduras y pide investigación exhaustiva](#). [Special Rapporteurship for Freedom of Expression condemns latest murder of journalist in Honduras and calls for thorough investigation]; Reporters Without Borders. July 15, 2011. [Asesinan al joven director de una radio la víspera de una reunión de medios comunitarios](#). [Young director of a radio station murdered on the eve of community media meeting]; Radio Progreso. July 16, 2011. [Asesinan director de Radio Jaconquera](#). [Director of Radio Jaconquera murdered]

⁴⁸¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras." p. 8.

⁴⁸² IACHR. Special Rapporteurship for Freedom of Expression. September 12, 2011. Press Release 100/11. [Relatoría Especial para la Libertad de Expresión condena asesinato de comunicador en Honduras](#). [Special Rapporteur for Freedom of Expression condemns murder of journalist in Honduras]; Reporters Without Borders. September 10, 2011. [Asesinado el periodista Medardo Flores](#). [Journalist Medardo Flores murdered]; El Tiempo. September 9, 2011. [Asesinan a estudiante de locución Medardo Flores de Radio Uno](#). [Radio broadcasting student of Medardo Flores of Radio Uno murdered]; Inter-American Press Association (IAPA). September 12, 2011. [Condena la SIP asesinato del quinto periodista ultimado en Honduras en 2011](#). [SIP condemns fifth murder of journalists in Honduras in 2011]

⁴⁸³ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Para. 312.

326. According to the information on file, on May 23, 2011, in Tegucigalpa, the managing editor of the newspaper *La Tribuna*, Manuel Acosta Medina, was the target of an attempt on his life, which left him seriously wounded. Mr. Acosta's car was blocked by two vehicles with armed individuals on board. When Acosta Medina accelerated to escape, the criminals shot and wounded him. The victim was able to drive home where his family came to his aid and took him to a hospital. Shortly after the attempt, the Police arrested five armed suspects who were riding in a similar vehicle to the one used in the attack.⁴⁸⁴

327. On April 27, 2011, a group of armed men allegedly attempted to ambush the director of *Radio Uno*, Arnulfo Aguilar, when he was returning to his home in San Pedro Sula. According to available information, Aguilar had managed to lock the gate and enter the residence before the suspects reached him. The journalist asked the Police for help, which arrived one hour later, when the individuals had already left. The incident occurred a few days after *Radio Uno* released cables from the US Department of State reported that weapons given to the Honduran Army were alleged to be in the possession of organized crime groups. *Radio Uno* has held a critical editorial line against the June 2009 *coup d'état*.⁴⁸⁵ The State provided information with respect to the case, indicating that "Several proceedings have been conducted, including the taking of statements from the victim and from witnesses, inspections, and other procedures. At this time, we are waiting for the victim to go to the Office of the Public Prosecutor in order for a psychological evaluation to be conducted."⁴⁸⁶

328. The Special Rapporteurship has expressed its concern in light of several acts of harassment and violence perpetrated against several community radio stations and reminds the Honduran State of its obligation to investigate these incidents and make sure that its agents, or private individuals, do not attack people who exercise their freedom of expression through these media outlets.

329. According to reports, on March 13, 2011, the Director of *La Voz de Zacate Grande*, Franklin Meléndez, was allegedly threatened by two men in connection with coverage of the land disputes in the area and one of them is alleged to have shot him in the leg. The assailants were fully identified but the local authorities did not take any action against them.⁴⁸⁷ A few hours later, the same individual that allegedly shot Melendez, threatened to kill journalist Ethel Correa of *La Voz de Zacate Grande*, whom he warned: "You'll be the second to die."⁴⁸⁸ On August 4, 2011 a request for an arrest warrant from the public prosecutor was filed for the attempted murder against the person suspected of shooting Franklin Melendez, and on August 9, the presiding judge issued an arrest warrant⁴⁸⁹. The State of Honduras

⁴⁸⁴ IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder against owner and manager of media outlets in Honduras]; Committee to Protect Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Killed in Honduras, Another Wounded]; *La Tribuna*. May 24, 2011. [Atentado criminal contra gerente de La Tribuna](#). [Criminal Attempt on the Life of Manager of *La Tribuna*]; C-Libre/IFEX. May 24, 2011. [Desconocidos tirotean al gerente de diario "La Tribuna"](#). [Unidentified Men Shoot Manager of the Daily "La Tribuna"]

⁴⁸⁵ Committee to Protect Journalists (CPJ). April 29, 2011. [Director de radio hondureño emboscado por sujetos armados](#). [Director of Honduran Radio Station Ambushed by Armed Individuals]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Assault on Owner of Opposition Radio Station Thwarted]

⁴⁸⁶ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras." p. 8.

⁴⁸⁷ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11 [Office of the Special Rapporteur Expresses Concern Over Attacks Against Media in Honduras](#); Reporters Without Borders. March 16, 2011. [Police try to hush up shooting of community radio station's president](#).

⁴⁸⁸ C-Libre/IFEX. March 21, 2011. [Comunicadora de la emisora La Voz de Zacate Grande amenazada de muerte](#). [Women Communicator of the radio station *La Voz de Zacate Grande* threatened with death]; Reporters Without Borders. March 24, 2011. [Se multiplican los ataques y agresiones a la prensa](#). [Attacks and assaults on the press increase]

⁴⁸⁹ Communication from the Center for Justice and International Law (CEJIL) to the IACHR. Ref: Communicators of *The Voice of Zacate Grande* MC115-11. September 2, 2011.

provided information indicating that “The defendant has been arraigned and the initial hearing was held on October 4, 2011.”⁴⁹⁰

330. On April 16, a journalist from the *La Voz de Zacate Grande* station, Pedro Canales, is alleged to have been the target of sabotage and death threats. That same day, Canales noticed unidentified individuals had sunk nails into one of the tires of his vehicle and later two armed individuals allegedly intercepted him and pointed their weapons at him.⁴⁹¹ Reports also indicated that two journalists from the community radio station *La Voz de Zacate Grande* had been detained in the performance of their reporting duties on December 15, 2010. Based on the available information, correspondents Elia Hernández and Elba Rubio were covering the forced removal of a family from land in the community of Coyolito, on the Isle of Zacate Grande, where they allegedly were detained by members of the preventive Police and the Navy. According to the report, the lady reporters were stripped of their journalistic accreditation and cameras, held incommunicado for 36 hours, and charged with the crime of disobedience.⁴⁹² The journalists are alleged to have been restricted by the court from performance of their journalistic tasks, in prohibiting their departure from the country, compelling them to secure permission to leave Coyolito, forcing them to appear before a judge every two weeks and prohibiting their participation in public demonstrations, as well as prohibiting them from having contact with the community of Coyolito.⁴⁹³

331. According to the information received by the IACHR, on February 15, individuals identified as agents of the national Department of Criminal Investigation (DNIC), are alleged to have show up at the radio station in order to serve notice of an arrest warrant for disobeying an order to shut down the radio station, that had been issued in 2010 and to conduct an inspection. It is claimed that the agents attempted to force their way inside when radio station officials prevented them from entering.⁴⁹⁴ Additionally, on April 7 the Office of the Prosecutor of Choluteca allegedly issued arrest warrants for the crimes of disobeying authority and usurpation of land, against eight individuals who were members of *La Voz de Zacate Grande* and the Land Titling Movement (*Movimiento de Titulación de Tierras*), including Franklin Meléndez, Ernesto Lazo, Rafael Osorio, Danilo Osorio, Pedro Canales, Wilmer Rivera, Ethel Correa and Benito Pérez.⁴⁹⁵ In light of proof of a situation of imminent danger, on April 18, 2011, the

⁴⁹⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹¹ C-Libre/IFEX. April 19, 2011. [Atentan contra comunicador social de la radio La Voz de Zacate Grande](#). [Attempt on the Life of Social Communicator of Radio Station La Voz de Zacate Grande]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Attack against owner of opposition radio station thwarted]

⁴⁹² IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras](#). [Office of the Special Rapporteur for Freedom of Expression of expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC)/IFEX. December 21, 2010. [Apresan a corresponsales de la emisora Zacate Grande](#). [Correspondents from radio station Zacate Grande Detained]; World Association of Community Broadcasters (AMARC)/IFEX. December 29, 2010. [Corresponsales de radio comunitaria indiciadas por el delito de “desobediencia”](#). [Correspondents from community radio station charged with crime of ‘disobedience’]; Reporters Without Borders. December 27, 2010. [Las dos corresponsales de La Voz de Zacate Grande podrían ser juzgadas por el delito de desobediencia](#). [Two women correspondents from La Voz de Zacate Grande could be tried for crime of disobedience]

⁴⁹³ Reporters without Borders. January 20, 2011. [Medidas judiciales contra dos corresponsales de una radio comunitaria a pesar de la falta de condena sobre el fondo](#). [Judicial measures against correspondents of community radio station despite non conviction on the merits]; AMARC/IFEX. January 21, 2011. [Emiten auto de prisión a corresponsales de radio](#). [Order of imprisonment issued against correspondents of radio station]

⁴⁹⁴ World Association of Community Broadcasters (AMARC). February 17, 2011. [Reinicia el hostigamiento en contra de La Voz de Zacate Grande por parte del gobierno de Honduras](#). [Harassment by government against la Voz de Zacate Grande resumes]; La Voz de Zacate Grande. February 15, 2011. [Policía llega a La Voz de Zacate Grande](#). [Police arrive at La Voz de Zacate Grande]

⁴⁹⁵ C-Libre. May 3, 2011. [Continúa la violación a la libertad de expresión en Honduras: Impunidad y represión el rostro del año 2011](#). [Violation of freedom of expression continues in Honduras: Impunity and repression the face of 2011]; Defenders on Line. April 8, 2011. [Ocho órdenes de captura contra dirigentes y pobladores de Zacate Grande](#). [Eight arrest warrants against leaders and residents of Zacate Grande]

IACHR requested the Honduran State to adopt urgent precautionary measures to ensure the lives and physical integrity of the communicators of *La Voz de Zacate Grande*, and to work out a specific agreement with the beneficiaries and their representatives on the measures to be taken.⁴⁹⁶

332. The State indicated that the eviction from the property where the station operates was ordered by the District Trial Court of Amapala, and that the measure “is not related to the journalists’ activities, but rather to the unlawful appropriation of the land on which [the station] operates.” The State confirmed that a criminal complaint was filed against the 8 above-named journalists for the offenses of “unlawful appropriation and tax fraud,” and noted that following the issuance of the warrants for their arrest, the journalists appeared voluntarily at an arraignment hearing held on May 5, 2010, at which “the Office of the Public Prosecutor requested that the defendants be granted supervised pretrial release.”⁴⁹⁷

333. The State established that on May 27, 2010, the Court issued an incarceration order for the offense of unlawful appropriation with respect to 5 of the defendants, while the complaint alleging tax fraud was dismissed with prejudice. The Court also “affirmed the precautionary measures established at the arraignment hearing” with respect to the 5 aforementioned journalists. In addition, the Court ordered the dismissal without prejudice of the complaints against the other 3 accused journalists, and ordered that the property be vacated immediately. According to the information received, all of the defendants appealed the incarceration order before the Choluteca Court of Appeals. That appeal was declared inadmissible by the court on August 4, 2010. Subsequently, on October 11, 2010, the defendants filed a writ of *amparo* [petition for a constitutional remedy], which was forwarded to the Supreme Court of Justice on October 11, 2010.⁴⁹⁸

334. The information provided by the State indicates that on June 2, 2010, the court officer in charge of executing judgments carried out the eviction of the property, together with members of the military and the National Police. The State established that “The defendants were not there, and the door was locked. Accordingly, the specified property was cordoned off with yellow adhesive tape, as ordered by the Court.” In spite of the fact that the State indicated that upon arriving at the property “they were met by unknown persons carrying some machetes and sticks,” it stated that the operation “was carried out peacefully, without anyone being injured.” The State further maintained that at the time of the eviction, “the radio station had already ceased broadcasting because of a problem with the equipment it was using,” and that “at no time during the execution of the order were they restricted from continuing with their broadcasts.” In this same respect, however, the State underscored that the broadcasts were illegal because the station does not have “a broadcast license issued by the National Telecommunications Council (CONATEL), and does not meet the other legal operating requirements, like having the municipal permits.”⁴⁹⁹

335. The State noted that there was a new allegation that “the defendants re-entered the property [...] which resulted in the filing of another complaint by the prosecutor’s office on March 31, 2011 for the offense of contempt.” The defendants were again granted supervised pretrial release.⁵⁰⁰

⁴⁹⁶ IACHR. Precautionary Measure MC 115-11. [Medida Cautelar MC 115-11](#). April 18, 2011; Center for Justice and International Law (CEJIL). April 26, 2011. [Comisión Interamericana exige que Honduras proteja a integrantes de radio comunitaria](#). [Inter-American Commission demands Honduras to protect members of community radio station]; Journalists in Spanish (Periodistas en Español). April 27, 2011. [Censura en Honduras: La CIDH pide protección para los periodistas de La Voz de Zacate Grande](#). [Censorship in Honduras: IACHR requests protection for journalists of La Voz de Zacate Grande]; Reporters Without Borders. June 28, 2011. [Radios comunitarias: voces aún excluidas de la frecuencia radiofónica, señalan RSF y AMARC](#). [Community Radio Broadcasters: voices still excluded from radiofrequencies, according to RSF and AMARC]

⁴⁹⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹⁸ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

⁴⁹⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

⁵⁰⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

336. Finally, the State addressed “the alleged intimidating acts and attacks by armed, masked individuals.” It stated that those individuals were on-site investigative technicians from the National Bureau of Criminal Investigation (DNIC) who were at the property “to conduct the inspections requested by the prosecutor’s office,” and that they were met by individuals armed with “sticks, rocks, and machetes” who proceeded to intimidate, assault, and threaten the investigators. The information received indicates that in order to avoid a confrontation, they left the scene “after conducting the proceedings that had been ordered.”⁵⁰¹

337. To date, the IACHR does not know whether the radio station has continued to operate, and it is closely following the complaints that the eviction and seizure of the station are aimed at preventing it from continuing to air critical reports and expressions regarding matters of public interest in the region.

338. Furthermore, the IACHR received information about acts of harassment and threats to force the community radio station *Faluma Bimetu* (*Sweet Coconut*) to suspend broadcasts for 12 days beginning on January 14, 2011. According to the reports, municipal authorities of Tela, assisted by police officers, arrived on January 12, 2011 in the Garifuna community of Triunfo de la Cruz, where the radio station operates out of, to pressure it to appoint certain members to the board of the station, even though the election of board members was scheduled for January 28. In light of the refusal of the community to move up the date of the appointment, the members of the municipal delegation threatened to burn down the facilities of the radio station, which had already been destroyed by arsonists a year earlier.⁵⁰² On January 14, the director of radio *Faluma Bimetu*, Alfredo López, was brought before a criminal court in connection with a shooting that had taken place a few days earlier in Triunfo de la Cruz, without any charges being brought against him, much less any evidence being introduced to implicate him. At that same hearing, the charges were dropped due to lack of evidence. When broadcasts were suspended, the workers of the radio station hung a sign at the entrance that said: “Closed temporarily due to insecurity.” *Faluma Bimetu* resumed broadcasts on January 26.⁵⁰³ Lastly, on April 7, 2011, unidentified individuals set Alfredo Lopez’ house on fire, and as of this date, the outcome of the investigation is unknown.⁵⁰⁴ The IACHR requested information from the State of Honduras on January 18, regarding these incidents.

339. The State indicated with respect to the incident at the community radio station *Faluma Bimetu* that a complaint had reportedly been filed before the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage “against unknown persons for the offense of harm to the Community of Triunfo de la Cruz.” The Honduran State reported that “the local Prosecutor’s Office in Tela conducted several investigative proceedings that subsequently led to the filing of a complaint on February 18, 2001

⁵⁰¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵⁰² *Faluma Bimetu* and Garifuna community have maintained their opposition to real estate development projects in the Atlantic region of Honduras.

⁵⁰³ Radio Tierra. January 17, 2011. [Cesan las transmisiones de la radio comunitaria garífuna Faluma Bimetu “Coco Dulce” ante el incremento de amenazas y hostigamiento.](#) [Garifuna Faluma Bimetu radio broadcasts halted as a result of increased threats and harassment]; Journalists in Spanish. January 19, 2011. [Radio Faluma Bimetu se apaga ante la amenaza criminal.](#) [Radio Faluma Bimetu goes silent due to threat of crime]; World Association of Community Broadcasters (AMARC). February 1, 2011. [La emisora comunitaria Radio Faluma Bimetu reinuda sus transmisiones bajo una gran tensión.](#) [Community radio broadcaster Faluma Bimetu resumes broadcasts under heightened tension]; AMARC/RSF/IFEX. February 3, 2011. [Emisora comunitaria reanuda sus transmisiones bajo una gran tensión.](#) [Community radio broadcaster resumes broadcasts under heightened tension]

⁵⁰⁴ Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición.](#) [Honduras: Attack against owner of opposition broadcaster thwarted]; Afro Legacy (Legado Afro.) April 12, 2011. [Honduras: Incendian casa de integrante de radio comunitaria Faluma Bimetu \(Coco Dulce\).](#) [Honduras: house of member of community radio broadcaster Faluma Bimetu (sweet coconut) set ablaze]; RSF/AMARC/IFEX. April 13, 2011. [Las radios comunitarias siguen siendo presas de grandes dificultades por el simple hecho de existir.](#) [Community radio broadcasters in big trouble for the simple fact of existing]

against unknown persons for the offenses of aggravated robbery and arson.” In the initial hearing of April 14, 2011 “the complaint alleging aggravated robbery was dismissed without prejudice, and the complaint alleging arson was dismissed with prejudice.” In this respect, the State indicated that “the investigations are ongoing.” In addition, with respect to the fire at Mr. Alfredo López’s house, the State specified that “Various proceedings have been conducted, including the taking of statements from the victims, the performance of a visual inspection, and the compilation of a photo album of the damages. A report was also requested from the Tela Fire Department for purposes of determining the cause of the fire. It has not yet been possible to identify the perpetrators.”⁵⁰⁵

340. According to the information provided, on January 5, 2011, alleged members of the Electric Measuring Service of Honduras (SEMEH) entered the offices of the Civic Council of People’s and Indigenous Organizations (COPINH) in the city of La Esperanza and turned off the electricity, preventing the community radio stations *Guarajambala* and *La Voz Lenca* from broadcasting. According to the affected individuals, the purpose of the cutting of the electricity was to prevent these radio stations from continuing to broadcast, as retaliation for the critical content of their broadcasts. Additionally, the members of the SEMEH made death threats against them.⁵⁰⁶

341. The Honduran State indicated that “on January 6, 2011, the Office of the Public Prosecutor filed a complaint alleging the offense of threats” against two SEMEH employees. After the arraignment and the initial hearing, an incarceration order was issued against both defendants on February 1, 2011. They filed a motion for appeal that is still pending. The State stressed that “SEMEH is a private company in charge of measuring the electric power services of all consumers in the country, and it shuts off the power of individuals or legal entities that are delinquent in payment for services.” According to the State, “It was proven before the Office of the Public Prosecutor that COPINH was behind in its payment, and that is why its power was cut.” The State indicated that it assumes that “the members of COPINH were opposed to the power shut-off, and that gave rise to a dispute with the SEMEH employees.” It underscored that “the members of COPINH have not demonstrated interest in continuing with the case.”⁵⁰⁷

342. Information has been received about several assaults on Honduran journalists, indicating that on March 25, 2011, police officers fired tear gas bombs at *Canal 36-Cholusat* reporter Richard Casulá, and cameraman Salvador Sandoval, as they were covering the police response to the educators’ demonstration in Tegucigalpa. Sandoval was wounded in the face and Casulá suffered from gas inhalation poisoning.⁵⁰⁸ The State asserted that several proceedings have been conducted with respect to these events; nevertheless, “to date it has not been possible to identify the officers.”⁵⁰⁹ According to the

⁵⁰⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵⁰⁶ IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras](#). [The Office of the Special Rapporteur expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC). March 17, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte de miembros de empresa privada contratada por el Estado hondureño](#). [Members of community radio stations receive death threats from members of private company hired by the Honduran State]; Foodfirst Information and Action Network (FIAN). January 5, 2011. [Denuncia pública urgente: Consejo Cívico de Organizaciones Populares e Indígenas de Honduras COPINH](#). [Urgent public denouncement: Civic Council of People’s Organizations of Honduras (COPINH)]; AMARC/IFEX. January 5, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte](#). [Members of community radio stations receive death threats]

⁵⁰⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” pp. 10-11.

⁵⁰⁸ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; Reporters Without Borders. March 28, 2011. [Honduras: La policía hiere a dos periodistas que cubrían una manifestación](#). [Honduras: Police wound two journalists covering demonstration]; C-Libre. March 25, 2011. [Periodistas víctimas de represión policial](#). [Journalists victims of police crackdown]

⁵⁰⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

information received, on March 22, 2011, the Police also assaulted journalist Lidieth Díaz, cameraman Rodolfo Sierra, of *Canal 36-Cholusat*, and the director of *Radio Globo*, David Romero, while they were in conversation with a group of professors.⁵¹⁰ The State of Honduras reported that “The Office of the Public Prosecutor filed a complaint against five police officers alleging the offense of abuse of authority.” However, the presiding Court issued an order of incarceration against one of the officers, and dismissed the complaint with prejudice in the case of the other four officers. The Office of the Public Prosecutor appealed the dismissal with prejudice on June 27, 2011, but the court affirmed the lower court’s decision, “and therefore the Office of the Public Prosecutor filed a writ of *amparo* [petition for a constitutional remedy], which is pending.”⁵¹¹

343. In a separate incident, according to reports, on March 21, 2011, police agents fired tear gas bombs and rubber bullets at journalist Sandra Maribel Sánchez, director of *Radio Gualcho*, and *Globo TV* cameraman Uriel Rodríguez, as they were covering the forced removal of teachers in Tegucigalpa.⁵¹² The State reported that “The Office of the Public Prosecutor filed a complaint against a police officer alleging the offense of abuse of authority”; an initial hearing has yet to be held in the case.⁵¹³ On March 30, 2011, *Radio Progreso* correspondent Pedro López was detained for four hours by police agents in Potrerillos, Department of Cortés, as he reported on a protest demonstration in the context of the nationwide work stoppage.⁵¹⁴ That same day, a bullet wounded journalist David Corea Arteaga of the *Centro de Noticias de Colón* in the jaw, as he reported on the forced removal of demonstrators by the Police and the Army.⁵¹⁵

344. On May 5, 2011, reporters Silvia Ardón of *Radio Uno* and Noel Flores of *Globo TV*, as well as the cameraman of that station, Uriel Rodríguez, were assaulted by policemen in San Pedro Sula as they tried to obtain information on a group of individuals being held in custody at the police station, for participating in a demonstration that was broken up with tear gas. According to the information provided to this Commission, the policemen pushed the communicators and prevented them from doing their job as journalists.⁵¹⁶ The State indicated that these acts have not been reported to the Office of the Public Prosecutor, and “requests that those individuals file the appropriate complaint in order to be able to open

⁵¹⁰ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; C-Libre. March 23, 2011. [Policía Nacional atenta contra la vida de los periodistas David Romero y Lidieth Díaz](#). [National Police Attempt against the Lives of journalists David Romero and Lidieth Díaz]; Reporters Without Borders. March 28, 2011. [Un periodista herido y otro intoxicado denuncian un ataque de la policía al margen de las manifestaciones del magisterio](#). [One wounded journalist wounded and another poisoned denounce an police attack on the margin of teachers’ demonstration]

⁵¹¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹² IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Office of the Special Rapporteur Expresses Concern over Attacks Against Media in Honduras]; Revistazo. March 22, 2011. [Policías atacan sin reparo a periodista de Cholusat Sur](#). [Police attack journalist of Choulsat Sur without qualms]; C-Libre. March 22, 2011. [Policía Nacional agrede a periodista y camarógrafo](#). [National Police assault journalist and cameraman]

⁵¹³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹⁴ Radio Progreso. March 30, 2011. [Detienen a corresponsal de Radio Progreso en Potrerillos](#). [Correspondent of Radio Progreso Arrested in Potrerillos]; Revistazo. March 30, 2011. [Sin razón justificada, policía aprehende durante varias horas a periodista de Radio Progreso](#). [Without any justifiable reason, police hold Radio Progreso Journalist for hours]

⁵¹⁵ Committee to Protect Journalists (CPJ). April 6, 2011. [El CPJ alarmado por ola de ataques contra la prensa en Honduras](#). [CPJ alarmed by wave of attacks against the press in Honduras]; C-Libre. April 1, 2011. [Periodista en herido de bala disparada por el Ejército Nacional](#). [Woman Journalist wounded by bullet shot from National Army]

⁵¹⁶ C-Libre. May 5, 2011. [Periodista es agredida mientras intentaba recabar información de manifestantes detenidos](#). [Journalist is assaulted while attempting to gather information about detained demonstrators]; World Association of Community Broadcasters (AMARC). May 6, 2011. Reporters Without Borders. May 9, 2011. [Nuevas agresiones contra los medios de oposición en San Pedro Sula tras el atentado contra un director de radio](#). [More assaults against the opposition media in San Pedro Sula after attempt on life of radio station director]

an investigation into the matter.”⁵¹⁷ One day later, cameraman Uriel Rodríguez was beaten again and his equipment was destroyed by agents of the National Police. According to the reports, Rodríguez was wounded in the head and his equipment was destroyed while he was filming the violent breakup of a student demonstration. The communicator was taken to one hospital where he was supposed to have been stitched up but was then transferred to a different hospital. Government officials had gone to the original hospital he was supposed to go to with the intention of arresting him.⁵¹⁸ With respect to these events, the State reported that on November 18, 2011 “the Office of the Public Prosecutor filed a complaint alleging the offense of torture.”⁵¹⁹

345. The IACHR has been informed of the armed robbery of journalist Edgardo Antonio Escoto Amador on September 22, 2011, in colonia Las Brisas of the city of Comayagüela. Edgardo Antonio Escoto Amador, also known as “el Washo”, is the coordinator of the news program “Temas y Debates” and the interview program “Entrevista con el Washo [interview with el Washo]” on Canal 13 in Tegucigalpa. According to reports, two men on a motorcycle intercepted him while he was heading to his car; they held him up at gunpoint with wide gauge firearms and grabbed his laptop, which contained confidential information. Prior to the hold up and harassment, the journalist had reported on matters connected to the Armed Forces and the *coup d’état* and, according to the information obtained, had been the target of threats.⁵²⁰

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

C. Threats

347. During 2011, information was received regarding several acts of violence, intimidation and harassment of journalists. On July 17, 2011, journalist Roberto García Fúnez, correspondent of *Radio Progreso* in the municipality of Arizona, Department de Atlántida, was allegedly physically assaulted by the mayor of Arizona at a public gathering and, consequently, the journalist brought a suit for physical assault against the mayor on July 25. According to reports, the journalist and his family were the targets of threats and acts of harassment.⁵²¹ According to the information, on September 14, 2011, journalist Mario Castro Rodríguez, director of the news program “El látigo contra la corrupción” [‘the whip against corruption’] on Globo TV, received death threats via text messages.⁵²² Journalists Esdras Amado López and Mario Rolando Suazo, of Canal 36-Cholusat, received death threats after disclosing

⁵¹⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹⁸ C-Libre. May 6, 2011. [Periodista Gráfico de Globo TV es brutalmente golpeado por la Policía Nacional](#). [Graphic journalist from Globo TV is brutally beaten by National Police]; YouTube. May 9, 2011. [Golpiza a camarógrafo de Globo TV Uriel Gudiel Rodríguez](#). [Globo TV cameraman Uriel Gudiel Rodriguez beaten]

⁵¹⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵²⁰ C-Libre. September 23, 2011. [Hombres armados intimidan a periodista](#). [Armed men intimidate journalists]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Antonio Escoto]; Knight Center for Journalism in the Americas. September 28, 2011. [Honduran journalist attacked; laptop with coup d’état information stolen](#).

⁵²¹ C-Libre/IFEX. July 27, 2011. [Corresponsal de Radio Progreso amenazado de muerte](#). [Radio Progreso Correspondent receives death threat]; Canadian Journalists for Free Expression (CJFE). August 24, 2011. [Honduran Journalist Facing Death Threats](#).

⁵²² International Freedom of Expression Exchange (IFEX). September 14. [Director de noticiario recibe amenazas de muerte](#). [Director of news program receives death threats]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives death threats]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF request protection for journalists Mario Castro and Edgardo Antonio Escoto]

information on alleged irregularities in the Honduran Catholic church. According to the account, the journalists began to receive threatening text messages on their cell phones, after revealing on July 12, the resignation letter of a priest in which alleged anomalies committed by the religious institution were mentioned.⁵²³ As of September 8, journalist Mario Castro Rodríguez, director of the news program “El látigo de la corrupción”, which is broadcast on Canal Globo TV in Tegucigalpa, received threats on several occasions via text messages to his cell phone.⁵²⁴

348. The Special Rapporteurship reiterates that, according to the ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR: “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.”

D. Indirect censorship, subsequent punishment and limitations on access to public information

349. The IACHR has received information on National Telecommunications Commission (CONATEL)-issued resolution NR003/11 of February 24, 2011, which suspends the permitting and licensing of radio electric frequencies for Low Power FM (LPFM) Stations operating in the range of 88 to 108 MHz. CONATEL establishes that the use of those frequencies can only be authorized as repeaters for operators who have a frequency in another range. The decision would affect a group of community radio broadcasters that could not gain any access to other powers or frequencies because the only procedure to obtain them is through a bidding process.⁵²⁵ Based on the information received, this resolution came about despite the commitments accepted by the Honduran State at the United Nations Human Rights Council Universal Periodic Review in November 2010, under which Honduras made a commitment to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was *[sic]* line with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”⁵²⁶

350. In this respect, the Honduran State maintained that Resolution NR003/11 “is based on technical considerations” relating to the saturation of the radio spectrum in the 88-108MHz band, specifically for the stations that use frequency modulation (FM). This is because “in the more populated zones or areas of the country there is no availability of radio spectrum frequencies in that frequency range.” According to the State, that situation resulted in CONATEL authorizing “low power radio frequencies within the country to cover those zones that were not covered by regular power radio broadcasting stations.” The State maintained that these provisions have given rise to “obstacles to the development and implementation of new channeling schemes and new broadcasting zones made possible by the new technologies,” and that the new resolution aims to “prevent greater problems for the

⁵²³ El Libertador. July 14, 2011. [Amenazas de muerte a periodistas Mario Rolando Suazo y Esdras Amado López de Canal 36](#). [Death threats against Canal 36 journalists Mario Rolando Suazo and Esdras Amado Lopez]; C-Libre. July 18, 2011. [Amenazan de muerte a periodistas de Canal 36](#). [Canal 36 journalists receive death threats]

⁵²⁴ The messages, which were sent repeatedly, were text such as: “It is great that they kill you pigs;” “Better to bring you all down;” “Old scoundrel let them kill you,” “ha, ha, ha they’re killing those dumb guys, ass hole,” Reporters Without Borders. September 28, 2011. [RSF pide protección para los periodistas Mario Castro y Edgardo Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Escoto]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives threats]

⁵²⁵ National Telecommunications Council. February 24, 2011. [Resolución NR002/11](#), published in the Gazette of the Republic of Honduras on April 5, 2011; World Community Broadcasters Association (AMARC)/IFEX. February 4, 2011. [El gobierno emite resolución para impedir acceso a frecuencias de radio en baja potencia](#). [Government issues resolution to prevent access to low power radiofrequencies]; C-Libre. February 4, 2011. [CONATEL pretende negar la apertura a nuevas radios comunitarias](#). [CONATEL attempts to deny the opening of new community radio stations]

⁵²⁶ UN. Human Rights Council. November 15, 2010. [Proyecto de Informe del Grupo de Trabajo sobre el Examen Periódico Universal: Honduras](#). [Draft Report of the Working Group on the Universal Periodic Review: Honduras]. Para. 85b.

future planning of channeling schemes and of service areas for sound broadcasting services.”⁵²⁷ Nevertheless, the IACHR notes that in the information provided, the State did not make reference to any difficulty that this resolution imposes upon community radio stations, in the sense that they would not be able to access other powers and frequencies through procedures other than financial bidding.

351. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR holds that: “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right 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.”

352. In accordance with Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR: “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.”

353. According to the information we received, on September 23, 2011, the National Congress denied the digital magazine *Revistazo.com* information on non-governmental organizations, churches and foundations that had received money from the State during the *de facto* government of Roberto Micheletti, from June 28, 2009 to January 27, 2010. Congress limited its response to stating that it had information available on the requested subject as of 2010, but did not have information from 2008 to 2009. *Revistazo* filed an administrative appeal for review with the Institute of Access to Public Information, which as of the date of completion of this report had not ruled on the appeal.⁵²⁸

354. The 4th Principle of the Declaration of Principles on Freedom of Expression establishes: “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.”

16. Jamaica

355. The Office of the Special Rapporteur learned that a report from the Joint Select Committee for the consideration and revision of libel laws in Jamaica was approved by the House of Representatives on January 25, 2011, and by the Senate on April 8, 2011. According to the information received, the report was forwarded to the Chief Parliamentary Counsel for the drafting of the bill, which must be signed by the cabinet before being returned to the House of Representatives.⁵²⁹ The report of the

⁵²⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 12.

⁵²⁸ *Revistazo*. September 23, 2011. [Gobierno Nacional Niega Información Pública e irrespeto la Ley de Transparencia](#). [National Government Denies Public Information and Breaks the Law of Transparency]; C-Libre. September 28, 2011. [Congreso Nacional niega información sobre organizaciones que recibieron dinero durante el golpe](#). [National Congress denies information on organizations that received money during the coup]

⁵²⁹ Jamaica Information Service (JIS). January 27, 2011. *House approves committee report on libel laws*. Available at: <http://www.jis.gov.jm/news/122-parliament/26623-house-approves-committee-report-on-libel-laws>; Jamaica Information Service (JIS). April 11, 2011. *Senate approves Report on Review of Libel Laws*. Available at: <http://www.jis.gov.jm/news/122-parliament/27371-senate-approves-committee-report-on-review-of-libel-laws>; Inform’s Blog. The International Forum for

Joint Select Committee recommended, among other things, to eliminate criminal libel, including for publications that could be considered blasphemous, obscene or seditious, with the understanding that international standards establish that no person can be imprisoned for expressing his or her self; to eliminate the distinction between libel and slander and replace it with a single civil action of defamatory publication; to reduce the statutory limitations period for an action of defamation from six years as of its publication to two; to replace the defense of justification with the defense of *exceptio veritatis* - that is, that the person being sued for defamation shall be acquitted of the charges when that person can allege and prove that the facts contained in the publication are in large part or completely true; and to create the defense of innocent dissemination to protect the media that within reasonable limits have in good faith reproduced the content of other publications that could be defamatory.⁵³⁰ According to the information received, on November 22 a bill was submitted to the House of Representatives that would implement the report of the joint Select Committee.⁵³¹ As of the publication deadline of this Annual Report, the passage of these reforms was still pending.

356. In the same sense, on October 26, 2010, the Prime Minister of Jamaica, Bruce Golding, reiterated before the Press Association of Jamaica his commitment to protecting freedom of the press and expressed his interest in pushing for changes to the Defamation Act, which have become bogged down.⁵³² According to the information, the Prime Minister also insisted on the need for the media to establish a “media council” to process complaints from members of the public whose reputation may have been damaged by “unjustified” reports in the media. The Press Association of Jamaica responded that it will continue in its efforts to establish a media complaints council to receive complaints from the public on the media.⁵³³

357. The Office of the Special Rapporteur views positively the steps taken by the State of Jamaica toward reforming its laws on defamation and recalls the Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

358. According to the information received, on April 14, 2011, the Joint Select Committee created by Parliament to examine how the Access to Information Act of 2002 was operating submitted its recommendations to Parliament for strengthening the law and improving its effectiveness. According to reports, in addition to the significant progress made, the law has shown certain weaknesses in its application. Among the recommendations issued by the committee is the need to empower the Access to Information Unit - ATI Unit - as a statutory body with significant authority to monitor the performance of

...continuation

Responsible Media Blog. January 30, 2011. *Libel Reform in Jamaica- Joint Select Committee Report Approved*. Available at: <http://inform.wordpress.com/2011/01/30/libel-reform-in-jamaica-%E2%80%93-joint-select-committee-report-approved/>

⁵³⁰ Houses of Parliament of Jamaica. December 2010. *Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law*. Available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf; Government of Jamaica. Office of the Prime Minister. *Debate on Reform of Libel Laws Begin... Media has Role in Democratic Society- PM Golding*. Available at: http://www.opm.gov.jm/news_and_public_affairs/debate_on_reform_of_libel_laws_beginmedia_has_role_in_democratic_society_p_m

⁵³¹ Jamaica Gleaner. November 24, 2011. “New Libel Bill Tabled in House”. Available at: <http://jamaica-gleaner.com/gleaner/20111124/lead/lead5.html>. Carib101.com

⁵³² The Press Association of Jamaica. October 26, 2010. *PM reaffirms commitment to Press Freedom*. Available at: <http://pressassociationjamaica.org/pm-reaffirms-commitment-to-press-freedom/>

⁵³³ The Press Association of Jamaica. October 26, 2010. *PM reaffirms commitment to Press Freedom*. Available at: <http://pressassociationjamaica.org/pm-reaffirms-commitment-to-press-freedom/>

government agencies in complying with the contents of the Act; the application of the public interest test to justify the rejection of requests for access to information; and the separation of the Appeal Tribunal from the Access to Information Unit, such that it is more independent and has a prerogative to carry out the investigations and inquiries necessary to resolve challenges to first instance rulings on access to information beyond its already established authority to review the requested documents. However, the committee came out against the proposal to establish a time period in which that Appeal Tribunal must issue its rulings.⁵³⁴ The same committee proposed that the Official Secret Act of 1911 be repealed. Currently, that Act can block public officials from revealing basic information in the public interest. The former Prime Minister, Bruce Golding, expressed publicly his desire for the Official Secrets Act to be repealed.⁵³⁵

359. The Office of the Special Rapporteur views positively the State's efforts to strengthen and improve effectiveness of its Access to Information Act. Likewise, it reiterates its concern over the fact that the Official Secrets Act is still in force. In this sense, it reminds that Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

⁵³⁴ Jamaica - Houses of Parliament. October 21, 2010. *Report of the Joint Select Committee to Consider and Report on the Operation of "The Access to Information Act, 2002" Relative to the Review of the Legislation as Provided by the Act.* Available at:

http://www.japarliament.gov.jm/attachments/637_Report%20of%20The%20JSC%20to%20Consider%20and%20Report%20on%20Operation%20of%20The%20Access%20to%20Information%20Act.%202002.pdf; Inter-American Press Association (IAPA). October 2011. *Country reports: Caribbean - Jamaica.* Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inforid=824&idioma=us; Office of the Prime Minister. April 14, 2011. *Committee Recommends Repealed Official Secrets Act Among Other Changes.* Available at: http://www.opm.gov.jm/news_and_public_affairs/committee_recommends_repeal_of_official_secrets_act_among_other_changes

⁵³⁵ The Gleaner. April 16, 2011. *Official Secrets Act to be Replaced.* Available at: <http://jamaica-gleaner.com/gleaner/20110416/news/news9.html>; Jamaica Observer. April 15, 2011. *Repeal Official Secrets Act!* Available at: <http://www.jamaicaobserver.com/news/Repeal-Official-Secrets-Act>; The Gleaner. April 1, 2011. *House Committee Wants Official Secrets Act Repealed.* Available at: <http://jamaica-gleaner.com/gleaner/20110401/lead/lead7.html>; Office of the Prime Minister. April 14, 2011. *Committee Recommends Repealed Official Secrets Act Among Other Changes.* Available at: http://www.opm.gov.jm/news_and_public_affairs/committee_recommends_repeal_of_official_secrets_act_among_other_changes

17. Mexico

A. Progress

360. The Office of the Special Rapporteur was informed of the decision of the Senate of the Republic on November 29 to eliminate articles 1 and 31 of the Press Crimes Act.⁵³⁶ The articles address, respectively, “attacks on privacy” and the punishments applicable in the event of such infractions.⁵³⁷ According to information received, the initiative was sent by the federal executive branch for publication.⁵³⁸ In its *2010 Special Report on Freedom of Expression in Mexico*, the Office of the Special Rapporteur recommended that the Mexican State “Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act.”⁵³⁹ The Office of the Special Rapporteur recognizes this important step forward.

361. The Office of the Special Rapporteur for Freedom of Expression received with satisfaction the ruling of the Supreme Court of Justice of the Nation on Direct Amparo 28/2010.⁵⁴⁰ The case arose out of a civil complaint submitted over a column published in the magazine *Letras Libres* questioning a collaboration agreement between the newspaper *La Jornada* and a Spanish newspaper and the effect that agreement would have on the editorial stance of *La Jornada*. In a ruling dated November 23, the Supreme Court acquitted the author of the column and *Letras Libres*. Broadly citing inter-American case law on freedom of expression, including the standard of “actual malice.” The Court observed that:

Debate on subjects in the public interest should be uninhibited, robust and open, able to include vehement, caustic and unpleasantly scathing attacks on public personalities, as well as, in general, ideas that could be unwelcome by those receiving them and by public opinion in general, such that ideas that are welcome or seen as inoffensive or indifferent are not the only ones protected. These are the demands of a plural, tolerant and open society without which true democracy cannot exist.

*In this regard, although it is true that any individual participating in a public debate in the general interest should refrain from exceeding certain limits - such as respect for reputation and the rights of third parties - that individual is also allowed to employ a certain amount of exaggeration, even provocation - that is, an individual's statements can be somewhat excessive, and it is precisely in expression that can offend, shock, disturb, upset, worry or disgust where freedom of expression is most valuable.*⁵⁴¹

362. The Office of the Special Rapporteur also received with satisfaction a ruling of the Supreme Court of Justice of the Nation dated November 30 that ordered the Office of the Attorney

⁵³⁶ See Press Crimes Act. Available at: http://corteidh.or.cr/docs/medidas/lanacion_se_04.pdf

⁵³⁷ Senate of the Republic. November 29, 2011. *Bulletin-0417 Senate Protects Freedom of Expression*. Available at: http://comunicacion.senado.gob.mx/index.php?option=com_content&view=article&id=2702:boletin-0417-protege-senado-libertad-de-expresion&catid=46:boletin-de-prensa&Itemid=177; El Universal. November 29, 2011. *Senate decriminalizes defamation and libel*. Available at: <http://www.eluniversal.com.mx/notas/812409.html>

⁵³⁸ Senate of the Republic. November 29, 2011. *Bulletin-0417 Senate Protects Freedom of Expression*. Available at: http://comunicacion.senado.gob.mx/index.php?option=com_content&view=article&id=2702:boletin-0417-protege-senado-libertad-de-expresion&catid=46:boletin-de-prensa&Itemid=177; El Universal. November 29, 2011. *Senate decriminalizes defamation and libel*. Available at: <http://www.eluniversal.com.mx/notas/812409.html>

⁵³⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 828. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁴⁰ Supreme Court of Justice of the Nation. Direct Amparo 28/2010. November 23, 2011. Available at: http://www.scjn.gob.mx/Primera_Sala/1ra_listas_actasesion/Actasesepub%2020111123.pdf

⁵⁴¹ Supreme Court of Justice of the Nation. Direct Amparo 28/2010. November 23, 2011. Pgs. 71-72. Available at: http://www.scjn.gob.mx/PLENO/Paginas/proyectos_resolucion.aspx

General of the Republic (PGR in its Spanish acronym) to turn over the case file on the initial inquiry into the forced disappearance of Mr. Rosendo Radilla Pacheco to a relative of the victim.⁵⁴² The Supreme Court announced the decision,⁵⁴³ however its full text was still not available as of the publication deadline of this report. According to the Supreme Court press release, the court ruled “in observance of the judgment issued by the Inter-American Court of Human Rights⁵⁴⁴ [...] and attending to the case law this Supreme Court of Justice of the Nation,” that:

*Article 14 of the Federal Transparency and Access to Public Government Information Act must be interpreted in the sense that initial investigations into facts that could constitute grave violations of human rights are not confidential, meaning that they are public information, pursuant to the provisions of Article 6 of the Constitution.*⁵⁴⁵

363. In its 2010 *Special Report on Freedom of Expression in Mexico*, the Office of the Special Rapporteur called attention to the fact that the PGR had not observed the ruling of the Federal Institute on Access to and Protection of Information (IFAI in its Spanish acronym) in this case.⁵⁴⁶ At that time, the Office of the Special Rapporteur expressed that it:

*recognizes the need to withhold open criminal investigations in order not to affect the investigation and to protect sensitive data. Nevertheless, the Office of the Special Rapporteur considers that delivery of a public version of information on investigations that have been concluded or inactive for years, with due regard for the protection of sensitive data and elements which it can be proven should be withheld to protect other legitimate interests, promotes the public nature of the proceedings and is a guarantee of appropriate inter-departmental and public oversight of the bodies of administration of justice. This is precisely the purpose of the right of access to information.*⁵⁴⁷

364. The Office of the Special Rapporteur received with satisfaction the news of the ruling to acquit handed down on April 7 by the First Civil Chamber of the Superior Tribunal of Justice of the Federal District to the benefit of weekly newspaper *Contralínea* and its director, Miguel Badillo, reporters Ana Lilia Pérez and Nancy Flores, and cartoonist David Manrique. On January 3, 2011, the 54th Civil Court of the Federal District had found the weekly newspaper and the communicators guilty in first instance of having committed moral damage to the detriment of three oil businessmen who felt offended by the contents of a series of reports published in *Contralínea* on their participation in allegedly irregular business deals with State oil company *Petróleos Mexicanos* (PEMEX). Among other aspects, the judgment of the Superior Tribunal establishes that the journalists only have the duty to carry out a reasonable investigation into the the facts they publish; that they can only be punished if the nonexistence

⁵⁴² Supreme Court of Justice of the Nation. November 30, 2011. Press Release 220/2011: *The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry on the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>. The Radilla case was also the subject of a judgment of the Inter-American Court. I/A Court H.R. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated November 23, 2009. Series C No. 209.

⁵⁴³ Supreme Court of Justice of the Nation. Direct Amparo 28/2010. November 30, 2011. Press Release 220/2011: *The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry into the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>.

⁵⁴⁴ I/A Court H.R. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated November 23, 2009. Series C No. 209.

⁵⁴⁵ Supreme Court of Justice of the Nation. November 30, 2011. Press Release 220/2011: *The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry on the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>.

⁵⁴⁶ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 813. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁴⁷ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 814. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

of sources or an intent to damage the persons in question is demonstrated and that they do not have the obligation (as judicial authorities do) to provide formally generated evidence; in addition, the judgment holds that the threshold for the protection of the moral reputation of the businessmen who voluntarily do business with the State is lower, as they are public figures participating in matters of public interest.⁵⁴⁸

365. The Office of the Special Rapporteur takes note of the ruling of the Federal Institute on Access to Information (IFAI) to order the Center for Investigation and National Security (CISEN), a State intelligence agency, to turn over information on the number of people who have died in clashes between criminal groups or between criminal groups and State forces between years 2000 and 2010. The information must be broken down by month and identify whether those who died were government functionaries or not and to which institution they belonged. Initially, the CISEN had alleged that it did not have the information and remitted the petitioner to other State entities and a State database on homicides, with information from 2006 to 2010. According to the information received, the IFAI requested the CISEN to do an exhaustive search of its archives to locate the information requested from the period 2000-2010 and turn it over in an electronic format.⁵⁴⁹

366. The Office of the Special Rapporteur highlights the fact that the Second Chamber of the Supreme Court of Justice of the Nation ruled on February 2 - for reasons of "interest and importance" - to hear a case on the Secretary of Health's refusal to place public advertising with community radio broadcaster *La Voladora Radio*, from the Amecameca municipality in Mexico state. The Secretary of Health had alleged that the broadcaster did not meet its standards of broad distribution and coverage for its messages, while the radio station and its legal representatives argue that the broadcaster serves a poor and vulnerable population and that the refusal to place advertising contravenes the obligations to respect and promote freedom of expression and the right to inform, guaranteed in the Mexican Constitution. The matter reached the Supreme Court of Justice after the Ninth District Court on administrative matters of the Federal District denied the radio station's *amparo* petition in August of 2010.⁵⁵⁰ On July 13, the Second Chamber of the Supreme Court of Justice of the Nation granted the *amparo* to La Voladora Radio on finding that the Secretary of Health's refusal to place a reasonable amount of government advertising with a community radio broadcaster was a violation of freedom of expression and the right to be informed. According to the ruling, the Secretary of Health's decision was based on measures of restriction lacking reasonableness, as they favored media outlets based generally on their broadcast range and not their real coverage in different regions and communities throughout the country. According to the judgment, there could be special cases in which broadcasters with a national reach are not ideal, as when a community speaks an indigenous language or the geographic landscape makes signal reception difficult.⁵⁵¹

⁵⁴⁸ The ruling of the Superior Tribunal modified the first instance ruling, which had found that matters related with Pemex were not in the public interest. The first ruling also found the cartoonist's work offensive and banned the communicators from addressing the subject further. Mexican Commission for the Defense and Promotion of Human Rights. April 15, 2011. *First Civil Chamber of the TSJ of the DF* [in the Spanish acronyms] *acquits Contralinea journalists of moral damages*. Available at: http://www.cmdpdh.org/index.php?option=com_content&view=article&id=339%3Aprimera-sala-civil-del-tsj-del-df-absolvio-de-dano-moral-a-periodistas-del-semanario-contralinea&catid=37%3Acomunicados&Itemid=162&lang=en; Article 19. April 19, 2011. *Article 19 welcomes court review benefiting the right to freedom of expression*. Available at: http://ifex.org/mexico/2011/04/19/reconsideracion_a_favor/es/; El Sol de México. April 15, 2011. *Ruling to acquit for Contralinea journalists*. Available at: <http://www.misionpolitica.com/hoy/3614-sentencia-absolutoria-a-periodistas-del-semanario-contralinea>; Revista Contralinea. February 13, 2011. *The Contralinea case*. Available at: <http://contralinea.info/archivo-revista/index.php/2011/02/13/el-caso-contralinea/>

⁵⁴⁹ Federal Institute on Access to and Protection of Information (IFAI). March 23, 2011. Case File 145/11. Pgs. 64 *et seq.* Available at: <http://www.ifai.org.mx/Sesiones/Consulta>. Cf. El Universal. March 24, 2011. *CISEN ordered to report on narco deaths*. Available at: <http://www.eluniversal.com.mx/notas/753961.html>; Notimex. March 23, 2011. *CISEN must turn over information on deaths caused by organized crime*. Available at: http://www.cronica.com.mx/nota.php?id_notas=568176

⁵⁵⁰ World Association of Community Broadcasters (AMARC). February 4, 2011. *Supreme Court agrees to hear case on government advertising for community radio stations*. Available at: <http://legislaciones.item.org.uy/index?q=node/2254>; La Voladora Radio. February 4, 2011. *SCJN agrees to hear case on government advertising for community radio stations*. Available at: <http://lavoladora.net/?p=220>

⁵⁵¹ Supreme Court of Justice of the Nation. July 13, 2011. *Amparo under review 248-2011*. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/11002480.002.doc>; El Universo. July 13, 2011. *SCJN rules in favor of community radio station and against Ministry of Health*. Available at: <http://www.eluniversal.com.mx/notas/779158.html>; Supreme

367. In another very similar ruling, the First Chamber of the Supreme Court of Justice of the Nation ruled on August 24 to grant the *amparo* requested by community broadcaster *Radio Nandía*. As with *La Voladora Radio*, *Radio Nandía* submitted an *amparo* petition in response to the Secretary of Health of the State of Mexico's refusal to place government advertising with it, demanding the petition be granted by the Supreme Court to the benefit of the radio station.⁵⁵²

368. The Office of the Special Rapporteur observes that on March 24, more than 50 Mexican media outlets signed an agreement on coverage of the violence in order to protect journalists and avoid being used as instruments of propaganda by organized crime. The document establishes objectives, guiding principles, and common editorial standards and, among other provisions, proposes guaranteeing the safety of the reporters covering issues related with violence and insecurity through joint coverage, avoiding filing reports from the most violent areas, and not placing bylines on news items on subjects related to organized crime. Among other points, it also calls for encouraging citizen participation and complaints in the fight against crime, noninterference in combating crime, protecting victims and minors, and the creation of a citizen body for monitoring the media to prepare regular reports on the degree to which the media have followed the terms of the agreement.⁵⁵³

369. The Office of the Special Rapporteur views positively the creation of a Public Prosecutor's Office for the Investigation of Crimes of Social Relevance in Oaxaca State with the purpose of investigating more than 400 crimes with political motives, among them the deaths of more than 20 people murdered during a protest against the state government in 2006, in which the American journalist Bradley Will also died.⁵⁵⁴ The independent American journalist died after being shot while filming the disturbances. The only person accused of the crime against the communicator, an activists who was participating in the protests, was acquitted of all responsibility by a federal court.⁵⁵⁵

370. The Office of the Special Rapporteur learned of the August 28 arrest of an individual accused of the murder of journalist José Luis Romero.⁵⁵⁶ Romero, who was also working for news radio

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Court of Justice of the Nation. No. 125/2011, July 13, 2011. *Unconstitutional, Secretary of Health's refusal to place government advertising for fiscal year 2010 with community radio broadcaster*. Available at: <http://www2.scjn.gob.mx/comunica2prensa/comunicado.asp?id=2113>; Jornada UNAM. July 14, 2011. *Community radio station granted amparo against denial of advertising*. Available at: <http://www.jornada.unam.mx/2011/07/14/politica/022n1pol>; Litiga OLE. July 18, 2011. *Amparo for La Voladora opens way to regulation of placement of government advertising*. Available at: http://www.litigaole.org.mx/web/web/MICROSITIO_LA_VOLADORA.html

⁵⁵² Supreme Court of Justice of the Nation. August 24, 2011. *Amparo under review 531-2011*. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/11005310.002.doc>; World Association of Community Broadcasters (AMARC). August 24, 2011. *Press Release: Second SCJN ruling in favor of government advertising for community radio stations*. Available at: <http://www.amarcMexico.org/?p=8>; Etcétera. August 24, 2011. *Second SCJN ruling in favor of government advertising for community radio stations*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=8874>

⁵⁵³ Mexicodeacuerdo.org. March 24, 2011. *Agreement on Media Coverage of the Violence*. Available at: <http://www.mexicodeacuerdo.org/acuerdo.pdf>; WRadio. March 23, 2011. *Media directors sign editorial agreement*. Available at: <http://www.wradio.com.mx/nota.aspx?id=1443936>; El Economista. March 24. *Standards unified in response to the violence*. Available at: <http://eleconomista.com.mx/sociedad/2011/03/24/unifican-criterios-ante-violencia>

⁵⁵⁴ Governor of Oaxaca State. March 9, 2011. *Gabino Cué signs decree creating the Public Prosecutor's Office for the Investigation Crimes of Social Relevance*. Available at: <http://www.oaxaca.gob.mx/?p=3432>; Milenio. March 9, 2011. *Cué creates Public Prosecutor's Office for the Investigation Crimes of Social Relevance*. Available at: <http://www.milenio.com/node/666033>; Associated Press/The Washington Post. March 9, 2011. *Mexican investigators reopen Oaxaca death cases*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/09/AR2011030905434.html>

⁵⁵⁵ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 659-665. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf; El Universal. February 18, 2010. *Judge orders the only individual accused of Will's death be freed*. Available at: <http://www.eluniversal.com.mx/primer/34454.html>; La Crónica de Hoy. February 18, 2010. *Federal court orders individual accused of murdering Brad Will released*. Available at: http://www.cronica.com.mx/nota.php?id_notas=488722

⁵⁵⁶ Knight Center for Journalism in the Americas. September 1, 2011. *Suspect captured in 2009 killing of Mexican journalist*. Available at: <http://knightcenter.utexas.edu/en/blog/suspect-captured-2009-killing-mexican-journalist>; Debate. August 31, Continued...

program *Línea Directa*, disappeared in December 2009 and his lifeless body was found in Los Mochis, Sinaloa State, on January 16, 2010.⁵⁵⁷ According to the information received, the captured individual, Gilberto Plascencia Beltrán, belonged to the criminal group Los Mazatlecos and had turned over the names of other persons who participated in Romero's kidnapping and murder. For its part, the Sinaloa Journalists Association and the Sinaloa and Association of Communicators had demanded that the authorities provide evidence of the suspect's guilt.⁵⁵⁸

B. Murders and disappearances

371. According to the information that has been provided to the Office of the Special Rapporteur, at least eight journalists and two media workers were killed in 2011 under circumstances in which a link between the crime and the exercise of their profession could not be ruled out. Likewise, the Office of the Special Rapporteur was informed of the disappearance of two journalists and the murder of two possible bloggers, allegedly by organized crime. The Office of the Special Rapporteur also received information on multiple attacks, harassment, kidnappings and other acts of violence. As indicated in its 2010 Special Report on Freedom of Expression in Mexico,⁵⁵⁹ the Office of the Special Rapporteur confirms that the alarming problem of violence against journalists continues to worsen. Likewise, the Office of the Special Rapporteur emphasizes that attacks on communicators constitute the most radical form of censorship, as they prevent absolutely both the right of journalists to circulate ideas or information and the right of all persons to receive that information, meaning that it affects not only the victim and the victim's relatives but also society as a whole.

372. The Office of the Special Rapporteur received information on an armed attack on the television station owned by Grupo Multimedios Laguna and on radio broadcaster Radiorama Laguna on February 9 in the state of Coahuila, Mexico, which resulted in the death of an engineer at the television station. According to the information received, several masked and armed individuals entered Radiorama's broadcasting facilities, where they beat two people and damaged equipment. Later, they broke into the facilities of Grupo Multimedios, where they murdered engineer Rodolfo Ochoa Moreno when he tried to make a phone call for help.⁵⁶⁰

373. On March 25, journalist Luis Ruiz Carrillo, with the newspaper *La Prensa* in Coahuila, - accompanied by the host of a Televisa program José Luis Cerda Meléndez and one of his relatives Juan Roberto Gómez Meléndez - was found murdered in Monterrey. According to the information received by the Office of the Special Rapporteur, the three men had been kidnapped the previous night after Cerda Meléndez left work at the television channel.⁵⁶¹

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2011. *Individual accused of the death of José Luis Romero captured.* Available at: <http://www.debate.com.mx/eldebate/Articulos/ArticuloGeneral.asp?IdArt=11258307&IdCat=12302>

⁵⁵⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 546. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁵⁸ Knight Center for Journalism in the Americas. September 1, 2011. *Suspect captured in 2009 killing of Mexican journalist.* Available at: <http://knightcenter.utexas.edu/en/blog/suspect-captured-2009-killing-mexican-journalist>; Debate. August 31, 2011. *Individual accused of the death of José Luis Romero captured.* Available at: <http://www.debate.com.mx/eldebate/Articulos/ArticuloGeneral.asp?IdArt=11258307&IdCat=12302>

⁵⁵⁹ See IACHR. Office of the Special Rapporteur for Freedom of Expression. *2010 Special Report on Freedom of Expression in Mexico.* OEA/Ser.L/V/II Doc. 5. March 7, 2011. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=230>

⁵⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 14, 2011. Press Release R11/11. *Special Rapporteur Condemns Armed Attack on Media Outlets in Mexico.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=833&IID=1>; Committee to Protect Journalists (CPJ). February 11, 2011. *Broadcast offices attacked in Mexico; engineer killed.* Available at: <http://cpi.org/2011/02/broadcast-offices-attacked-in-mexico-engineer-kill.php>; Milenio. February 10, 2011. *Multimedios engineer killed.* Available at: <http://www.milenio.com/node/642609>

⁵⁶¹ The body of José Luis Cerda Meléndez was found the morning of March 25 at the side of a highway with hands tied, blindfolded, and a gunshot wound to the head. Near the body, the murderers - presumably the Gulf cartel - had written a sign on the

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374. The Office of the Special Rapporteur learned of a crime committed against journalist Noel López Olguín. According to the information available, on March 8 the reporter was traveling to the area of Sotepan, in the south of Veracruz, and never arrived to his destination. On Sunday, May 29, the police captured an alleged drug trafficker who confessed to having murdered the journalist. With the information obtained, the authorities exhumed the body that had been buried in a secret grave on the Malacate cooperative farm in the Jáltipan municipality. On June 1, the relatives of the journalist identified the remains. Noel López Olguín was a columnist with the newspaper *La Verdad de Jáltipan* and contributed to several media outlets, including *Horizonte* and *Noticias de Acayucan*. According to the information, the journalist regularly denounced and harshly criticized acts of local corruption.⁵⁶²

375. The Office of the Special Rapporteur received information on the murder of journalist Miguel Ángel López Velasco, assistant director of *Notiver*, together with his son Misael López Solana, a journalist at the same newspaper, and his wife, Agustina Solana, in Veracruz state on June 20. All three were murdered in their house while they slept. Miguel Ángel López Velasco, also known in his column as "Milo Vela," specialized in issues of security, politics and narco trafficking for *Notiver*, a widely circulated newspaper in Veracruz. He had received threats over his professional activity.⁵⁶³ In its 2007 Annual Report, the Office of the Special Rapporteur documented that on May 3 of that year, a human head was dropped outside the headquarters of *Notiver* with a note saying "this is a gift for the journalists, more heads are going to roll and Milo Vela knows it well."⁵⁶⁴ With regard to the triple murder, the governor of the state of Veracruz ordered the investigation be sped up and for the Office of the State Prosecutor to carry out the investigation, with the assistance of experts from the Office of the Attorney General of the Republic.⁵⁶⁵ Likewise, the national human rights Commission opened an *ex officio* complaint to launch an investigation.⁵⁶⁶

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wall that said, "Stop cooperating with the Zetas. Sincerely CDG Greetings to Architect No. 1" While the police were guarding the scene of the crime, armed men arrived and took Cerda's body. The body appeared several hours later in a place where people had been invited the day before to a march for peace. The remains of Ruiz Carrillo and Gómez Meléndez were found that morning in another place in the city. IACHR. Office of the Special Rapporteur for Freedom of Expression. March 29, 2011. Press Release R26/11. *Office of the Special Rapporteur Condemns Crime Against Two Media Workers in Mexico*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=834&IID=1>; Reporters Without Borders/IFEX. March 29, 2011. *Double murder in Nuevo León; Guerrero newspaper suspends publication following threats*. Available at: http://www.ifex.org/mexico/2011/03/29/double_murder/; Europa Press. March 25, 2011. *Body of José Luis Cerda Meléndez, 'La Gata,' found*. Available at: <http://www.europapress.es/tv/noticia-hallan-cadaver-jose-luis-cerda-melendez-gata-20110325193102.html>

⁵⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. June 7, 2011. Press Release R54/11. *Office of the Special Rapporteur Condemns Murder of Journalist who disappeared in Mexico in March*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=850&IID=1>; EFE News Service. June 3, 2011. *Body of Mexican journalist missing since March found*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5gtvihdtDshl3WQ0aZ1aK-XNTCEwA?docId=1542797>; Committee to Protect Journalists (CPJ). June 2, 2011. *Missing journalist found dead in Mexico*. Available at: <http://www.cpj.org/2011/06/missing-journalist-found-dead-in-mexico.php>; Reporters Without Borders. March 25, 2011. *Police find body of Veracruz state reporter missing since March*. Available at: http://en.rsf.org/mexico-police-find-body-of-veracruz-state-03-06-2011_40401.html; PEN Center USA. March 29, 2011. *Mexico. Journalist Disappears in Veracruz*. Available at: <http://www.penusa.org/ran-1311-mexico>; Inter-American Press Association (IAPA). April 2011. *Information by Country: Mexico*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoId=810&idioma=us

⁵⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 23, 2011. Press Release R61/11. *Office of the Special Rapporteur Deplores Murders of Journalist and his Family in Mexico*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=852&IID=1>; Committee to Protect Journalists (CPJ). June 20, 2011. *Miguel Ángel López Velasco*. Available at: <http://www.cpj.org/killed/2011/miguel-angel-lopez-velasco.php>; La Jornada. June 21, 2011. *Journalist Miguel Ángel López Velasco killed in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n1pol>; La Jornada. June 22, 2011. *Journalist Miguel Ángel López Velasco, his wife and son buried in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/22/politica/010n1pol>

⁵⁶⁴ IACHR. Annual Report 2007. OEA/Ser.L/V/II.131. Doc. 34 ver. 1. March 8, 2008. Vol. II. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 246. Pg. 113. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007_VOL.II%20ENG.pdf. Cf. La Jornada. May 4, 2007. *Ten murdered in seven different localities; human head found in Veracruz*. Available at: <http://www.jornada.unam.mx/2007/05/04/index.php?section=politica&article=003n1pol>

⁵⁶⁵ La Jornada. June 20, 2011. *Journalist Miguel Ángel López Velasco killed in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n1pol>; Radio Fórmula. June 20, 2011. *Duarte saddened by crime against*
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376. On July 26, journalist Yolanda Ordaz, also with *Notiver*, appeared dead in Boca del Río, Veracruz. The journalist disappeared on July 24, shortly after telling her family members that she was going to cover a story. Her body was found decapitated behind the offices of the newspaper *Imagen del Golfo* and nearby radio broadcaster MVS. According to the available information, Yolanda Ordaz was working as a journalist covering the police beat for *Notiver* in Veracruz.⁵⁶⁷ According to reports, the head of the state Office of the Public Prosecutor in charge of the investigation indicated that a sign was found along with the body apparently linking the journalist with criminal groups.⁵⁶⁸ The newspaper *Notiver* requested the resignation of the Attorney General of Justice of Veracruz and demanded a public apology after the official made premature public statements dismissing any link between the crime and the journalist's work. He resigned in the first week of October.⁵⁶⁹ The National Human Rights Commission opened an *ex officio* complaint to launch an investigation into the murder.⁵⁷⁰

377. The Office of the Special Rapporteur learned of the kidnapping and murder of Humberto Millán, journalist with Radio Fórmula, in Sinaloa, Mexico. According to the information received, Humberto Millán was kidnapped by several armed men on the morning of August 24 in Culiacán, Sinaloa. On the morning of August 25, the journalist was found dead with a bullet wound to the head. In addition to his work with *Radio Fórmula*, he edited the digital newspaper *A Discusión*, where he specialized in local and national politics. The journalist, with more than 30 years experience in the media, was known for his critical commentaries and denunciations of alleged acts of corruption.⁵⁷¹ On August 24, the date on which the journalist disappeared, the National Human Rights Commission opened a complaint case file to investigate the facts and asked the Secretary of the Government to implement precautionary or protective measures to the benefit of the relatives of the journalist, who had received threats.⁵⁷²

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journalist and family in Veracruz. Available at: <http://www.radioformula.com.mx/notas.asp?Idn=180289>; La Jornada. June 21, 2011. *Criminals will not be permitted to act in impunity: Javier Duarte*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n2pol>

⁵⁶⁶ National Human Rights Committee (CNDH in its Spanish acronym). June 20, 2011. CGCP/149/11. *From 2000 to date: 70 journalists murdered*. Available at: <http://www.cndh.org.mx/node/37>

⁵⁶⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 29, 2011. Press Release R81/11. *Office of the Special Rapporteur Condemns Murder of a Journalist in Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=859&IID=1>; La Jornada. July 27, 2011. *Journalist Yolanda Ordaz with newspaper Notiver found murdered*. Available at: <http://www.jornada.unam.mx/2011/07/27/politica/012n1pol>; BBC. July 27, 2011. *Mexico. Missing journalist Yolanda Ordaz found killed*. Available at: <http://www.bbc.co.uk/news/world-latin-america-14305364>; Reporters Without Borders. July 27, 2011. *Journalist Yolanda Ordaz de la Cruz found murdered*. Available at: <http://www.rsf-es.org/news/mexico-asesinada-la-periodista-yolanda-ordaz-de-la-cruz/>

⁵⁶⁸ Reporters Without Borders. July 27, 2011. *Mexico: Journalist Yolanda Ordaz de la Cruz found murdered*. Available at: <http://www.rsf-es.org/news/mexico-asesinada-la-periodista-yolanda-ordaz-de-la-cruz/>

⁵⁶⁹ Proceso. July 27, 2011. *Notiver demands prosecutor resign*. Available at: <http://www.proceso.com.mx/?p=277160>; E-Consulta October 7, 2011. *Veracruz prosecutor resigns after more bodies turn up*. Available at: http://e-consulta.com/portal/index.php?option=com_k2&view=item&id=18829:renuncia-procurador-de-veracruz-tras-aporaric%C3%B3n-de-m%C3%A1s-cad%C3%A1veres&Itemid=332; CNN. October 7. *Veracruz prosecutor resigns after a wave of violence*. Available at: <http://www.cnn.com/nacional/2011/10/07/el-procurador-de-veracruz-presenta-su-renuncia-tras-una-ola-de-violencia>

⁵⁷⁰ National Human Rights Committee (CNDH in its Spanish acronym). July 26, 2011. CGCP/181/11. *Death of journalist in Veracruz investigated*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_181.pdf

⁵⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 26, 2011. Press Release R95/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of a Journalist in Sinaloa, Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=863&IID=1>; El Mundo. August 26, 2011. *Body of Mexican journalist Humberto Millán found a day after his kidnapping*. Available at: <http://www.elmundo.es/america/2011/08/25/mexico/1314294557.html>; El País. August 26, 2011. *Another journalist murdered in Mexico*. Available at: http://www.elpais.com/articulo/internacional/Asesinan/periodista/Mexico/elpeuint/20110826elpeuint_1/Tes; CNN. August 26, 2011. *Justice demanded in murder of journalist Humberto Millán in Sinaloa*. Available at: <http://mexico.cnn.com/nacional/2011/08/26/exigen-justicia-por-la-muerte-del-periodista-humberto-millan-en-sinaloa>

⁵⁷² National Human Rights Committee (CNDH in its Spanish acronym). August 30, 2011. CGCP/214/11. *Measures of protection for the family of the journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_214.pdf

378. On September 24, the editor of the newspaper *Primera Hora*, María Elizabeth Macías, appeared dead in Nuevo Laredo, Tamaulipas state. According to information received, the communicator was found decapitated and a message was found with her remains accusing her of denouncing the actions of criminal groups on her blog. The information received by the Office of the Special Rapporteur also indicates that two weeks prior, on September 13, 2011, the bodies of two young people were found in the city of the Nuevo Laredo showing signs of torture. The bodies were accompanied by a message warning people not to report crimes on social networks.⁵⁷³ According to what was reported to this Office of the Special Rapporteur, as of the publication deadline of this report, the bodies of the two young people had not been identified.⁵⁷⁴

379. The Office of the Special Rapporteur for Freedom of Expression received information concerning the disappearance of journalist Marco Antonio López Ortiz, information chief for newspaper *Novedades Acapulco* in the state of Guerrero on June 7, 2011. According to the information received by the Office of the Special Rapporteur, the journalist was abducted by a group of unknown individuals in the city of Acapulco on the night of June 7. His car was found abandoned at the place of the kidnapping and since then there has been no news on his whereabouts.⁵⁷⁵ According to information, the Office of the Attorney General of Justice of the State of Guerrero has launched an investigation into these facts.⁵⁷⁶ The Commission for the Defense of Human Rights of the State of Guerrero issued press releases on the case and the National Human Rights Commission also open a case file and visited the offices of *Novedades Acapulco* to look into the journalist's disappearance. However, the whereabouts of the journalist are still unknown.⁵⁷⁷

380. The Office of the Special Rapporteur received information on the disappearance of journalist Manuel Gabriel Fonseca, a reporter with newspaper *El Mañanero* in the municipality of Acayucan, Veracruz state. Fonseca, who was covering the police beat, was last seen leaving work on September 19.⁵⁷⁸

⁵⁷³ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 27, 2011. Press Release R105/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Three Murders in Nuevo Laredo, Mexico*. Available at: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=871&IID=1>; Office of the Attorney General of Justice of Tamaulipas State. September 24, 2011. *Press release from the Office of the Attorney General of Justice of the State*. Available at: <http://tamaulipas.gob.mx/2011/09/comunicado-de-la-procuraduria-general-de-justicia-del-estado-11/>; Vanguardia. September 26, 2011. *Murder of María Elizabeth Macías "clear threat" to net surfers*. Available at: <http://www.vanguardia.com.mx/asesinatodemariaelizabethmaciasclaraamenazaacibernautasai-1107853.html>; CNN. September 25, 2011. *Editor of the newspaper found decapitated in Tamaulipas*. Available at: <http://mexico.cnn.com/nacional/2011/09/25/la-editora-de-un-periodico-fue-encontrada-decapitada-en-tamaulipas>

⁵⁷⁴ Telephone interview with nongovernmental organization Article 19. October 31, 2011.

⁵⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 16, 2011. Press Release R58/11. *Office of the Special Rapporteur Expresses Concern regarding Disappearance of Journalist in Mexico*. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=851&IID=1>; Acapulco. June 10, 2011. *Media worried over disappearance of journalist López Ortiz*. Available at: <http://www.aca-novenet.com.mx/acapulco/preocupa-a-medios-desaparicion-del-periodista-lopez-ortiz>

⁵⁷⁶ La Jornada de Guerrero. June 26, 2011. *Protests continue demanding López Ortiz be returned*. Available at: <http://www.lajornadaguerrero.com.mx/2011/06/26/index.php?section=sociedad&article=005n2soc>; La Jornada de Guerrero. July 8, 2011. *One month after the disappearance of López Ortiz, the PGJE still doesn't have results*. Available at: <http://www.lajornadaguerrero.com.mx/2011/07/08/index.php?section=politica&article=004n1pol>

⁵⁷⁷ National Human Rights Committee (CNDH in its Spanish acronym). June 15, 2011. CGCP/144/11. *Case file opened over disappeared journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_144.pdf; Commission for the Defense of Human Rights of the State of Guerrero. June 9, 2011. *Human Rights CONDEMNS the disappearance of Novedades Acapulco journalist*. Available at: http://www.coddehumgro.org.mx/coddehumgro2011/index.php?option=com_content&view=article&id=390%3Aderechos-humanos-reprueba-la-desaparicion-del-informador-de-novedades-acapulco&catid=38%3ABoletines-2011&Itemid=1; La Jornada Guerrero. July 8, 2011. *One month after the disappearance of López Ortiz, the PGJE still does not have results*. Available at: <http://www.lajornadaguerrero.com.mx/2011/07/08/index.php?section=politica&article=004n1pol>

⁵⁷⁸ Committee to Protect Journalists (CPJ). September 29, 2011. *Mexican police reporter missing in Veracruz*. Available at: <http://www.cpj.org/2011/09/police-reporter-missing-in-mexico.php>; Milenio. September 22, 2011. *Disappearance of journalist in Veracruz denounced*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/9eff4ec8bb8b82a2677854bfeb8e728>

381. The Office of the Special Rapporteur urges the Mexican authorities to investigate the motive for these crimes, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.

382. The Office of the Special Rapporteur recalls that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the 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."

C. Attacks on media and journalists

383. The Office of the Special Rapporteur received information on various attacks on communicators during this period. On December 18, 2010, armed men fired at least 15 times at the residence of journalist José Rosario Olán Hernández, with the newspaper *Verdicto Popular*, in Cárdenas, Tabasco, while he was there with his family. According to reports, *Verdicto Popular* regularly publishes denouncements of alleged acts of corruption in the state of Tabasco.⁵⁷⁹ On January 9, government security personnel of the state of Mexico attacked a correspondent with the newspaper *La Jornada*, Misael Habana de los Santos, and independent photographer Bernadino Hernández while they were reporting on the collapse of a metal structure during a political rally that caused the death close to 20 people. According to reports, the security personnel tried to prevent press from approaching the place and capturing images, in doing so seizing Habana's camera and threatening Hernández with a firearm.⁵⁸⁰

384. In the early morning hours of January 11, unknown individuals threw a fragmentation grenade and fired at a building owned by newspaper *El Norte* in Monterrey, Nuevo León. The attack caused damage to glass and the newspaper's façade. The attack took place hours after presumed criminal groups threatened local media covering news related to the war against narco trafficking.⁵⁸¹ The newspaper was attacked again with a grenade on March 31, though no one was injured and no major damage was caused.⁵⁸²

385. The Office of the Special Rapporteur was informed that reporter Alejandro Caballero and photographer Hugo Camarillo, with the newspaper *Plaza de Armas*, were attacked on January 6 by

⁵⁷⁹ El Independiente del Sureste. December 19, 2010. *Attack against journalist José Rosario Olán en Cárdenas*. Available at: http://www.elindependiente.mx/independiente/index.php?option=com_content&view=article&id=5447:atentan-contra-el-periodista-jose-rosario-olan-en-cardenas&catid=13:agenda&Itemid=5; International Freedom of Information Exchange (IFEX). December 23, 2010. *Journalist's house, car shot at in Cárdenas, Tabasco*. Available at: http://www.ifex.org/mexico/2010/12/23/olan_hernandez/; El Independiente del Sureste. December 19, 2010. *Open letter sent to journalist José Rosario Olán*. Available at: http://www.elindependiente.mx/independiente/index.php?option=com_content&view=article&id=5448:envia-carta-abierta-el-periodista-jose-rosario-olan&catid=10:salud&Itemid=14

⁵⁸⁰ Center for Journalism and Public Ethics (CEPET). January 10, 2011. *Journalists covering incident during political rally attacked*. Available at: <http://libexmexico.wordpress.com/2011/01/10/agreden-a-periodistas-que-cubrian-incidente-durante-acto-politico/>; *La Jornada*. February 12, 2011. *Habana submits criminal complaint to prosecutor against Añorve and Peña Nieto for attacks*. Available at: <http://www.lajornadaquerrero.com.mx/2011/02/12/index.php?section=politica&article=002n1pol>

⁵⁸¹ El Universal. January 11, 2011. *Grenade attack reported against newspaper El Norte*. Available at: <http://www.eluniversal.com.mx/notas/736371.html>; EFE News Service. January 11, 2011. *Newspaper in north of Mexico attacked with grenades and assault rifles*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5iK92U5AkbeSIH4tSCzIYb-WsrpuQ?docId=1440861>

⁵⁸² Vanguardia. April 1, 2011. *Monterrey newspaper attacked*. Available at: <http://www.vanguardia.com.mx/atacanunperiodicoenmonterrey-687384.html>; EFE News Service. April 1, 2011. *Grenade explodes outside newspaper in north of Mexico without causing injuries*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5iIU4xCDoxZmpNbvj-2ErcORkFWA?docId=1499310>

security guards of the local delegation of the Mexican Institute of Social Security (IMSS in its Spanish acronym) in Queretaro while trying to interview nurses to refute an official statement on these worker's salaries. According to reports, in the evening, an official with the Internal Communications Department had gone to the newspaper's offices to demand to be informed of the content of the news item that was to be published.⁵⁸³ In follow up to the incident, the Querétaro State Human Rights Commission opened an *ex officio* complaint the following day.⁵⁸⁴ On January 20, presumed employees of union leader Martín Esparza beat journalists Javier Vega and cameraman Juan Carlos Martínez, of *Milenio Televisión*, and seized and destroyed a camera and cellular phones while the two were recording images outside the property of the union leader in Tetepango, Hidalgo. The Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym) ordered forensics experts and agents of the Federal Investigation Agency (AFI) be sent to collect evidence.⁵⁸⁵ Elsewhere, the Office of the Special Rapporteur learned of an attack suffered on February 1 by Juan César Martínez, a cameraman with *Televisa Monterrey*, while he was covering a confrontation between members of criminal groups and federal forces in Apodaca, Nuevo León.⁵⁸⁶ On February 28, Julián Ortega, a photographer with daily newspaper *El Imparcial* in Sonora, was physically and verbally attacked by state police officers while photographing the search for an armed gang in the city of Hermosillo. While he was doing his job, three police officers approached him to take away his cameras.⁵⁸⁷ In Saltillo, Coahuila, Milton Martínez, a cameraman with *Televisa*, was beaten, arrested and threatened by officers of the Coahuila Prosecutor's Office on March 4 while he was taking pictures of the destruction caused by a clash between criminals and police forces. The communicator was released hours later. In following up the incident, the National Human Rights Committee opened an *ex officio* complaint.⁵⁸⁸ On February 15, Gildardo Mota, a journalist with *Radiorama* and weekly newspaper *La Hora* was wounded by a gunshot to the leg while reporting on a clash between federal police officers and members of the teachers union, close to the Zócalo in the city of Oaxaca where President Felipe Calderón was located. According to the information received by the Office of the Special Rapporteur, photographers Luis Cruz, Hugo Velasco and Jaime García were also slightly injured.⁵⁸⁹

⁵⁸³ Center for Journalism and Public Ethics (CEPET)/IFEX. January 14, 2011. *Employees of IMSS Queretaro attack reporters*. Available at: http://www.ifex.org/mexico/2011/01/14/plaza_de_armas_agreden/es/; El Universal. January 8, 2011. *Employees of IMSS attack reporters*. Available at: <http://www.eluniversal.com.mx/notas/735887.html>

⁵⁸⁴ According to the information, the CEDHQ opened complaint case file CEDH/063/2011/VG. Cf. Querétaro State Human Rights Commission (CEDHQ in its Spanish acronym). January 7, 2011. Press release 001/2011/DCS. *CEDHQ condemns attack on to reporters in Querétaro*. Available at: <http://www.cedhqro.org/archivos/boletines/2011/001-2011.pdf>

⁵⁸⁵ Milenio. January 20, 2011. *PGR launches initial inquiry into damages and theft to the detriment of Milenio*. Available at: <http://www.milenio.com/node/626585>; Telediario. January 20, 2011. *Cameras stolen and reporters with Milenio Televisión attacked outside ranch of Martín Esparza*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/50a22c5f90a91c7060c4a6dba2ab5151>

⁵⁸⁶ Center for Journalism and Public Ethics (CEPET)/IFEX. February 4, 2011. *Federal police beat Televisa Monterrey cameraman and confiscate his equipment*. Available at: http://www.ifex.org/mexico/2011/02/04/televisa_monterrey_agresion/es/; Vanguardia. February 4, 2011. *Federal police beat Televisa Monterrey cameraman*. Available at: <http://www.vanguardia.com.mx/policiasfederalesgolpeanacamaraografodetelevisamonterrey-644847.html>

⁵⁸⁷ El Imparcial. March 1, 2010. *State police officers attack journalist*. Available at: <http://www.elimparcial.com/EdicionEnLinea/Notas/Policiaca/01032011/500228.aspx>. El Portal de la Noticia. March 2, 2011. *Journalists: Who's next?* Available at: http://www.elportaldelanoticia.com/index.php?option=com_content&view=article&id=1850:periodistas-iquien-sigue&catid=26:el-zancudo; Knight Center for Journalism in the Americas. March 2, 2011. *Mexican police attack photographer covering shooting*. Available at: <http://knightcenter.utexas.edu/blog/mexican-police-attack-photographer-covering-shooting>. Cf. National Human Rights Committee (CNDH in its Spanish acronym). March 5, 2011. CGCP/054/11. *CNDH investigates attack on cameraman*. Available at: <http://www.cndh.org.mx/node/37>

⁵⁸⁸ Noticieros Televisa. March 4, 2011. *Shootings reported in Saltillo*. Available at: <http://noticierostelevisa.esmas.com/nacional/265987/reportan-balaceras-salttillo>; Vanguardia. March 9, 2011. *CDHDF requests protection for communicator attacked by the police in Coahuila*. Available at: <http://www.vanguardia.com.mx/pidelacdhdfprotegeracomunicadoragredidoporlapolicia decoahuila-668972.html>; National Human Rights Committee (CNDH). March 5, 2011. CGCP/054/11. *CNDH investigates attack on cameraman*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_054.pdf

⁵⁸⁹ Article 19/IFEX. February 16, 2011. *Journalist injured while covering protest in Oaxaca*. Available at: http://www.ifex.org/mexico/2011/02/16/mota_shot/; El Universal. February 15, 2011. *Reporter shot in Oaxaca*. Available at: <http://www.eluniversal.com.mx/notas/745052.html>

386. The Office of the Special Rapporteur was informed of an attack on the headquarters of television channel Televisa in Piedras Negras, Coahuila state, on January 8. The attack took place when unknown individuals threw at least two fragmentation grenades that did not explode. The grenades were deactivated by members of the Secretary for National Defense in coordination with state and federal police.⁵⁹⁰ According to information received, the Office of the Attorney General of the Republic reported that the Public Ministry of the Federation launched an initial inquiry into who was responsible for the commission of the crime after receiving a report from the State Control, Command, Communications and Computation Center (C-4).⁵⁹¹

387. On February 25, reporter Oswald Alonso Navarro, a correspondent with *Radio Fórmula* and the AP news agency, and Marco Antonio Vallejo Estrada, a publicist with *Radio Fórmula*, were attacked by unidentified armed men in Cuernavaca, Morelos state. According to information received by the Office of the Special Rapporteur, at around 10 PM, three armed men tried to intercept the communicators and make them get out of their vehicle. When the journalists fled, they fired at them with assault rifles, wounding Marco Antonio Vallejo Estrada in the leg.⁵⁹² According to reports, the Mexican Reporters Network announced that the Secretary of Public Security of Morelos state had failed to apply precautionary measures to the benefit of the communicators based on these facts and asked the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE) of the Office of the Attorney General of the Republic to urgently implement the precautionary measures. According to the information, the FEADLE interviewed the communicators, asked the secretary of public security of Morelos state to issue precautionary measures, and took up the case.⁵⁹³ Based on these facts, the National Human Rights Commission opened an *ex officio* investigation.⁵⁹⁴

388. The Office of the Special Rapporteur was informed of the kidnapping of journalists Fabián Antonio Santiago Hernández and Margarito Santiago Pérez, with the newspaper *La Verdad*, which took place on February 25 in the municipality of Jáltipan, Veracruz. Both were abducted close to noon in the center of the municipality and released hours later after an intense police operation in the community that had blocked all exits.⁵⁹⁵ Two days before the abduction, municipal police authorities had threatened the

⁵⁹⁰ El Universal. January 9, 2011. *Grenades thrown at Piedras Negras Televisa*. Available at: <http://www.eluniversal.com.mx/notas/736083.html>; Vanguardia. December 9, 2011. *Two grenades thrown at television station in Piedras Negras, Coahuila*. Available at: <http://www.vanguardia.com.mx/lanzan2granadasatelevisoraenpiedrasnegrascoahuila-627949.html>; the Public Ministry of the Federation launched initial inquiry AP/PGR/OACH/PN-11/01/DD/2011. Cf. Office of the Attorney General of the Republic (PGR). January 8, 2011. State Bulletin DPE/0036/11. Available at: <http://www.pgr.gob.mx/prensa/2007/delega11/coah080111DPE003611.shtm>

⁵⁹¹ The Public Ministry of the Federation launched initial inquiry AP/PGR/OACH/PN-11/01/DD/2011. Cf. Office of the Attorney General of the Republic (PGR). January 8, 2011. State Bulletin DPE/0036/11. Available at: <http://www.pgr.gob.mx/prensa/2007/delega11/coah080111DPE003611.shtm>

⁵⁹² El Universal. February 26, 2011. *Journalist and publicist attacked in Morelos*. Available at: <http://www.eluniversal.com.mx/notas/747883.html>; Center on Journalism and Public Ethics (CEPET). February 28, 2011. *AP reporter and Radio Fórmula employee fired at in Morelos*. Available at: <http://libexmexico.wordpress.com/2011/03/01/disparan-contra-reportero-y-empleado-de-radio-formula-morelos-denuncian-omision-de-autoridades-locales/>. Cf. National Human Rights Committee (CNDH in its Spanish acronym). February 27, 2011. CGCP/049/11. *CNDH investigates attack on journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_049.pdf

⁵⁹³ El Regional. February 28, 2011. *Authorities fail to address attacks on journalists*. Available at: http://www.elregional.com.mx/index.php?option=com_content&view=article&id=14661:desatienden-autoridades-agresion-a-periodistas&catid=42:local&Itemid=63; El Universal. February 26, 2011. *PGR takes up case of attack on journalist and publicist*. Available at: <http://www.eluniversal.com.mx/notas/747966.html>

⁵⁹⁴ National Human Rights Committee (CNDH in its Spanish acronym). February 27, 2011. CGCP/049/11. *CNDH investigates attack on journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_049.pdf

⁵⁹⁵ Diario Xalapa. February 26, 2011. *Reporter and his father freed*. Available at: <http://www.oem.com.mx/diariodexalapa/notas/n1981225.htm>; Coatzá Digital. February 25, 2011. *"Kidnapping" of journalists Fabián Antonio Santiago and Margarito Santiago confirmed*. Available at: <http://www.coatzadigital.net/2011/02/confirman-levanton-de-periodistas.html>

journalists for having published the statements of a municipal police officer denouncing the improper practices of his superiors.⁵⁹⁶

389. On May 30, unidentified individuals threw a grenade at the offices of newspaper *Vanguardia* in Saltillo, Coahuila, at around 11:30 p.m. The attack did not cause any injuries.⁵⁹⁷ Following the attack on *Vanguardia* offices, the Office of the Attorney General of the Republic launched an inquiry.⁵⁹⁸ Likewise, the National Human Rights Commission issued an *ex officio* complaint and requested that precautionary measures be granted for the newspaper's employees.⁵⁹⁹

390. The Office of the Special Rapporteur received information on an attack on journalist Jacobo Elnecavé Luttmann, in Tuxtla Gutiérrez, Chiapas state, on June 19. According to the information received, Elnecavé, the host of one of the news programs of the Sistema Chiapaneco de Radio, Televisión y Cinematografía, was attacked with a blunt object while at an amusement park with friends. The attack caused injuries to his head, face and right shoulder. He was taken to a medical center in Mexico City, where he remained hospitalized for an extended period of time. The CNDH opened a file on the case and ordered precautionary measures to the benefit of the communicator.⁶⁰⁰

391. On August 5, reporter Yuri Galván Quesada with the newspaper *Provincia* in the state of Michoacan was arrested while carrying out research in a health center in the city of Morelia in that state. According to the information received, Galván was looking into whether health services that by law should be free were being charged for when the director of the center called the police, who arrested the journalist and transferred her to a municipal detention center.⁶⁰¹

392. The Office of the Special Rapporteur received information on telephone threats and website sabotage against the newspaper *El Sol del Sur* in Tampico, Tamaulipas state, during the month of September. The information also indicates that reporter Mario Alberto Segura, from the same newspaper, was subjected to aggression on September 21. Segura had been filming the police of the city of Madero, Tamaulipas, as they violently evicted street vendors when he was beaten and arrested.

⁵⁹⁶ State Commission for the Defense of Journalists. Veracruz State Government. February 25, 2011. Press Release CEDEP-OM/Bol./No.041/11. *CEDEP demand guarantees for journalist in Jaltipan, Ver., Fabian Antonio Santiago Hernández*. Available at: http://portal.veracruz.gob.mx/pls/portal/docs/PAGE/COMISIONDEFENSAPERIODISTAS/DIFUSION/BOLETINES/NOTA%20DE%20PRENSA_041_CEDEP_FEBRERO_2011.PDF; *El Diario del Sur*. February 25, 2011. *Journalists kidnapped*. Available at: <http://www.diariodelsur.mx/?p=12075>

⁵⁹⁷ Knight Center for Journalism. May 31, 2011. *Grenade thrown at newspaper offices in the north of Mexico*. Available at: <http://knightcenter.utexas.edu/es/blog/lanzan-granada-contra-diario-en-el-norte-de-mexico>; CNN. May 30, 2011. *Armed men attack newspaper in Coahuila with a grenade*. <http://mexico.cnn.com/nacional/2011/05/30/hombres-armados-atacan-con-una-granada-un-diario-de-coahuila>; *El Universal*. May 30, 2011. *Grenade thrown at newspaper Vanguardia*. Available at: <http://www.eluniversal.com.mx/notas/768978.html>

⁵⁹⁸ Office of the Attorney General of the Republic. May 30, 2011. AP/PGR/COAH/SALT/AG-IV/DD/217/2011. Available at: <http://www.pgr.gob.mx/prensa/2007/bol11/May/b59111.shtm>

⁵⁹⁹ See National Human Rights Committee (CNDH in its Spanish acronym). May 31, 2011. CGCP/12/11. *Protection sought for Vanguardia personnel*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_129.pdf; CNDH. May 30, 2011. CGCP/128/11. *Ex officio complaint over attack on newspaper*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_128.pdf

⁶⁰⁰ Milenio. June 24, 2011. *PGJE investigating attack on journalist Jacobo Elnecavé*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/0431a64440f070c6e5fc79c12fe5fdfe>; *El Universal*. June 30, 2011. *CNDH doing inquiry into attack on journalist in Chiapas*. Available at: <http://www.eluniversal.com.mx/estados/80987.html>; Milenio. July 6, 2011. *Government collaborating in case of Jacobo Elnecavé*. Available at: <http://impreso.milenio.com/node/8987412>

⁶⁰¹ Knight Center for Journalism in the Americas. August 6, 2011. *Mexican journalist alleges illegal arrest*. Available at: <http://knightcenter.utexas.edu/blog/mexican-journalist-alleges-illegal-arrest>; *El Sol de Morelia*. August 6, 2011. *Inquiry over restriction on freedom of expression*. Available at: <http://www.oem.com.mx/elsoldemorelia/notas/n2175813.htm>

According to the information received, a criminal complaint was filed before the FEADLE regarding the facts.⁶⁰²

393. In October of 2011, journalists Norma Madero Jiménez and Agustín Ambríz, with the magazine *Luces del Siglo* in the state of Quintana Roo, filed a criminal complaint of harassment before the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE). Madero and Ambríz are the owner and director, respectively, of the magazine and have been threatened, harassed, and physically attacked in connection with the article "How big was the debt he left?" bearing Ambríz' byline, about the financial debt left by the administration of a former state governor. The information received indicates that the journalists filed criminal complaints upon receiving several threatening e-mails per day detailing their activities. They have been moved to Mexico City for security reasons.⁶⁰³

394. On November 1, in Ciudad Juárez, Chihuahua, several journalists including Christian Torres from the newspaper *El Diario* and Ramiro Escobar from Radio Net were attacked and arrested by municipal police officers while covering a demonstration against violence and organize crime. According to the information received, both journalists have filed criminal complaints for abuse of authority and damages against the police officers responsible. The authorities have indicated that they will impose administrative sanctions on the police officials who caused the journalists' injuries.⁶⁰⁴

⁶⁰² Knight Center for Journalism in the Americas. October 12, 2011. *Reporter and newspaper in Mexico accuse mayor of ordering attacks*. Available at: <http://knightcenter.utexas.edu/blog/reporter-and-newspaper-mexico-accuse-mayor-ordering-attacks>. Metro Noticias. September 22, 2011. *Reporter denounces Madero mayor*. Available at: <http://www.metronoticias.com.mx/nota.cgi?id=62529>; El Sol de Sur. September 21, 2011. Press Release from *El Sol del Sur*. Available at: <http://www.elsoldelsurtampico.com/denuncia-agresion-a-el-sol-del-sur/>

⁶⁰³ National Center for Social Communication (CENCOS/IFEX). October 20, 2011. *Quintana Roo journalists harassed for revealing information on poor management of public money*. Available at: http://www.ifex.org/mexico/2011/10/20/luces_del_siglo/es/; Diario Avanzada. November 9, 2011. *Threats and attacks against Quintana Roo journalists denounced*. Available at: <http://www.diarioavanzada.com.mx/noticia.php?id=81811>; Knight Center for Journalism in the Americas. October 19, 2011. *Cancun Magazine denounces threats and insults from former Mexican governor*. Available at: <http://knightcenter.utexas.edu/es/blog/revista-de-cancun-denuncia-amenazas-e-insultos-de-ex-gobernador-mexicano>

⁶⁰⁴ La Red Noticias. November 1, 2011. *General condemnation of repression of social leaders and attacks on journalists*. Available at: <http://www.larednoticias.com/noticias.cfm?n=69698>; Organización Editorial Mexicana (OEM). November 1, 2011. *Demonstrators beaten and journalists subjected to violence*. Available at: <http://www.oem.com.mx/laprensa/notas/n2291925.htm>; El Diario. November 2, 2011. *The 28 arrested freed on bail*. Available at: <http://www.diario.com.mx/notas.php?f=2011/11/02&id=674b122a5e2f43c485fcd2cf8a64b328>; El Diario. November 3, 2011. *Officers who attacked reporters to be punished: Arcelús*. Available at: <http://www.diario.com.mx/notas.php?f=2011/11/02&id=bcfd9601696cb08def38e417d6d9a5f6>

D. Threats

395. The Office of the Special Rapporteur learned of several cases of threats against journalists that took place since December of 2010. On December 15, 2010, journalist Anabel Hernández alleged in an open letter that there was a plan, allegedly of certain officials with ties to the Secretary of Public Security and the Federal Investigations Agency, to attack her after the publication of her book *The Lords of the Narco* on December 1, 2010.⁶⁰⁵ At her request, the National Human Rights Commission interviewed the journalist, opened a complaint case file and opened an investigation into the facts.⁶⁰⁶ On March 25, an anonymous phone call warned a receptionist at the newspaper *El Sur* in Acapulco that there would be an attack on the newspaper's director, Juan Angulo: "This message is for Juan Angulo. [...] Tomorrow at two in the afternoon, all the innocents should get out of there." As a precautionary measure, on the following day the newspaper's employees did not go to the office and many of them worked from home.⁶⁰⁷ In November of 2010, *El Sur* had been attacked by armed men who entered the building and fired several times.⁶⁰⁸ According to the information received, the newspaper enjoys precautionary measures of protection ordered by the National Human Rights Commission.⁶⁰⁹

396. The Office of the Special Rapporteur was informed of the April 15 arrest and deportation of Italian journalist Giovanni Proietti, a resident of Mexico for 18 years. According to the information received, the communicator had permission to work as a teacher at a university in Chiapas and also wrote a blog for the Italian newspaper *Il Manifesto*. The authorities indicated that he had been deported because he was exercising a profession that was not the one for which he was authorized. Proietti was involved in an incident with President Felipe Calderón during the United Nations Climate Change Conference held in Cancun in December of 2010, where security agents canceled his press credentials for covering the event.⁶¹⁰

397. The Office of the Special Rapporteur learned of new threats against journalist Lydia Cacho received on June 14. According to information received, the journalist was again threatened with torture and death via telephone and e-mail. The journalist, who has alleged that the threats are in retaliation for "revealing the names of traffickers of girls and women," filed a criminal complaint over the threats and petitioned authorities to provide her with security measures.⁶¹¹ As the Office of the Special Rapporteur has noted, this is not the first time that journalist Lydia Cacho has been subjected to threats

⁶⁰⁵ Artículo 19/CENCOS. December 16, 2010. *Journalist Anabel Hernández alleges death threats after publishing investigation*. Available at: <http://radioinformaremosmexico.wordpress.com/2010/12/19/la-periodista-anabel-hernandez-denuncia-amenazas-de-muerte-tras-publicar-investigacion/>; Women's Communication and Information (CIMAC). December 16, 2010. *Journalist Anabel Hernández alleges plan for attack on her life*. Available at: <http://www.cimacnoticias.com.mx/site/10121607-Denuncia-periodista.45541.0.html>

⁶⁰⁶ National Human Rights Committee (CNDH in its Spanish acronym). December 1, 2010. CGCP/306/10. *Journalist files complaint*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2010/COM_2010_306.pdf

⁶⁰⁷ Medios Latinos. March 30, 2011. *Periódico Mexicano cierra temporalmente por amenazas*. Available at: <http://www.kas.de/wf/en/221.76/>; Zapateando 2. March 31, 2011. *Cierra el Sur sus oficinas en Acapulco*. Available at: <http://zapateando2.wordpress.com/2011/03/31/cierra-el-sur-sus-oficinas-en-acapulco/>

⁶⁰⁸ See IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 639. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁰⁹ CNDH. December 30, 2009. *CNDH demands respect for journalists' source confidentiality*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2009/COM_2009_173.pdf

⁶¹⁰ Proceso. April 16, 2011. *Italian journalist deported over "incident" with Calderón*. Available at: <http://www.proceso.com.mx/?p=268085>; Knight Center for Journalism in the Americas. April 18, 2011. *Mexico deports critical Italian journalist*. Available at: <http://knightcenter.utexas.edu/blog/mexico-deports-critical-italian-journalist>; Periodistas en Español. April 20, 2011. *Censorship in Mexico: Italian journalist and professor Giovanni Proietti deported*. Available at: <http://www.periodistas-es.org/reporteros/censura-en-mexico-expulsado-al-periodista-y-profesor-italiano-giovanni-proietti>

⁶¹¹ Informador. June 30, 2011. *Journalist Lydia Cacho reveals new death threats*. Available at: <http://www.informador.com.mx/mexico/2011/303497/6/la-periodista-lydia-cacho-revela-nuevas-amenazas-de-muerte.htm>; Noticieros Televisa. June 29, 2011. *Lydia Cacho alleges new death threats against her*. Available at: <http://noticierostelevisa.esmas.com/nacional/304328/denuncia-lydia-cacho-amenazas-muerte-contra>

or attacks in retaliation for her work.⁶¹² The IACHR granted precautionary measures to the journalist, her family and functionaries with the Comprehensive Women's Care Center (CIAM its Spanish acronym) starting in 2009 based on the death threats she received in connection with her work as a journalist and human rights defender.⁶¹³

E. Obstructions to the disclosure of information

398. The Office of the Special Rapporteur was informed that on March 2, the 12th Court of the Administrative District of the Federal District temporarily suspended the showing of the documentary "Presumed Guilty" in response to the request for a writ of *amparo*.⁶¹⁴ The documentary questions the Mexican judicial system and lays out the proceeding against José Antonio Zúñiga Rodríguez, who was convicted and sentenced to 20 years in prison for the crime of first-degree murder without any clear evidence and despite the existence of testimony placing the defendant elsewhere at the time the crime took place. In April 2008, after 28 months in prison, the Fifth Chamber of the Tribunal of Justice of the Federal District acquitted him for reasonable doubt.⁶¹⁵ The court order to prevent the distribution of the documentary was sought by a person who appeared as a witness in the criminal proceeding in question. Through a restraining order, the first instance judge ordered the documentary's distribution be suspended. However, in response to a writ of complaint and request for clarification from the General Directorate of Radio, Television and Cinematography (RTC), the court removed the suspension but placed a restraining order requiring the documentary to keep the identity of the person who requested the writ of *amparo* confidential.⁶¹⁶ Later, movie theater company Cinépolis filed a writ of *amparo* in favor of the distribution of the film and on May 23, the 12th Multimember Tribunal of the City of Mexico authorized the unrestricted showing of the movie inside Mexico and abroad.⁶¹⁷ In response to a request for information by the Office of the Special Rapporteur submitted on March 4, 2011, the Mexican State responded on March 25, 2011, that the Secretary of Governance authorized and defended showing the documentary and that the Federal Government, in disagreement with the initial court ruling, would exhaust all legal resources to challenge the ruling and defend freedom of expression.⁶¹⁸

399. The Office of the Special Rapporteur learned that a group of individuals identifying themselves as "very influential" tried to prevent the circulation of the newspaper *Novedades* in Quintana Roo on the morning of March 31. According to the information, shortly after midnight several individuals appeared at the newspaper to offer to purchase that day's full print run, some 45,000 copies. In response to the company's refusal, men in several trucks and on motorcycles rode through the city for several hours to intimidate the drivers of circulation trucks and the newspaper's vendors in order to acquire the newspapers. In the end, the unknown group was able to buy close to 90% of the edition. The newspaper

⁶¹² See IACHR. Office of the Special Rapporteur for Freedom of Expression. 2010 *Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II Doc. 5. March 7, 2011. Paras. 170-174. Available at: www.cidh.oas.org/relatoria/ShowDocument.asp?DocumentID=229

⁶¹³ Cf. IACHR. *Lydia Cacho et al. Mexico. Precautionary Measures*. MC 192/09. August 10, 2009. Available at: <http://www.oas.org/es/cidh/defensores/proteccion/cautelares.asp>

⁶¹⁴ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 2; *La Jornada*. March 6, 2011. *Presumed Guilty*. Available at: <http://www.jornada.unam.mx/2011/03/06/opinion/a09a1esp>

⁶¹⁵ *Proceso*. February 18, 2011. *Presumed Guilty: Reasonable doubt*. Available at: <http://www.proceso.com.mx/?p=263507>; CNN. March 4, 2011. *The background of the complaint against the documentary 'Presumed Guilty.'* Available at: <http://m.cnnmexico.com/nacional/2011/03/04/el-trasfondo-de-la-demanda-contra-el-documental-presunto-culpable&pagina=1>

⁶¹⁶ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 3.

⁶¹⁷ *Cinépolis News*. May 26, 2011. *"Presumed Guilty" will reach Latin America without censorship*. Available at: <http://www.cinepolisnews.com/2011/05/26/llegara-presunto-culpable-sin-censura-a-latinoamerica/>; *La Jornada*. March 22, 2011. *Cinépolis appeals ruling on 'Presumed guilty.'* Available at: <http://www.jornada.unam.mx/2011/03/22/politica/022n3pol>

⁶¹⁸ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 4.

denounced the facts before the Human Rights Commission of the State of Quintana Roo, which condemned the restriction on the right to freedom of expression.⁶¹⁹

400. On June 8, journalist Ángeles Mariscal was prevented from doing her job when she tried to cover a public hearing of the former governor of the state of Chiapas. According to the information received, Mariscal - with CNN and *Animal Político* in Chiapas - had her equipment confiscated when she arrived to the hearing. Later, several police officers ordered her to leave the place where the hearing was taking place, which she refused to do without a written order from the judge. When she left the place where the hearing was taking place, Mariscal was intercepted by prison security officials who confiscated her USB memory sticks, her audio recorder, and the memory card from her video camera, all of which were returned half an hour later. During that half an hour, she was held inside the prison.⁶²⁰

401. In the first week of July, online media outlets *Expediente Quintana Roo*, *Cuarto Poder* and *Noticaribe* in the state of Quintana Roo suffered denial of service attacks. As a result of the attack, *Expediente Quintana Roo*, a media outlet based exclusively on the Internet, remained off line for almost 5 days; information was also stolen from the e-mail account of its director. The attack on *Expediente Quintana Roo* took place on the eve of a poll evaluating the first 100 days of the state government.⁶²¹

402. In September, the magazine *Proceso* reported repeated mass purchases of copies the magazine. According to information received, in that month the mass purchase took place in the cities of Veracruz, Nuevo Leon, Guanajuato, Durango and Puebla, where unknown individuals appeared at different sales points to purchase, without violence, all the copies in circulation, preventing them from reaching the public. In Veracruz, for example, some 5400 copies of the magazine were purchased. The edition dedicated its cover to the narco trafficking violence in that state.⁶²²

F. Judicial proceedings

403. On May 25, the Second Single Judge Court of the Fourth Circuit, in Monterey, confirmed the sentence of two years in prison for the director of community radio station Tierra y Libertad, Héctor Camero. The communicator was granted a conditional suspension of the prison sentence but ordered to pay a fine equivalent to US \$1,360 dollars and barred from practicing his civil and political rights for - according to the ruling - having used the broadcast spectrum without authorization. According to the information received by the Office of the Special Rapporteur, the proceeding against Camero began in 2008, when officers with the Federal Preventive Police forcibly entered the radio station Tierra y Libertad and confiscated broadcast equipment. In November of 2009, Camero was convicted by a first instance

⁶¹⁹ The main news items to be published that day addressed the government acquisition of armored patrols, the sentencing of a man accused of corrupting minors to 13 years in prison, the report of a murder in broad daylight in Cancun, and the problems facing a tourism fair in Quintana Roo. *Excelsior*. March 31, 2011. *Newspaper Novedades de Quintana Roo suffers suppression*. Available at: http://www.excelsior.com.mx/index.php?m=nota&id_nota=726476; *Novedades*. April 1, 2011. *Suppression of newspaper Novedades de Q. Roo*. Available at: <http://www.novenet.com.mx/portada.php?id=200947>; *El Economista*. April 1, 2011. *Newspaper Novedades de Quintana Roo censored*. Available at: <http://eleconomista.com.mx/sociedad/2011/04/01/censuran-diario-novedades-quintana-roo>; SIPSE. April 3, 2011. *Censorship of newspaper Novedades de Quintana Roo violates Constitution*. Available at: <http://www.sipse.com/noticias/96156-censura-novedades-quintana-viola-constitucion.html>; SIPSE. April 1, 2011. *Ombudsman rejects suppression of Novedades de Quintana Roo*. Available at: <http://sipse.com/noticias/95976-ombudsman-rechaza-represion-novedades-quintana-.html>

⁶²⁰ Article 19/CENCOS/IFEX. June 20, 2011. *Chiapas reporter prevented from covering public hearing*. Available at: http://www.ifex.org/mexico/2011/06/20/mariscal_obstaculizada/es/; CENCOS/IFEX. June 27, 2011. *Concern over harassment and attacks on journalists in Chiapas*. Available at: http://www.ifex.org/mexico/2011/06/30/mandujano_acoso/es/

⁶²¹ Article 19/IFEX. July 11, 2011. *Cyber attack on three online media outlets in Quintana Roo*. Available at: http://www.ifex.org/mexico/2011/07/14/ataque_cibernetico/es/; Online journalists. July 13, 2011. *Online media in Quintana Roo victims of cyber attacks*. Available at: <http://www.periodistasenlinea.org/modules.php?op=modload&name=News&file=article&sid=19273>

⁶²² Article 19/IFEX. September 28, 2011. *Indirect censorship of the magazine Proceso carried out through mass purchases*. Available at: http://www.ifex.org/mexico/2011/09/28/proceso_compra_masiva/es/; *El Mundo*. September 17, 2011. *Mass purchase of the Mexican magazine Proceso is denounced in several cities*. Available at: <http://www.elmundo.es/america/2011/09/13/mexico/1315936086.html>

judge. The radio station Tierra y Libertad has provided information in the public interest to low income communities in Monterey since 2002.⁶²³

404. On January 17, José Maza, a member of community radio station Radio Diversidad, was arrested by officers of the Office of the Attorney General of the Republic as part of a criminal proceeding launched when the radio broadcaster was closed in March of 2009 for allegedly operating without the corresponding permits.⁶²⁴ According to information received by the Office of the Special Rapporteur, the communicator had to post bail equivalent to US \$1,800 dollars. Communicators Juan José Hernández and Paula Ochoa also faced accusations on the same grounds.⁶²⁵

405. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.⁶²⁶

406. The Office of the Special Rapporteur emphasizes that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions or disproportionate penalties, such as use of criminal law.⁶²⁷

407. Likewise, the Office of the Special Rapporteur observes that it is necessary for the State to recognize the existence of community broadcasters and set aside parts of the spectrum for these media outlets. It must also provide equal conditions for access to licenses that take into account the different nature of noncommercial private media.⁶²⁸ As this office has indicated, States must provide a clear, preestablished, precise and reasonable legal framework that recognizes the special characteristics of community broadcasting and that includes simple and accessible proceedings for obtaining frequencies. These proceedings may not establish severe technology requirements and they must not impose discriminatory or unreasonable limits on funding and range.⁶²⁹ The Office of the Special Rapporteur likewise observes that community broadcasters must operate legally.⁶³⁰

⁶²³ World Association of Community Broadcasters (AMARC). May 28, 2011. *Circuit magistrate upholds conviction of community communicator*. Available at: <http://migracion.amarcMexico.org/?p=69>; El Mercurio Digital. June 7, 2011. *RSF asks for investigation into murder of journalist Noel López*. Available at: <http://www.elmercuriodigital.net/2011/06/rsf-pide-una-investigacion-sobre-el.html>; Article 19. July 13, 2009. *Persecution of community radio stations*. Available at: <http://www.libertad-expresion.org.mx/noticias/persecucion-a-radios-comunitarias/#more-2599>

⁶²⁴ According to reports, he was charged under Article 150 of the General Public Property Act. See General Public Property Act. Published in the Diario Oficial on May 20, 2004. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/267.pdf>

⁶²⁵ World Association of Community Broadcasters (AMARC). January 19, 2011. *Member of community radio station in Veracruz apprehended*. Available at: <http://legislaciones.item.org.uy/index?q=node/2163>; InfoVeracruz. May 28, 2011. *Transmissions of community radio station La Precisa del Paso del Macho canceled by court order*. Available at: <http://www.infoveracruz.com/noticias/2011/05/cancela-transmisiones-radio-comunitaria-la-precisa-de-paso-del-macho-por-una-orden-judicial/>; El Mundo de Córdoba. January 21, 2011. *Communicator posts bail, but is not released*. Available at: <http://www.elmundodecordoba.com/noticias/regional/200-otras-poblaciones/1011848-CR1N3RADIO>

⁶²⁶ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chap. II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶²⁷ IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51. December 30, 2009. Volume II: *Annual Report of the Special Rapporteurship for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). Paras. 40-41. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

⁶²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II IACHR/RELE/INF. 3/09. December 30, 2009. Paras. 30, 97. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PORTADA.pdf>

⁶²⁹ See IACHR. Office of the Special Rapporteur for Freedom of Expression. *Inter-American Framework on the Right to Freedom of Expression*. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009. Para 234, 235. Available at:

408. The Office of the Special Rapporteur was informed that on May 11, Mexican authorities released without charges Jesús Lemus Barajas, the director and founder of newspaper *EL Tiempo*, in La Piedad, Michoacan, after keeping him in prison for three years on suspicions of having had connections with criminal groups. The journalist was arrested by police officers on May 7, 2008, in Cuernavaca, Guanajuato, along with two sources as he was gathering information for a report on drug trafficking routes in the south of the country. In February of 2011, he was convicted and sentenced to 20 years in prison for drug trafficking. However, a second instance court overturned the ruling and acquitted him on finding that there was no evidence connecting him with incidents of drug trafficking or organized crime. Prior to his arrest, Lemus Barajas' newspaper was critical in its coverage of local news. He had alleged a campaign of harassment by the La Piedad mayorality against the media, unequal placement of government advertising in the municipality, and police intimidation.⁶³¹

409. Reporter Arcelia García Ortega, with newspaper *Realidades de Nayarit* in the state of Nayarit, had a criminal complaint brought against her for the crimes of defamation, libel and slander by state deputy Omar Reynoso Gallegos over a report she published on July 21. García Ortega published statements issued by another deputy accusing Reynoso Gallegos of embezzlement during his time as state health secretary. The Office of the Special Rapporteur recalls that according to Principle 10 of the Declaration of Principles, "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest."⁶³²

410. On August 26, 2011, María de Jesús Bravo Pagola and Gilberto Martínez Vera were arrested on charges of terrorism and sabotage in the city of Veracruz after having spread rumors of attacks by drug trafficking cartel through microblogging site Twitter. The rumors, which turned out to be false, reported attacks on schools. According to the press, they caused "chaos" in the city.⁶³³ On September 1, 2011, in a letter addressed to the Office of the Special Rapporteur, the Secretary of the Government of Veracruz State, Gerardo Buganza Salmerón confirmed these facts and explained that the accused individuals "were not arrested, brought before the authorities, and placed at the disposal of a judge for 'publishing messages on Twitter and Facebook,'" but for taking "actions against persons, things, or public services that caused alarm, fear, and terror in the population [...] as set forth in the Veracruz

...continuation

<http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PO RTADA.pdf>

⁶³⁰ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 757. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶³¹ Months after the journalist's arrest, a group of soldiers searched his home on July 31, 2008. A similar incident took place again on August 18, 2010. In addition, on August 31, 2009, at least two attorneys defending Jesús Lemus Barajas were shot to death by unknown individuals. Reporters Without Borders. May 17, 2011. *Jesús Lemus Barajas freed after three years of imprisonment without evidence*. Available at: <http://www.rsf-es.org/news/mexico-en-libertad-jesus-lemus-barajas-tras-tres-anos-de-encarcelamiento-sin-pruebas/>; PEN International Writers in Prison Committee. May 18, 2011. *Mexico. Journalist acquitted after three years in prison; fears for safety*. Available at: <http://uyghurpen.org/pen-press-id31.html>; Senate of the Republic of the United Mexican States. May 28, 2008. *Point of agreement on situation of Jesús Lemus Barajas, journalist and director of newspaper El Tiempo*. Available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=8723&lq=60>

⁶³² CENCOS/IFEX. August 26, 2011. *Local deputy files criminal complaint against Nayarit reporter for defamation*. Available at: http://www.ifex.org/mexico/2011/08/29/garcia_ortega_demanda/es/; Periodistas en Español. August 31, 2011. *Journalism in Mexico: Local deputy files criminal complaint against Nayarit reporter for defamation*. Available at: <http://www.periodistas-es.org/libertad-de-expresion/periodismo-en-mexico-diputado-local-denuncia-a-una-reportera-de-nayarit-por-injuria>

⁶³³ Communication from the Secretary of the governments of Veracruz state Gerardo Buganza Salmerón to the Special Rapporteur, September 1, 2011, in possession of the Office of the Special Rapporteur. El Informador. August 31, 2011. *Two Twitter users imprisoned in Veracruz on allegations of terrorism*. Available at: <http://www.informador.com.mx/primera/2011/318858/6/encarcelan-en-veracruz-a-dos-twitteros-por-presunto-terrorismo.htm>; El Economista. August 30, 2011. *Twitter users imprisoned in Veracruz for "terrorism."* Available at: <http://eleconomista.com.mx/sociedad/2011/08/30/twitteros-presos-veracruz-terrorismo>

State Criminal Code.⁶³⁴ On September 21, 2011, the government of Veracruz State dropped the charges and freed the two accused individuals.⁶³⁵

411. Available information indicates that the Congress of Veracruz State passed a reform of the State Criminal Code on September 20, 2011, codifying the crime of “disturbance of the public order,” in connection with the aforementioned incident on social network Twitter. According to the information, new Article 373 of the Criminal Code establishes that “those who through any medium falsely affirm the existence of explosive or other devices; attacks with firearms; or chemical, biological, or toxic substances that can cause damage to health, resulting in the disturbance of public order, will be sentenced to a prison term of one to four years and a fine equivalent to 500 to 1000 salary days, depending on the alarm or disturbance of public order effectively caused.” Javier Duarte, the governor of Veracruz State, submitted the initiative on September 5.⁶³⁶ According to the information, the National Human Rights Commission (CNDH in its Spanish acronym) began analyzing the reform on September 22, 2011, evaluating whether it should move to file an action of unconstitutionality.⁶³⁷ According to information received, a similar proposal was submitted to the Tabasco State Congress on August 31.⁶³⁸

412. The Office of the Special Rapporteur recognizes that in certain cases, restrictions on forms of expression that can incite acts of violence or public panic and situations that put the safety and integrity of people at risk can be legitimate.⁶³⁹ At the same time, the Office of the Special Rapporteur notes the important role that social networks play as a medium for sharing information. This is true at all times, but especially so in the situation of violence faced by many regions. For this reason, it is essential that norms that tend to discourage violence by providing sanctions for certain forms of expression adhere to the principle that only expressions that have the intent and potential, real and objective, to lead to violence should be prohibited in the terms of Article 13.5 of the American Convention.

⁶³⁴ Communication from the Secretary of the governments of Veracruz state Gerardo Buganza Salmerón to the Special Rapporteur. September 1, 2011. In possession of the Office of the Special Rapporteur.

⁶³⁵ El Comercio. September 21, 2011. *Veracruz government drops charges of "terrorism" against Twitter users*. Available at: http://www.elcomercio.com/mundo/Gobierno-Veracruz-retira-terrorismo-twitteros_0_558544230.html; BBC. September 21, 2011. *Mexico 'Twitter Terrorism' Charges Dropped*. Available at: <http://www.bbc.co.uk/news/world-latin-america-15010202>

⁶³⁶ Legislative Gazette Year I No. 54 of September 20, 2011. Pg. 4. Available at: <http://www.legisver.gob.mx/gaceta/gacetaLXII/GACETA54E.pdf>. Cf. Veracruz State Congress. September 20, 2011. *Veracruz Congress reforms Penal Code*. Available at: <http://www.legisver.gob.mx/?p=infoCarrusel&idSlider=527>; El Universal. September 20, 2011. *Veracruz Congress passes Twitter reform*. Available at: <http://www.eluniversalveracruz.com.mx/12860.html>

⁶³⁷ National Human Rights Committee (CNDH in its Spanish acronym). September 22, 2011. *Reform of Veracruz Code analyzed*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_236.pdf; Uno Noticias. September 23, 2011. *CNDH analyzes reform of Veracruz Penal Code*. Available at: <http://www.unonoticias.com/DS/282599/w-CNDH-analiza-reformas-a-Codigo-Penal-de-Veracruz.html>

⁶³⁸ The proposal presented on August 31, 2011, would add the following to the Tabasco Penal Code: “Article 367: Those who through various oral, written, electronic, or any other kind of media distribute false information with the purpose of causing alarm and disturbing the public peace or constitutional order will be sentenced to six months to five years in prison and fined the equivalent of 100 to 500 workdays.” (“A quien por diversos medios orales, escritos, electrónicos, o de cualquier otro tipo, difunda información falsa con el ánimo de causar alarma, perturbar la paz pública o el orden constitucional, se le impondrá prisión de seis meses a cinco años y multa de cien a quinientos días”). The President of the Permanent Commission, José Carlos Ocaña Becerra, turned the document over to the Commission on Public Safety, Civil Protection and Justice for analysis and approval. Tabasco State Congress. August 31, 2011. *Proposal to punish those who disrupt the social peace with negligently provided information*. Available at: http://www.congresotabasco.gob.mx/legislaturaLX/index.php?option=com_content&view=category&layout=blog&id=30&Itemid=123

⁶³⁹ See American Convention on Human Rights. Art. 13(5) The famous line from Judge Oliver Wendell Holmes in the case of *Schenck v. United States*, 249 U.S. 47 (1919) should also be recalled, wherein he expressed that even the strictest protection of freedom of expression does not protect those who falsely shout “fire” in a crowded theater:

The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

G. Violence against journalists: follow-up to the recommendations in the 2010 Special Report on Freedom of Expression in Mexico.⁶⁴⁰

413. In this section, the Office of the Special Rapporteur follows up on some of the recommendations issued in its 2010 *Special Report on Freedom of Expression in Mexico* with regard to the issue of violence against journalists.⁶⁴¹ The Special Report was the result of an *in loco* visit carried out jointly between August 9 and 24, 2010, with the United Nations Special Rapporteur on Freedom of Opinion and Expression at the invitation of the Mexican government. The Special Report, which was incorporated into the Annual Report of the Office of the Special Rapporteur for 2010, analyzes the following issues: violence, impunity and self-censorship; freedom, pluralism and diversity in the Democratic debate; legal action related to the exercise of freedom of expression; and access to information. Likewise, the Office of the Special Rapporteur examined certain specific cases and formulated conclusions and recommendations based on the ones that were formulated at the conclusion of the joint *in loco* visit.⁶⁴² At this time, the Office of the Special Rapporteur will do a special follow-up to some of its recommendations on the violence against journalists and communicators in Mexico.

414. At the conclusion of the 2010 *in loco* visit, the offices of the Rapporteurs issued a preliminary report in which they recommended, *inter alia*, that the Mexican State:

Strengthen the Office of the Special Prosecutor for Crimes against Journalists of the Office of the Attorney General of the Republic and the local prosecutors' offices. It is especially recommended that the necessary reforms be made to permit the exercise of federal jurisdiction over crimes against freedom of expression.

Give the Special Prosecutor's Office and the local prosecutors' offices greater autonomy and greater resources, and adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity.

Establish a national mechanism for the protection of journalists. The mechanism must be implemented through a high-level official and inter-institutional committee; be led by a federal authority; have the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.

*Provide training to members of the security forces on the subject of freedom of expression.*⁶⁴³

415. In the same sense, in its 2010 special report on freedom of expression in Mexico, the Office of the Special Rapporteur urged the Mexican state to "implement, as soon as possible, a

⁶⁴⁰ This section follows up the Special Report on Freedom of Expression in Mexico contained in Chapter II, section 28 of IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 525 et seq. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf. The Special Report is also available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=230>

⁶⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 525 to 835. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴² Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 534. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴³ Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. August 24, 2010. *Joint Official Visit to Mexico: Preliminary Report Executive Summary*. Pages 15 and 16. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf>

comprehensive policy of prevention, protection and prosecution in response to the critical situation of violence facing journalists in the country” with “the active participation of all relevant sectors, including journalists and social organizations that defend human rights and freedom of expression.”⁶⁴⁴ These recommendations highlight the need to strengthen the Office of the Special Prosecutor for Crimes against Journalists (FEADLE) and to create and put into operation a mechanism for protecting journalists.

416. During 2011, the IACHR and the Office of the Special Rapporteur remained particularly concerned with regard to the situation of violence against journalists and the media in Mexico. At the conclusion of its visit to Mexico on September 30, 2011, the Office of the Rapporteur for Mexico expressed that:

*[T]he Commission continues to be concerned over the high levels of violence against journalists and media workers in Mexico. In 2011, 13 members of the media have been killed for reasons that could be tied to the exercise of freedom of expression. In addition to the murders and disappearances, journalists and the media continue to face serious attacks, acts of aggression, and harassment. In parts of Mexico, journalists are subject to intense intimidation, coming primarily from criminal groups. This phenomenon creates self-censorship among many media outlets and limits investigative journalism. The Inter-American Commission once again urges the State of Mexico to strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE, for its Spanish acronym); transfer the investigation of crimes against media workers to the federal justice system, in cases in which this is warranted; and urgently implement any necessary security mechanisms to effectively safeguard the lives and well-being of journalists who have been threatened, as the IACHR recommended in its 2010 Special Report on Freedom of Expression in Mexico.*⁶⁴⁵

417. Hereinafter, the Office of the Special Rapporteur will examine the progress and challenges with regard to its recommendations on violence, impunity and self-censorship, particularly with regard to the operations of the FEADLE and the creation of a mechanism for the protection of journalists. Toward doing so, it will take into account, among other elements, the *Report on Mexico: Human rights progress and challenges*, from Mexico’s Secretary on Foreign Relations,⁶⁴⁶ as well as the information provided by civil society and the State during the hearing entitled “Attacks on journalists in Mexico,” held on October 28, 2011, in the framework of the 143rd period of sessions of the IACHR.⁶⁴⁷

H. The Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE)

418. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur observed that:

[T]he Mexican Federation has reacted to the situation of general impunity that holds sway with regard to crimes against journalists with the creation of a Special Prosecutor’s Office within the structure of the PGR.

⁶⁴⁴ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 706. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴⁵ IACHR. Press Release No. 105/11. *IACHR Wraps Up Visit to Mexico*. September 30, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/105-11sp.htm>

⁶⁴⁶ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁴⁷ IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

[...]

*The FEADLE is empowered to prosecute crimes committed against those who engage in journalistic activities if and when: the victim of the crime is a practicing journalist; the crime in question was committed as a result of the exercise of the right to information or of press freedom or was motivated by either of these; the crime is of federal or common law jurisdiction, when the acts are connected to federal crimes; and when the crime concerned is punishable by a prison sentence.*⁶⁴⁸

419. During its *in loco* visit, the Office of the Special Rapporteur met with the FEADLE head to hear and discuss its working plan. The Office of the Special Rapporteur learned at that time that the FEADLE was moving forward with "several activities, among them the investigation and criminal prosecution of crimes over which it has jurisdiction, collaboration with the Attorneys General of Justice of the different federal entities in the investigation of unlawful acts against journalists, the creation of a centralized archive of initial inquiries into the homicides and disappearances of journalists, the preparation of security protocols, and the carrying out of meetings with public entities and civil society bodies."⁶⁴⁹

420. In its Special Report, the Office of the Special Rapporteur observed that as of that time, the FEADLE had not been able to "reduc[e] the generalized impunity that holds sway in cases of violence against journalists, if we consider that according to information provided in the course of the on-site visit, since its creation in 2006 the FEADLE had not achieved a single conviction, and had brought only four cases to trial."⁶⁵⁰ Likewise, the Office of the Special Rapporteur took note of FEADLE's historical tendency to decline responsibility for cases referred to it, evidencing "a lack of political will that went uncorrected until the designation in 2010 of a new Special Prosecutor who has shown the will to assume the pertinent cases." The Office of the Special Rapporteur viewed positively the fact that seven cases were brought to trial by the FEADLE between February 15 and December 31 of 2010 and expressed its hope that the working plan of the current FEADLE head would bring specific results in the short term.⁶⁵¹

421. Finally, the Office of the Special Rapporteur offered recommendations to the Mexican State. First, it made an urgent call to the Mexican State to strengthen the FEADLE, "granting it greater autonomy and its own budget, and making the necessary reforms to allow the federal jurisdiction to exercise competence over crimes against freedom of expression." Second, it recommended that the State resolve "the existing ambiguity with regard to jurisdiction over crimes against freedom of expression [...] in order to permit the exercise of federal jurisdiction over the crimes against freedom of expression when circumstances so demand," and considered it enormously important to push for the reforms necessary to allow federal judges to be able to hear these kinds of crimes.⁶⁵²

⁶⁴⁸ Agreement A/145/10 of the Attorney General of the Republic. July 5, 2010. Arts. 2 and 5; IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 721. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 722. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf. See the information submitted to the Office of the Special Rapporteur by the Office of the Special Prosecutor on Crimes against Freedom of Expression during the *in loco* visit.

⁶⁵⁰ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 723. Available at: http://www.cidh.oas.org/annualrep/2010sp/RELATORIA_2010_ESP.pdf; Office of the Special Prosecutor on Crimes against Journalists. 2009 Report; Interview with Office of the Special Prosecutor on Crimes against Freedom of Expression. August 12, 2010.

⁶⁵¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 724. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁵² An analysis of the efforts made toward federalization under this recommendation at: IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 725, 726 *et seq.* Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

422. In its *Report on Mexico: Human rights progress and challenges*, the State indicated that the FEADLE “is now strengthened in that it answers directly to the Office of the Prosecutor” and that “although the Office of the [Special] Prosecutor refers responsibility on cases of organized crime to the Office of the Assistant Prosecutor of Specialized Investigation on Organized Crime (SIEDO) of the Office of the Attorney General of the Republic (PGR), there are mechanisms for institutional coordination between both areas for carrying out investigations.”⁶⁵³ Likewise, the State reported that the FEADLE established a Subprogram for the Systemization of Information “whose purpose is to use an automatic system to identify, locate and categorize information on cases of the homicide and disappearance of journalists,” for which reason a “national database on homicides and disappearances of journalists” was created including 2914 entries broken down according to state, year, area or region, and sex, among other categories. A database was also set up on attacks on journalists and the media apart from the aforementioned homicides and disappearances, with a total of 3306 entries.⁶⁵⁴ Finally, it indicated that the FEADLE had developed a Guide of Basic Steps for the Investigation of Homicides Committed against Freedom of Expression, which it had made available to prosecutors in the different federal entities.⁶⁵⁵

423. The Office of the Special Rapporteur also took note of the meeting held on August 9, 2011, that included the participation of the Special Prosecutor on Crimes against Freedom of Expression and the permanent Commission of the Congress of the Union with the purpose of discussing the subject of impunity in cases of violence against journalists. According to the information received, the Prosecutor indicated that the FEADLE was concentrating on a Work Plan that includes the statistical systematization of information in cases of homicides and disappearances of journalists through a database; the granting of precautionary measures; and the design of an early alert system to set up security protocols, among other measures.⁶⁵⁶

424. In the same meeting on August 9, 2011, the head of FEADLE reported that he had launched 126 investigations and ordered 64 precautionary measures since 2010. Likewise, he reported that his office had launched more than 40 actions against those allegedly responsible for crimes against journalists since September of 2010 for crimes such as abuse of authority, threats, aggravated assault, aggravated theft, aggravated damage to property, and attempted murder, the majority of which had been committed by public officials.⁶⁵⁷ According to the information, the FEADLE was able to review 48% of

⁶⁵³ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Paras. 2 and 25. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁴ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Para. 34. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁵ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Paras. 34, 66. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁶ El Universal. August 18, 2011. *Cynthia Cárdenas, “New telling of an old story, and without results.”* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; El Universal. August 10, 2011. *The North, dangerous for the press*. Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears* (video). Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>. Cf. Office of the Attorney General of the Republic of Mexico. *Fourth Work Report 2010*. Pgs. 241-253. Available at: <http://www.pgr.gob.mx/Temas%20Relevantes/Documentos/Informes%20Institucionales/4o%20Informe%20PGR%20completo.pdf>

⁶⁵⁷ El Universal. August 18, 2011. *Cynthia Cárdenas, “New telling of an old story, and without results.”* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; La Silla Rota. August 9, 2011. *Officials are the ones who attack journalists the most: FEADLE*. Available at: http://lasillarota.com/index.php?option=com_k2&view=item&id=17797:funcionarios-quienes-m%C3%A1s-violentan-a-periodistas-feadle&Itemid=59; El Universal. August 10, 2011. *The North, dangerous for the press*. Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears* (video). Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>. Cf. *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations, General Directorate on Human Rights and Democracy, SRE 305.90816. September 9, 2011, Section VII. 2. *Freedom of expression and the right to access to information*. Para. 34

existing case files, allowing for "the first criminologist involvement, which, although it was not conclusive, [...] has begun to explain the phenomenon."⁶⁵⁸ In addition, he stated that, "The problem has not been addressed with the speed, flexibility, and efficiency for which we all would have hoped."⁶⁵⁹

425. Despite the progress reported, the Office of the Special Rapporteur observes that more than a year since the presentation of the FEADLE's new work plan, there has still been no increase in its activities, and to date no case under examination by the agency of the homicide or murder of a journalist has resulted in the punishment of those responsible. According to the information received, the special prosecutor has attributed the persistence of impunity in cases of the homicide or disappearance of journalists to a lack of information and adequate infrastructure and has stated that "very few" cases of this kind have been resolved due to a lack of the necessary information and authority to investigate.⁶⁶⁰ Neither has information been received on the status of investigations being carried out by local and state prosecutors, or on punishments for those responsible for crimes against journalists handed down by courts at any level of government.

426. On November 11, 2011 the full Chamber of Deputies passed a modification of Article 73 of the Constitution that would empower federal authorities to hear "crimes against journalists in the exercise of the freedoms of expression, information and press," representing an important step forward in the process.⁶⁶¹ However, the passage of this change by the Senate and the legislatures in a majority of states is still pending as this report goes to press.⁶⁶²

427. The Office of the Special Rapporteur views positively the increase in the number of investigations and protective actions put in place by the Office of the Special Prosecutor on Crimes against Freedom of Expression, as well as the development of investigation protocols for crimes against freedom of expression. The gathering and systemization of forensic evidence on crimes against journalists is also important, and addresses the specific recommendations made by the Office of the Special Rapporteur in its Special Report.⁶⁶³ At the same time, it reiterates its great concern over the fact that in its almost six years of existence, the office of the special prosecutor still has not achieved the criminal conviction of a single person responsible for murdering or disappearing a journalist. In its

...continuation

(reporting 65 precautionary measures, 35 criminal actions launched, and 158 investigations in progress between September of 2010 and June 30, 2011.)

⁶⁵⁸ El Universal. August 18, 2011. *Cynthia Cárdenas, "New telling of an old story, and without results."* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; El Universal. August 18, 2011. *New telling of an old story, and without results.* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html. Also see Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears* (video). Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>

⁶⁵⁹ Animal Político. August 9, 2011. *Mexican journalists live under threat of drug traffickers: FEADLE.* Available at: <http://www.animalpolitico.com/2011/08/periodistas-mexicanos-viven-bajo-amenaza-del-narco-feadle/>; El Universal. August 18, 2011. *Cynthia Cárdenas, "New telling of an old story, and without results."* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html

⁶⁶⁰ El Universal. August 10, 2011. *The North, dangerous for the press.* Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears* (video). Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>

⁶⁶¹ According to what the Chamber of Deputies passed, Article 73 would establish that, "federal authorities can also hear local jurisdiction crimes when connected with federal crimes or crimes against journalists in the exercise of freedoms of expression, information and the press." Chamber of Deputies. *Report of the United Commissions on Constitutional Matters and Justice, with draft decree that adds to the second paragraph of section XXI of article 73 of the Constitution of the United Mexican States.* Available at: <http://gaceta.diputados.gob.mx/>; El Universal. November 12, 2011. *Legislation passed to federalize crimes against journalists.* Available at: <http://www.eluniversal.com.mx/nacion/190744.html>; Sin Embargo. November 11, 2011. *Deputies approve federalization of crimes against journalists.* Available at: <http://www.sinembargo.mx/11-11-2011/72416>

⁶⁶² Constitution of the United Mexican States. Article 135.

⁶⁶³ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 821. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

preliminary report on the conclusion of the *in loco* visit issued in August of 2010, the Office of the Special Rapporteur expressed its hope that the FEADLE's new work plan would translate into specific results in the "short-term." More than a year later, the information submitted by the State indicates some progress, such as for example the 47 "likely guilty parties" who, as reported by the State in the hearing held before the IACHR, were turned over to the courts by the FEADLE between September 2010 and September 2011 for the commission of different crimes against freedom of expression.⁶⁶⁴ However, the lack of clear, specific and broken-down statistics on the results achieved - arrest warrants, arrests, charges, convictions and sentences - complicates the ability of the press and the Mexican public to evaluate the performance of the office of the special prosecutor and other prosecutorial offices. The reasons offered by the head of FEADLE for the lack of "rapidity, agility and efficiency" in resolving cases of violence against journalists - among them, an inadequate definition of its jurisdiction - are legitimate and were pointed out by the Office of the Special Rapporteur earlier. At the same time, the Office of the Special Rapporteur observes that the FEADLE has spent scarce resources on activities other than the ones directly associated with its central responsibility: to obtain criminal punishment for the most serious crimes - murders, disappearances and attacks - committed over the exercise of freedom of expression. The urgent situation of violence against communicators in Mexico demands an effective policy for combating impunity in these cases, and the Office of the Special Rapporteur will continue to carefully monitor the FEADLE's role in this struggle and to collaborate, where possible and within the bounds of its competence, to the attainment of these goals.

I. Creation of a mechanism for protection of journalists

428. At the close of its *in loco* visit to Mexico, the Office of the Special Rapporteur recognized the progress made in the talks between the federal government and civil society toward creating a mechanism of protection for journalists. In the report, the Office of the Special Rapporteur called attention to the:

*urgent need to make this process a reality and put [the] protection mechanism into operation as soon as possible. In particular, the Rapporteurs consider it essential that [the] mechanism be implemented through a high-level official and inter-institutional committee; be led by a federal authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.*⁶⁶⁵

429. Later, the Office of the Special Rapporteur learned of the adoption of a "Coordination agreement for the implementation of preventive actions and actions to protect journalists" signed by the Secretary of Governance, the Secretary of Foreign Relations, the Secretary of Public Security, the Office of the Attorney General of the Republic and the National Human Rights Commission (CNDH).⁶⁶⁶ According to the State, this represented "the first step toward establishing a mechanism for the protection of journalists and communicators" and complied with the aforementioned recommendations of the Special Rapporteurs of the IACHR and the UN.⁶⁶⁷ The agreement created a Consultative Committee in charge of

⁶⁶⁴ IACHR. Hearing entitled "Attacks on journalists in Mexico." October 27, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁶⁵ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 708. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁶⁶ SEGOG. Unit for the promotion and defense of human rights. *Coordination agreement for the implementation of preventive actions and actions to protect journalists*. November 30, 2010. Available at: http://www.derechoshumanos.gob.mx/work/models/Derechos_Humanos/Resource/134/1/images/ConvenioPeriodistas.pdf

⁶⁶⁷ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 710. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf; Citing Communication OEA-02547 from the Mexico Permanent Mission before the OAS to the Office of the Special Rapporteur, received on November 11, 2010.

receiving requests for protection, establishing and following up on measures of prevention and protection for journalists, and facilitating the federal and local implementation of those measures. Likewise, an Evaluation Subcommittee was created with the responsibility of analyzing the requests for preventive and protective measures and making the corresponding recommendations to the Consultative Committee.⁶⁶⁸

430. The agreement established a time period of 30 days for setting up the Consultative Committee and indicated that within the next 30 days, this committee would issue the Operational and Working Guidelines that would define, among other issues, “the standards for adopting, implementing, maintaining, modifying or ending preventive or protective measures for journalists.”⁶⁶⁹

431. According to the information provided in the *Report on Mexico: Human rights progress and challenges*, the Secretary of Governance is the department in charge of coordinating the mechanism for the protection of journalists, and the Consultative Committee is comprised of that Secretary as well as the Secretary of Public Security, the Office of the Attorney General of the Republic, the National Human Rights Commission, and the United Nations Office on Drugs and Crime.⁶⁷⁰

432. The Office of the Special Rapporteur has received information on some progress in the implementation of the Agreement. On July 18, 2011, the organization National Center for Social Communication (CENCOS in its Spanish acronym) accepted an invitation to participate in the Consultative Committee as a permanent guest from civil society.⁶⁷¹ Likewise, on October 5 of this year, it was revealed that the state government of Morelos had joined the Agreement.⁶⁷²

433. At the same time, the Office of the Special Rapporteur took note of the comments of press and freedom of expression organizations on the mechanism’s capacities and procedures and the lack of effective implementation of the protective measures contemplated in the agreement. Among other things, these comments make reference to the importance of specialized organizations and the United Nations Office of the High Commissioner for Human Rights’ participation in the mechanism, as well as the need for the mechanism to have an adequate budget and technical capacity, management, and ability to act throughout the country.⁶⁷³ Likewise, in a communication issued on November 18, several

⁶⁶⁸ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 711. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁶⁹ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 711. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁷⁰ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Paras. 26, 62. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁷¹ SEGOG. Unit for the promotion and defense of human rights. November 7, 2011. *Representatives of the journalists’ association*. Disponible en: http://www.derechoshumanos.gob.mx/es/Derechos_Humanos/Representantes_del_gremio_periodistico

⁶⁷² El Universal. October 6, 2011. *Morelos to join agreement to protect journalists*. Available at: <http://www.eluniversal.com.mx/estados/82420.html>; Mexican Reporters Network of Morelos, National Center for Social Communication, Periodistas de a Pie, Casa del Periodista, ARTICLE XIX. October 5, 2011. *Pending issues in Coordination Agreement for the Implementation of Preventive Actions and Actions to Protect Journalists given support of Morelos State*. Available at: <http://www.libertad-expresion.org.mx/noticias/los-pendientes-del-convenio-de-coordinacion-para-la-implementacion-de-acciones-de-prevencion-y-proteccion-a-periodistas-ante-la-adhesion-del-estado-de-morelos/>

⁶⁷³ Article 19. *Analysis of the legal framework for a mechanism of protection in Mexico*. Available at the archive of the Office of the Special Rapporteur; Mexican Reporters Network of Morelos, National Center for Social Communication, Periodistas de a Pie, Casa del Periodista, ARTICLE XIX. October 5, 2011. *Pending issues in Coordination Agreement for the Implementation of Preventive Actions and Actions to Protect Journalists given support of Morelos State*. Available at: <http://www.libertad-expresion.org.mx/noticias/los-pendientes-del-convenio-de-coordinacion-para-la-implementacion-de-acciones-de-prevencion-y-proteccion-a-periodistas-ante-la-adhesion-del-estado-de-morelos/>. Also see the presentation of Article 19 in the hearing held before the IACHR on October 28, 2011. IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

nongovernmental organizations called the budget of 28.5 million pesos assigned to the mechanisms for the protection of journalists and human rights defenders in the Federation Budget Expenditures for Fiscal Year 2012 “still insufficient.”⁶⁷⁴ The Office of the Special Rapporteur notes the agreement between these comments and the recommendations that the Office of the Special Rapporteur had sent to the Mexican State on the preparation of the Operational and Working Guidelines and that were later incorporated into the 2010 Special Report on Freedom of Expression in Mexico.⁶⁷⁵

434. In the hearing held before the IACHR on October 28, the State did not make reference to any journalists who had received State protection in the framework of this Agreement.⁶⁷⁶ Likewise, the Office of the Special Rapporteur observes with concern the delay in publicly issuing the Operational and Working Guidelines of the Agreement. Although the State indicated in the public hearing held on October 28 that the Committee approved the Guidelines in its fifth session held on January 28, 2011,⁶⁷⁷ those Guidelines have still not been made public as of this report’s publication deadline, for which reason the majority of communicators in the country are not aware of the preceding for requesting protection in the framework of the Agreement. The Office of the Special Rapporteur reiterates the urgent need of putting the mechanism for protection into operation given the critical situation of violence against journalists and the media in Mexico and will continue to monitor closely the implementation of the coordination Agreement for the implementation of preventive actions and protection of journalists, as well as providing all assistance to the State which its competence permits.

18. Nicaragua

A. Threats

435. The Office of the Special Rapporteur received information that Luis Galeano, a journalist from the newspaper *El Nuevo Diario*, reportedly received death threats on at least two occasions—February 19 and 21—coinciding with the February 21, 22, and 23 publication of several articles about administrative irregularities alleged to have been committed at the Supreme Electoral Council (CSE). According to the information received, on February 19 Galeano received a message on his cell phone that said: “You have 72 hours to take back what you’re going to publish. This is not a game. This is serious. If you don’t, your poor family isn’t going to see you again.” On February 21, Galeano received another message via email that said: “Luisito, man, it looks like you don’t want to live to be an old man (...) because you don’t want to take advice. Look, man, don’t go forward with that crap you’re writing for that right-wing rag *El Nuevo Diario*.”⁶⁷⁸ Galeano and the newspaper reported the incident to the police. In June, the Judicial Assistance Department of the Nicaraguan Police announced that the alleged author of the February 19 threats had been identified. However, the suspect, whose identity was not revealed,

⁶⁷⁴ Centro de Derechos Humanos de la Montaña Tlachinollan, CMDPDH, Fundar, Artículo 19, Todos los Derechos Para Todos. November 18, 2011. *Secretary of Governments must make adequate use of resources for the validity of Human Rights*. Available at: <http://www.tlachinollan.org/Comunicados/segob-obligado-a-hacer-uso-adecuado-de-recursos-para-la-vigencia-de-los-derechos-humanos.html>

⁶⁷⁵ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 712. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁷⁶ IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁷⁷ IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁷⁸ National Police. February 22, 2011. Complaint A-0004-2011-00952. Available at the archives of the Office of the Special Rapporteur for Freedom of Expression; Nicaraguan Center for Human Rights (Centro Nicaragüense de Derechos Humanos, CENIDH). 23 de febrero de 2011. Letter to the Special Rapporteurship for Freedom of Expression. Available in the files of the Special Rapporteurship for Freedom of Expression; Committee to Protect Journalists (CPJ). February 23, 2011. *Periodista investigativo nicaragüense recibe amenazas de muerte*. Available at: <http://www.cpj.org/es/2011/02/periodista-investigativo-nicaragüense-recibe-amena.php>; Reporters Without Borders. February 22, 2011. *El Nuevo Diario, en medio de la tormenta tras revelar casos de corrupción* <http://es.rsf.org/nicaragua-el-nuevo-diario-en-medio-de-la-22-02-2011,39600.html>

denied being the owner of the telephone from which the threat was made at the time of the incident.⁶⁷⁹ At the time of this writing, there were no reports of new developments in the investigation.⁶⁸⁰

436. According to information received, Silvia González, the *El Nuevo Diario* correspondent in the city of Jinotega, received several threats against her and her family during 2011. Given the serious risk, the journalist finally decided to leave the country.⁶⁸¹ In addition to her work with *El Nuevo Diario*, González was the director of a radio program that had reported alleged electoral irregularities and used to analyze the local political scene. According to the information received, on July 30 an individual approached one of González's daughters, 24-year-old Yaneri Sobalvarro González, in a public place and said, "Tell your mother to watch herself, and not go around talking too much, because we're going to make her pay, and we're going to get her where it hurts the most (...) and you, girl, take care." In addition, on August 4, 2011, González reportedly received at least three menacing text messages that were sent to her cell phone. Among other things, they said: "If you keep causing trouble we're going to have that rag where you work burned down."⁶⁸² Subsequently, the journalist reportedly received two threatening phone calls. In one of them, a voice warned her that "if she kept being a pest" she would have 48 hours to live. In another one she was reportedly told, "If you don't shut up, we're going to shut one of your children up." Later, the journalist reportedly received new death threats via text message. Unknown persons also reportedly threw a chicken's head into the yard of her house; it was wrapped in paper, on which her name was written. Finally, two days before she was forced to leave the country, she reportedly received two anonymous notes written with clippings from newspapers and magazines that read, "We're going to kill you."⁶⁸³ According to reports, the journalist and her daughter filed a complaint regarding the incidents with the National Police in Jinotega. They reportedly named a suspect as the alleged author of the intimidating messages from the July 30 incident. Subsequently, the police reportedly summoned Yaneri to the police premises in Jinotega. There at the police station, the journalist's daughter reportedly encountered the suspect, who allegedly took her by the arm and led her to an office where she was questioned by two police officers, who also allowed the suspect to participate in the interrogation.⁶⁸⁴ The Office of the Special Rapporteur requested information from the State regarding these incidents in September 1, 2011.⁶⁸⁵

437. In response to the request for information on these events, on September 22, 2011, the State reiterated its commitment to freedom of expression and underscored the constitutional protection of

⁶⁷⁹ El Nuevo Diario. June 30, 2011. *Hallan a presunto autor de amenaza a Luis Galeano*. Available at: <http://www.elnuevodiario.com.ni/nacionales/106407>

⁶⁸⁰ Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸¹ El Nuevo Diario. September 20, 2011. *Periodista END exiliada*. Available at: <http://www.elnuevodiario.com.ni/nacionales/114366-periodista-end-exiliada>

⁶⁸² AFP News Agency (Agence France-Presse). August 5, 2011. *Diario de Nicaragua denuncia amenazas contra una periodista*. Available at: <http://noticias.terra.com.pe/internacional/latinoamerica/diario-de-nicaragua-denuncia-amenazas-contra-una-periodista.56b9c86540b91310VgnVCM1000098f154d0RCRD.html>; La Prensa. August 6, 2011. *Periodista de Jinotega amenazada*. Available at: <http://www.laprensa.com.ni/2011/08/06/nacionales/69016>

⁶⁸³ El Nuevo Diario. December 20, 2011. *Periodista END exiliada*. Available at: <http://www.elnuevodiario.com.ni/nacionales/114366-periodista-end-exiliada>; Confidencial. September 21, 2011. *Cabeza sangrante de gallina*. Available at: <http://www.confidencial.com.ni/articulo/4929/cabeza-sangrante-de-gallina>; Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁴ Communication from the Nicaraguan Human Rights Center (CENIDH) to the Office of the Special Rapporteur for Freedom of Expression. August 15, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁵ On September 1, Office of the Special Rapporteur for Freedom of Expression requested information from the State about the investigations into the threats received by Silvia González and the results thereof; the suspect's alleged ties to any political organization; the judicial proceedings brought against the suspect, and the circumstances of the summoning of González's daughter to give a statement at the police station; and finally, it asked whether there had been any public statement condemning the threats and intimidation reported by Nicaraguan journalists.

“the practice of constructive and free critical journalism by the media and by journalism professionals in particular.” The State stated that “In Nicaragua there is no policy of persecution or censorship against the work of the media, or against journalists or media workers individually or collectively; nor is this a country that attacks or harms the freedom to inform, or the physical, emotional, or psychological welfare or the lives of journalists, whatever their ideology or Government (...).” With respect to the fruitless investigations, the State reported that it had opened the police investigation and classified it as a case involving threats; requested that a telephone company provide the numbers for incoming calls to two telephones used by the complainant; interviewed Silvia González’s daughter, and requested written information from the complainant pertaining to the threatening calls and texts received on her telephone. The State explained with regard to the judicial proceedings against the suspect that the charge had to be amended from “threats” against Silvia González to “harassment” of Yanery Sobalvarro González, the journalist’s daughter. A preliminary hearing for the offense of harassment was scheduled for September 20, 2011. With regard to the suspect’s presence when Yaneri Sobalvarro was summoned to the police station, the State explained that the National Police had summoned the suspect to provide a statement, and had summoned the complainant in order for her to be present at that proceeding. As for whether the State had made any public condemnation of the reported threats and intimidation, the State responded that the complaints involve isolated cases and have been handled diligently by the proper authorities.⁶⁸⁶

438. Representatives of the complainant informed this Office of the Special Rapporteur that Silvia González’s complaint had not been investigated and that no security had been provided to her. In the representatives’ opinion, the Police had not informed the complainant of the source of the threatening telephone calls that she had received. The police amended the charge and named the daughter as the victim, rather than the mother. They stated that on August 23, the Police reportedly filed a charge before the judicial authorities alleging harassment of the reporter’s daughter, dismissing the threats against the journalist. On September 2, the Local Judge of Jinotega admitted the case and scheduled an initial hearing for September 20. However, that day the journalist reported left the country for her safety.⁶⁸⁷

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

B. Attacks on journalists and media

440. According to the information received, a group of people was reportedly assaulted by Police on April 2, when they tried to take part in an authorized demonstration against the reelection of President Daniel Ortega. According to reports, the Police first refused to allow members of the Nicaraguan Human Rights Center (CENIDH) and other demonstrators pass, and then struck them with police batons. The CENIDH is the beneficiary of precautionary measures that were issued by the IACHR in 2008 and remain in effect at this time. The IACHR requested information from the State of Nicaragua

⁶⁸⁶ The documentation submitted by the State in its response to the Office of the Special Rapporteur provides the statement given by Yaneris Sobalvarro González, the daughter of journalist Silvia González, on August 2, 2011 at the National Police premises. At that time, Sobalvarro stated that the suspect had told her he had heard that “Silvia was talking about politics on the radio and that she should be very careful, that she should not be out on the streets, and if she did go out, she should not go on foot because it was very dangerous.” Sobalvarro added that the suspect “at no time threatened her, let alone told her that she was in their sights.” As for the appearance of the suspect and Silvia González at the National Police offices on August 4, 2011, the record of the proceeding indicates that the suspect stated that he had told Sobalvarro “to be careful, since her mother was a public figure (...) especially now that it’s election season.” In addition, he said that, “at no time had he made threats (since) the only thing he did was give her a piece of advice without any bad intent.” Office of the Attorney General of the Republic. September 22, 2011. Official Letter PGR 1915. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁷ Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

about the actions it has undertaken to guarantee the lives and safety of the beneficiaries.⁶⁸⁸ The State informed the IACHR that on April 2 two previously scheduled marches ran into each other, even though measures had been taken to prevent that from happening. The State asserted that the precautionary measures have been enforced at all times, and it affirmed that the security mechanisms are still in force at the CENIDH's offices and at its president's residence.⁶⁸⁹

441. The Office of the Special Rapporteur was informed that on January 19 the owner of the *Telecable* company, in the town of Condega, cut the broadcast signal of *Canal 15*, alleging adverse effects on its business interests. The cancellation of *Canal 15*'s broadcast occurred following repeated threats and acts of sabotage against this station that coincided with or followed the airing of news and opinion programs that called local authorities into question. In addition, on January 16, 2011, *Telecable*'s fiber optic cables were reportedly cut. An organization calling itself "*Columna Simón Bolívar*" reportedly left a written note that read: "We are warning you, we do not want *Canal 15* in Pueblo Nuevo." Prior to the January 16 sabotage, several fiber optic utility poles had reportedly been stolen, and *Telecable* employees reportedly received text messages containing threats that alluded to the possibility of bombs being placed at the station. They were signed by the so-called "*Columna Simón Bolívar*." The victims of those incidents reported them to the Police, but the results of the investigation are unknown.⁶⁹⁰

442. The Office of the Special Rapporteur learned that on several occasions a group of trade unionists and former distributors of the newspaper *La Prensa*, whose contract had been canceled, blocked the paper from coming out in the early morning hours, causing a several-hour delay in its circulation; they also reportedly fired home-made explosives in the vicinity of the paper. The conflict stemmed from *La Prensa*'s August 2010 decision to rescind the contracts of a group of newspaper distributors. The Ministry of Labor (MITRAB) ordered the newspaper to rehire 23 contractors who had been dismissed.⁶⁹¹ According to the information received, the blockages at the newspaper's entrance reportedly took place in the early morning hours of December 7 and 23, 2010, August 14, 2011, and September 4, 2011. The residence of the general manager of *La Prensa* was also blockaded on December 10, 2010, and February 5, 2011. On all of these occasions, the demonstrators prevented the newspaper from coming out on time, and fired home-made explosives into the air, without the authorities ever reporting to the scene.⁶⁹²

443. The Office of the Special Rapporteur considers it important that in situations such as these the authorities adopt a regulatory framework that simultaneously allows for the satisfaction of the right to freedom of expression—severely affected by the aforementioned blockades—and the right to social protest in accordance with the international standards.

C. Subsequent liability

⁶⁸⁸ Nicaraguan Human Rights Center (CENIDH). Communication to the IACHR in reference to precautionary measures 277-08. April 4, 2011. Available at: Archives of the IACHR.

⁶⁸⁹ Communication from the State of Nicaragua to the IACHR in reference to precautionary measures 277-08. May 31, 2011. Available at: Archives of the IACHR.

⁶⁹⁰ El Nuevo Diario. January 25, 2011. *Orteguismo saca del aire a Canal 15 Condega TV*. Available at: <http://www.elnuevodiario.com.ni/nacionales/93202>; Inter-American Press Association (IAPA). *La SIP pide restablecer señal a un canal censurado en Nicaragua*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4513&idioma=sp; Reporters Without Borders. February 3, 2011. *Un canal considerado crítico con el gobierno suspende sus programas tras recibir repetidas amenazas*. Available at: http://es.rsf.org/nicaragua-un-canal-considerado-como-critica-03-02-2011_39466.html

⁶⁹¹ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 142. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶⁹² *La Prensa*. December 10, 2010. *Agresión a La Prensa y pasividad policial*. Available at: <http://www.laprensa.com.ni/2010/12/11/politica/46093>; *El Universal*. February 6, 2011. *Periódico Nicaragüense denuncia "acoso"*. Available at: http://www.eluniversal.com/2011/02/06/int_ava_periodico-de-nicarag_06A5120777.shtml; *La Prensa*. August 14, 2011. *Policía ignora ataque contra La Prensa*. Available at: <http://www.laprensa.com.ni/2011/08/14/nacionales/69832>; *La Prensa*. September 5, 2011. *Acoso a libertad de expresión*. Available at: <http://www.laprensa.com.ni/2011/09/05/poderes/72240>

444. According to information received, two opposition city councilmen from the Managua Mayor's Office, Luciano García and Leonel Teller, were reportedly charged with criminal defamation, and one of them was reportedly convicted, after exposing alleged irregularities in that municipal government. According to the information received, on March 30, Councilman Luciano García spoke out in an article published by the newspaper *La Prensa* about several alleged irregularities committed by municipal authorities, and called for the mayor to be dismissed from office. The councilman cited an audit performed at the Managua Mayor's Office that reportedly revealed embezzlement equivalent to some US \$155,000. On April 13, 2011, the aforementioned authority filed a complaint alleging criminal defamation before the Third Criminal Court of Managua. On June 27, 2011, the court found García guilty and imposed a fine equivalent to about US \$19,000. The judgment was affirmed on appeal by the Tenth Criminal District Court on September 2, although the amount of the fine was reduced to the equivalent of US \$9,500.⁶⁹³

445. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a 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."

446. In addition, principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

D. Administrative restrictions

447. According to the information received, the General Revenue Service and the Customs Bureau reportedly delayed the release of a shipment of goods to the newspaper *El Nuevo Diario*. The shipment contained paper and printing plates—essential input materials for the publication of the morning paper—and had entered the country on January 6. According to the information provided to this office, *El Nuevo Diario* retrieved materials from customs on several occasions without any trouble during 2010. On this occasion, the delays apparently coincided with the publication of several articles in which *El Nuevo Diario* reported alleged acts of corruption and nepotism in the Treasury Department and the General Revenue Service.⁶⁹⁴ The paper and the input materials were finally able to be retrieved from the warehouse on February 11.⁶⁹⁵

E. Restriction on access to information and mandatory government broadcasts

⁶⁹³ Petition of Luciano Rafael García Mejía before the Inter-American Commission on Human Rights for the violation of due process, freedom of expression, right to equal protection, the right to leave the country freely, and the right to judicial protection, received by the IACHR on October 24, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. *La Prensa*. March 30, 2011. *Piden la cabeza de Fidel Moreno*. Available at: <http://www.laprensa.com.ni/2011/03/30/nacionales/56322>; EFE News Service. August 9, 2011. *Consejeros opositores denuncian desalojo de sus oficinas en alcaldía de Managua*. Available at: <http://noticias.terra.com.ar/internacionales/concejales-opositores-denuncian-desalojo-de-sus-oficinas-en-alcaldia-managua.2caa91fd420b1310VgnVCM10000098f154d0RCRD.html>

⁶⁹⁴ Nicaraguan Human Rights Center (CENIDH). Communication to the Office of the Special Rapporteur for Freedom of Expression, received on February 9, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. February 22, 2011. *Nicaragua: Cerco a El Nuevo Diario por revelar casos de corrupción*. Available at: <http://www.rsf-es.org/news/nicaragua-cerco-a-el-nuevo-diario-por-revelar-casos-de-corrupcion/>

⁶⁹⁵ Inter-American Press Association (IAPA). April 2011. *Information by Country: Nicaragua*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=46&inford=818&idioma=sp

448. The Office of the Special Rapporteur learned that on January 7, the Supreme Electoral Council (CSE) reportedly announced through its spokesperson a policy of transparency and open doors toward the media, but stated that it “[would] reserve the right” to deny entry into conferences to media with an agenda aimed at “attacking individuals and public servants.”⁶⁹⁶ The admonition was issued following a year in which there were repeated reports of discrimination against independent media in accessing official press conferences, especially at the CSE.⁶⁹⁷

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

450. The Office of the Special Rapporteur has received information indicating that multiple presidential broadcasts have continued to be employed on all cable television channels to transmit messages that even include partisan elements. Such actions are carried out based on administrative order 009-2010 of the Nicaraguan Institute for Telecommunications and Postal Service (TELCOR), according to which subscriber-based television channels must make their services and facilities available to the Government of the Republic during times of national emergency.⁶⁹⁸ According to reports, last January 10 several cable television channels that did not link their signals up to the presidential speech were reportedly blocked when President Ortega issued his Government Report in a public square. In addition, on July 19, open channels and cable channels were forced to air the official celebration of the 32nd anniversary of the triumph of the Sandinista revolution.⁶⁹⁹

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

452. Principle 5 of the IACHR’s Declaration of Principles establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

19. Panama

453. According to information received, on July 25 the 12th Criminal Circuit Court of Panama dismissed without prejudice a case alleging criminal defamation against Grisel Bethancourt, a journalist from the newspaper *Crítica* and the president of the National Association of Journalists of Panama. The

⁶⁹⁶ Nicaraguan Human Rights Center (CENIDH). Communication to the Office of the Special Rapporteur for Freedom of Expression, received on February 9, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. February 6, 2011. *El bozal del CSE*. Available at: <http://www.laprensa.com.ni/2011/02/06/nacionales/51273>

⁶⁹⁷ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 339. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶⁹⁸ Nicaraguan Institute for Telecommunications and Postal Service (TELCOR). Administrative Order 009-2010 of June 22, 2010. Available at: http://www.telcor.gob.ni/DocAdmin.asp?Accion=VerDocumento&DAD_ID=5300

⁶⁹⁹ La Prensa. July 21, 2011. *COSEP critica a cadenas de radio y TV*. Available at: <http://www.laprensa.com.ni/2011/07/21/politica/67351>; El Nuevo Diario. January 11, 2011. *Un remedo de mensaje presidencial*. Available at: <http://archivo.elnuevodiario.com.ni/2011/01/11/nacionales/139321>; Europa Press. January 11, 2010. *La oposición tilda a Ortega de "dictador" por impedir la observación internacional en las elecciones*. Available at: <http://www.europapress.es/latam/politica/noticia-nicaragua-oposicion-tilda-ortega-dictador-impedir-observacion-internacional-elecciones-20110111193440.html>; Confidencial. February 6, 2011. *Cadenas televisivas presidenciales*. Available at: <http://www.confidencial.com.ni/articulo/3108/cadenas-televisivas-presidenciales>

case reportedly began with a claim filed by a person suspected of committing a crime, who was in the end acquitted. The information published in 2009 was based on an order to stand trial issued by the Second Court of Justice. The criminal court reportedly concluded that there was no malicious intent in the article published by the journalist.⁷⁰⁰ The Prosecutor's Office reportedly appealed the decision.⁷⁰¹ Journalists Jahaira Valverde and Enrique Brathwaite of the newspaper *Mi Diario* have also been prosecuted in this matter, and at the time of this writing their case is still pending.⁷⁰² On August 22, Brathwaite was reportedly detained at a routine police checkpoint when his name appeared in a police database showing that he had a pending court case, in spite of the fact that he had appeared before the respective court in a timely manner. The journalist was handcuffed and taken to a police station, then released several hours later.⁷⁰³

454. The Office of the Special Rapporteur learned of the concern of press organizations over the fact that there are more than 40 cases pending before various courts in which journalists are accused of crimes against honor.⁷⁰⁴ The Office of the Special Rapporteur finds it important to stress that, in a 2007 decision that we value for its importance to the defense of freedom of expression, Panama decriminalized libel and slander offenses when they concern critical information or opinions about official acts or omissions of high-ranking public servants. This decision should favor those who had previously been the beneficiaries of a pardon.⁷⁰⁵ The Office of the Special Rapporteur has indicated that criminal penalties applied to crimes against honor have an intimidating and chilling effect on the exercise of freedom of expression, and that they are disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to penalize expressions regarding issues of public interest or about government employees can be a means of indirect censorship, due to its limiting and chilling effect on speech concerning issues of public relevance.⁷⁰⁶

455. The Office of the Special Rapporteur received information concerning threats reportedly received by *La Prensa* journalist Santiago Cumbreira from Alma Cortés, the Minister of Labor and Employment Development, and personnel from her office. According to reports, on June 23, Cortés stated on a television program, "Cumbreira: be careful with me, my reputation has no price." This was apparently in response to a series of reports by the journalist regarding alleged irregularities in a social

⁷⁰⁰ TVN Noticias. July 26, 2011. *Sobresseen a presidenta del Colegio de Periodistas*. Available at: http://64.117.203.107/aldescubierto/noticias_detalle.asp?id=56100; Crítica. July 26. *Dictan sobreseimiento a favor de periodista*. Available at: http://www.critica.com.pa/hoy/sucesos-interna.php?edition_id=20110726&external_link=dictan_sobreseimiento_a_favor_de_periodista

⁷⁰¹ National Association of Journalists. July 28, 2011. *Ordenan conducción de periodistas y apelan decisión de fiscal por delitos de calumnia e injuria*. Available at: <http://conapepanama.blogspot.com/2011/07/ordenan-conduccion-de-periodistas-y.html>

⁷⁰² National Association of Journalists. July 28, 2011. *Ordenan conducción de periodistas y apelan decisión de fiscal por delitos de calumnia e injuria*. Available at: <http://conapepanama.blogspot.com/2011/07/ordenan-conduccion-de-periodistas-y.html>; Crítica. Undated. *Fijan fecha de audiencia para periodistas*. Available at: http://www.critica.com.pa/hoy/sucesos-interna.php?edition_id=20111025&external_link=fijan_fecha_de_audiencia_contra_periodistas

⁷⁰³ TVN Noticias. August 22, 2011. *Detenido el periodista Enrique Brathwaite*. Available at: http://64.117.203.107/noticias/noticias_detalle.asp?id=57889; National Association of Journalists of Panama. August 23, 2011. *Carta de protesta dirigida al presidente de la Corte por detención de periodista Brathwaite*. Available at: <http://conapepanama.blogspot.com/search?q=enrique>

⁷⁰⁴ Office of the National Ombudsman. February 24, 2011. *Informe Especial de Libertad de Expresión en Panamá*. Pg. 44. Available at: http://www.defensoria.gob.pa/index.php?option=com_flippingbook&view=book&id=52%3AInforme-de-libertad-de-expresion-en-panama&catid=6%3AInformes&Itemid=61; La Estrella. February 27, 2011. *Persisten amenazas a la libertad de expresión*. Available at: http://www.laestrella.com.pa/online/impreso/2011/02/27/persisten_amenazas_a_la_libertad_de_expresion.asp; Telephone interview with Grisel Bethancourt, President of the National Association of Journalists. November 16, 2011.

⁷⁰⁵ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 352. <http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202010%20ESPI.pdf>

⁷⁰⁶ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 353. <http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202010%20ESPI.pdf>

program of the Ministry of Labor. According to the information available, a staff member from the minister's office later warned the journalist: "you are furiously attacking the minister (Cortés), but not the people from the (opposing party) PRD... I am not the minister who allows herself to be intimidated... I don't threaten, I act." After the threats were disclosed, President Ricardo Martinelli reportedly ordered the Minister of Labor to refrain from making statements against the media, and to publicly apologize to the journalist. In addition, he reportedly warned her that she or the personnel under her charge would be dismissed in the event that these actions were repeated.⁷⁰⁷

456. According to information received by the Office of the Special Rapporteur, on February 26 the National Police detained Spanish journalists and human rights defenders Francisco Gómez Nadal and María del Pilar Chato Carral while they were filming and documenting an indigenous people's demonstration in Panama City and ordered their "voluntary return" to their country of origin. According to the journalists' statement, both of them were held in custody for at least 48 hours prior to being taken to the airport, during which time they were not allowed to meet with their attorney, receive consular assistance, or properly exercise their right to a defense.⁷⁰⁸ The journalists stated to various media outlets that they had been pressured by authorities to agree to the "voluntary return."⁷⁰⁹

457. In response to a request for information by this Rapporteurship, a statement dated April 28 from the Permanent Mission of Panama to the OAS states that Francisco Gómez Nadal and María del Pilar Chato Carral were apprehended for disturbing the peace, together with other demonstrators who were blocking a public street. Due to their status as aliens, they were sent to an immigration shelter, where it was determined that Gómez did not have employment authorization and Chato had a tourist visa. According to the information provided by the State, on February 27 an order was issued for the journalists' arrest and it was determined that both of them had violated the immigration laws by taking part in alleged acts against public safety. Based on those acts, the State ordered the "voluntary return" of the Spanish citizens to their country of origin, and barred them from re-entering Panama for two years. According to the State, Gómez and Chato were reportedly assisted "at all times" "by their attorney" and by personnel from the Office of the Ombudsman of Panama. On February 28, they were both escorted to the international airport to board a flight to Spain.⁷¹⁰

458. The journalist Gómez Nadal assured that he had been exercising his rights in a legal manner and that he was expelled in retaliation for this.⁷¹¹ As this report went to press, the Office of the Special Rapporteur had not been informed of new developments in this case.

459. The Office of the Special Rapporteur takes note of the withdrawal from the parliamentary agenda of a bill that would have amended the Criminal Code to include the imposition of a four-year prison sentence upon "any person who, without valid grounds, publicly offends, affronts, or insults the president of the Republic or any elected public servant." The legislative initiative was introduced by

⁷⁰⁷ Hacer Latin American News. June 24, 2011. *Panamá: Ministra de Trabajo amenaza a La Prensa*. Available at: <http://www.hacer.org/latam/?p=8798>; La Prensa. June 23, 2011. "Yo no amenazo, yo ejecuto", García. Available at: <http://mensual.prensa.com/mensual/contenido/2011/06/23/hoy/panorama/2641386.asp>; Panamá América. June 24, 2011. *Martinelli regaña a ministra Cortés por amenazas*. Available at: http://www.panamaamerica.com.pa/periodico/buscador/resultado.php?story_id=1064348&texto=%2522que

⁷⁰⁸ Committee to Protect Journalists (CPJ). March 2, 2011. *Periodistas españoles críticos expulsados de Panamá*. Available at: <http://cpj.org/es/2011/03/periodistas-espanoles-criticos-expulsados-de-panam.php>; Human Rights Foundation. April 5, 2011. *Arbitrary Detention and Expulsion of Foreign Journalists and Human Rights Defenders from Panama*. Available at: <http://thehrf.org/media/documents/HRFLegalReportPanama.pdf>; La Prensa. March 1, 2011. *Periodistas repatriados*. Available at: <http://mensual.prensa.com/mensual/contenido/2011/03/01/hoy/panorama/2519696.asp>

⁷⁰⁹ Reporters Without Borders. February 28, 2011. "La expulsión de Paco Gómez Nadal y Pilar Chato marca una negación de la libertad de expresión". Available at: <http://es.rsf.org/panama-dos-periodistas-espanoles-28-02-2011.39642.html>

⁷¹⁰ Statement of the Permanent Mission of Panama to the OAS. April 18, 2011. PANA-OEA-3-361-2011.

⁷¹¹ Radio Netherlands. March 2, 2011. *Panamá: ¿Periodista y defensor de derechos humanos o agitador?* Available at: <http://www.mw.nl/espanol/article/panama-%C2%BFperiodista-y-defensor-de-derechos-humanos-o-agitador>; Radio Televisión Española. March 1, 2011. *Panamá fuerza la salida de país de un periodista español crítico*. Available at: <http://www.rtve.es/noticias/20110301/panama-fuerza-repatriacion-periodista-espanol-critico-con-martinelli/412336.shtml>

representatives of the party in power on January 5, and withdrawn on January 11 following harsh criticism from legislators and the Office of the National Ombudsman.⁷¹² The initiative not only violated Article 13 of the American Convention on Human Rights and Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression but also contradicted the amendment passed in 2007, set forth in Article 196 of the Criminal Code, which partially decriminalizes defamation offenses when they pertain to critical information or opinions about official acts or omissions of high-ranking public servants.⁷¹³

460. The Office of the Special Rapporteur learned of anonymous videos posted on the Internet site YouTube, which contained disparaging messages for the express purpose of damaging the credibility of well-known independent Panamanian journalists. According to the information received, the videos call into question the professional careers of journalists Lina Abad, editor of the investigative unit of the newspaper *La Prensa*, and Álvaro Alvarado, host of the *Telemetro* news program on *Canal 13*. The videos also question the journalists' integrity and claim that they have ties to opposition political parties. In other cases, the messages have been aired on television channels and attributed to the pro-government Democratic Change Party [*Partido Cambio Democrático*], as in the case of a message that attempted to discredit reporter Santiago Cumbreira of the investigative unit of *La Prensa*. The series of messages reportedly began to appear after the publication of the content of diplomatic cables from the State Department about the Panamanian government.⁷¹⁴

461. During the public hearing on Access to Public Information in Panama held on October 28, 2011, the Office of the Special Rapporteur received information about the implementation of the Access to Information Act in effect since 2002. The petitioners claimed that the law has regressed in terms of its effectiveness, given the issuance of recent administrative decisions inconsistent with the provisions of the Act. Such decisions include the specification that only the interested parties in a matter may request public information; the charging of taxes to photocopy or certify documents; the reduction of information made available to the public by state agencies voluntarily and proactively; the failure to comply with deadlines established for the release of information; the categorization of information as classified or restricted-access beyond what is provided for under the Act, through lower-ranking provisions such as regulations and decrees; and the lack of an effective judicial remedy to prevent the denial of this right. According to reports, in the specific experience of a Panamanian environmental organization, it was able to confirm that of more than 30 writs of *habeas data* filed in over three years, only one has been adjudicated. For its part, the State acknowledges that there are shortcomings in the implementation of the Act, but it maintains that it has progressively fostered mechanisms to develop the legal standards, as well as processes for receiving requests and appeals, and for imposing penalties for noncompliance with the Act. According to the information received from the State, from the time of its enactment, nearly 15 orders or resolutions have been passed regulating or strengthening the enforcement of the act and supporting its progressive development. The State reported that it is taking the necessary steps to bring about technological transformations to improve access to public information and to reduce or eliminate the costs of obtaining it. The State also agreed to receive proposals from civil society enabling it to improve the enforcement and effectiveness of the Access to Public Information Act. The Office of the Special

⁷¹² Reporters Without Borders. January 12, 2011. *Alivio tras el retiro del anteproyecto de ley que sancionaba la ofensa al jefe de Estado*. Available at: <http://es.rsf.org/panama-retrograda-y-peligrosa-reforma-del-10-01-2011,39263.html>; Telemetro. January 11, 2011. *Asamblea retira proyecto que pretendía imponer nueva "mordaza"*. Available at: <http://www.telemetro.com/noticias/2011/01/11/nota64941.html>; Ibero-American Federation of Ombudsmen. January 20, 2011. *Panamá: Defensor del Pueblo rechaza proyecto que penaliza a quien ofenda al presidente*. Available at: <http://www.portalfio.org/inicio/noticias/item/5868-panam%C3%A1-defensor-del-pueblo-rechaza-proyecto-que-penaliza-a-quien-ofenda-al-presidente.html>

⁷¹³ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 352. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷¹⁴ Inter-American Press Association (IAPA). May 10, 2011. *La SIP pide a gobierno de Panamá investigar campañas de desprestigio contra periodistas*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4558&idioma=sp; Reporters Without Borders. May 9, 2011. *Tormenta gubernamental tras revelaciones de WikiLeaks; campaña de desacreditación contra periodistas*. Available at: <http://es.rsf.org/panama-tormenta-gubernamental-tras-09-05-2011,40249.html>

Rapporteur acknowledges the existence of an important legal framework in Panama. However, it expresses its concern over the possibility that in practice the fundamental standards are not being applied. These standards include: the ability of any person to access information in the possession of the State; the ability to obtain the information free of charge or at a low cost; the principle that a request may be denied only under exceptional circumstances; the existence of a restrictive legal stipulation that narrowly defines the limitations on access to information; compliance with brief and reasonable time periods for the release of information; and the existence of simple and effective administrative and judicial remedies to challenge decisions. The Office of the Special Rapporteur notes with satisfaction the State's willingness to improve the implementation of the Act and its openness toward working jointly with civil society to adequately implement the right to access to information in Panama.⁷¹⁵

20. Paraguay

462. On June 30, Judge Manuel Aguirre Rodas acquitted *ABC Color* newspaper reporter Sandra López of criminal defamation charges. According to reports, a complaint was filed against the journalist by a businesswoman and former model referred to in an article published on June 28, 2009, about an alleged case of influence peddling. The plaintiff sought a two and a half year prison sentence and damages of 6 billion guaraníes (around US\$1.5 million). The judge found that the news article contained the journalist's opinion based on documents and truthful sources, which did not merit punishment.⁷¹⁶

463. In December of 2010, two former employees of the Department of National Emergency separately filed two criminal complaints against journalist Jorge Torres of the newspaper *ABC Color*, alleging criminal defamation offenses. Torres had reported on irregularities in the management of funds at that public agency. According to the information received, the public employees felt offended by the publications and requested the imposition of a sentence of up to two years in prison or a fine. The Office of the Public Prosecutor reportedly opened a case against the plaintiffs for alleged acts of breach of confidence and the production of fraudulent documents.⁷¹⁷ On February 4, a deputy commissioner filed a criminal defamation complaint against *ABC Color* news correspondent Omar Acosta, claiming harm based on reports that linked her to allegations of torture while she was the chief of police station No. 16 of Guayaybí, in the department of San Pedro.⁷¹⁸

464. Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression states that "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in

⁷¹⁵ Thematic hearing before the IACHR on access to public information in Panama, requested by environmental organizations. Washington D.C. October 28, 2011. Available at: (List of multimedia resources on hearings) <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

⁷¹⁶ Instituto Prensa y Sociedad (IPYS). July 1, 2011. *Paraguay: Absuelven a periodista acusada de difamación por empresaria*. Available at: <http://www.ipys.org/index.php?q=noticia/695>; ABC. July 1, 2011. *Magistrado absuelve a periodista y ratifica libertad de prensa y opinión*. Available at: <http://www.abc.com.py/nota/magistrado-absuelve-a-periodista-y-ratifica-libertad-de-prensa-y-opinion/>; ABC. June 29, 2011. *Abogados de Zuni pidieron pena de dos años y medio contra periodista*; Available at: <http://www.abc.com.py/nota/abogados-de-zuni-solicitaron-pena-de-dos-anos-y-medio-contra-periodista/>; Paraguay.com. June 30, 2011. *Sandra López: "Con el fallo ganó la libertad de expresión"*. Available at: <http://www.paraguay.com/nacionales/sandra-lopez-con-el-fallo-gano-la-libertad-de-expresion-72501>

⁷¹⁷ ABC. December 21, 2010. *Funcionario de la SEN imputado con Camilo querrela a periodista*. Available at: <http://www.abc.com.py/nota/funcionario-de-la-sen-imputado-con-camilo-querrela-a-periodista/>; Foro de Periodistas Paraguayos. June 17, 2011. *Preocupación del FOPEP ante el aumento de demandas*. Available at: <https://www.facebook.com/topic.php?uid=194659127214966&topic=360#!/topic.php?uid=194659127214966&topic=360#!/Fopep>; ABC. March 7, 2011. *Camilo y periodista van a tribunales para una audiencia de conciliación*. Available at: <http://www.abc.com.py/nota/camilo-y-periodista-van-a-tribunales-para-una-audiencia-de-conciliacion/>; Paraguay.com. April 15, 2010. *Juez procesa por presunta malversación a Camilo Soares*. Available at: <http://www.paraguay.com/nacionales/juez-procesa-por-presunta-malversacion-a-camilo-soares-20053>

⁷¹⁸ El Diario. February 8, 2011. *Policía acusada de torturas querrela a corresponsal de ABC*. Available at: <http://eldiario.com.py/?p=173>; Foro de Periodistas Paraguayos. June 17, 2011. *Preocupación del FOPEP ante el aumento de demandas*. Available at: <http://www.fopep.org.py/noticias-detalle.php?id=20>

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.”

465. In the early morning hours of January 12, a homemade explosive device detonated near the building of the privately-owned television station *Canal 9* in Asunción, and another in a nearby park. No one was injured. Hours later, a pamphlet appeared—the authenticity of which was unconfirmed—attributing the attack to an alleged subversive group. The explosion took place in the midst of a labor dispute at the station.⁷¹⁹

466. The Office of the Special Rapporteur was informed of a threat reportedly received on May 27 by three journalists from the Governor of Alto Paraná. According to reports, the governor publicly stated, “I want a machine gun to spray these miserable bums with bullets,” following a series of print and radio reports about a judicial investigation involving the alleged distribution of bad food to school cafeterias. The journalists referred to were reportedly Carlos Bottino and Samir Sánchez of *Radio Parque*, and Fermín Jara of the regional newspaper *Vanguardia*, who is also a correspondent for *ABC Color*. Later, the governor reportedly explained to the press that his statement was the result of an angry moment and that he had at no time intended to harm the journalists. Nevertheless, Bottino reported the threat to the Public Ministry. After the governor’s warning, *Radio El Parque* reportedly suspended its broadcasting of Bottino and Sánchez’s radio programs.⁷²⁰

467. The Office of the Special Rapporteur received information about the final enactment of the Telecommunications Act, which had been vetoed by President Fernando Lugo. At the time, consistent with the challenge raised, the Rapporteur’s Office maintained that the law contained restrictions on the operation of community radio broadcasters and criminal penalties that could be discriminatory and problematic under the freedom of expression standards of the inter-American human rights system. According to the information received, the Paraguayan Senate passed the Telecommunications Act last March 8. The Act had been passed in 2010 by both the Senate and the House of Representatives, but was vetoed by the president on November 12. The House of Representatives overrode the veto in December, and the Senate subsequently did the same.⁷²¹ The Telecommunications Act that was passed limits all community, educational, association, and citizen radios to 50 to 300 watts of power, without distinction, and restricts the broadcasting of private and state advertising on those stations. It also imposes a prison term of up to two years, or a fine ranging from 300 to 500 times the daily minimum wage, on persons operating without a license or prior authorization from the National

⁷¹⁹ Infobae. January 12, 2011. *Bomba contra canal de televisión en Uruguay*. Available at: <http://america.infobae.com/notas/17258-Bomba-contra-un-canal-de-televisin-en-Paraguay>; Inter-American Press Association (IAPA). January 13, 2011. *Condena la SIP atentado contra canal de TV en Uruguay*. Available at: http://www.sjiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4506&idioma=sp; Federación de Periodistas de América Latina y el Caribe. Undated. *Periodistas de Paraguay condenan ataque a Canal 9*. Available at: http://www.fepalc.org/noticias_det.php?Itemid=1044

⁷²⁰ Sindicato de Periodistas del Paraguay [Union of Paraguayan Journalists]. May 31, 2011. *SPP repudia amenaza de Gobernador Aguinagalde contra periodistas de Ciudad del Este*. Available at: <http://periodistaspy.blogspot.com/2011/05/sindicato-repudia-amenaza-de-gobernador.html#more>; ABC Color. May 31, 2011. *Fiscal investiga amenaza a periodistas de A. Paraná*. Available at: <http://www.abc.com.py/nota/fiscal-investiga-amenaza-a-periodistas-de-a-parana/>; Última Hora. May 30, 2011. *Periodista denuncia a gobernador por amenaza de muerte*. Available at: <http://www.ultimahora.com/notas/433233-Periodista-denuncia-a-gobernador-por-amenaza-de-muerte->

⁷²¹ EFE News Service. March 8, 2011. *El Congreso de Paraguay ratifica el proyecto que restringe a las radios comunitarias*. Available at: http://www.google.com/hostednews/epa/article/ALeqM5jXD9p-C6nLP2C-mmAm73_C4PjK2Q?docId=1480860; Última Hora. March 9, 2011. *Senado da golpe de gracia a las radios comunitarias*. Available at: <http://www.ultimahora.com/notas/410014-Senado-da-golpe-de-gracia-a-las-radios-comunitarias>; Última Hora. November 12, 2010. *Lugo veta el proyecto que modificaba la Ley de Telecomunicaciones*. Available at: <http://www.ultimahora.com/notas/377053-Lugo-veta-el-proyecto-que-modificaba-la-Ley-de-Telecomunicaciones>

Telecommunications Commission.⁷²² In the opinion of the Office of the Special Rapporteur, the indiscriminate restrictions on power, the prohibitions against access to advertising funds, and the use of the criminal law to penalize violations of the radio broadcasting system are aspects of the Act that are problematic in light of the American Convention on Human Rights. Those provisions establish distinctions that tend to exclude or limit the participation in public discourse of certain speech that is channeled through non-profit community media. In addition, the establishment of criminal penalties for any private radio is a disproportionate response to an infraction for which it is not even required to prove specific harm. The state has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be able to rely on guarantees that allow them to operate sufficiently and not to be treated in a discriminatory manner. In this sense, the State must protect community media, as they are outlets for the excluded social groups and communities that are often absent from public debate and whose inclusion is imperative in every democratic state. The Office of the Special Rapporteur urges the Paraguayan State to amend the law in accordance with the inter-American standards on the protection of the right to freedom of expression, and reiterates its offer of technical support in the interest of securing compliance with the principles of pluralism and diversity that must guide regulation of the use of the radio spectrum.⁷²³

21. Peru

A. Developments

468. The Office of the Special Rapporteur recognizes that on July 25 the Congress of the Republic of Peru took an important step in approving an advisory opinion that would amend Articles 130 and 132 of the Criminal Code to make criminal defamation offenses punishable by community service and fines rather than incarceration. Nevertheless, on July 27, on his last day in office, President Alan García vetoed the bill, and it was returned to Congress.⁷²⁴

469. On February 1, the Temporary Criminal Chamber of the Supreme Court vacated the acquittal of Luis Valdez, the former mayor of the municipal district of Coronel Portillo. Valdez had been charged as the alleged mastermind of the April 21, 2004 murder of journalist Alberto Rivera Fernández. According to the information received, the high court ordered a new trial, in which Zoilo Ramírez Garay is also being tried. Days prior to his murder, journalist Alberto Rivera Fernández had reportedly criticized the municipal government and linked high-ranking local authorities to drug trafficking activities.⁷²⁵

470. The Office of the Special Rapporteur learned of the judgment handed down on October 28, 2011 by the Temporary Criminal Chamber of the Supreme Court acquitting journalist Paul Garay Ramírez of the offense of defamation and vacating in its entirety the July 27, 2011 judgment of the

⁷²² Official Gazette of the Republic of Paraguay. March 30, 2011. Law 4179, amending the Telecommunications Act. Available at: <http://www.presidencia.gov.py/v1/wp-content/uploads/2011/03/gaceta30marzopm.pdf>

⁷²³ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 366 and 367. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷²⁴ Standing Committee of the Congress of the Republic. *Law amending the Criminal Code with respect to offenses against honor*. July 26, 2011. Available at: http://www.voltairenet.org/IMG/pdf/Difamacion_sin_pena_privativa_II.pdf. See also: Official Letter 180-2011-PR from President Alan García Pérez and Minister of Justice Rosario del Pilar Fernández Figueroa to the Head of Congress, Daniel Abugattás Majluf. July 27, 2011. Available at: <http://blog.pucp.edu.pe/media/2841/20110927-Observacion%20presidencial.pdf>; EFE News Service. July 29, 2011. *AGP observó despenalización de la difamación a última hora*. Available at: <http://noticias.terra.com.pe/agp-observo-despenalizacion-de-la-difamacion-a-ultima-hora.b1a2a0e927a91310VqnVCM1000098f154d0RCRD.html>

⁷²⁵ RPP Radio. May 16, 2011. *Inició nuevo juicio oral a Luis Valdez por asesinato de periodista*. Available at: http://www.rpp.com.pe/2011-05-16-inicio-nuevo-juicio-oral-a-luis-valdez-por-asesinato-de-periodista-noticia_365931.html; La República. February 1, 2011. *Luis Valdez volverá a juicio por caso de periodista asesinado*. Available at: <http://www.larepublica.pe/01-02-2011/luis-valdez-volvera-juicio-por-caso-de-periodista-asesinado>; La Primera. February 2, 2011. *Anulan sentencia absolutoria contra Valdez*. Available at: http://www.diariolaprimera.com/online/politica/anulan-sentencia-absolutoria-contra-valdez_79189.html

Ucayali Superior Court that had affirmed his conviction.⁷²⁶ The journalist had reportedly been sentenced to 18 months in prison and ordered to pay a fine of 20,000 nuevos soles (approximately US \$7,400) in civil damages.⁷²⁷

B. Murders

471. The Office of the Special Rapporteur expresses its deep concern over the murders of three journalists in Peru in 2011 that may be related to the victims' professional work. This office reminds the State of its obligation to investigate the crimes diligently and exhaustively, identify the direct perpetrators and masterminds, prosecute them and, if appropriate, impose proportionate penalties. Such actions are essential to prevent impunity and to keep these types of acts from being repeated.

472. The Office of the Special Rapporteur was informed of the murder of journalist Julio Castillo Narváez, which occurred on May 3 in Virú, in the department of La Libertad. According to reports, the journalist was eating lunch at a restaurant when several men came in, pretending to be patrons, and suddenly shot and killed him. The victim's cell phone was reportedly found at the scene, and was found to contain a message with a death threat. According to reports, Julio Castillo Narváez had been practicing journalism for over 20 years. He was the host of the radio program "*Noticiero Ollantay*," and he maintained a critical stance toward the local authorities of La Libertad. *Radio Ollantay* reportedly confirmed to Peruvian media that the journalist had been receiving threats constantly since March, when he had done an audio broadcast that implicated some government employees of La Libertad in possible irregularities. According to the information received, at least one of the perpetrators, a 17-year old minor, was tried and convicted, and was sentenced to six years in a juvenile detention center. In addition, another individual suspected of having been involved in the murder was reportedly arrested by police and is awaiting trial.⁷²⁸

473. The Office of the Special Rapporteur learned of the murder of journalist Pedro Flores Silva, which occurred in Casma, department of Ancash, on September 8. According to the information received, on the night of September 6, a masked individual intercepted the journalist near his house and shot him twice. One of the bullets perforated vital organs, and he died on September 8 at the Chimbote Regional Hospital. Pedro Flores was the director of the program "*Visión Agraria*" on the local *Canal 6* station. The journalist's wife stated that her husband had received several death threats during the previous two months. The journalist reportedly had aired several news pieces relating to alleged irregularities in the municipal district government of Comandante Noel. He was facing a criminal case brought by the mayor of that district.⁷²⁹ In September, police reportedly arrested three direct perpetrators of the crime, and recovered the murder weapon.⁷³⁰

⁷²⁶ Supreme Court of Justice of the Republic. Transitory Criminal Chamber. October 28, 2011. R.N. No 2436-11. Available at: http://historico.pj.gob.pe/CorteSuprema/documentos/SPT_R_N_N_2436_2011_UCAYALI.pdf; National Association of Journalists of Peru (ANP). October 28. *Corte Suprema absolvió al periodista Garay Ramírez*. Available at: <http://www.anp.org.pe/noticias/nacionales/891-corte-suprema-absolvio-a-periodista-paul-garay-ramirez>

⁷²⁷ Supreme Court of Justice of the Republic. Transitory Criminal Chamber. October 28, 2011. R.N. No 2436-11. Available at: http://historico.pj.gob.pe/CorteSuprema/documentos/SPT_R_N_N_2436_2011_UCAYALI.pdf

⁷²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 6, 2011. Press Release R41/11. *Office of Special Rapporteur Condemns Murder of Journalist in Peru*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=841&IID=2>; Correo. July 17, 2011. *Condenan al asesino de periodista en Perú*. Available at: <http://diariocorreo.pe/nota/21486/condenan-al-asesino-de-periodista-en-viru/>; Inter-American Press Association (IAPA). June 23, 2011. *Cae otro periodista sospechoso por la muerte de periodista peruano*. Available at: <http://www.impunidad.com/noticia.php?id=729&idioma=sp>

⁷²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 13, 2011. Press Release R101/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Peru*. Available at: <http://www.cidh.oas.org/relatoria/artListCat.asp?year=2011&countryID=28&IID=2&catID=1>; Committee to Protect Journalists (CPJ). September 8, 2011. *Periodista peruano muere tras ataque armado*. Available at: <http://cpj.org/es/2011/09/periodista-peruano-muere-tras-ataque-armado.php>; El Comercio. September 8, 2011. *Periodista falleció tras ser baleado por desconocidos en Casma*. Available at: <http://m.elcomercio.pe/peru/1281624/noticia-periodista-se-encuentra-grave-baleado-desconocidos-casma>

⁷³⁰ Reporters Without Borders. September 20, 2011. *Detienen a tres presuntos autores materiales del asesinato de un periodista; riesgo de presión sobre los investigadores*. Available at: <http://es.rsf.org/peru-urqe-que-los-poderes-publicos-09-09>

474. The Office of the Special Rapporteur was informed of the September 14 murder of journalist José Oquendo Reyes in Pueblo Nuevo, in the province of Chincha. According to the information received, Oquendo Reyes was walking near his house when he was ambushed by unknown assailants on a motorcycle who shot him at close range. One of the victim's sons came to his aid and took him to the hospital, where he died. The journalist was the director and host of "*Sin Fronteras*," a program on *BTV Canal 45* of Chincha. According to reports, he had recently done an exposé on his program about alleged administrative mismanagement in the Office of the Mayor of Chincha. In addition to his journalistic activities, Oquendo Reyes also worked as a construction site foreman.⁷³¹

475. According to the ninth principle of the IACHR's 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. 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."

C. Assaults and threats against journalists and the media

476. The Office of the Special Rapporteur learned of an incendiary bomb attack on the building that houses the newspaper *Voces* on March 5 in Tarapoto, San Martín. According to the information received, unknown persons hurled three explosive devices at the building in the early morning hours, causing slight injuries to two workers who were printing the paper at the time. The attack occurred days after the publication of several articles on the alleged corrupt acts supposedly committed by a candidate to Congress. Also, the editorial director of *Voces* had reportedly received death threats on his cell phone following the publication of the articles. The National Police pledged to investigate the attack and provide security to the newspaper.⁷³²

477. The Office of the Special Rapporteur was informed of various assaults on journalists, especially in certain regions. In the department of Ancash, the Office of the Special Rapporteur learned of the January 14, 2011 assaults on journalists Josué Ibarra, of the newspaper *La Industria*; Edwin Azaña, a correspondent for *América Televisión*; Nancy Arellano, a correspondent for *Canal N*, and Guillermo Napa, a cameraman for *Canal 25*.⁷³³ It also received reports of the assault on photographer Paul Meza Castañeda, of *Diario Correo* of Chimbote, by the National Police on February 17⁷³⁴; and the assault on

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2011.40954.html; Instituto Prensa y Sociedad (IPYS). September 20, 2011. *Caen autores materiales de asesinato de periodista*. Available at: http://www.ifex.org/peru/2011/09/20/suspects_arrested/es/; Crónica Viva. September 17, 2011. *Caen "El Viejo" y "Macuto": asesinos de Pedro Flores Silva*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/28087-cae-el-viejo-sujeto-planeo-crimen-de-pedro-flores-silva>

⁷³¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 20, 2011. Press Release R103/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Third Murder of a Journalist in Peru in 2011*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=869&IID=1>; Instituto Prensa y Sociedad (IPYS). September 15, 2011. *Comunicador es asesinado frente a su casa*. Available at: <http://www.ipys.org/index.php?q=alerta/853>; RPP. September 14, 2011. *A balazos asesinan a trabajador de construcción civil en Chincha*. Available at: http://www.rpp.com.pe/2011-09-14-a-balazos-asesinan-a-trabajador-de-construccion-civil-en-chincha-noticia_403917.html; Infobae. September 16, 2011. *Preocupa la violencia regional contra periodistas*. Available at: <http://america.infobae.com/notas/33697-Preocupa-la-violencia-regional-contra-periodistas>

⁷³² Committee to Protect Journalists (CPJ). March 9, 2011. *Diario peruano atacado; editor amenazado*. Available at: <http://cpi.org/es/2011/03/diario-peruano-atacado-editor-amenazado.php>; Regional Council of the Journalists' Guild of San Martín. March 5, 2011. *Pronunciamiento*. Available at: <http://www.diariovoces.com.pe/?p=25402>

⁷³³ Police officers guarding President Alan García during a presidential trip reportedly struck the journalists when they attempted to approach the president at the end of a press conference. National Association of Journalists of Peru (ANP). Undated. *Policías agreden a periodistas durante rueda de prensa de Jefe de Estado*. Available at: <http://www.anp.org.pe/ofip/alertas/745-policias-agreden-a-periodistas-durante-rueda-de-prensa-de-jefe-de-estado>; La Primera. February 1, 2011. *Golpean a periodistas*. Available at: http://www.diariolaprimeraperu.com/online/pataditas/pataditas_79074.html

⁷³⁴ In the province of Santa, members of the National Police reportedly beat and fired shotgun pellets at the photographer when he attempted to photograph an incident in which several police officers allegedly assaulted a worker on strike at an agro-industrial company. The police reportedly stated that the incident was an indirect and unintentional consequence of the police action. Instituto Prensa y Sociedad (IPYS). February 18, 2011. *Policía dispara perdigones a periodista*. Available at:

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Miguel Alcántara, of the newspaper *Correo*, of Chimbote, while he was covering a protest of neighbors of the regional president of Ancash on May 21, 2011.⁷³⁵

478. In the department of San Martín, the Office of the Special Rapporteur learned of the attack against the news director of *Radio Televisión Nor Selva*, Juan Vela Castro, by a provincial attorney on January 17, 2011.⁷³⁶ In the department of Amazonas, the Office of the Special Rapporteur was informed of the attacks on journalists Manuel Saldaña García and Julio César Mendoza Escobar, hosts of the program *El Matador*, on radio *Nova Star*, on March 5 in Alto Amazonas,⁷³⁷ and of threats against journalists Segundo Alvines and Braulio Rojas Núñez, hosts of the program *Hits Star Noticias*, on the Bagua radio station *Hits Star*, on September 24.⁷³⁸ The Office of the Special Rapporteur was also informed of assaults on journalist Julio César Mundo Isique, of *Radio Paraíso*, outside the municipal building in Huaura, on April 3,⁷³⁹ and journalist Carlos Camacho Sánchez, of *Panamericana Televisión*, at the entrance to his house on October 9.⁷⁴⁰ In the region of Tumbes, journalists Lesly Ventura, of the newspaper *Correo*, and Marlon Castillo, of the newspaper *Tumbes 21* were assaulted on April 19.⁷⁴¹

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<http://www.ipys.org/index.php?q=alerta/301>; National Association of Journalists of Peru (ANP). Undated. *Dispara perdigones policía contra reportero gráfico*. Available at: <http://www.anp.org.pe/noticias/nacionales/764>

⁷³⁵ According to the information received, César Álvarez Aguilar, the regional president of Ancash, allegedly insulted the journalist and ordered his security staff to forcibly move him away from his residence. A uniformed man reportedly pushed the journalist while another person reportedly threw sand at him, and several other individuals reportedly chased him with the intention of beating him. *Correo*. May 23, 2011. *Presidente regional César Álvarez ordena agredir a periodista de Correo*. Available at: <http://diariocorreo.pe/nota/10375/presidente-regional-cesar-alvarez-ordena-agredir-a-periodista-de-correo/>; Instituto Prensa y Sociedad (IPYS). May 23, 2011. *Presidente regional manda a agredir a reportero de prensa*. Available at: <http://www.ipys.org/index.php?q=alerta/618>

⁷³⁶ On January 17, an attorney from the province of Rioja reportedly attacked Vela with a tire iron after Vela had criticized the attorney's performance in a court case. The attacker reportedly broke a window of the journalist's house, kicked a motorcycle to pieces, uttered death threats, and broke the victim's arm when he tried to cover his head. Vela requested police protection and filed a criminal complaint against the perpetrator for attempted murder and other charges. National Association of Journalists of Peru (ANP). Undated. *Agreden físicamente a director informativo de radio televisión "Nor Selva"*. Available at: <http://www.anp.org.pe/ofip/alertas/730-agreden-fisicamente-a-director-informativo-de-radio-televisión-qnor-selvaq>; Inter-American Press Association (IAPA). April 2011. *Information by Country: Perú*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&inford=813&idioma=sp

⁷³⁷ According to the information received, unknown persons reportedly ambushed and assaulted the journalists. Saldaña managed to escape, but Mendoza received kicks and punches that left him unconscious. The day of the attack, the journalists had apparently reported on administrative irregularities in the provincial government of Alto Amazonas. *La Primera*. March 8, 2011. *Agreden a periodistas radiales en Yurimaguas*. Available at: http://www.diariolaprimeraperu.com/online/nacional/agreden-a-periodistas-radiales-en-yurimaguas_81368.html; National Association of Journalists of Peru (ANP). Undated. *Golpean y dejan inconsciente a periodista*. Available at: <http://www.anp.org.pe/ofip/alertas/788-golpean-y-dejan-inconsciente-a-periodista>

⁷³⁸ The journalists reportedly received the death threat on leaflets left under the doors of their houses, which warned the journalists that they would be killed if they did not leave the news program. According to reports, the threat arrived after they had publicized complaints of alleged irregular acts in the provincial government of Bagua. Instituto Prensa y Sociedad (IPYS). September 27, 2011. *Con panfletos amenazan de muerte a periodistas*. Available at: <http://www.ipys.org/index.php?q=alerta/872>

⁷³⁹ According to reports, a member of the security team of Santiago Cano La Rosa, the provincial mayor of Huaura, punched the journalist in the face, causing injuries. The incident reportedly occurred outside the municipal building, when a group of journalists insisted on asking questions that apparently made the mayor uncomfortable. National Association of Journalists of Peru. Undated. *Miembro de seguridad de alcalde lesiona a periodista*. Available at: <http://www.anp.org.pe/ofip/alertas/809-miembro-de-seguridad-de-alcalde-lesiona-a-periodista>; *Crónica Viva*. April 5, 2011. *Huaura: miembro de seguridad de alcalde lesiona a periodista*. Available at: <http://www.cronicaviva.com.pe/index.php/mundo/europa/16694-huaura-miembro-de-seguridad-de-alcalde-lesiona-a-periodista>

⁷⁴⁰ Journalist Carlos Camacho Sánchez was reportedly attacked by at least five men at the entrance to his house in Lima. According to reports, the assailants did not attempt to rob him of any of his belongings, and they concentrated on hitting and kicking him. During the attack, one of the perpetrators reportedly told him to, "quit fucking around." During the months prior to the attack, the journalist apparently had reported on drug traffickers and public servants who had allegedly committed irregularities. Andean Group for Freedom of Information (EL GALI) October 14, 2010. *Matones agreden y amenazan a periodista de investigación*. Available at: <http://elgali.org/monitoreo/peru/matones-agreden-y-amenazan-periodista-investigacion>; *El Comercio*. October 11, 2011. *Periodista agredido atribuye ataque a denuncias contra alcalde Ocros poma*. Available at: <http://elcomercio.pe/lima/1316202/noticia-periodista-agredido-atribuye-ataque-denuncias-contra-alcalde-ocros-poma>

⁷⁴¹ Unknown persons riding a motorcycle reportedly threw excrement at the journalists after they covered a press conference at the regional government headquarters in Tumbes, at which public servants were reportedly questioned regarding the

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Journalist Mario Suárez Romero, director of the program *La Hora de la Verdad* on *Radio Satélite*, was assaulted on May 4;⁷⁴² and journalist Robert Jennier Carrasco Huamán, of *Lorito*, who was shot and wounded by unknown persons on October 23.⁷⁴³ In Junín, four journalists from the province of Huancayo were reportedly assaulted by members of the police while covering a protest involving students from the National University of Central Peru on June 22.⁷⁴⁴ In Arequipa, the mayor of the district of Chala allegedly assaulted reporter Silvana Núñez on October 3.⁷⁴⁵ In Ayacucho, Jaime Quispe Olano, director of the newspaper *Jornada*, reportedly received a death threat in a July 20 phone call.⁷⁴⁶

479. The Office of the Special Rapporteur received with concern several reports of assaults and harassment of media and journalists in the context of the presidential elections. For example, on May 10, bodyguards of presidential candidate Keiko Fujimori reportedly hit journalist José Luis Lizárraga and José Mandujano, of the radio stations *Súper Éxito* and *Estudio 99*, when they attempted to record a beating that the security staff was administering to a protestor who opposed Fujimori, in Satipo, Junín.⁷⁴⁷ A photographer from the newspaper *La República*, Miguel Mejía, was reportedly insulted, head-butted and punched on May 29 by a member of candidate Fujimori's campaign staff. This reportedly occurred when the journalist sought to verify a report about the distribution of medical prescriptions with printed pro-Fujimori propaganda in a health campaign for low-income individuals at a high school in Lima.⁷⁴⁸ On

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administration of public funds. Correo. April 20, 2011. *Cobarde agresión*. Available at: <http://diariocorreo.pe/nota/4630/cobarde-agresion/>; Instituto Prensa y Sociedad (IPYS). April 20, 2011. *Desconocidos arrojan excrementos a periodistas*. Available at: <http://www.ipys.org/index.php?q=alerta/519>

⁷⁴² On May 4, a police officer reportedly struck the journalist, the director of the program *La Hora de la Verdad*, while he was interviewing relatives of the victims of a traffic accident outside a hospital. *El Mercurio*. Undated. *Capitán de la policía arremete violentamente contra periodista radial*. Available at: http://www.mercurioajamarca.com/index.php?option=com_content&view=article&id=2435:capitan-de-la-policia-arremete-violentamente-contra-periodista-radial&catid=40:style&Itemid=185; Instituto Prensa y Sociedad (IPYS). May 9, 2011. *Capitán de la policía agrede a golpes a periodista radial*. Available at: <http://www.ipys.org/index.php?q=alerta/571>

⁷⁴³ Two unknown persons on board a motorcycle reportedly shot at the journalist and wounded him in the back. According to reports, days prior to the assault the journalist had received a death threat in a text message sent to his cell phone that said "we're going to shut you up, we're going to kill you." The journalist had recently disclosed various reports about matters of public interest. Latin American Observatory for Freedom of Expression (OLA)/IFEX. November 21, 2011. *Atentan contra vida de reportero en Cajamarca*. Available at: http://ifex.org/peru/2011/11/22/carrasco_huaman/es/; Crónica Viva. November 29, 2011. *ANP pide investigar atentado criminal contra periodista*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/32130-anp-pide-investigar-atentado-mortal-contra-reportero>

⁷⁴⁴ Some of the affected individuals reportedly had their work equipment temporarily confiscated. Instituto Prensa y Sociedad (IPYS)/IFEX. June 30, 2011. *Policías agreden a periodistas cuando cubrían protesta*. Available at: http://www.ifex.org/peru/2011/06/30/huancayo_protesta/es/; Ideeleradio. June 22, 2011. *Huancayo: Policías agredieron a periodistas durante protesta de estudiantes*. Available at: <http://www.ideeleradio.org.pe/web/wNoti.php?idN=2886&tip=red>

⁷⁴⁵ The mayor, Agustín Condori, allegedly assaulted the reporter when she filmed him drinking alcohol during working hours. According to reports, the journalist received several bruises. *La República*. October 5, 2011. *Alcalde en estado de ebriedad agrede a periodista en Arequipa*. Available at: <http://www.larepublica.pe/05-10-2011/alcalde-ebrio-golpea-periodista-en-arequipa>; Andean Group for Freedom of Information (EL GALI). October 5, 2010. *Periodista registra a alcalde ebrio golpeándola*. Available at: <http://www.elgali.org/monitoreo/peru/periodista-registra-alcalde-ebrio-golpeandola>; RPP. October 5, 2010. *Alcalde de Chala en Arequipa ataca a golpes a periodista*. Available at: http://www.rpp.com.pe/2011-10-05-alcalde-de-chala-en-arequipa-ataca-a-golpes-a-periodista-noticia_410155.html

⁷⁴⁶ The same day, his newspaper published an exposé about the alleged criminal acts of a relative of the former president of the regional government. Info Región. July 21, 2011. *ANP hará denuncia internacional sobre amenazas a periodista de Ayacucho*. Available at: <http://www.inforegion.pe/portada/109660/anp-hara-denuncia-internacional-sobre-amenazas-a-periodista-de-ayacucho/>; Instituto Prensa y Sociedad (IPYS)/IFEX. July 22, 2011. *Director de diario denuncia ser amenazado de muerte*. Available at: http://www.ifex.org/peru/2011/07/22/quispe_olano_death_threat/es/

⁷⁴⁷ Committee to Protect Journalists (CPJ). June 1, 2011. *Crece ataques contra la prensa antes de la elección en Perú*. Available at: <http://www.cpi.org/es/2011/06/crecen-ataques-contra-la-prensa-antes-de-la-elecci.php>; *La República*. May 11, 2011. *Ponen en duda ataque contra Keiko*. Available at: <http://www.larepublica.pe/imprensa/ponen-en-duda-ataque-contra-keiko-2011-05-11>

⁷⁴⁸ Instituto Prensa y Sociedad (IPYS). May 30, 2011. *Perú: Reportero gráfico agredido por personero legal del partido Fuerza 2011*. Available at: <http://www.ipys.org/index.php?q=alerta/632>; *La República*. May 29, 2011. *Personero legal de Fuerza 2011 agredió a fotógrafo de La República*. Available at: <http://www.larepublica.pe/29-05-2011/personero-legal-de-fuerza-2011-agredio-fotografo-de-la-republica>

May 25, some ten journalists who were covering a political ceremony for Keiko Fujimori's presidential candidacy were reportedly attacked by protestors from *Gana Perú* party in Bambamarca, Cajamarca.⁷⁴⁹ On June 15, journalist Ángel Montenegro Guanilo, host of the program "Hora 25" on *Line TV*, was reportedly chased and attacked by three individuals leaving the law school at the Private University of the North (UPN) in Cajamarca. They reportedly took him to a deserted area where they beat and threatened him, and complained of his criticism of events that took place at a political rally.⁷⁵⁰ On May 11, less than one month before the runoff elections, the director of the newspaper *La Primera*, César Lévano, and the chairman of the newspaper's board of directors, Arturo Belaúnde, received funeral wreaths in Lima. This practice was used in earlier decades to intimidate journalists. The wreaths, delivered by an unknown person, came with cards bearing the recipient's names and the acronym RIP (Rest in Peace). The newspaper *La Primera* had reportedly endorsed candidate Ollanta Humala.⁷⁵¹ Television journalist Elvis Italo Guillermo Espinoza reported having received telephone and email threats on May 20, after he called candidate Keiko Fujimori into question. A program that he hosted on *Canal 4 JSV* was cancelled on May 17 after he interviewed the former coordinator of the Truth and Reconciliation Commission, who discussed former president Alberto Fujimori's criminal history.⁷⁵²

D. Judicial proceedings

480. The Office of the Special Rapporteur notes President Ollanta Humala's important statements to the effect that he will not use existing criminal provisions to dampen the vigor and openness of public debate, even when it may be offensive. Notwithstanding the president's position, some local public servants have continued the practice of using criminal law to limit the right to freedom of expression, in violation of principles 10 and 11 of the Declaration of Principles on Freedom of Expression.

481. The Office of the Special Rapporteur expresses its concern over the July 6 criminal conviction of journalist Hans Francisco Andrade Chávez of the *América TV* network for the offense of aggravated defamation. According to the information received, the Single-judge Supra-provincial Criminal Court of Chepén sentenced the journalist to two years in prison, with one year suspended, and ordered him to pay 4,000 nuevos soles (approximately US \$1,460) in civil damages; and a fine of 120 times the daily minimum wage, for allegedly having defamed the deputy manager of Public Services of Chepén. The judgment ordered the journalist to broadcast a correction and a public apology through the same media outlet, with his own funds, for two days; appear before the enforcement judge every 30 days; and not to leave his place of residence without authorization from the enforcement judge. The journalist and his attorney announced that they would appeal the decision. The case arose following Andrade's early March interview of a local political leader who, in several media outlets, accused the deputy manager of having threatened him with death. Nevertheless, the complainant brought the action against the *América TV* journalist and not the original source of the alleged defamation.⁷⁵³ On October 12th, the Third Criminal

⁷⁴⁹ Instituto Prensa y Sociedad (IPYS). May 27, 2011. *Militantes de Gana Perú agredieron con insultos y rompieron cámara filmadora*. Available at: <http://www.ipys.org/index.php?q=alerta/626>; RPP. May 25, 2011. *Agreden a Keiko Fujimori y le caen huevos a su esposo Mark Vito*. Available at: http://www.rpp.com.pe/2011-05-25-agreden-a-keiko-fujimori-y-le-caen-huevos-a-su-esposo-mark-vito-noticia_368975.html

⁷⁵⁰ Instituto Prensa y Sociedad (IPYS)/IFEX. June 22, 2011. *Universitarios agreden y amenazan a periodista*. Available at: http://www.ifex.org/peru/2011/06/22/montenegro_attacked/es/; El Mercurio. Undated. *Estudiantes agreden a periodista*. Available at: http://www.mercuriocajamarca.com/index.php?option=com_content&view=article&id=2921:estudiantes-agreden-a-periodista&catid=41:news&Itemid=92

⁷⁵¹ La República. May 11, 2011. *Envían corona funeraria a periodista César Lévano*. Available at: <http://www.larepublica.pe/11-05-2011/envian-corona-de-funeraria-periodista-cesar-levano-0>; Instituto Prensa y Sociedad (IPYS). May 11, 2011. *Perú: desconocidos envían coronas fúnebres a director y propietario de diario la Primera*. Available at: <http://www.ipys.org/index.php?q=noticia/582>

⁷⁵² Committee to Protect Journalists (CPJ). June 1, 2011. *Crece ataques contra la prensa antes de la elección en Perú*. Available at: <http://www.cpj.org/es/2011/06/crecen-ataques-contra-la-prensa-antes-de-la-elecci.php>; Instituto Prensa y Sociedad (IPYS). May 30, 2011. *Periodista denuncia amenazas tras cierre de programa; militantes del partido Gana Perú agreden a periodistas con insultos*. Available at: http://www.ifex.org/peru/2011/05/30/quillermo_espinoza_threatened/es/

⁷⁵³ Single-judge Supra-provincial Criminal Court of Chepén and Pacasmayo. Decision number three of July 6, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. July 20, 2011. Press Release R71/11. *Office of the Special Rapporteur Expresses Concern over*

Chamber of Appeal of the Superior Court of Justice of La Libertad overturned the conviction and ordered a new trial.⁷⁵⁴

482. According to information received, on September 22 the Sixth Single-judge Criminal Court for the region of Arequipa convicted Fritz Du Bois, the director of the newspaper *Perú 21*, and Gessler Ojeda, the paper's Arequipa correspondent, to two years in prison, all suspended, for the offense of defamation; they were also ordered to pay 30,000 nuevos soles (about US \$10,800) in civil damages.⁷⁵⁵

483. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a 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."

484. The Civil and Criminal Appeals Chamber of Utcubamba of the Superior Court of Justice of Amazonas reversed the June 7 decision in which a complaint alleging aggravated theft against Aurora Doraliza Burgos de Flores, the holder of the permit for the radio station radio *La Voz* in Bagua, was ruled inadmissible. According to the information received, this decision reopened the court case against the station, whose permit to provide radio broadcasting services had been cancelled in June of 2010 for allegedly having broadcast content that incited violence in the Bagua uprising of June 5, 2009. The sanction against the radio was then lifted in October of 2010 by a decision of the Ministry of Transportation and Telecommunications. After having prevailed in several administrative and judicial proceedings, there was still a criminal complaint for aggravated theft of radio spectrum pending against the licensees, including Aurora Burgos. The prosecutor's office sought the imposition of a four-year prison sentence and 3,000 soles (about US \$1,100) in civil damages. Burgos's defense counsel filed a motion to dismiss based on the inadmissibility of the claim, and on May 3, the Utcubamba court ruled in Burgos's favor. However, the prosecutor's office appealed, and on June 7 the Superior Court of Justice of Amazonas reversed that decision.⁷⁵⁶ A court hearing on the complaint alleging aggravated theft of radio

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Criminal Conviction of Television Journalist in Peru. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=856&IID=2>; Instituto Prensa y Sociedad (IPYS). July 11, 2011. *Condenan a prisión a periodista por denuncia que no hizo.* Available at: <http://www.ipys.org/index.php?q=alerta/715>; Committee to Protect Journalists (CPJ). July 14, 2011. *El CPJ condena sentencia por difamación criminal en Perú.* Available at: <http://cpj.org/es/2011/07/el-cpj-condena-sentencia-por-difamacion-criminal-e.php>

⁷⁵⁴ Superior Court of Justice of La Libertad. Third Criminal Chamber of Appeal. Resolution No. 11 of October 12, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; National Association of Journalists of Peru (Asociación Nacional de Periodistas del Perú, ANP). Office of Journalists' Human Rights. October 25, 2011. *Sala Penal anula sentencia de tribunal que condenó periodista.* Available at: <http://ofip.blogspot.com/2011/10/alerta-peru-chepen-trujillo-sala-penal.html>

⁷⁵⁵ Superior Court of Justice of Arequipa. Sixth Individual Criminal Court. September 20, 2011. File No. 701-2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS)/IFEX. September 26, 2011. *Juzgado condena a director de diario y corresponsal.* Available at: http://www.ifex.org/peru/2011/09/26/peru_21/es/; El Comercio. September 23, 2011. *Condenan a dos periodistas de "Perú 21" a prisión suspendida.* Available at: http://elcomercio.pe/opinion/1307079/noticia-condenan-dos-periodistas-peru-21-prision-suspendida_1; RPP. September 23, 2011. *Condenan a periodistas por difamación.* Available at: http://www.rpp.com.pe/condenan-a-periodistas-de-peru21-por-difamacion-noticia_406491.html

⁷⁵⁶ Chamber of Criminal and General Appeals of Utcubamba. Resolution No. 5 of June 7, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS)/IFEX. June 17, 2011. *Revocan resolución que exculpaba de delito a concesionaria de radio La Voz de Bagua.* Available at: http://www.ifex.org/peru/2011/06/17/ruling_revoked/es/; Radio "La Voz" de Bagua Grande. June 17, 2011. *Amenaza de prisión contra Aurora Burgos.* Available at: <http://radiolavozbaguagrande.blogspot.com/2011/06/amenaza-de-prision-contra-aurora-burgos.html>; IACHR. Annual Report 2010. OEA/SER.LV/III. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere).

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spectrum was scheduled for November 15, 2011, but had to be continued due to the prosecutor's absence.⁷⁵⁷

485. The Office of the Special Rapporteur reiterates the obligation of community radio stations to operate in accordance with the laws, but insists that those laws must be consistent with international standards, and must be enforced through proportional administrative sanctions, and not through the application of criminal law.⁷⁵⁸

22. Dominican Republic

486. The Office of the Special Rapporteur received information concerning the August 2 murder of journalist José Agustín Silvestre de los Santos. According to this information, several individuals forced Silvestre de los Santos into a vehicle in the town of La Romana. Hours later his body, bearing several gunshot wounds, was found on the road between La Romana and San Pedro de Macorís. According to the information available, Silvestre was the director of the magazine *La Voz de la Verdad*, and the host of a program of the same name on the *Caña TV* television station. Silvestre practiced critical and investigative journalism, which led him to face court accusations and death threats. In the week leading up to his murder, he reported to the Dominican Association of Journalists that two vehicles had attempted to intercept him on July 23, 2011. The Attorney General of the Dominican Republic, Radhamés Jiménez, announced the creation of a special investigative commission to solve the case.⁷⁵⁹ The National Police identified at least four men suspected of directly perpetrating the murder, and at the time of this report, all four remained in pretrial detention.⁷⁶⁰ Police authorities stated that the suspected mastermind of the crime is a hotel entrepreneur who reportedly ordered the murder in reaction to an item published in *La Voz de la Verdad*.⁷⁶¹

487. According to information received, alleged police officers reportedly shot and wounded Dominican journalist Francisco Frías Morel in the city of Nagua on January 28. According to the information, Frías Morel and a group of journalists were covering the funeral of a young man who had died in a confrontation, when police officers reportedly attempted to disperse the funeral procession. The

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Paras. 368 and 369. Available at:
<http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷⁵⁷ Instituto Prensa y Sociedad (IPYS). November 15, 2011. Perú: *Suspenden audiencia judicial en caso de radio La Voz de Bagua*. Available at: <http://www.ipys.org/?q=noticia/975>; La República. November 16, 2011. *Denuncian acoso a radio La Voz*. Available at: <http://www.larepublica.pe/node/714332/print>

⁷⁵⁸ Cf. IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 *Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010sp/RELATORIA_2010_ESP.pdf

⁷⁵⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2011. Press Release R85/11. *Office of the Special Rapporteur Condemns Kidnapping and Murder of Journalist in Dominican Republic*. August 4, 2011. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=861&IID=2>; Committee to Protect Journalists (CPJ). August 3, 2011. *Critical journalist murdered in Dominican Republic*. Available at: <http://cpj.org/es/2011/08/periodista-critico-asesinado-en-la-republica-domin.php>

⁷⁶⁰ Noticias SIN. Undated. *Apresan a los tres presuntos asesinos del periodista José Silvestre*. Available at: <http://www.noticiassin.com/2011/08/apresan-a-los-tres-presuntos-asesinos-del-periodista-jose-silvestre/>; EFE News Service. August 10, 2011. *Detenidos cuatro de los acusados del asesinato de un periodista dominicano*. Available at: <http://noticias.terra.com.co/internacional/detenidos-cuatro-de-los-acusados-del-asesinato-de-un-periodista-dominicano.ea42fb328c4b1310VqnVCM4000009bf154d0RCRD.html>

⁷⁶¹ National Police of the Dominican Republic. August 9, 2011. *Policía identifica otros tres de los autores materiales del asesinato del periodista José Silvestre. Los invita a entregarse*. Available at: <http://www.policianacional.gob.do/v2/principal/noticias/20110809-policia-identifica-otros-tres-autores-materiales-asesinato-periodista-jose-silvestre-invita-entregarse.ashx>; Reporters Without Borders. August 11, 2011. *Police name journalist's alleged killers, confirm reporting was motive*. Available at: http://es.rsf.org/republica-dominicana-secuestran-y-asesinan-a-un-03-08-2011_40743.html; Noticias SIN. Undated. *Prisión preventiva de tres meses para uno de los implicados en asesinato del periodista José Silvestre*. Available at: <http://www.noticiassin.com/2011/08/prision-preventiva-de-tres-meses-para-uno-de-los-implicados-en-asesinato-del-periodista-jose-silvestre/>

journalist was injured by several bullets. The police commander of Nagua, Colonel Juan Antonio Lora Castro, maintained that the police action was not directed against the journalists, but rather was intended to disperse a crowd that it characterized as “unruly.” Frías Morel is the director of *Cabrera FM* radio, writes a news blog, co-produces a news program on *Trébol FM* radio, and is the press advisor to a local senator. According to the information received by the Office of the Special Rapporteur, the journalist had, in several different media outlets, called into question the police version of the circumstances surrounding the young man’s death.⁷⁶²

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

489. On February 27, President Leonel Fernández presented the Expression and Communications Media Act, the Radio, Television and Internet Act, and the Audiovisual and Advertising Act to Congress. The Government and the Association of Journalists continue to encourage public debate to publicize and discuss the bills. The Office of the Special Rapporteur invites the Dominican State to broadly disseminate the legislative bills in the interest of promoting an informed and vigorous national debate, and trusts that amendments will be consistent with the international standards on freedom of expression.⁷⁶³ On August 16, Congress began its regular legislative session, and three of the aforementioned bills were pending.⁷⁶⁴ At the time of this writing, there was no additional information about the progress of the initiatives as they work their way through Congress.

23. Trinidad and Tobago

490. The Office of the Special Rapporteur was informed of alleged email threats sent on January 30, 2011 to Omatie Lyder and Anna Ramdass of the *Trinidad Express* newspaper. They are the editor in chief and a journalist, respectively. According to the information received, Lyder and Ramdass received emails with threatening content days after the newspaper had published an article about alleged irregularities in the appointment of a public employee to the Strategic Services Agency, who later resigned from the position. The messages were reportedly sent from an email account under the user name of Janice Thomas. However, the investigation traced the sender of the emails and reportedly determined that the messages had originated from a computer at the home of an adviser to the Prime Minister. The advisor has denied having sent such messages, and her attorneys have asked the newspaper to issue an apology for the statements made against her. In addition, the attorneys requested

⁷⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. February 3, 2011. Press Release R05/11. *Office of the Special Rapporteur Expresses Concern Over Attack on Dominican Journalist*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=832&IID=2>; Listín Diario. January 29, 2011. *Se registra balacera en cortejo fúnebre de joven*. Available at: <http://www.listindiario.com.do/la-republica/2011/1/29/175317/Se-registra-balacera-en-cortejo-funebre-de-joven>; Reporters Without Borders. January 31, 2011. *Un periodista hospitalizado tras recibir tiros de la Policía; llamamiento a la vigilancia frente a las fuerzas del orden*. Available at: http://es.rsf.org/republica-dominicana-un-periodista-hospitalizado-tras-31-01-2011_39427.html

⁷⁶³ Government Information Center. March 1, 2011. *Presidente somete al Congreso Ley de Estrategia Nacional de Desarrollo*. Available at: <http://www.cig.gob.do/app2/article.aspx?id=20908>; Dominican Association of Journalists. *CDP someterá propuesta de modificación de la ley 10-91*. February 28, 2011. Available at: <http://periodistasni.blogspot.com/2011/02/cdp-sometera-propuesta-de-modificacion.html>; Periodistas en Español. September 20, 2010. *República Dominicana: oposición a un proyecto de ley sobre libertad de expresión y ejercicio del periodismo*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/republica-dominicana-oposicion-a-un-proyecto-de-ley-sobre-libertad-de-expresion-y-ejercicio-del-periodismo>; Instituto de Televisión de las Américas. January 6, 2011. *Urge periodistas conozcan proyecto ley audiovisual*. Available at: http://itvlam.com/index.php?option=com_content&view=article&id=164:urge-periodistas-conozcan-proyecto-ley-audiovisual&catid=37:master-en-produccion-de-tv&Itemid=60

⁷⁶⁴ Senate of the Dominican Republic. August 17, 2011. *Congreso tiene pendiente una amplia agenda*. Available at: <http://www.senado.gob.do/senado/Inicio/tabid/40/ctl/ArticleView/mid/439/articleId/384/Congreso-tiene-pendiente-una-amplia-agenda.aspx>

that the newspaper refrain from publishing any additional stories on the matter, claiming that there is no evidence that she sent the messages.⁷⁶⁵

24. Uruguay

491. The Office of the Special Rapporteur was informed of the June 20 judgment denying a civil claim for US \$40,000 in damages against public television journalist Ana María Mizrahi, filed in 2009 by Celeste Álvarez, a niece of former Uruguayan dictator Gregorio Álvarez. According to the information received, the case stemmed from a television interview that Mizrahi had conducted in May 2007 with a former Tupamaro guerrilla who reportedly confessed to having assassinated the plaintiff's father, a member of the military and brother of the dictator, and stated the reasons for which he had committed the crime. The civil judge Beatriz Venturini ruled in favor of the journalist on the grounds that she had not acted with the intent to cause harm, and that she had acted with rigor and objectivity.⁷⁶⁶

492. The Office of the Special Rapporteur takes note of the process undertaken by the State of Uruguay to conduct a census and regularize community radios, which has reportedly made it possible to authorize the operation of 54 stations since 2010. According to the information received, a new radio regularization process approved on March 23, 2011 recognizes the community nature of the stations and allows them to use an FM radio frequency for a ten-year period. In addition, the State reportedly issued a new call for community projects interested in the allocation of a frequency band to submit the necessary documentation. In order to be considered a community station under Uruguayan law, a station must be collectively owned and have a non-profit, social purpose.⁷⁶⁷

493. The Office of the Special Rapporteur learned of threats reportedly received by journalist Roger Rodríguez following the February 4 publication of the article entitled, "*La ofensiva de los indagables*" ["*Suspects on the Offensive*"], in the magazine *Caras y Caretas*. The article was about the actions of retired members of the military to evade justice for crimes committed during the military dictatorship (1973-1985). According to reports, days after the article was published, a group—in the name of an organization related to former members of the military—posted threatening comments against the journalist on the social networking site Facebook that included his personal and family information and the exact address of his house.⁷⁶⁸

⁷⁶⁵ Under the laws of Trinidad and Tobago, threatening another person by any means is punishable by up to 5 years in prison. Antigua Observer. July 17, 2011. *Prime Minister's special adviser demands apology*. Available at: <http://www.antiguaobserver.com/?p=61639%20->; Trinidad Express Newspapers. June 18, 2011. *Sasha under fire*. Available at: http://www.trinidadexpress.com/news/SASHA_UNDER_FIRE-124143579.html; Barbados Free Press. June 23, 2011. *Trinidad & Tobago Police investigate emailed threats to journalists*. Available at: <http://barbadosfreepress.wordpress.com/2011/06/23/trinidad-tobago-police-investigate-emailed-threats-to-journalists/>; Guardian Media. June 22, 2011. *Mohammed's lawyers to CoP: What's the offence*. Available at: <http://www.guardian.co.tt/news/2011/06/22/mohammed-s-lawyers-cop-what-s-offence#st-logo>

⁷⁶⁶ Uruguayan Press Association. June 21, 2011. *La justicia falló a favor de la periodista Ana María Mizrahi*. Available at: <http://www.apu.org.uy/noticias/la-justicia-fallo-a-favor-de-la-periodista-ana-maria-mizrahi>; Últimas Noticias. June 21, 2011. *Fallo a favor de periodista denunciada por difamación*. Available at: <http://www.ultimasnoticias.com.uy/Edicion-UN/articulos/prints-2011jun21/act12.html>; 180. June 20, 2011. *Fallo a favor de la periodista Ana María Mizrahi*. Available at: http://www.180.com.uy/articulo/19690_Fallo-a-favor-de-la-periodista-Ana-Maria-Mizrahi

⁷⁶⁷ Office of the President of the Eastern Republic of Uruguay. April 8, 2011. *Comunicación de DINATEL: Culmina censo de radios comunitarias y se abre nuevo llamado*. Available at: <http://archivo.presidencia.gub.uy/sci/noticias/2011/04/2011040803.htm>; World Association of Community Radio Broadcasters (AMARC). April 20, 2011. *Más de cien emisoras comunitarias han sido regularizadas en todo el país*. Available at: <http://legislaciones.item.org.uy/index?q=node/2687>; La Red 21. March 9, 2011. *El gobierno abrirá nuevo llamado para radios comunitarias*. Available at: <http://www.lr21.com.uy/comunidad/443619-el-gobierno-abrira-nuevo-llamado-para-radios-comunitarias#>; Legislative Branch of the Eastern Republic of Uruguay. Law No. 18.232 of December 22, 2007. *Servicio Radiodifusión Comunitaria*. Available at: <http://www0.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18232&Anchor>

⁷⁶⁸ La Red 21. February 9, 2011. *Amenazan a periodista Roger Rodríguez*. Available at: <http://www.lr21.com.uy/politica/440747-amenazan-a-periodista-roger-rodriguez>; Reporters Without Borders. May 18, 2011. *Roger Rodríguez, la erosión de la impunidad*. Available at: http://es.rsf.org/uruguay-roger-rodriguez-la-erosion-de-la-18-05-2011_40306.html; Caras y Caretas. February 4, 2011. *La ofensiva de los indagables*. Available at: <http://200.40.211.253/detail.asp?IdEdition=102&NewsId=772&Portal=1>

494. According to information received, journalist Victor Carrato of the newspaper *La República* received threats after publishing an article on June 17 about contraband cyanide inside a prison. Carrato received two email messages on June 18, allegedly sent by the head of a criminal gang at the prison, warning him to stop investigating the matter and intimidating him by indicating that they knew where he lived. The newspaper condemned the threats and requested a police investigation.⁷⁶⁹

495. According to the information received, on February 14 the 10th criminal duty judge sentenced Álvaro Alfonso to 24 months in prison for the offense of defamation. He will serve the sentence while on supervised release. According to reports, the case arose as a result of the publication of the book entitled "*Secretos del Partido Comunista del Uruguay*" [*Secrets of the Uruguayan Communist Party*], in which Alfonso asserted that a member of the Communist Party and former Uruguayan legislator had cooperated with the military in the identification of his comrades while detained during the dictatorship (1973-1985). The Public Prosecutor's Office also requested that all copies of the book be confiscated, but the judge denied the petition, indicating that "preventing the sale of a book would be to disregard freedom of expression." Mr. Alfonso, who was serving as the Mayor of Aguas Corrientes at the time of the decision, appealed the ruling.⁷⁷⁰

496. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression states that: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

⁷⁶⁹ The first threatening email said: "Very good article. And thank you for the information on the traitor; my police informants also keep me informed. I'll keep it short... I know where to find you, and I'm going to send someone to get you; I'm fed up with you meddling in my business... I also have something on Pereira Cuadra to get him thrown out of the national bureau [of prisons]. And I'll take care of Píriz Brum in a few days... Get your life insurance ready." Five minutes later, another email demanded: "And try cleaning up with your elbow what you wrote with your hands... because I'll even find your house if I want to." La Red 21. June 21, 2011. *Investigan amenazas de muerte contra periodista de LA REPÚBLICA*. Available at: <http://www.lr21.com.uy/justicia/458768-investigacion-amenazas-de-muerte-contra-periodista-de-la-republica>; Montevideo.Com. June 21, 2011. *Con libertad ofendo y no temo*. Available at: http://www.montevideo.com.uy/noticias_140969_1.html; La Red 21. June 17, 2011. *Entregan ½ kilo de cianuro en Libertad*. Available at: <http://www.lr21.com.uy/justicia/458062-entregan-12-kilo-de-cianuro-en-libertad>

⁷⁷⁰ Inter-American Press Association (IAPA). April 2011. *Informes por país: Uruguay*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=46&infoid=816&idioma=sp; LR21. February 17, 2011. *Juez rechazó requisa de libros*. Available at: <http://www.lr21.com.uy/politica/441668-juez-rechazo-requisa-de-libros>; Office of the President of the Eastern Republic of Uruguay. Undated. *Municipios del Departamento de Canelones*. Available at: <http://www.presidencia.gub.uy/wps/wcm/connect/presidencia/portalpresidencia/intendencias/municipios/municipios-canelones>

25. Venezuela⁷⁷¹

A. Attacks on the media and journalists

497. The Commission was informed of the murder of the journalist, Wilfred Ojeda Peralta, who was found dead in the early hours of May 17 in the municipality of Revenga in the State of Aragua. At the time, the Special Rapporteurship recognized the rapid intervention of Venezuelan police authorities to shed light on the case and asked that they not disregard the possibility that the murder had been motivated by the victim's work as a journalist.⁷⁷² On June 28, the Scientific, Criminal, and Criminalistics Investigations Corps (CICPC) concluded that two brothers were responsible for the crime and that the murder had been due to a debt that the journalist owed to one of them. The CICPC declared that the case was "solved by the police" and announced that the suspects "were being sought by the First Preliminary Proceedings Court of the State of Aragua."⁷⁷³

498. The IACHR learned of shots fired on the Venezuelan public television station *Vive TV Zulia* on July 31, 2011, injuring two employees of the channel.⁷⁷⁴ According to the information received, two suspects in the shooting at the station were shot down on August 3, 2010 when they were confronted by police.⁷⁷⁵

499. The IACHR was informed of various attacks on media employees by members of the State security forces. On December 6, 2010 in the State of Apure, agents of the Bolivarian National Guard attacked several journalists who were covering a salary protest by State government employees. The Special Rapporteurship learned that several members of the National Guard had beaten the General Secretary of the Apure office of the National Journalists Association, José Ramón González, while trying to arrest him and snatch his photographic equipment. The journalist Aly Pérez of the newspaper *Visión Apureña* was also attacked.⁷⁷⁶ On December 23, 2010 the Agence France-Presse (AFP) photographer, Miguel Gutiérrez, received a head wound during a police operation in Caracas to dissolve a

⁷⁷¹ This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

⁷⁷² Ojeda used to write a column titled "Critical Dimension" in the daily newspaper *Clarín* of La Victoria in the state of Aragua, where he frequently questioned governmental authorities. According to the information available, Ojeda was also an activist in the opposition Democratic Action Party (AD) and years earlier had held municipal and regional positions with this political group. IACHR. Office of the Special Rapporteur for Freedom of Expression. May 23, 2011. Press Release R47/11. [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Venezuela](#); Committee to Protect Journalists (CPJ). May 20, 2011. [Newspaper columnist shot to death in Venezuela](#). Reporters Without Borders. May 19, 2011. [Contract-style Killing of Newspaper Columnist in Aragua State](#).

⁷⁷³ Scientific, Criminal, and Criminalistics Investigations Corps (CICPC). June 28, 2011. [CICPC resuelve el caso del periodista aragüeño de El Clarín](#). [CIPC solves case of Aragan journalist from El Clarín]

⁷⁷⁴ According to the information received, on Sunday morning unknown subjects on board a truck passed in front of the headquarters of the channel in Maracaibo in the state of Zulia, and shot several times as press staff from the station were leaving the building. As a result of the attack, police officer Gustavo Ceballos was shot in the right leg and employee José Brito fractured his leg when he fell from a stairway while trying to protect himself from the bullets. IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R84/11. [Office of the Special Rapporteur Expresses Concern Regarding Shots Fired at Public Television Station in Venezuela](#); Office of the Attorney General of the Bolivarian Republic of Venezuela. [MP comisionó a dos fiscales para investigar ataque contra Vive TV en el Zulia](#). [Prosecutor's Office commissioned two prosecutors to investigate attack on Vive TV]; Venezolana de Televisión. July 31, 2011. [Dos heridos tras atentado a Vive TV Zulia](#). [Two injured after attack at Vive TV Zulia]; Espacio Público [Public Arena]. August 1, 2011. [Atacan sede de Vive TV en Zulia](#). [Attack on headquarters of Vive TV in Zulia]

⁷⁷⁵ Noticiero Digital. August 4, 2011. [Abatieron a dos de las personas que atacaron a Vive TV](#). [Two people who attacked Vive TV cut down]; La Verdad. August 3, 2011. [Ultiman a involucrados en atentado contra Vive TV](#). [Suspects in attack on Vive TV killed]

⁷⁷⁶ National Association of Journalists (CNP). December 8, 2010. [CNP denuncia atropello de la Guardia Nacional a periodistas en Apure](#). [CNP denounced National Guard abuse of journalists in Apure]; National Association of Journalists (CNP). December 6, 2010. [Agredidos periodistas y sindicalistas durante protesta en San Fernando de Apure](#). [Journalists and trade unionists assaulted during protest in San Fernando de Apure]; Espacio Público. December 7, 2010. [Guardia Nacional agrede a periodistas en Apure](#). [National Guard assaults journalists in Apure]

demonstration of students opposed to the Universities Law.⁷⁷⁷ On January 15, 2011, according to reports, members of the National Guard attempted to seize the cameras of the photographers, Enio Perdomo, of *El Universal*, and José (Cheo) Pacheco, of *El Universal* and *Últimas Noticias*, while they were covering a protest by relatives of prisoners at the La Planta prison in Caracas.⁷⁷⁸ On March 28, the *Globovisión* journalist, Lorena Cañas, was attacked by police officers of the State of Bolívar while she was covering a demonstration of students demanding the release of the former mayor of the municipality of Sifontes, Carlos Chancellor.⁷⁷⁹

500. The IACHR received information regarding several incidents in which individuals associated with the government had allegedly attacked journalists. On January 20, 2011, vigilantes from the State markets network of the Venezuelan Food Producer and Distributor (PDVAL) struggled with the journalist Gabriela Iribarren from the newspaper *Últimas Noticias* and snatched the notebook where she was noting down product prices in San José, Caracas. As reported to the Special Rapporteurship, on that same day the journalist succeeded in retrieving her notebook and received apologies from PDVAL management.⁷⁸⁰ On January 11, the outgoing President of the Municipal Chamber of Vargas, Miriam González, allegedly attacked the journalist Luisa Álvarez, of the Chamber's press corps, during a meeting during which the new municipal leadership was being elected and installed. As this office learned, González scolded the journalist so that she wouldn't note down her statements, called her a "traitor" and hit her in the face. The journalist received various injuries.⁷⁸¹ On April 1, alleged employees of the state-owned *Petróleos de Venezuela* (PDVSA) attacked a press team from the First Justice party, which was documenting activities of this group in the area around the headquarters of the petroleum company in Caracas.⁷⁸² On April 1, a group of alleged sympathizers of the United Socialist Party of Venezuela (PSUV) allegedly attacked the journalists Juan Vicente Maya of the newspaper *Las Noticias de Cojedes* and Rosana Barreto of the daily newspaper *La Opinión*, as well as two other press employees outside the radio station in Cojedes, while they were waiting for the Governor of the State of Miranda, Henrique Capriles Radonsky, who was granting interviews there.⁷⁸³

⁷⁷⁷ BBC World. December 23, 2010. [Venezuela: policía dispersa marcha contra ley de universidades](#). [Venezuela: police disperse march against universities law]; Noticia al Día. December 23, 2010. [Repelen marcha de universitarios en Caracas: Reportan un periodista de AFP herido y dos estudiantes detenidos](#). [Universities march in Caracas repelled: Reports of an AFP journalist wounded and two students detained]; Noticias 24. December 23, 2010. [Fotógrafo de la Agencia AFP recibió una pedrada en la cabeza durante protesta estudiantil](#). [Rock hits AFP photographer in head during student protest]

⁷⁷⁸ Espacio Público. February 4, 2011. [GN intenta despojar de sus equipos a los reporteros gráficos de El Universal y Últimas Noticias](#). [NG tries to take equipment from El Universal and Últimas Noticias photojournalists]; El Informador. January 15, 2011. [Protestas en las afueras de retén de La Planta](#). [Protests outside the La Planta prison]

⁷⁷⁹ When a police officer arrested the cameraman from *Globovisión* and seized the recording equipment, Cañas tried to intervene and was hit about the face and back. The cameraman was later released. The equipment was returned after a military official intervened. National Association of Journalists. March 31, 2011. [Agredida Lorena Cañas de Globovisión en Bolívar](#). [Lorena Cañas of Globovisión attacked in Bolívar]; Espacio Público. March 29, 2011. [Equipo de Globovisión es agredido por la Policía del estado Bolívar](#). [Globovisión team attacked by police in State of Bolívar]

⁷⁸⁰ Instituto Prensa y Sociedad (IPYS). January 24, 2011. [Personal de seguridad agrede a periodista](#). [Security personnel attack journalist]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁷⁸¹ El Universal. January 12, 2011. [Concejo Municipal de Vargas se instaló en medio de trifulca](#). [Vargas Municipal Council installed in the midst of squabble]; Espacio Público. January 26, 2011. [Concejales de Vargas agrede a periodista Luisa Álvarez](#). [Vargas council member attacks journalist Luisa Álvarez]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁷⁸² According to reports, some 40 people, some of them with PDVSA identification, also threw several objects at the journalists, Deyanira Castellanos and Eucaris Perdomo, and the cameraman, Lenín León. Later, at a metro station, part of the press team was surrounded by individuals tied to the government. Police officers intervened to protect the journalists but asked them to turn over the material they had filmed. Espacio Público. April 4, 2011. [Trabajadores de PDVSA agreden a equipo de prensa de Primero Justicia](#). [PDVSA workers attack press team from Primero Justicia]; Knight Center for Journalism in the Americas. April 5, 2011. [Periodistas venezolanos atacados por grupo de presuntos partidarios de Chávez](#). [Venezuelan journalists attacked by groups of alleged Chavez partisans]

⁷⁸³ Instituto Prensa y Sociedad (IPYS). April 4, 2011. [Simpatizantes del presidente Chávez agreden a periodistas](#). [Sympathizers of President Chávez attack journalists]; Espacio Público. April 11, 2011. [Grupo de oficialistas agrede a comunicadores en el estado Cojedes](#). [Pro-government group attacks journalists in the estate of Cojedes]

501. The IACHR was informed of the attack on a team of journalists from *Globovisión* on April 7 in Trujillo, while they were covering a peaceful protest of nursing employees at the Central Hospital of Valera. According to reports to this office, individuals allegedly affiliated with the Bolivarian Union of Nurses physically and verbally attacked the journalist Laura Domínguez and the cameraman Heisser Gutiérrez and snatched their recording equipment.⁷⁸⁴

502. The Special Rapporteurship learned that on February 19 the State channel *Venezolana de Televisión (VTV)*, located in the Los Ruices district of Caracas, was temporarily left without telephone or Internet service after unknown persons deliberately burned the cable equipment from the telephone company, CANTV.⁷⁸⁵

503. On August 13, journalists from the program “Zurda Kondukta” of VTV were attacked in Puerto Ordaz as they were covering the launch of the campaign for Governor of the State of Bolívar of the opposition deputy Andrés Velásquez. According to the information available, the journalists Oswaldo Rivero and Marcos Ramírez were trying to interview those attending the event when several people beat them and seized a video camera.⁷⁸⁶ On September 13, journalists from VTV who were trying to interview the former governor of Zulia and opposition leader, Oswaldo Álvarez Pérez, were attacked and expelled from a location where the 70th Anniversary of the Democratic Action Party was being celebrated. According to reports, the politician tried to hit Oswaldo Rivero and Pedro Carvajalino when the latter called him a “murderer.” Later, those attending the event insulted, pushed, and expelled the journalists from the room and destroyed one of their cameras.⁷⁸⁷

⁷⁸⁴ National Association of Journalists, Zulia section – Circle of Graphic Reporters of Venezuela. April 8, 2011. [CNP y CRGV Trujillo rechazan vil agresión a reporteros de Globovisión](#). [Trujillo CNP and CRGV reject vile attack on Globovisión reporters]; Espacio Público. April 7, 2011. [Agreden a corresponsal de Globovisión en Trujillo](#). [Globovisión correspondent attacked in Trujillo]

⁷⁸⁵ Estamos en línea. February 19, 2011. [Armario de CANTV fue completamente quemado. Vandalismo deja sin servicios a VTV y a 900 usuarios](#). [CANTV equipment cabinet completely burned. Vandalism knocks out services to VTV and 900 users]; Instituto Prensa y Sociedad (IPYS). February 23, 2011. [Canal estatal sufre acto vandálico](#). [State-run channel hit by vandalism]

⁷⁸⁶ Espacio Público. August 23, 2011. [Agredido equipo reporteril de VTV en el estado Bolívar](#). [VTV reporter team attacked in State of Bolívar]; Venezolana de Televisión. August 14, 2011. [Zurda Kondukta Último domingo Agresiones Podemos Andrés Velásquez en Bolívar](#). [Zurda Kondukta Last Sunday Attacks We can Andrés Velásquez in Bolívar] Minute 9:00 *et seq*; Correo del Orinoco. August 13, 2011. [Opositores agredieron a equipo reporteril](#). [Team of reporters attacked by the opposition]

⁷⁸⁷ Espacio Público. September 15, 2011. [Reporteros de VTV agredidos durante celebración de 70th aniversario de Acción Democrática](#). [VTV reporters attacked during celebration of 70th anniversary of Democratic Action]; National Association of Journalists. September 15, 2011. [CNP protesta por agresión a trabajadores de VTV](#). [CNP protests attack on VTV employees]; Venezolana de Televisión (VTV). September 13, 2011. [Pedro Carvajalino y Oswaldo Rivero atacados por las hienas de Acción Democrática](#). [Pedro Carvajalino and Oswaldo Rivero attacked by Democratic Action hyenas] Minute 23: 30.

B. Threats and harassment

504. The IACHR was informed of death threats received via Twitter on January 24 by Rayma Suprani, a journalist and cartoonist at the daily *El Universal*. The threats were sent from an account in the name of a recognized pro-government leader and activist. Based on the information received, the reason for the threatening message was a critical cartoon Suprani published about a submarine cable that will link telecommunications between Venezuela, Cuba and Jamaica.⁷⁸⁸ In December 2010 and January 2011, the secretary of Photojournalists of the National Union of Press Employees (SNTP), Nilo Jiménez, received anonymous phone calls with intimidating messages and death threats, in which, according to the information provided to this office, he was warned to stop gathering information for a book he is preparing that includes a photographic compilation regarding violations of freedom of expression in Venezuela.⁷⁸⁹ According to the information received, the reporter from the daily *El Carabobeño*, Kevin García, received a death threat on February 22 from two individuals who warned that they would kill him if he continued writing about the municipality of Guacara in the State of Carabobo.⁷⁹⁰

505. The U.S. journalist, John Enders, claimed he was harassed by agents of the Bolivarian Intelligence Service (SEBIN). According to the information received, on February 13 the journalist was in the city of Sabaneta, State of Barinas, when he realized he was being followed and photographed by two unknown men.⁷⁹¹

506. The IACHR received information regarding the intervention or hacking, since August 31, of the electronic accounts of journalists, writers, human rights defenders, and politicians on social networks, blogs, and e-mail accounts. The anonymous e-attack consisted of the insertion of text with insults, threats and mudslinging, as well as the disclosure of private information, destruction of data and threats to publicly identify the information sources of those affected. According to the reports, at least 14 people who expressed critical or independent positions regarding the government were subject to the attack.⁷⁹² An anonymous group called N33 was said to be responsible for executing the attacks. In a communication from the perpetrators issued on September 2 and read on the state-owned broadcaster VTV, the N33 group alleged that the purpose of the hacking was to prevent the legitimate owners of the accounts from using them “under the guise of freedom of expression” to attack Venezuelan institutions and the Head of State. The N33 group maintained that it had no links to the Government but was a sympathizer of President Chávez.⁷⁹³ As of the date this report is being completed, the hacking of

⁷⁸⁸ In the cartoon, Suprani drew a cable with the title “Cable to Cuba” alongside a noose with the text: “Cable to Venezuela.” One of the threatening messages said: “We’re going to put that noose on you unpatriotic X, Yankee-lover X, unfaithful to Vzla (Venezuela) X.” International Freedom of Expression Exchange (IFEX)/IPYS. February 1, 2011. [Amenazan a caricaturista via Twitter](#). [Cartoonist threatened via Twitter]; Espacio Público. January 26, 2011. [La caricaturista Rayma es amenazada de muerte por @LinaNRonUPV](#). [Cartoonist Rayma receives death threats via @LinaNRonUPV]

⁷⁸⁹ Espacio Público. January 24, 2011. [Periodista del SNTP recibe amenazas de muerte](#). [SNTP journalist receives death threats]; International Freedom of Information Exchange (IFEX)/IPYS January 26, 2011. [Amenazan de muerte a secretario del Sindicato de Trabajadores de la Prensa](#). [Secretary of Union of Press Employees receives death threats]

⁷⁹⁰ International Freedom of Expression Exchange (IFEX)/Instituto Prensa y Sociedad (IPYS). March 1, 2011. [Amenazan de muerte a pasante del diario “El Carabobeño”](#). [“El Carabobeño” intern receives death threats]; Espacio Público. March 1, 2011. [Amenazan de muerte a reportero de diario El Carabobeño](#). [“El Carabobeño” reporter receives death threats]

⁷⁹¹ The journalist discussed the event with representatives of the opposition party COPEI he was interviewing, and those representatives photographed the unknown subjects. Moments later, alleged police officers arrived where the reporter was interviewing the representatives and took their camera’s memory card. One day later, the journalist again noticed he was being followed and notified officials of the National Guard who were at a police post. The police detained the subjects, who were released after identifying themselves as agents of SEBIN. International Freedom of Information Exchange (IFEX)/IPYS. February 23, 2011. [Periodista estadounidense denuncia acoso del servicio de inteligencia](#). [U.S. journalist denounces assault by intelligence service]. Informe On Line. February 25, 2011. [SEBIN sigue los pasos a periodista estadounidense](#). [SEBIN follows trail of U.S. journalist]

⁷⁹² Espacio Público. September 5, 2011. [Hackeadas cuentas de Twitter de usuarios críticos al gobierno venezolano](#). [Twitter accounts of those critical of Venezuelan government hacked]; EFE News Service. September 6, 2011. [Hackers chavistas interviniéron cuentas de opositores por “atacar” a Chávez](#). [Chavist hackers broke into opposition accounts for “attacking” Chavez]

⁷⁹³ Redpres Noticias. September 2, 2011. [Grupo Hacker #N33 se pronuncia y se atribuye hackeos a cuentas de personajes conocidos en twitt](#). [Hacker Group #N33 announces itself and claims it hacked accounts of persons known in Twitter].

electronic accounts continues and no information has been received regarding investigations begun by the State to identify and punish those responsible.

507. On April 7, the journalist Maolys Castro and the photographer Ernesto Morgado, both of the daily *El Nacional*, were detained for some six hours at the military installations at Fort Tiuna, in Caracas, where they were covering a demonstration of victims of natural disasters being housed at that military center. Based on the reports, soldiers held the reporters at the entrance to the fort; took away their identity documents and did not tell them why they were being detained. They were released hours later after being forced to sign a document in the presence of attorneys and officials from the Public Defender's Office.⁷⁹⁴

508. On April 7, the Director of the Educational Zone of the State of Mérida dismissed the educator, Manuel Aldana, Director of the "Rafael Antonio Godoy" State College in Mérida, allegedly for having informed the official newspaper "Correo del Orinoco" that cases of the AH1N1 flu had been detected at the school.⁷⁹⁵

C. Indirect restrictions on freedom of expression: calls to suspend programming that the authorities find "offensive"

509. The IACHR was informed that on January 13 the National Telecommunications Commission (CONATEL) called on the television company *Televen* "to immediately suspend transmission of the 12 *Corazones* programs and the Colombian soap opera *Chepe Fortuna*, because of their demeaning treatment of Venezuela."⁷⁹⁶ On January 15, in his report to the National Assembly, President Hugo Chávez questioned the transmission of the Colombian soap opera, which he called "disrespectful" of Venezuela.⁷⁹⁷ President Chávez indicated that *Televen* had agreed to remove the soap opera.

...continuation

Venezolana de Televisión. La Hojilla. September 3, 2011. [Mario Silva lee un supuesto comunicado de los hackers #33](#). [Mario Silva Lee reads an alleged communication from the #33 hackers]

⁷⁹⁴ The document signed by the journalists stated that they were not mistreated and that they needed to identify themselves in advance in order to enter a military installation. The reporters insisted they were detained outside the fort. Espacio Público. April 8. [Gremios denuncian abuso de autoridad](#). [Unions denounce abuse of authority]; Noticias 24. April 7, 2011. [Periodistas de El Nacional retenidos en Fuerte Tiuna son liberados tras firmar acta](#). [El Nacional journalists held at Fort Tiuna are released after signing document]

⁷⁹⁵ Institute for Press and Society (IPYS)/IFEX. April 15, 2011. [Destituyen a director de colegio por declarar a la prensa sobre casos de gripe AH1N1](#). [College director dismissed for telling press about AH1N1 flu cases]; El Universal. April 9, 2011. [Destituyen a docente que alertó casos de AH1N1 en el estado Mérida](#). [Teacher who warned of AH1N1 cases in State of Merida dismissed]; Correo del Orinoco. March 16, 2011. [Se detectaron en Mérida dos casos de influenza AH1N1](#). [Two cases of AH1N1 flu detected in Merida]

⁷⁹⁶ According to reports, in the soap opera *Chepe Fortuna* one of the characters is a woman named Venezuela, whose pet is a chihuahua named *huguito*. In one show, which led to the criticism, the dog was lost and Venezuela asks herself "and now what am I going to do without *Huguito*," to which a friend answers "you will be free, Venezuela." On January 13, both programs were sharply criticized on the "La Hojilla" program on the state channel *Venezolana de Televisión*. According to a communication from CONATEL: "The Colombian soap opera *Chepe Fortuna* (...) underestimates the intelligence of the viewer by presenting two characters identified as the sisters Colombia and Venezuela, with the second character being characterized as associated with criminal and interventionist activities, a metaphor that indicates blatant manipulation of the script to demoralize the Venezuelan people." El Universal. January 13, 2011. [Conatel exhortó a Televen a suspender un programa y una novela](#). [CONATEL urged Televen to suspend a program and a soap opera]; RCN. Undated. [Escena: "Sin Huguito" de Chepe Fortuna](#). ["Without Huguito" scene from *Chepe Fortuna*]

⁷⁹⁷ VTV. January 15, 2011. [El Comandante Presidente Hugo Chávez ante la Asamblea Nacional](#). [Commander President Hugo Chavez before the National Assembly]; El Universal. January 17, 2011. [Presidente celebra salida del aire de "Chepe Fortuna"](#). [President celebrates removal of "Chepe Fortuna" from air]; El Espectador. January 15, 2011. [Chávez celebra suspensión de novela colombiana que "irrespetaba" a Venezuela](#). [Chavez celebrates suspension of Colombian soap opera "disrespectful" of Venezuela]

D. Criminal proceedings against journalists and opposition leaders

510. On January 27, the Criminal Cassation Chamber of the Supreme Court of Justice let stand the decision imposing⁷⁹⁸ 30 months in prison on the journalist, Gustavo Azócar, for the crime of “unlawful enrichment from the business of government.” The judges rejected a cassation appeal filed by the journalist’s defense.⁷⁹⁹ Gustavo Azócar was granted the benefit of conditional release but received an additional punishment of political disqualification. The journalist was also forbidden to speak about his case and in July 2009 he was imprisoned for eight months for reproducing news related to his legal situation in a personal blog.⁸⁰⁰ On February 7, 2011, Gustavo Azócar appeared before a court in the State of Táchira accused of defamation⁸⁰¹ of an Army officer. According to the reports, the case began with an article that Gustavo Azócar published in September 2004 in the daily *El Universal*, in which he cited an official report discussing alleged irregularities in tasks involved in registering citizens, under the responsibility of the complaining military official. In a conciliation agreement, in April 2005, the journalist agreed to allow the official to respond on this television program “Café con Azócar” on *Televisión Regional del Táchira*. However, the officer had not received authorization from his superiors to discuss the case. When he was finally able to make statements, the complainant indicated that responsibility for the alleged offense belonged to the author of the report and not the journalist. However, processing of the case continued.⁸⁰²

511. The IACHR learned of the criminal conviction on July 13, 2011 of the former Governor of the State of Zulia, Oswaldo Álvarez Paz, for the crime of spreading false information, as established in the Penal Code of the Bolivarian Republic of Venezuela.⁸⁰³ According to the information received, Court 21 of the Metropolitan Area of Caracas sentenced Álvarez Paz to two years in prison, with the benefit of conditional release, and prohibited him from leaving the country. The case began on March 8, 2010, when Álvarez Paz talked on the “Aló Ciudadano” program aired by the private broadcaster *Globovisión* about international judicial investigations into the alleged activities and links of international organized crime in Venezuela. Because of these comments, the governing party deputies, Manuel Villalba and Pedro Lander, filed a complaint with the Public Prosecutor’s Office seeking an investigation into the conduct of Álvarez Paz for having committed various crimes established in the Venezuelan Penal Code, including conspiracy, spreading false information, and instigating the commission of a crime. In addition to being a former Governor of Zulia, Oswaldo Álvarez Paz is a primary candidate from the opposition Constitutional Pole and was a candidate for the presidency of Venezuela in 1993.⁸⁰⁴ As of October 2011,

⁷⁹⁸ Supreme Court of Justice. Principal Matter 1JM-1276-07. [Review of judgment of January 2010](#); Ministry of Popular Power for Communication and Information. Judicial. [Sentencia Condenatoria bajo libertad condicional para Gustavo Azócar](#). [Conviction with conditional release for Gustavo Azócar]

⁷⁹⁹ Supreme Court of Justice. Judgment of January 27, 2011. [Expediente C10-297](#). [Case file C10-297]

⁸⁰⁰ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. Para: 424.

⁸⁰¹ Third Court of First Instance (at trial). February 1, 2005. [Orden para librar boleta de citación a Gustavo Enrique Azócar Alcalá](#). [Order to issue summons for Gustavo Enrique Azócar]

⁸⁰² Reporters Without Borders. February 8, 2011. [El periodista Gustavo Azócar comparece de nuevo ante la justicia, esta vez por un caso de “difamación” con una base dudosa](#). [Provincial journalist prosecuted on dubious criminal libel charge]; *El Universal*. February 5, 2011. [Gustavo Azócar regresa a tribunales este lunes](#). [Gustavo Azócar returns to court this Monday]

⁸⁰³ According to Article 297-A, “[a]nyone who spreads false information through any media, whether print, radio, television, telephonic, e-mail, or written brochure, to cause panic among the population or keep it in a state of anxiety shall be punished with imprisonment of two to five years.” Official Gazette of the Bolivarian Republic of Venezuela. March 16, 2005. Special Official Gazette No. 5763. Penal Code. [Gaceta Oficial No. 5.763 Extraordinario. Código Penal](#).

⁸⁰⁴ Public Prosecutor’s Office of the Bolivarian Republic of Venezuela. July 13, 2011. [MP logró condena de 2 años para Oswaldo Álvarez Paz por información falsa](#). [Public Prosecutor’s Office succeeds in sentencing Oswaldo Álvarez Paz to two years for false information]; VTV. July 13, 2011. [Oswaldo Álvarez Paz recibe condena a 2 años de prisión por difundir información falsa](#). [Oswaldo Álvarez Paz sentenced to two years in prison for spreading false information]; *Globovisión*. March 8, 2010. *Aló Ciudadano*. Part 1. [Entrevista a Oswaldo Álvarez Paz](#). [Interview with Oswaldo Álvarez Paz]

Oswaldo Álvarez Paz had not received copy of the conviction and had not been able to appeal the decision so far.⁸⁰⁵

512. The IACHR was informed of the decision made by the Venezuelan courts to temporarily prohibit circulation of the weekly paper *Sexto Poder* in Venezuela and to order the capture, arrest, and criminal prosecution of the editorial director and president of that media outlet.⁸⁰⁶ According to the information received, the edition of the weekly *Sexto Poder* for Sunday, August 21, 2001 came out on August 19. It included a satirical article titled “The Powerful Ladies of the Revolution,” illustrated with a photographic montage of six female senior officials of the Venezuelan State dressed as cabaret dancers. The point of the publication was to question the alleged dependence on the Executive Branch of oversight agencies in Venezuela.⁸⁰⁷ Some of the female officials referred to, as well as other male senior public officials, stated that the photomontage and text offended “the dignity of Venezuelan women” and constituted “gender-based violence.” They claimed that the publication contained “hate speech” and that it “vilified” the officials and the institutions they represented.⁸⁰⁸ Once the publication became known, the Comptroller filed a complaint against the journalists with the Prosecutor’s Office and less than 24 hours later the Ninth Preliminary Proceedings Court of the Metropolitan Area of Caracas ordered a precautionary measure to prohibit the “publication and distribution” of the weekly “by any means.”⁸⁰⁹ The same court ordered the arrest of the general manager of the *Sexto Poder*, Dinorah Girón Cardona, and its president and general editor, Leocenis García, for alleged violations of the Penal Code of Venezuela based on publication of the referenced article. On August 21, agents of the SEBIN arrested Girón, who was released two days later when the referenced Ninth Court ordered conditional release. However, the court ordered that she be prohibited from leaving the country, that she appear in court to leave her signature every 15 days, and prohibited her from referring to her case and participating in public assemblies. On August 23, the Special Rapporteurship asked the State for information on this case. In its response, the State indicated that, based on her publication, Dinorah Girón was being charged with the crimes of “vilification of a public official, public instigation of hate, and public offense based on gender” while Leocenis García was being charged for “instigating hate, vilification and gender-based violence.” According to the information supplied by the State, such crimes are established and punished under the Penal Code and in the Organic Law on the Right of Women to a Life Free of Violence.⁸¹⁰ In addition, on August 29, the State informed the Special Rapporteurship that it had revoked the prohibition on publication of the weekly. However, it was reported that the judge imposed an order prohibiting *Sexto Poder* from publishing information containing “graphic or textual” information that “constitutes an offense

⁸⁰⁵ El Universal. October 1, 2011. [Oswaldo Álvarez Paz no ha podido apelar su condena](#). [Oswaldo Álvarez Paz has been unable to appeal his conviction]

⁸⁰⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R96/11. [Office of the Special Rapporteur Expresses Concern over Detention of Journalists and Serious Measures Taken against Magazine in Venezuela for Publishing Article that Offended the Authorities](#); Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. August 23, 2011. [MP imputó a directora general de 6to Poder](#). [Office of the Public Prosecutor indicted General Director of Sexto Poder]; Committee for the Protection of Journalists (CPJ). August 24, 2011. [Clausuran semanario venezolano y dos ejecutivos son acusados](#). [Venezuelan weekly shut down and two executives are accused]

⁸⁰⁷ The note and illustration showed the President of the Supreme Court of Justice, Luisa Estella Morales; the General Prosecutor, Luisa Ortega; the Ombudswoman, Gabriela Ramírez; the interim General Comptroller, Adelina González; the President of the National Electoral Council, Tibisay Lucena, and the Vice President of the National Assembly, Blanca Eekhout, all dressed as cabaret dancers. Among other assertions, the publication indicated that each of the representatives of the above-mentioned entities “played a specific role within the carabet led by Mr. Chávez.” Twitpic. August 22, 2011. [La Foto: Las poderosas de la Revolución Bonita](#). [Photo: Powerful ladies of the pretty revolution]

⁸⁰⁸ Noticias 24. August 22, 2011. [“Publicación del Semanario es un ataque a las instituciones del Estado”](#). [Publication by Weekly is an attack on the institutions of government]; Minuto a Minuto. August 22, 2011. [Maryclen Stelling calificó de burla la publicación de Sexto Poder](#). [Maryclen Stelling called publication by Sexto Poder a joke]; VTV. Contragolpe. August 23, 2011. [Sexto Poder. Gabriela Ramírez Defensora del Pueblo](#). [Sexto Poder. Gabriela Ramírez, Public Defender]

⁸⁰⁹ Judicial Branch of the Bolivarian Republic of Venezuela. Ninth First Instance Court (procedural) of the Criminal District of Caracas. August 20, 2011. Precautionary measure. Available in the archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁰ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

or insult against the reputation or decorum of any representative of the branches of government, where the purpose is to expose them to scorn or public hatred.” The court also prohibited the publication of “degrading and offensive content against women” and ordered the removal of copies of the edition of this past August 19 that were still available to the public.⁸¹¹ The weekly could not circulate on August 28 because the judicial measure originally adopted was in effect. On August 30, Leocenis García turned himself in to the authorities.⁸¹²

513. According to the information the IACHR has received, Leocenis García was on a hunger strike in the detention facility where he was being held. In the early morning hours of November 17, 2011, he was reportedly taken against his will to the Military Hospital. The information indicates that his family and the lawyers representing Leocenis García did not initially have information concerning his whereabouts and that despite his delicate health he allegedly received no medical treatment. On November 18, 2011, in exercise of its authorities under Article 41 of the American Convention, the Commission requested information about the situation and about Mr. Leocenis García’s health and the conditions under which he is being held.

E. Administrative proceedings

514. The IACHR learned that the CONATEL Social Responsibility Board penalized the television channel Globovisión on October 18, 2011 by imposing a fine of 9,394,314 Strong Bolívares (about US\$ 2.1 million), the equivalent of 7.5% of its gross revenue for the year 2010.⁸¹³ According to the information received, the penalty was imposed due to violations of Articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (the *Resorte* Law), based on material aired by Globovisión between June 16 and June 19, 2011 about the prison situation at the El Rodeo Penitentiary Center.⁸¹⁴ According to the resolution issued on October 18, the Social Responsibility Board determined

⁸¹¹ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression; Committee for the Protection of Journalists (CPJ). August 30, 2011. [Permite la reapertura de semanario venezolano, ejecutivos aún acusados](#). [Venezuelan weekly allowed to reopen; executives still accused]

⁸¹² Reporters Without Borders. September 20, 2011. [Apelan la decisión de que el editor de Sexto Poder permanezca en prisión preventiva](#). [Decision to keep editor of Sexto Poder under preventive detention appealed]; El Universal. September 19, 2011. [Defensa de Leocenis García introduce recurso de apelación](#). [Leocenis García’s defense files appeal]

⁸¹³ Bolivarian Republic of Venezuela. Bureau of Social Responsibility. October 18, 2011. [Providencia Administrativa No PADRS-1.913](#). [Administrative Order No. PADRS-1.913]

⁸¹⁴ Article 27 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Radio, televisión, and electronic media are not permitted to disseminate messages that:*

1. *Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.*
2. *Incite or promote and/or advocate crime.*
- (...)
4. *Foment anxiety in the population or affect the public order.*
- (...)
7. *Incite or promote disobedience to the established legal order ...”*

Article 29 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Those subject to the application of this Law shall be punished:*

1. *With a fine of up to ten percent (10%) of gross revenues in the year immediately preceding the year when the violation was committed, and/or suspension for up to 72 continuous hours of their transmission, when they disseminate message that:*
 - a. *Promote, advocate or incite disturbances of the public order;*
 - b. *Promote, advocate or incite crime;*
 - c. *Incite or promote hatred or intolerance for religious, political, gender-related, racist or xenophobic reasons;*
 - (...)
 - g. *Foment anxiety in the population or affect the public order ...”*

Continued...

that the television channel had transmitted “messages that promoted disturbances of the public order, advocated crime, and incited against the legal system in effect, promoted hatred for political reasons and fomented anxiety among the population, on June 16, 17, 18, and 19, 2011.” As the Special Rapporteurship learned, for several days Globovisión reported information on the events that occurred in the area of the El Rodeo Penitentiary Center and the intervention of law enforcement. Coverage included interviews of the relatives of those in prison, opposition politicians, and government officials.⁸¹⁵

515. The IACHR has expressed its concern regarding the Law on Social Responsibility in Radio, Television and Electronic Media and its most recent reform of December 2010, which introduces a broad catalogue of restrictions written in vague and ambiguous language, and makes the sanctions for such prohibited actions more onerous. In that regard, this Rapporteurship considers it must observe that vague and imprecise legal provisions may grant overly broad discretionary powers to the authorities, which are incompatible with the full effect of the right to freedom of expression, because they may support potentially arbitrary actions that impose disproportionate liabilities for airing news, information, or opinions of public interest. By their mere existence, provisions of this type discourage the transmission of information and opinions due to fear of sanctions and may lead to broad interpretations that unduly restrict freedom of expression. Thus, the State must be specific about the conduct that may be subject to liability later, so as not to affect the free expression of uncomfortable ideas or inconvenient information regarding the actions of the authorities.

516. The IACHR has also expressed its concern regarding the absence of guarantees on the independence of agencies responsible for implementing the Law on Social Responsibility in Radio, Television and Electronic Media. The Rapporteurship notes that the President of the Republic may freely appoint and remove the members of CONATEL and there are no safeguards to ensure their independence and impartiality. In addition, seven of the eleven members of the Social Responsibility Board are selected by the Executive Branch, the referenced law does not establish any criteria for appointing the board members, and does not define a fixed term of office for them or establish specific grounds for their removal.

517. The IACHR received information that *Canal 67 Tu Imagen TV* has been excluded from the programming grid of the cable company, Representaciones Inversat C.A, Tele-Red, in Charallave, State of Miranda, since March 28, 2011.⁸¹⁶ According to the information received, its exclusion from the grid occurred after the mayor of Charallave, José Ramírez, wrote a note on November 16, 2010 to the President of the Tele Red company demanding that *Canal 67* be “suspended indefinitely from its transmissions.” In the same note, the mayor claimed that the content of *Canal 67* “has been systematically partial in favoring an opposition political sector to the detriment of economic equilibrium,” launches “misinformation attacks” and “gathers opinions against the municipal government in the communities.”⁸¹⁷ On March 28, officials of CONATEL appeared at the facilities of *Canal 67* and Representaciones Inversat to conduct an inspection of the technical conditions at the station and its legal

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Bolivarian Republic of Venezuela. Social Responsibility Board. October 18, 2011. [Providencia Administrativa No PADRS-1.913. Capítulo II](#). [Administrative Order No. PADRS-1.913, Chapter II]. See also: Ministry of Popular Power for Communication and Information. Official Gazette No. 39.610. February 7, 2011. [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#). [Law on Social Responsibility in Radio, Television and Electronic Media]

⁸¹⁵ Venezolana de Televisión. La Hojilla. June 18, 2011. [Globovisión manipulación El Rodeo I cárcel tomada Guardia Nacional Bolivariana de Venezuela](#). [Globovisión charges manipulation. El Rodeo I prison taken by Bolivarian National Guard of Venezuela] Min 22, 30, 38, 53, 1:04, 1:10, 1:23; BBC World. June 19, 2011. [El descontrol del sistema carcelario de Venezuela](#). [Prison system in Venezuela out of control]; El País. July 13, 2011. [Los presos de la cárcel venezolana de El Rodeo II finalizan un mes de motín](#). [Prisoners at Rodeo II prison in Venezuela end a month of uprisings]

⁸¹⁶ Tu Imagen TV. May 9, 2011. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Manager of Operations of CONATEL, Enrique Quintana. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁷ Mayor's Office of the Municipality of Cristóbal Rojas Charallave. November 16, 2010. Letter from Mayor José Ramírez to the President of Tele-Red, José Manuel Angarita. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

situation, during which it noted the lack of a written contract between the television station and the cable company, leading to the channel's exclusion from the programming grid.⁸¹⁸ On April 7, 2011, *Canal 67* remedied the failure to sign a contract with Representaciones Inversat C.A, and this was immediately demonstrated to CONATEL.⁸¹⁹ Nonetheless, the cable company alleged that it would keep *Canal 67* off the grid until it received written approval from CONATEL. Despite requests for information made to CONATEL and various State agencies regarding the situation, the representatives of *Canal 67* and the cable company have not received a response and the channel's suspension continues.⁸²⁰

518. The IACHR received information about proceedings that shut down various radio stations, some of them included in the proceedings initiated in 2009 against 34 stations that, according to CONATEL authorities,⁸²¹ violated provisions of the Organic Law on Telecommunications.⁸²² On February 2, the Supreme Court of Justice confirmed the shutdown of *Radio Bonita "La Guapa"* in Guatire, State of Miranda. According to the reports, the Political-Administrative Chamber of the Supreme Court of Justice (TSJ) declared inadmissible the appeal⁸²³ filed by *Radio Bonita "La Guapa"* seeking to overturn the shutdown order issued by what was then the Ministry of Popular Power for Public Works and Housing.⁸²⁴ On March 18, CONATEL ordered the shutdown of the station *Carabobo Estéreo 102.3 FM*, in the city of Valencia, State of Carabobo, as well as the seizure of the equipment and materials needed to operate the radio station, since it did not have "the proper administrative authorization and license."⁸²⁵ On January 20, National Guard soldiers closed the station *Onda Costera 95,1 FM* in Costa de Oro, State of Aragua, and seized the broadcasting equipment. According to the information received, local authorities requested the shutdown because it aired information regarding the illegal occupation of housing in that town.⁸²⁶ On March 25, CONATEL ordered the shutdown and seizure of equipment at the station *Musicable Higueroite 93.7 FM*, in Higueroite, State of Miranda, alleging clandestine operations by the station, a claim denied by the station's owners.⁸²⁷ The Special Rapporteurship had already expressed its concern in 2009 over the massive shutdown of stations and the fact that, after several years of inaction, the authorities would

⁸¹⁸ CONATEL. March 28, 2011. Report on inspection at administrative offices of Tu Imagen TV. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁹ Contract between Representaciones Inversat, C.A. and Producciones Tu Imagen TV, C.A. April 7, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸²⁰ Tu Imagen TV. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Director of CONATEL, Pedro Rolando Maldonado, the General Manager of Operations CONATEL, Enrique Quintana, and the Chief of Regulatory Follow-up of CONATEL, Mikhail Marsiglia. May 17, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸²¹ Ministry of Public Works and Housing. July 31, 2009. [Oficio 1095](#). [Official communication 1095]

⁸²² See, IACHR. 2009 Annual Report. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 660 *et seq.*

⁸²³ Supreme Court of Justice. Administrative-Political Chamber. Trial Court. June 8, 2010. [Exp. 2010-0279](#). [Case File 2010-0279]

⁸²⁴ Supreme Court of Justice. February 2, 2011. [Sentencia 00139. Expediente 2010-0279](#). [Decision 00139. Case File 2010-0279]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

⁸²⁵ National Telecommunications Commission (CONATEL). March 18, 2011. [CONATEL inicia procedimiento administrativo sancionatorio a emisora Carabobo Estéreo](#). [CONATEL begins administrative proceeding to penalize Carabobo Estéreo station]; National Journalists Association. March 19, 2011. [Periodistas de Carabobo en emergencia por cierre de emisora FM](#). [Carabobo journalists facing emergency due to shutdown of FM station]

⁸²⁶ El Carabobeño. January 22, 2011. [Pobladores de Ocumare de la Costa denunciaron cierre de emisora radial](#). [Residents of Ocumare de la Costa denounce shutdown of radio station]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

⁸²⁷ National Telecommunications Commission (CONATEL). March 25, 2011. [CONATEL inició procedimiento administrativo sancionatorio a emisora Musicable por funcionar presuntamente de forma clandestina en Miranda](#). [CONATEL began administrative proceeding to penalize Musicable station for allegedly operating clandestinely in Miranda]; Institute for Press and Society (IPYS). April 5, 2011. [CONATEL cierra emisora e incauta equipos](#). [CONATEL closes station and seizes equipment]; Globovisión. March 25, 2011. [CONATEL ordena cierre e incautación de equipos a emisora en Higueroite](#). [CONATEL orders shutdown of station and seizure of equipment in Higueroite]; Noticias 24. March 25, 2011. [Conatel ordenó el cierre de operaciones de la emisora Musicable Higueroite 97,7 FM](#). [CONATEL ordered shutdown of operations at Musicable Higueroite 97.7 FM station]

announce such measures against a background of tension between the private media and the government and constant criticism by government agents regarding the editorial content of the media that would be affected, suggesting that the editorial outlook of these media outlets was one of the reasons for the shutdown measures.⁸²⁸

519. The IACHR was informed that a decree published on March 29, 2011 in the Official Gazette granted the Vice President of the Republic unilateral power to define the direction of public policies in all matters related to the radio spectrum and the power to “grant, revoke, renew, and suspend” radio and television frequency licenses.⁸²⁹

F. Access to information

520. The IACHR received information about a series of problems in guaranteeing the right of access to public information as well as judicial interpretations that restrict that right, the absence of a suitable judicial remedy, restrictions on journalists’ access to information sources, lack of information available on government websites, and lack of response to requests for public information.⁸³⁰ According to reports, the criterion being used by public institutions to reject requests for information is a decision handed down by the Supreme Court of Justice on July 15, 2010, requiring “i) that the person requesting the information expressly indicate the reasons or purposes for which he or she needs the information; and ii) that the magnitude of the information being sought is in proportion to the utilization and use one wishes to make of the information being requested.”⁸³¹ That criterion was reflected, for example, in a response that CONATEL gave to a request for information filed by the Public Arena Civil Association [*Asociación Civil Espacio Público*] in which the regulatory agency maintained that, in accordance with a binding decision from the Supreme Court of Justice, the requester must communicate to the entity “the ultimate purpose for which the information being sought is needed, so that this regulatory entity can make the appropriate determination, in view of the weight assigned between the proportionality of the information and the use to which it will be put.”⁸³² The jurisprudence of the Inter-American Court of Human Rights has maintained that “[the] information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”⁸³³ There are also obstacles in terms of having a suitable judicial remedy ensuring access to public information, given that in Venezuela there is no law on access to information and the courts have decided to reverse the original assumption according to which the right of access could be sought through a quick and simple remedy (appeal) and maintain that one must exhaust the entire Appeal for Failure to Act [*Recurso de Abstención o Carencia*] procedure established in the Organic Law of the Contentious Administrative Law Jurisdiction, which is neither quick or simple.

⁸²⁸ See, IACHR. 2009 Annual Report. December 30, 2009. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 671 *et seq.*

⁸²⁹ Paragraph three of the new Article 2 of the Organic Regulations on the Office of the Vice President of the Republic, amended by Decree 8122 of March 29, 2011, signed by President Hugo Chávez, establishes, *inter alia*, that the Vice President has the power to “grant, revoke, renew and suspend administrative authorizations and licenses in the area of open radio and television broadcasting and non-profit community public service radio and television broadcasting.” Paragraph one also assigns to the Vice President “the leadership of public policies on matters relating to the administration, regulation, organization, and control of the radio spectrum.” Since August 3, 2010 the Office of the Vice President had attached to CONATEL [missing text here?]. However, the Vice President was not authorized to make unilateral decisions until the aforementioned decree took effect. Official Gazette of the Bolivarian Republic of Venezuela. March 29, 2011. [Decreto Número 8.122](#) [Decree No. 8.122]; Institute for Press and Society (IPYS)/IFEX. April 7, 2011. [Vicepresidente podrá revocar concesiones de radio y televisión](#). [Vice President may revoke radio and television licenses]

⁸³⁰ Cf. Hearing on right of access to public information in Venezuela held at the IACHR on October 25, 2011 during the 143rd Period of Session.

⁸³¹ Public Arena sought information regarding the salary and other benefits of the Comptroller General of the Republic, as well as the personal compensation table for that institution. Supreme Court of Justice. Constitutional Chamber. July 15, 2010. [745-15710-2010-09-1003](#).

⁸³² CONATEL. September 23, 2011. DG/CJ/No 606. Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸³³ I/A Court H.R. [Case of Claude Reyes et al. v. Chile](#). Judgment of September 19, 2006. Series C No. 151, para. 77.

521. The IACHR learned of limitations that had been imposed on journalists' access to various public agencies. As reported to this office, during 2011 there has been an increase in the restrictions imposed on journalists' ability to access and obtain information from entities such as the National Assembly, the Supreme Court of Justice, the Miraflores Palace (seat of the Executive Branch), the Ministry of Planning and Finance, and the headquarters of the state-owned company, PDVSA.⁸³⁴ In the National Assembly, since February, journalists and photographers are prohibited from attending legislative debates and are only allowed to follow the debates from a television set in an adjoining room. The audio for the transmission was even suddenly suspended on February 3, based on the claim that the session had been declared private. In response to the journalists' protests, the legislative employee pushed and insulted them.⁸³⁵ On February 21, one journalist involved in that incident, Oliver Fernández, from the station *Televén*, had his credentials for access to that public building revoked without explanation by the National Assembly. He submitted another request to the press team headed by Ricardo Durán for accreditation to access the Assembly, but this was denied although no written reasons were given for that denial. In practice, the new rules were extended even to the free movement of journalists within the legislative building. Prior to February, the restriction only covered television cameramen.⁸³⁶ The limitations were established based on reform of the Internal Rules of Procedure and Debates of the National Assembly approved in December 2010, according to which the National Assembly's *Fundación Televisora* will provide private stations with the signal from legislative sessions.⁸³⁷ According to reports, between January and September 2011, national organizations defending freedom of expression recorded 21 complaints involving restrictions on journalists' access to sources of official information, which includes both limitations on entering public buildings and discrimination against private communication media in terms of their participation in press conferences held by public agencies.⁸³⁸

522. According to reports, an analysis of the 65 requests for information submitted to various public agencies between August and October 2011 indicated that 82% of the requests received no response, while 12% obtained a positive response and 2% received an explicit negative response.⁸³⁹ In addition, an evaluation of the websites of 28 public institutions, performed during October 2011, revealed that none of them meets the standards established in the Model Law on Access to Public Information

⁸³⁴ Knight Center for Journalism in the Americas. April 10, 2011. [Gremio y sindicato de prensa denuncia agresiones y falta de acceso a fuentes oficiales en Venezuela](#). [Press guild and union denounce attacks and lack of access to official sources in Venezuela]; El Nacional. April 7, 2011. [CNP y SNTP denuncian restricciones del Gobierno al trabajo periodístico](#). [CNP and SNTP denounce government restrictions on journalism]; El Universal. April 8, 2011. [Periodistas exigen acceso a las fuentes informativas](#). [Journalists demand access to information sources]

⁸³⁵ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists in National Assembly]; Espacio Público. February 4, 2011. [Aumentan restricciones de periodistas y fotógrafos a la AN](#). [Restrictions on journalists and photographers in National Assembly increased]; Espacio Público. February 23, 2011. [Periodista de Televen fue vetado en la Asamblea Nacional](#). [Televen journalist banned from National Assembly]

⁸³⁶ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists at National Assembly]

⁸³⁷ Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela, a chapter in the Operating System of the National Assembly, establishes that: "In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly's *Fundación Televisora* (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal." These Rules, in Article 87 of the same chapter, established that: "All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions." National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. [Reglamento Interior y de Debates de la Asamblea Nacional](#). [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. [Reglamento Interior y de Debates de la Asamblea Nacional](#).

⁸³⁸ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

⁸³⁹ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

approved by the OAS General Assembly in 2009, although there is greater compliance in mayoral offices in the Metropolitan Area of Caracas and less compliance in the national central government.⁸⁴⁰

⁸⁴⁰ According to the evaluation done by the Public Arena Civil Association, the information that is usually available would represent information related to the organic structure, functions, location of department, names of employees, services offered, and laws and operational manuals, and the least available information is that related to employee salaries, complaints, and responses from agencies, requests received, lists of published information, decision-making procedures, budget, and subsidies granted. Cf. Hearing on right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session; Organization of American States. Department of International Law. June 4, 2009. Resolution of the OAS General Assembly AG/RES. 2514 (XXXIX-0/09). [Ley Modelo sobre Acceso a la Información](#). [Model Inter-American Law on Access to Information]

CHAPTER III THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS

A. Introduction

1. Access to information is essential for building citizenship. Using this tool, in recent decades many societies in the hemisphere have consolidated democratic systems that are increasingly well-established and robust, thanks to their citizens' active participation in matters of public interest.

2. This citizen activism is precisely one of the ideals underlying the American Convention on Human Rights and the Inter-American Democratic Charter. Access to information is a tool that fits perfectly with what is expected of members of a democratic society. Having access to public information makes it possible to protect rights and prevent abuses by the State, and to struggle against such ills as corruption and authoritarianism.

3. Access to information is also a particularly useful tool for the informed exercise of other rights, such as political or social and economic rights. This is especially relevant when it comes to the protection of marginalized or excluded segments of society that do not always have systematic, reliable ways of acquiring information on the scope of their rights and how to exercise them.

4. An active citizenry that demands information must have the backing of a democratic government structure. Practices typical to authoritarian systems —such as keeping State information secret as a general rule and making public the information on individuals— go against the inter-American ideal of promoting and strengthening democratic societies and States, where the general rule is just the opposite: disclosure of State acts and privacy of information belonging to individuals.

5. Given the importance of the right of access to public information, the OAS General Assembly has addressed the subject a number of times. It has given the Office of the Special Rapporteur for Freedom of Expression a mandate to closely follow the issue and has urged the Member States to adopt the Office of the Special Rapporteur's recommendations. In 2003, in its Resolution 1932 (XXXIII-O/03)¹—reiterated in 2004 in Resolution 2057 (XXXIV-O/04)² and in 2005 in Resolution 2121 (XXXV-O/05)³—the General Assembly urged the Office of the Special Rapporteur to continue preparing a chapter in its annual reports on the situation of access to public information in the region. In 2006, through Resolution 2252 (XXXVI-O/06),⁴ the Office of the Special Rapporteur was instructed, among other things, to advise the OAS Member States that request support in drafting legislation and mechanisms on access to information.⁵

¹ OAS. General Assembly. AG/RES. 1932 (XXXIII-O/03). Access to Public Information: Strengthening Democracy. June 10, 2003. Available at: http://www.oas.org/juridico/english/ga03/agres_1932.htm

² OAS. General Assembly. AG/RES. 2057 (XXXIV-O/04). Access to Public Information: Strengthening Democracy. June 8, 2004. Available at: http://www.oas.org/dil/AG-RES_2057_XXXIV-O-04_eng.pdf

³ OAS. General Assembly. AG/RES. 2121 (XXXV-O/05). Access to Public Information: Strengthening Democracy. June 7, 2005. Available at: http://www.oas.org/dil/AG-RES_2121_XXXV-O-05_eng.pdf

⁴ OAS. General Assembly. AG/RES. 2252 (XXXVI-O/06). Access to Public Information: Strengthening Democracy. June 6, 2006. See also, OAS. General Assembly. AG/RES. 2121 (XXXV-O/05). Access to Public Information: Strengthening Democracy. June 7, 2005. Available at: http://www.oas.org/dil/AG-RES_2121_XXXV-O-05_eng.pdf

⁵ The IACHR was also asked to do a study on the various ways to ensure that everyone has the right to seek, receive, and impart public information based on the right to freedom of expression. Following up on that resolution, in August of 2007 the Office of the Special Rapporteur published the "Special Study on the Right of Access to Information." IACHR. Special Study on the Right of Access to Information (2007). Available (only in Spanish) at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>

6. In 2007, the General Assembly approved Resolution 2288 (XXXVII-O/07),⁶ which underscored the importance of the right of access to public information, took note of the reports of the Office of the Special Rapporteur on the situation of the right of access to information in the region, encouraged the States to adjust their laws so as to guarantee this right, and instructed the Office of the Special Rapporteur to advise the Member States in this area.⁷ In 2008, the OAS General Assembly approved Resolution 2418 (XXXVIII-O/08).⁸ On the same subject and in 2009, Resolution 2514 (XXXIX-O/09)⁹ of the OAS General Assembly reaffirmed the importance of the right of access to public information and instructed the Department of International Law to draft, in cooperation with the Office of the Special Rapporteur, the Inter-American Juridical Committee, and the Department for State Modernization and Good Governance, and with the cooperation of the Member States and civil society, a model law on access to public information and a guide for its implementation, in keeping with international standards in this field. To carry out this mandate, a group of experts was formed, which included the Office of the Special Rapporteur. The group met three times over the course of a year to discuss, edit, and finalize the documents. The final versions of the two instruments were approved by the group of experts in March 2010 and presented to the Permanent Council's Committee on Juridical and Political Affairs in April 2010.¹⁰ In May 2010, the Permanent Council presented a resolution and the text of the Model Law to the General Assembly, which in June 2010 issued Resolution AG/RES 2607 (XL-O/10).¹¹ That resolution approved the text of the Model Law¹² and reaffirmed the importance of the Office of the Special Rapporteur's annual reports. In June 2011, the General Assembly approved resolution 2661 (XLI-O/11)¹³ which, among other matters, entrusts the IACHR Office of the Special Rapporteur for Freedom of Expression with continuing to include a report in the IACHR annual report on the situation or state of access to public information in the region and its effect on the exercise of the right to freedom of expression.

⁶ OAS. General Assembly. AG/RES. 2288 (XXXVII-O/07). Access to Public Information: Strengthening Democracy. June 5, 2007. Available at: http://www.oas.org/dil/AG-RES_2288_XXXVII-O-07_eng.pdf

⁷ The Resolution also asked various bodies within the OAS, including the Office of the Special Rapporteur, to prepare a basic document on best practices and the development of common approaches or guidelines for increasing access to public information. This document, prepared in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department for State Modernization and Good Governance, along with input from the delegations of the OAS Member States and civil society organizations, was approved in April 2008 by the Committee on Juridical and Political Affairs. OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2599/08. Recommendations on Access to Information. April 21, 2008. Available at: http://www.oas.org/dil/CP-CAJP_2599-08_eng.pdf

⁸ OAS. General Assembly. AG/RES. 2418 (XXXVIII-O/08). Access to Public Information: Strengthening Democracy. June 3, 2008. Available at: <http://www.oas.org/dil/AGRES.2418.doc>. This resolution emphasized the importance of the right of access to public information, encouraged the States to adjust their laws to the standards in this area, and instructed the Office of the Special Rapporteur to provide guidance to the States on the subject and to continue to include a chapter on the situation regarding access to public information in the region as part of its annual report.

⁹ OAS. General Assembly. AG/RES. 2514 (XXXIX-O/09). Acceso a la Información Pública: Fortalecimiento de la Democracia. June 4, 2009. Available at: http://www.oas.org/dil/AG-RES_2514-2009_eng.pdf. This resolution recognized that full respect for freedom of information, access to public information, and the free dissemination of ideas strengthens democracy and contributes to a climate of tolerance of all views, a culture of peace and nonviolence, and stronger democratic governance. The General Assembly also instructed the Office of the Special Rapporteur to support the OAS Member States in designing, executing, and evaluating their regulations and policies on access to public information, and to continue to include in its annual report a chapter on the situation of access to public information in the region.

¹⁰ OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2840/10 Corr.1. "Model Inter-American Law on Access to Information." April 29, 2010. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

¹¹ OAS. General Assembly. AG/RES. 2607 (XL-O/10). Model Inter-American Law on Access to Public Information. June 8, 2010. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

¹² The Model Law and its Implementation Guide are available at: http://www.oas.org/DIL/access_to_information_model_law.htm

¹³ OAS. General Assembly. AG/RES. 2661 (XLI-O/11). Access to Public Information and Protection of Personal Data. June 7, 2011. Available at: http://www.oas.org/dil/AG-RES_2661-XLI-O-11_eng.pdf

7. The aforementioned reports of the Office of the Special Rapporteur, which respond to General Assembly mandates, have focused on setting inter-American legal standards on access to information, systematizing Inter-American doctrine and jurisprudence in this area.¹⁴

8. In this follow-up report, the Office of the Special Rapporteur lays out the most important aspects of the laws in some of the Member States in which access laws have been approved or legal frameworks for access are reflected in administrative provisions of a general nature. Following these criteria, this report presents an overview of the normative framework surrounding the right to access to information provided by specialized laws on the subject in Antigua and Barbuda, Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, the United States, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay*. To complete this report, the general normative frameworks regarding access to information were taken as reference, but not laws regarding other subjects, or more specific regulations. In the case of federal states such as Mexico, Argentina, the United States, and Canada, the report examines only the legal framework applicable at the federal level. In a second update report, the Office of the Special Rapporteur will include other States that have adopted structural reforms in this area more recently, and will follow up on the practical implementation of existing laws. Finally, the Special Rapporteurship notes that this report does not examine the General Law on Access to Public Information of Brazil, given that it was recently passed on November 18, 2011, by President Dilma Rousseff¹⁵. Nevertheless, reference to this law and its most important features has been included in Chapter II of the current 2011 Annual Report.

9. In this regard, it is important to clarify that this report is limited to describing the content of the laws in the aforementioned States. The Office of the Special Rapporteur recognizes that putting these laws into practice requires systematic implementation policies, and that in many cases some aspects of these laws are not implemented efficiently, properly, or adequately. In some cases, for example, the exceptions have been interpreted particularly broadly, or the administrative or judicial remedies do not operate as quickly as is needed to properly guarantee this right. However, before doing a study on appropriate implementation, it seems necessary to become familiar with each State's legal framework. In future reports, the Office of the Special Rapporteur will concentrate on implementation matters that require greater attention.

10. In some States such as Mexico and Chile, the active and critical work of enforcement agencies such as the Federal Institute for Access to Information and Data Protection (IFAI) or the Council for Transparency, respectively, have given vitality and meaning to the provisions of the respective laws, and have brought the practices of State agencies in line with the highest international standards. A study of these institutions' case law would provide an important way to learn about best practices in this area. This subject will certainly be included in the implementation reports the Office of the Special Rapporteur plans to do in the future.

11. The structure of this report has been organized so as to summarize the most important standards in the area of access to information and then briefly describe the legal framework in the various States that have been studied.

¹⁴ An updated summary of the inter-American legal framework as regards the right to access to public information was published recently by the Office of the Special Rapporteur. See, Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." December 30, 2009. Document CIDH/RELE/INF. 1/09. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

*[Note regarding the version in English] The constitutional, legal, jurisprudential, and regulatory references presented in this report regarding Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, and Uruguay correspond to unofficial translations carried out by the Office of the Special Rapporteur.

¹⁵ Republic of Brazil. Office of the President of the Republic. Law No. 12.527. November 18, 2011. *Ley General de Acceso a la Información Pública*. Available at: http://www.planalto.gov.br/CCIVIL_03/ Ato2011-2014/2011/Lei/L12527.htm

12. The Office of the Special Rapporteur hopes this report will help the States and civil society become familiar with the various rules and principles, recognize best legislative practices, and adjust the existing legal frameworks to meet the highest standards in this field. It also hopes the document will serve to advance the best laws in those States that have yet to approve legal frameworks to defend the right of access to information.

B. Guiding Principles of the Right of Access to Information

1. Principle of Maximum Disclosure

13. The principle of maximum disclosure has been recognized in the inter-American system as a guiding principle of the right to seek, receive, and impart information, contained in Article 13 of the American Convention. Along these lines, the Inter-American Court has established in its case law that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure”¹⁶; accordingly, “any information in the State’s control is presumed to be public and accessible, subject to a limited regime of exceptions.”¹⁷ Along the same lines, the IACHR has explained that, based on Article 13 of the American Convention, the right of access to information must be guided by the principle of maximum disclosure.¹⁸ In addition, operative paragraph 1 of the Inter-American Juridical Committee’s Resolution CJI/RES.147 (LXXIII-O/08) (“Principles on the Right of Access to Information”) has established that “[i]n principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.”¹⁹

14. The Model Inter-American Law on Access to Information adopted by the OAS General Assembly builds on this principle when it establishes “a broad right of access to information, in possession, custody or control of any public authority.”²⁰ Specifically, the law is based on “the principle of maximum disclosure, so that all information held by public bodies is complete, timely and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society.”²¹

15. The principle of maximum disclosure calls for a legal regime in which transparency and the right of access to information are the general rule, subject only to strict and limited exceptions. The following consequences are derived from this principle: (a) the right of access to information must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, in such a way that favors the right of access to information; (b) grounds must be given for decisions to deny information, and the State has the burden to prove that the information being requested may not be released; and (c) in the event of a doubt or legal vacuum, the right of access to information must take priority.

¹⁶ I/A Court H.R. *Case of Claude-Reyes et al. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 92. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

¹⁷ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf

¹⁸ IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(c).

¹⁹ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 1. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

²⁰ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 2. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

²¹ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 2. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

16. As is explained below, most of the various legal frameworks that were studied in one way or another include the principle of maximum disclosure (*máxima divulgación*). The legal systems of Chile, Guatemala, Mexico, and El Salvador, in particular, specifically recognize this principle, which in some cases is called the principle of maximum transparency (*máxima publicidad*). Moreover, Chile's Law on Transparency of Public Functions and Access to State Administration Information incorporates the principle of maximum disclosure, by which "State Administration entities should provide information in the broadest terms possible, excluding only what is subject to constitutional or statutory exceptions."²²

17. Likewise, Guatemala's Law on Access to Public Information (LAIP) provides that one of its principal objectives is to "establish as mandatory the principle of maximum disclosure and transparency in public administration and for those subject to this law."²³

18. For its part, Mexico's Federal Transparency and Access to Governmental Public Information Act (LFTAIPG)²⁴ also establishes that the right of access to public information must be interpreted in accordance with the international treaties it has subscribed in this area, which ensures that the principle is in effect. Article 6 of the law states:

The interpretation of this Act and the Regulations thereof, as well as the provisions of a general nature described in Article 61 hereof, shall privilege the principle of maximum dissemination and availability of the information in possession of the disclosing parties.

The right to access public information shall be interpreted in terms of the Federal Constitution of the United Mexican States; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the American Convention on Human Rights; the Convention on the Elimination of All Forms of Discrimination against Women, as well as any other international instruments subscribed and ratified by the Mexican State and the interpretation thereof by specialized international entities.

19. For its part, El Salvador's Access to Public Information Law establishes, in Article 4 that among the principles that shall govern the interpretation and application of the law is that of maximum dissemination. In accordance with this principle, "the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law."²⁵

20. As will be explained below, in some of the countries studied, the principle of maximum disclosure is not reflected expressly but is included indirectly in some provisions.

a. First corollary of the principle of maximum disclosure: The right of access to information is the rule and secrecy the exception

²² Republic of Chile. Law No. 20.285 of 2008. Law on Transparency of Public Functions and Access to Information on State Administration. Article 11(d). Available at <http://www.leychile.cl/Navegar?idNorma=276363>. "[L]os órganos de la Administración del Estado deben proporcionar información en los términos más amplios posibles, excluyendo sólo aquello que esté sujeto a las excepciones constitucionales o legales".

²³ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Article 1(4). Available at <http://www.scspr.gob.gt/docs/infpublic.pdf>. "[E]stablecer como obligatorio el principio de máxima publicidad y transparencia en la administración pública y para los sujetos obligados".

²⁴ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental). June 11, 2002. The text of the law in effect in 2010 can be consulted at: <http://www.ifai.org.mx/English>. Official English version available at: <http://www.ifai.org.mx/English>

²⁵ Republic of El Salvador. Law on Access to Public Information (Ley de Acceso a la Información Pública). This law was approved by Decree No. 534 of 2011 and entered into effect on May 8, 2011. The law grants a one-year period for bodies subject to it to be able to meet its requirements. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "[L]a información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones establecidas por la ley".

21. The right of access to information is not an absolute right, but rather may be subject to limitations. However, as will be explained later on, such limitations must strictly comply with the requirements derived from Article 13.2 of the American Convention; that is, they must be of a truly exceptional nature, be established by law, have a legitimate purpose, be necessary, and be strictly proportionate.²⁶ The exceptions must not become the general rule, and it must be understood, for all effects, that access to information is the rule and secrecy the exception. Moreover, it should be clear in domestic law that information shall be classified as secret only as long as making it public could indeed jeopardize the benefits protected through secrecy. In this regard, secrecy must have a reasonable time limit, and once that has expired, the public has the right to know the information in question.

22. Specifically with regard to limitations, the Inter-American Court has underscored in its case law that the principle of maximum disclosure “establishes the presumption that all information is accessible, subject to a limited system of exceptions,”²⁷ which “must have been established by law,”²⁸ respond to a purpose allowed by the American Convention,²⁹ and “be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest.”³⁰

23. Pursuant to this principle, the OAS General Assembly, in its Model Law on Access to Information, has recognized that “the right of access to information is based on the principle of maximum disclosure,” and thus that “exceptions to the right of access should be clearly and narrowly established by law.”³¹

24. The principle establishing that the right to access to information is the rule, and secrecy the exception, is contemplated in nearly all the countries in this study, through the principle of disclosure. Disclosure as the rule is stipulated in the legal systems of all the countries examined.

25. In Guatemala, the Constitution itself establishes the public nature of administrative acts. Its Article 30 establishes: “All administration acts are public. Interested parties have the right to obtain, at any time, any reports, copies, reproductions, and certifications they request, and the production of any files they wish to consult, except in the case of military or diplomatic matters of national security, or information provided by individuals under guarantee of confidentiality.”³²

²⁶ Along these same lines, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR stipulates that “[a]ccess to information... 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.” Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=26&IID=2>

²⁷ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 92. Along the same lines, in their 2004 Joint Declaration, the UN, OAS, and OSCE rapporteurs for freedom of expression explained that this principle “[establishes] a presumption that all information is accessible subject only to a narrow system of exceptions.” Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=2>

²⁸ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89.

²⁹ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 90.

³⁰ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 91. *See also*, I/A Court H.R. *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135. Para. 85; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 96; *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Paras. 121 and 123; and I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 46. Similarly, Resolution CJI/RES.147 (LXXIII-O/08) of the Inter-American Juridical Committee on “Principles on the Right of Access to Information” establishes the following in Principle 1: “In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.” Available at: http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf

³¹ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Paras 3-4. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

³² Political Constitution of the Republic of Guatemala (1985) (Reformed by Legislative Accord No. 18-93, November 17, 1993). Available at: http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf. “Todos los actos de la administración son

26. Ecuador's Organic Law on Transparency and Access to Public Information, in Article 1, establishes as public any information held by "the institutions, bodies, and entities under public or private law that have State participation or are State contractors regarding the matter to which the information refers [...]."³³ Later, in Article 4 (c), it prescribes: "The exercise of public functions is subject to the principle of the openness and disclosure of its actions. This principle extends to those entities of private law that exercise State authority and manage public resources."

27. In Panama, Article 8 of the Law on Transparency in Public Management establishes the principle of disclosure and determines: "State institutions are obligated to provide, to anyone who so requests, information on the functions and activities they carry out, excepting only confidential information and that which has restricted access."³⁴

28. In El Salvador, the Access to Public Information Law provides, in Article 3(a), that one of the purposes of the law is "To facilitate to all persons the right of access to public information through simple and expedited procedures."³⁵ In Article 4, referring to the principles that govern the interpretation and application of the law, it establishes the principles of availability, promptness, integrity, and accountability, in accordance with which, respectively, "public information shall be available to individuals"; "public information shall be provided promptly"; "public information shall be complete, reliable, and truthful"; and "those who carry out responsibilities in the State or administer public assets are obligated to be accountable to the public and the respective authority over the use and administration of the public assets for which they are in charge and over their management, in accordance with the law."

29. Peru's Law on Transparency and Access to Public Information establishes the principle of disclosure in its Article 3.³⁶ Its first paragraph states: "All activities and provisions of the entities comprised in this Law are subject to the principle of disclosure." From this principle it is derived that consequently all information held by the State is presumed to be public (paragraph 1), that the State shall take basic steps to guarantee and promote transparency in public administration (paragraph 2), and that the State has the obligation to turn over information that individuals demand (paragraph 3).

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públicos. Los interesados tienen derecho a obtener, en cualquier tiempo, informes, copias, reproducciones y certificaciones que soliciten y la exhibición de los expedientes que deseen consultar, salvo que se trate de asuntos militares o diplomáticos de seguridad nacional, o de datos suministrados por particulares bajo garantía de confidencialidad".

³³ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Art. 1: "[L]as instituciones, organismos y entidades, personas jurídicas de derecho público o privado que, para el tema materia de la información tengan participación del Estado o sean concesionarios de éste". Art. 4: "El ejercicio de la función pública, está sometido al principio de apertura y publicidad de sus actuaciones. Este principio se extiende a aquellas entidades de derecho privado que ejerzan la potestad estatal y manejen recursos públicos".

³⁴ Republic of Panama. Law on Transparency in Public Administration (Ley de Transparencia en la Gestión Pública). Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. "Las instituciones del Estado están obligadas a brindar, a cualquier personal que lo requiera, información sobre el funcionamiento y las actividades que desarrollan, exceptuando únicamente las informaciones de carácter confidencial y de acceso restringido".

³⁵ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and became effective on May 8, 2011. The Law concedes a deadline of one year for the obligated entity to adjust its requirements. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 3: "Son fines de esta ley: (a) Facilitar a toda persona el derecho de acceso a la información pública mediante procedimientos sencillos y expeditos". Art. 4: "En la interpretación y aplicación de esta ley deberán regir los principios siguientes: b. Disponibilidad: la información pública debe estar al alcance de los particulares; c. Prontitud: la información pública debe ser suministrada con presteza; d. Integridad: la información pública debe ser completa, fidedigna y veraz; [...] h. Rendición de cuentas. Quienes desempeñan responsabilidades en el Estado o administran bienes públicos están obligados a rendir cuentas ante el público y autoridad competente, por el uso y la administración de los bienes públicos a su cargo y sobre su gestión, de acuerdo a la ley".

³⁶ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. August 2, 2002. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. "Todas las actividades y disposiciones de las entidades comprendidas en la presente Ley están sometidas al principio de publicidad".

30. In Uruguay, Article 2 of the Law on Access to Public Information (LAIP) contemplates the principle of disclosure and imposes the presumption of access to public information: “Public information is considered to be any information that is issued or in the possession of any public body, whether or not of the State, save for the exceptions or secrets established by law, as well as information that is privileged or confidential.”³⁷

31. For its part, Nicaragua's Law on Access to Public Information explicitly stipulates the principle of disclosure of public information, establishing that “...all existing information held by the indicated entities shall be of a public nature and shall be of free access to the public, save for the exceptions provided for in this Law.”³⁸

32. In Chile and Mexico, in addition to the principle of maximum disclosure and maximum dissemination, respectively, the principle of the public nature of public information is established. Thus, Article 8 of the Constitution of Chile provides that “the acts and resolutions of State bodies are public, as are their foundations and procedures.”³⁹ The same country's Law on Transparency of Public Functions and Access to State Administration Information determines, in its Article 4, para. 2: “The principle of transparency of public functions consists of respecting and protecting the public nature of all acts, resolutions, procedures, and documents of the Administration, as well as of the bases thereof, and facilitating access by any person to this information, through the means and procedures that the law establishes to this effect.”⁴⁰ Mexico's Federal Transparency and Access to Governmental Public Information Act, in turn, establishes in Article 2 that: “All governmental information included by this Act is of a public nature and private entities are allowed to have access thereto in the terms consigned herein.”⁴¹

33. In Colombia, Article 74 of the Constitution establishes the right of every person “to access public documents except in cases established by Law.”⁴² Similarly, the Code of Administrative Litigation, issued by means of Decree No. 01 of 1984, provides in Article 3 that one of the principles governing administrative action is disclosure.⁴³ The principle has also been underscored on various occasions in the

³⁷ Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Se considera información pública toda la que emane o esté en posesión de cualquier organismo público, sea o no estatal, salvo las excepciones o secretos establecidos por ley, así como las informaciones reservadas o confidenciales”.

³⁸ Republic of Nicaragua. Law No. 621 of 2007, which issues the Law on Access to Public Information. Article 3. No. 2. Available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “[T]oda la información existente en posesión de las entidades señaladas tendrá carácter público y será de libre acceso a la población, salvo las excepciones previstas en la presente Ley”.

³⁹ Political Constitution of Chile. Available at: http://www.camara.cl/camara/media/docs/constitucion_politica_2009.pdf. “[S]on públicos los actos y resoluciones de los órganos del Estado, así como sus fundamentos y los procedimientos que utilicen”.

⁴⁰ Republic of Chile. Law on Transparency of Public Functions and Access to State Administration Information. Law No. 20.285 of August 11, 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “El principio de transparencia de la función pública consiste en respetar y cautelar la publicidad de los actos, resoluciones, procedimientos y documentos de la Administración, así como la de sus fundamentos, y en facilitar el acceso de cualquier persona a esa información, a través de los medios y procedimientos que al efecto establezca la ley”.

⁴¹ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Along these same lines, Article 12 of the law provides: “The disclosing parties must publish all information related to the amounts and recipients of public funds for whatever reason, as well as the reports rendered by said recipients on the use and destination of said resources.” Available at: <http://www.ifai.org.mx/English>. [Direct citations of Mexico's law come from an official IFAI translation.]

⁴² Political Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>. “Todas las personas tienen derecho a acceder a los documentos públicos salvo los casos que establezca la ley”.

⁴³ Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html. The Code was issued by the government based on the powers granted under Law No. 58 of 1982, which also provided, in Article 8, that “administrative acts are public, save for the specific exceptions established by the Constitution and the Law.” Likewise, Law No. 136 of 1994, which develops the guiding principles of municipal administration, establishes the principle of openness and transparency in its Article 5c: “c) Disclosure and transparency. Acts of the municipal administration are public, and it is the municipal administration's obligation to facilitate citizens' access to its knowledge and oversight function, in accordance with the law.” In addition, one of the principles that governs public contracting is disclosure. In that regard, Law No. 80 of 1993 establishes, in Article 24: “3. The acts of the authorities

case law of the Constitutional Court. By way of example, in Judgment C-491 of 2007, which examined the constitutionality of various articles of the Law on Discretionary Expenses, the Court affirmed:

24. As was mentioned in detail, the Constitution expressly protects the fundamental right of access to public information (Art. 74 CN). Given the existence of a reinforced constitutional protection, the Court has established clear and rigorous prerequisites for a limitation to this right to be constitutionally admissible.

In this regard, the Court has recognized that the right of access to public information is not absolute. One of the reasons for which it may be limited is the protection of national security and public order in the face of grave threats that can be prevented only through restrictive measures. Nonetheless, the restrictive measure must in any case be contained in a law; be useful, necessary, and proportionate to the purpose being pursued; and be compatible with a democratic society, under the terms already examined and established prior to this decision.⁴⁴

34. In the Dominican Republic, the General Law on Free Access to Public Information (LGLAIP), No. 200-04, dated July 28, 2004, expressly establishes the principle of disclosure in its Article 3.⁴⁵ Pursuant to that principle, “[a]ll acts and activities of the Public Administration, both centralized and decentralized, including administrative acts and activities and the legislative and judicial branches, as well as information that refers to its functioning, shall be subject to disclosure. Consequently, it shall be obligatory for the Dominican State and all its authorities and its autonomous, self-sufficient, centralized, and/or decentralized bodies, to offer an information service that is permanent and current...”

35. Jamaica's Access to Information Act, dated July 22, 2002,⁴⁶ in Section 2 adopts the principle of transparency in granting to the public a general right of access to official documents held by public authorities, subject only to exemptions established in the statute.

36. A similar provision is found in Antigua and Barbuda's Freedom of Information Act, Section 15(1), which establishes the right of every person to obtain, on request, access to information, subject only to the exceptions established in the same statute.⁴⁷

37. In Canada, the Constitution does not explicitly recognize the right of access to information. However, case law has understood that the right to freedom of expression, recognized in Section 2(b) of the Canadian Charter of Rights and Freedoms, includes the right to receive and impart information. In that regard, the Supreme Court of Canada established in *Edmonton Journal v. Alberta*

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shall be public, and the records pertaining to them shall be open to the public, allowing, in the case of bidding, the exercise of the right addressed in Article 273 of the Constitution.”

⁴⁴ Republic of Colombia. Constitutional Court of Colombia. Judgment C-491/07. June 27, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>. “Como fue mencionado detalladamente la Constitución protege de manera expresa el derecho fundamental de acceso a la información pública (Art. 74 CN). Dada la existencia de una protección constitucional reforzada, la Corte ha establecido claros y rigurosos requisitos para que una limitación a este derecho pueda resultar constitucionalmente admisible. En este sentido, la Corte ha reconocido que el derecho de acceso a la información pública no es absoluto. Una de las razones por las cuales puede limitarse es la protección de la seguridad nacional y el orden público frente a graves amenazas que sólo pueden ser conjuradas a través de medidas restrictivas. Ahora bien, en todo caso, la medida restrictiva debe encontrarse contenida en una ley, ser útil, necesaria y proporcionada a la finalidad que persigue y ser compatible con una sociedad democrática, en los términos estudiados en los fundamentos anteriores de esta providencia”.

⁴⁵ Dominican Republic. General Law on Access to Public Information (Ley General de Acceso a la Información Pública). Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>

⁴⁶ Jamaica. Access to Information Act. No. 21-2002. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

⁴⁷ Antigua and Barbuda. The Freedom of Information Act. No. 19 of 2004. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

(Attorney General), “[t]he members of the public, as 'listeners' or 'readers', have a right to receive information pertaining to public institutions, in particular the courts.”⁴⁸

38. For its part, the 1983 Access to Information Act⁴⁹ establishes in Chapter A-1, Section 2(1), that its purpose is “to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”

39. In the United States, the First Amendment of the Constitution protects freedom of expression in the following terms: “Congress shall make no law... abridging the freedom of speech, or of the press.”⁵⁰ The right of access to information was recognized and regulated in the 1966 Freedom of Information Act (FOIA).⁵¹ While this law did not contain a specific provision explicitly stipulating the principle of maximum disclosure, the OPEN Government Act of 2007, which amends FOIA, establishes in its preamble that the country's system of government must be governed by a presumption of openness.⁵²

40. For its part, the Supreme Court of the United States has adopted that principle in its case law, noting that the Freedom of Information Act establishes a “strong presumption in favor of disclosure” and that this presumption “remains with the agency when it seeks to justify the redaction of identifying information in a particular document, as well as when it seeks to withhold an entire document.”⁵³ The Court has also indicated that “disclosure, not secrecy, is the dominant legislative objective of the FOIA.”⁵⁴

41. The principle of maximum disclosure has also been reaffirmed in administrative guidelines. The President's “Freedom of Information Act” Memorandum for the Heads of Executive Departments and Agencies, dated January 21, 2009, calls to mind that:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. [...]

*All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.*⁵⁵

⁴⁸ Canada. Edmonton Journal v. Alberta (Attorney General). [1989] 2 S.C.R. 1326. Available at: <http://scc.lexum.org/en/1989/1989scr2-1326/1989scr2-1326.html>

⁴⁹ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁵⁰ United States of America. First Amendment of the Constitution. Available at: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

⁵¹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁵² United States of America. Public Law 110–175. Dec. 31, 2007. Openness Promotes Effectiveness in Our National Government Act Of 2007. Section 2(2). Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-110publ175/pdf/PLAW-110publ175.pdf>

⁵³ United States Supreme Court. United States Department of State v. Ray et al. 502 U.S. 164, 173 (1991). Available at: <http://supreme.justia.com/us/502/164/case.html>.

⁵⁴ United States Supreme Court. Department of the Air Force v. Rose. 425 U.S. 352, 361 (1976). Available at: <http://supreme.justia.com/us/425/352/case.html>

⁵⁵ United States of America. President Barack Obama. Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act. Available at: http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/

42. In Trinidad and Tobago, Act No. 26, the Freedom of Information Act of 1999,⁵⁶ establishes in its Section 3(1) that the object of the act is to “extend the right of members of the public to access to information in the possession of public authorities by (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorizations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorizations, policies, rules and practices.”

43. The same section provides that the object of the act is to create “a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.” Pursuant to such, Section 3(2) establishes that the statute's provisions shall be interpreted so as to “further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.”⁵⁷ Access is thus clearly established as the general rule and secrecy as the exception.

44. It is important to emphasize that while a statute on access to public information does not exist in Argentina, judges have developed the principle of disclosure in their case law. In that regard, the Supreme Court of Justice has stated that “the principle of the disclosure of government acts is inherent to the republican system established in the National Constitution, and thus its fulfillment is an imperative requirement for the public authorities... this makes it possible for citizens to have the right to access to information of the State in order to exercise control over the authorities (doctrine of Judgments 311:750), and facilitates transparency in management.”⁵⁸

b. Second corollary of the principle of maximum disclosure: The State bears the burden of proof to justify limits on the right of access to information

45. Inter-American case law has established that the State has the burden to prove that any restrictions on access to information are compatible with inter-American norms on freedom of expression.⁵⁹ The Inter-American Juridical Committee also affirmed this in its resolution on “Principles on the Right of Access to Information,” establishing that “the burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”⁶⁰ The foregoing allows for legal certainty in the exercise of the right of access to information, inasmuch as when information is in the State's control, every effort must be made to ensure that the State does not engage in discretionary and arbitrary conduct in establishing restrictions to this right.⁶¹

46. This principle has also been adopted by the OAS General Assembly in its Model Inter-American Law on Access to Information, in which it is expressly established that “the burden of proof shall lie with the public authority to establish that the information requested is subject to one of the exceptions contained [in the Law].” Faced with that task, the authority must establish “that the exception is legitimate

⁵⁶ Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁵⁷ Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁵⁸ Republic of Argentina. Supreme Court of Justice of the Nation. Agreement No. 1/2004. February 11, 2004. Available at: <http://www.dplf.org/uploads/1191953169.pdf>. “[E]l principio de la publicidad de los actos de gobierno es inherente al sistema republicano establecido en la Constitución Nacional, por lo que su cumplimiento es una exigencia ineludible por las autoridades públicas, [...] ello posibilita a los ciudadanos el derecho al acceso a la información del Estado a fin de ejercer control sobre las autoridades (doctrina de Fallos: 311:750) y facilita la transparencia de la gestión”.

⁵⁹ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 93.

⁶⁰ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 7. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

⁶¹ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 98.

and strictly necessary in a democratic society” and that “disclosure will cause substantial harm to an interest protected by [the] Law.”⁶²

47. Only some of the legal systems studied establish expressly and directly that the State is responsible for proving the legitimacy and applicability of any limitations on access to information.

48. Under Jamaica's Access to Information Act, in cases in which access to information is refused or deferred, the onus of proof falls to the official authority. Section 7(5) of that law establishes that “[t]he response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty days, it shall state the reasons therefor, and the options available to an aggrieved applicant.”⁶³

49. In Panama, Article 16 of the Transparency Law establishes that “State institutions that refuse to grant information on grounds that it is of a confidential nature or subject to restricted access shall do so by means of a reasoned decision establishing the grounds on which the denial is based and which are supported by this Law.”⁶⁴

50. It is important to note that, through a *habeas data* ruling on January 15, 2004, that country's Supreme Court of Justice emphasized the applicability of the aforementioned provision by affirming:

*Finally, and by way of illustration, the Plenum of this Court believes it is appropriate to indicate that, under Article 16 of Law No. 6 of January 22, 2002, State institutions that refuse to grant information on grounds that it is of a confidential nature or subject to restricted access shall do so by means of a reasoned decision establishing the reasons on which the denial is based and which are supported by this Law.*⁶⁵

51. In Mexico, for its part, Article 45 of the Federal Transparency and Access to Governmental Public Information Act provides that in the event access to information is denied, the reasons for classification of the information shall be grounded in law and the applicant shall be informed of the remedy may be filed before the Institute. Moreover, Article 46 establishes that the applicant must be notified if the information requested is not in the agency's possession.⁶⁶

52. In El Salvador, Article 65 of the Access Law determines that the decisions by the bodies subject to the law “shall be given to the petitioner in writing and shall be explained, with a brief but sufficient mention of the grounds, specifying the reasons of fact and of law that determined or induced the entity to adopt its decision.” Along the same lines, Article 72 prescribes that when the information officer of an entity subject to the law decides to deny access to a document, he or she “must provide a basis and

⁶² OAS General Assembly. AG/RES. 2607 (XL-O/10), adopting a Model Inter-American Law on Access to Information. June 8, 2010. Article 53. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

⁶³ Jamaica. Access to Information Act. No. 21-2002. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

⁶⁴ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. “Las instituciones del Estado que nieguen el otorgamiento de una información por considerarla de carácter confidencial o de acceso restringido, deberán hacerlo a través de resolución motivada, estableciendo las razones en que se fundamenta la negación y que se sustenten en esta Ley”.

⁶⁵ Supreme Court of Justice, Panama. Plenary. Docket No. 1116-03. January 15, 2004. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. “Finalmente y de manera ilustrativa, el Pleno de esta Corporación de Justicia, estima oportuno indicar que de acuerdo al artículo 16 de la Ley 6 de 22 de enero de 2002, las instituciones del Estado que nieguen el otorgamiento de una información por considerarla de carácter confidencial o de acceso restringido, deberán hacerlo a través de resolución motivada, estableciendo las razones en que fundamentan la negación y que se sustenten en esta Ley”.

⁶⁶ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

grounds for the denial of the information and indicate to the petitioner any appeal that may be filed with the Institute [for Access to Public Information].⁶⁷

53. Along the same lines, Article 18 of Uruguay's Law on Access to Information establishes that "[t]he agency receiving the request may refuse to release the requested information only by means of a reasoned decision from the head of the agency that indicates the privileged or confidential nature of the information and indicates the legal provisions on which the decision is based."⁶⁸

54. This provision has made it possible to analyze in case law not only formal compliance with a response, but also its content. Thus, in Judgment 308 dated June 27, 2005, the Court of Administrative Litigation ruled on a nullity action lodged by the Commercial Defense League against the Central Bank of Uruguay's Administrative Act D/762/2002, which had invalidated various resolutions authorizing the release of information from the Registry of Check Offenders, a reference to checking accounts that had been suspended for check-related infractions.⁶⁹ The administrative decision had not included the grounds on which it was based, and in its answer to the complaint the Bank had affirmed that, in the exercise of its discretion, it "had the authority to assess or appreciate the advisability of access to the Registry, that is to whom access could be given and on which data they could be given information."⁷⁰

55. The Court determined that the Central Bank could not deny access to information based solely on its discretion. Moreover, it affirmed: "The defendant does not mention a single concrete regulatory provision that would provide for the secrecy of the suspended accounts. Nor is it inferred from Article 66 of D.L. No. 14.412 that the powers granted to the Central Bank of Uruguay through that regulation include that of conferring secrecy."⁷¹ Consequently, the ruling found that the Bank had no grounds on which to justify a general use of the principle of discretion to supposedly protect due process and professional secrecy. According to the Court, such secrecy is valid only on an exceptional basis, when the information is of an expressly secret nature.⁷²

56. On another point, it is worth noting that Guatemala and Nicaragua expressly establish that the State has the burden to prove the legal basis for its denial of a request for information, and that it must establish the "proof of harm" that would result from turning over the information. This introduces into

⁶⁷ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and became effective on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 65: "Todas las decisiones de los entes obligados deberán entregarse por escrito al solicitante y serán motivadas, con mención breve pero suficiente de sus fundamentos, precisándose las razones de hecho y de Derecho que determinaron e indujeron a la entidad a adoptar su decisión". Art. 72: "En caso de ser negativa la resolución, [el Oficial de Información] siempre deberá fundar y motivar las razones de la denegatoria de la información e indicar al solicitante el recurso que podrá interponer ante el Instituto".

⁶⁸ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁶⁹ Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>

⁷⁰ Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. "el Banco Central está facultado para valorar o apreciar la conveniencia del acceso al Registro, es decir a quiénes se les puede dar acceso a dicho registro, y sobre qué datos se les podrá dar información".

⁷¹ Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. "La demandada no menciona ninguna disposición normativa en concreto, que disponga el secreto de las cuentas suspendidas. Ni tampoco se infiere del artículo 66 del D.L. N° 14.412, que entre las facultades que se le otorgan al Banco Central del Uruguay por dicha norma esté la de otorgarle carácter secreto".

⁷² Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. Along the same lines, see: Court of Administrative Litigation. Judgment No. 379 of June 28, 2004. Available at: <http://informacionpublica.gub.uy/sitio/jurisprudencia.html>

the respective laws a greater demand on the burden of proof that is needed to justify restrictions to access to information.

57. Thus, Article 26 of Guatemala's Law on Access to Public Information establishes: "Proof of harm. In cases in which the authority provides grounds for classifying the information as secret or confidential, the information must thoroughly establish that the following three requirements have been met: 1. That the information legitimately falls under one of the exceptional cases provided for in this law; 2. That the release of the information in question could effectively threaten the interest protected by the law; and 3. That the damage or harm that could occur with the release of the information is greater than the public interest of knowing the information in question."⁷³

58. In Nicaragua, paragraph 7 of Article 3 of the law states: "Principle of Proof of Harm: This guarantees that the authority, in classifying certain information as being of restricted access, provides grounds based on the following factors: a. The information falls under one of the possible exceptions established in the law itself. b. The release of the information could effectively threaten the public interest protected by the law; and c. The harm that could result from releasing the information is greater than the public interest in knowing the information in question."⁷⁴

59. In Antigua and Barbuda, the Freedom of Information Act of 2004 establishes in Section 19 that any refusal to grant complete or partial access to the information requested shall be made in writing and shall state whether the record exists and the reasons for denying access to it. The response shall also explain to the applicant his or her right of appeal to the Commissioner or to a judicial review. Section 42(3), which refers to the process of handling complaints made to the Commissioner, and Section 45(2), having to do with the judicial review procedure, also contemplate that in any review of a denial of access to information, "the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Part III" of the Act.⁷⁵

60. For their part, Uruguay, Guatemala, Mexico, and Colombia appropriately construe administrative silence as affirmative, meaning that if a request does not receive a response within the legal time period, the applicant is authorized to access the information. Thus, the second paragraph of Article 18 of Uruguay's Law on Access to Public Information provides: "Upon expiration of the time period of twenty business days from the submission of the request, there being no extension or the time period having expired without a specific decision having been communicated to the interested party, the party shall be able to access the respective information, and it shall be considered a serious offense for any official to refuse to provide it, in accordance with the provisions of Law No. 17.060, dated December 23, 1998, and Article 31 of this law."⁷⁶

⁷³ Republic of Guatemala. Law on Access to Public Information. Decree No. 57/2008. September 23, 2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "Prueba de daño. En caso que la autoridad fundamente la clasificación de reservada o confidencial, la información deberá demostrar cabalmente el cumplimiento de los siguientes tres requisitos: 1. Que la información encuadre legítimamente en alguno de los casos de excepción previstas en esta ley; 2. Que la liberación de la información de referencia pueda amenazar efectivamente el interés protegido por la ley; y, 3. Que el perjuicio o daño que pueda producirse con la liberación de la información es mayor que el interés público de conocer la información de referencia".

⁷⁴ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). "Principio de Prueba del Daño: Garantiza que, la autoridad al catalogar determinada información como de acceso restringido, fundamente y motive los siguientes elementos: a. La información se encuentra prevista en alguno de los supuestos de excepción previstos en la propia Ley; b. La liberación de la información puede amenazar efectivamente el interés público protegido por la Ley; y c. El daño que puede producirse con la liberación de la información es mayor que el interés público de conocer la información de relevancia".

⁷⁵ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁷⁶ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "Vencido el plazo de veinte días hábiles desde la presentación de la solicitud, si no ha mediado prórroga o vencida la misma sin que exista resolución expresa notificada al interesado, éste podrá acceder a la información respectiva, considerándose falta grave la negativa de cualquier funcionario a proveérsela, de conformidad con las previsiones de la Ley Nº 17.060, de 23 de diciembre de 1998, y del artículo 31 de la presente ley".

61. In Judgment 48 of September 11, 2009, a court in of Mercedes, Uruguay (*Juzgado Letrado de Segundo Turno*), ruled in an *amparo* action brought against the Departmental Assembly of Soriano. The action was initiated after the Assembly President, acting on his own behalf, allegedly denied a request for access to information about official advertising expenditures incurred by the entity, as he believed that information to be privileged. The Court affirmed that the request should have received a response from the Assembly as a collective, not from its President. It added that the response had not been consulted with the Assembly, as required under the rules of procedure in effect, and that only the Assembly could classify information as privileged. The Court thus indicated that administrative silence applied in this particular case, since the interested party had not obtained a response from the entity within the legally established time period:

Pursuant to the regulatory provisions stated above, it would be the Assembly by agreement that should deny the information and classify it as confidential. Thus, the plaintiff is correct in maintaining that the hypothesis of "affirmative silence" holds, since there was no response from the collective Departmental Assembly. In this regard, Article 18 of the aforementioned Law establishes that the body receiving the request may deny the release of the requested information only through a reasoned decision from the leader of that body stating that the information is privileged or confidential and indicating the legal provisions on which that is based.⁷⁷

62. The Court also found for the plaintiff on the point that the requested information was not privileged, so that that the Assembly had to provide the information to the plaintiff:

The cost of government advertising is not information given to the Assembly, but rather produced by the Assembly, and it is public information from the time it is budgeted in the aforementioned body's five-year budget.⁷⁸

63. Similarly, in Guatemala, Article 44 of the Law on Access to Public Information establishes an affirmative decision by default, which means that "when the entity subject to this law provides no response within the period and in the form that is required, that entity shall be required to grant [the information] to the interested party no later than ten days after the expiration of the time period for a response, at no cost and with no need for a request from the interested party. Failing to comply with the provisions of this article shall be grounds for criminal liability."⁷⁹

64. Mexico's Federal Transparency and Access to Governmental Public Information Act also provides for this concept when the entity does not respond to a request for access to information within the legal time period. Article 53 establishes: "The failure to answer a request for access to information within the term provided by Article 44 hereof shall be construed as an affirmative answer and the department or agency shall be required to allow the access to the information within a term not to exceed

⁷⁷ Oriental Republic of Uruguay. Juzgado Letrado de Segundo Turno de Mercedes. Judgment 48 of September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. "De acuerdo a la normativa referida *ut-supra*, sería la Junta en acuerdo la que debería negar y catalogar de confidencial la información. Por lo tanto, le asiste razón al actor cuando sostiene que ha configurado una hipótesis de "silencio positivo", ya que no hubo respuesta del ente colectivo Junta Departamental. En tal sentido el artículo 18 de la referida Ley, establece que el organismo requerido solamente podrá negar la expedición de la información solicitada mediante resolución motivada del jerarca del organismo que señale su carácter de reservado o confidencial, indicando las disposiciones legales en que se funde".

⁷⁸ Oriental Republic of Uruguay. Juzgado Letrado de Segundo Turno de Mercedes. Judgment 48 of September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. "El gasto de publicidad oficial no es una información entregada a la Junta, sino producida por la Junta y es una información pública desde el momento en que está presupuestado en el presupuesto quinquenal del referido organismo".

⁷⁹ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "Cuando el sujeto obligado no diere respuesta alguna en el plazo y forma que está obligado, éste quedará obligado a otorgarla al interesado en un período no mayor de diez días posteriores al vencimiento del plazo para la respuesta, sin costo alguno y sin que medie solicitud de parte interesada. El incumplimiento de lo previsto en este artículo será causal de responsabilidad penal".

10 business days after payment of the costs derived from the reproduction of the material, unless the Institute shall determine that the documents in question contain privileged or confidential information.”⁸⁰

65. In Colombia, affirmative administrative silence operates with regard to requests to consult or copy documents held in public offices. Article 25 of Law No. 57 of 1985⁸¹ establishes that these requests should be resolved within a maximum period of ten days, and that if the petitioner is not given a response in that time frame, “it shall be understood, for all legal effects, that the request in question has been accepted. Consequently, the respective document shall be turned over within the three (3) days immediately following.”

66. This point should be emphasized, because if negative administrative silence were to apply, officials responsible for responding to requests for information could be induced to refrain from responding. In this regard, Article 13 of Peru's Law on Transparency and Access to Public Information provides that “[t]he denial of access to the information requested must be duly based on the exceptions established in Article 15 of this Law, with the reasons that these exceptions apply and the time period in which this impediment will last being expressly laid out in writing.” However, if the administration does not respond to the request for information, the request is considered to be denied, as provided in Article 11(d), which establishes: “If there is no response within the time periods established in subparagraph (b), the applicant can consider the application to have been denied.”⁸²

67. In the countries of the region that do not have provisions in this area, administrative and judicial mechanisms generally have been established to dispute denials of access. However, it would be of utmost importance to incorporate the standard discussed into all laws in force, since failing to do so imposes disproportionate obstacles and burdens on those who are entitled to that right.

68. It is worth noting that in the case of Canada, Chile and the United States, laws and regulations, as well as case law, have recognized and reaffirmed the aforementioned principles.

69. In Canada, Section 48 of the Access to Information Act establishes that in any judicial proceeding arising from a denial of access to information, “the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.”⁸³ Canadian case law reaffirmed that principle in *Dagg v. Canada (Minister of Finance)*. In that case, the Supreme Court held that Section 48 of the Access to Information Act “places the onus on the government to show that it is authorized to refuse to disclose a record”.⁸⁴ Similarly, in its decision in *Attaran v. Canada (Foreign Affairs)*, the Court stated: “The general principle of the access to information law is that there is a presumption that the government information must be disclosed. If there is an exemption from disclosure, it must be narrowly construed. When an applicant

⁸⁰ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Available at: <http://www.ifai.org.mx/English>

⁸¹ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. “[S]e entenderá, para todos los efectos legales, que la respectiva solicitud ha sido aceptada. En consecuencia, el correspondiente documento será entregado dentro de los tres (3) días inmediatamente siguientes”.

⁸² Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. July 13, 2002. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. Art. 13: “La denegatoria al acceso a la información solicitada debe ser debidamente fundamentada en las excepciones del artículo 15 de esta Ley, señalándose expresamente y por escrito las razones por las que se aplican esas excepciones y el plazo por el que se prolongará dicho impedimento.” Art. 11(d): “De no mediar respuesta en los plazos previstos en el inciso b), el solicitante puede considerar denegado su pedido.”

⁸³ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁸⁴ Canada. Supreme Court of Canada. *Dagg V. Canada (Minister of Finance)* [1997] 2 S.C.R. 403. Para.90. Available at: <http://csc.lexum.org/en/1997/1997scr2-403/1997scr2-403.pdf>

seeks disclosure, there is a reverse onus (section 48 of ATIA) on the government to show that the documents are exempt and should not be disclosed.”⁸⁵

70. In Chile, the Council for Transparency⁸⁶ has imposed that obligation on administrative entities.⁸⁷ Thus in decision A39-09 of July 19, 2009, the Council found that the burden of proof falls to the party claiming the exception, namely, the public official or entity claiming to have a duty to classify the information requested as privileged or secret.⁸⁸

71. In the United States, the FOIA stipulates⁸⁹ that in cases before district courts, government agencies have the burden of proving the legitimacy of withholding access to records. *GC Micro Corp. v. Defense Logistics Agency* established that “[a]n agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption.”⁹⁰

c. Third corollary of the principle of maximum disclosure: Supremacy of the right of access to information in the event of conflicting statutes or lack of regulation

72. As has been widely recognized by the rapporteurs for freedom of expression, in the event of any inconsistency in laws, the access to information law should prevail over other legislation,⁹¹ inasmuch as the right of access to information has been recognized as an essential requisite for the very functioning of democracy.⁹² This requirement helps to ensure that States comply effectively with the obligation to establish an access to public information law and that the law is interpreted so as to favor the right of access.⁹³ Thus the OAS General Assembly has recommended, in the aforementioned Model Law, that “[t]o the extent of any inconsistency, this Law shall prevail over any other statute.”⁹⁴

⁸⁵ Canada. Supreme Court of Canada. *Attaran v. Canada (Foreign Affairs)* 2009 FC 339. Available at: <http://www.canlii.org/en/ca/ctf/doc/2009/2009fc339/2009fc339.html>

⁸⁶ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State (Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado). Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. The Council for Transparency is an autonomous body created under Title V of the Law on Transparency of Public Functions and Access to State Administration Information. Its purpose is to promote transparency in public functions, oversee compliance with the law on this subject, and guarantee the right of access to information. One of its functions is to resolve complaints over denials of access to information.

⁸⁷ See also, Council for Transparency. Decision A-19-09 of July 7, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A19-09/A19-09_decision_web.pdf

⁸⁸ Republic of Chile. Council for Transparency. Decision A39-09. June 19, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A39-09/A39-09_decision_web.pdf

⁸⁹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(4)(B). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁹⁰ Cf. United States Court of Appeals. Ninth Circuit. *Gc Micro Corporation v. Defense Logistics Agency*. 33 F.3d 1109. 39 Cont.Cas.Fed. (CCH) P 76,701. (1994). [20] Available at: <http://openjurist.org/33/f3d/1109/gc-micro-corporation-v-defense-logistics-agency>. [30] See also United States Court of Appeals. Ninth Circuit. *Lewis v. IRS*. 823 F.2d 375, 378 (9th Cir.1987). Available at: http://scholar.google.com/scholar_case?case=8299082618244122596&q=Lewis+v.+IRS&hl=en&as_sdt=2,9&as_vis=1

⁹¹ Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=1>

⁹² OAS General Assembly. Resolution 1932 (XXXIII-O/03), “Access to Public Information: Strengthening Democracy.” June 10, 2003; Resolution 2057 (XXXIV-O/04), “Access to Public Information: Strengthening Democracy.” June 8, 2004; Resolution 2121 (XXXV-O/05), “Access to Public Information: Strengthening Democracy.” June 7, 2005; and Resolution 2252 (XXXVI-O/06), “Access to Public Information: Strengthening Democracy.” June 6, 2006. Available for consultation at: http://www.oas.org/DIL/access_to_information_background.htm

⁹³ IACHR. Arguments before the Inter-American Court in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(d).

⁹⁴ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 4. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

73. In Antigua and Barbuda, Ecuador, Guatemala, and Mexico, it is expressly recognized that the interpretation of access to information laws should be done in such a way that maximizes the exercise of that right.

74. In this regard, Article 6 of Mexico's Federal Transparency and Access to Governmental Public Information Act establishes: "The interpretation of this Act and the Regulations thereof, as well as the provisions of a general nature described in Article 61 hereof, shall privilege the principle of maximum dissemination and availability of the information in possession of the disclosing parties."⁹⁵

75. Also, Article 4(d) of Ecuador's Organic Law on Transparency establishes: "The appropriate authorities and judges must apply the provisions of this Organic Law in such a way that most favors the effective exercise of the rights guaranteed herein."⁹⁶

76. In El Salvador, Article 4 of the Access to Information Law provides that the law's interpretation and application shall be governed by a series of principles, including that of maximum disclosure. In accordance with this principle, "the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law." Further, Article 5, entitled "Prevailing standard of maximum disclosure," orders that when the Institute for Access to Public Information hears a case that raises doubts over whether the information being requested is public or is covered by one of the exceptions, "it shall ensure that the standard of disclosure prevails."⁹⁷

77. In Guatemala, Article 8 of the Law on Access to Public Information provides the following with regard to the interpretation of the law: "Interpretation. The interpretation of this law shall be done with strict adherence to the provisions established in the Constitution of the Republic of Guatemala, the Law of the Judiciary, and the international treaties and covenants ratified by the State of Guatemala, with the principle of maximum disclosure prevailing at all times. The provisions of this Law shall be interpreted in such a way as to obtain proper protection of the rights recognized therein and the effective functioning of its guarantees and defenses."⁹⁸

78. In Antigua and Barbuda, Section 6(2) of the law establishes that "(t)his Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act." It also establishes, in Section 6(3) that nothing in the act shall be construed as limiting the disclosure of information "pursuant to any other law, policy, or practice."⁹⁹

79. In the Dominican Republic, the LGLAIP does not make specific reference to this principle; nevertheless, its rules of procedure, adopted through Decree No. 130-05 by the executive branch,

⁹⁵ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁹⁶ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. "Las autoridades y jueces competentes deberán aplicar las normas de esta Ley Orgánica de la manera que más favorezca al efectivo ejercicio de los derechos aquí garantizados".

⁹⁷ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 4(a): "Máxima publicidad: la información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones expresamente establecidas por la ley." Article 5: "El Instituto en caso de duda sobre si una información es de carácter público o está sujeta a una de las excepciones, deberá hacer prevalecer el criterio de publicidad".

⁹⁸ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "Interpretación. La interpretación de la presente ley se hará con estricto apego a lo previsto en la Constitución Política de la República de Guatemala, la Ley del Organismo Judicial, los tratados y convenios internacionales ratificados por el Estado de Guatemala, prevaleciendo en todo momento el principio de máxima publicidad. Las disposiciones de esta Ley se interpretarán de manera de procurar la adecuada protección de los derechos en ella reconocidos y el funcionamiento eficaz de sus garantías y defensas".

⁹⁹ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

establish in Article 5 that “based on the principle of disclosure, any existing or future provision, general or special, that directly or indirectly regulates the right of access to information or its exceptions and limitations, should always be interpreted in a way that is consistent with the principles laid down in the LGLAIP and in these rules of procedure, and always in the way that is most favorable to access to information.”¹⁰⁰

80. In this section it is important to emphasize the case of Nicaragua. Article 50 of the Law provides that this is a law in the “public interest, and thus it shall prevail over other laws that may conflict with it.”¹⁰¹ Along the same lines, Mexico's Federal Transparency and Access to Governmental Public Information Act also contemplates, in Article 1, that “[t]his Act is public in nature. It was designed to issue the required provisions to guarantee access by every person to the information in possession of the [federal government], autonomous constitutional instrumentalities or those having legal autonomy as well as any other federal entity.”¹⁰²

81. In Chile, however, transitory Article 1 of the Law on Transparency¹⁰³ establishes that all secrecy classifications implemented before the law took effect are presumed to be legitimate, without verifying whether they meet with the legitimate aims established by the law itself or by Article 13 of the American Convention on Human Rights.

82. In the remaining countries, it is noted that there are no major regulatory developments in this respect. And while a broad interpretation of the presumption of disclosure may engender an assurance that the right of access to information will prevail,¹⁰⁴ everything indicates that for this right to be guaranteed unequivocally, the law must contemplate an explicit provision to that effect.

2. Principle of Good Faith

83. To guarantee the effective exercise of the right of access to information, it is essential that those bound by this right act in good faith—that they interpret the law in such a way that it serves to meet the objectives pursued by the right of access and that they ensure strict enforcement of this right, provide applicants with any means of assistance needed, promote a culture of transparency, help to make public administration more transparent, and act diligently, professionally, and with institutional loyalty. That is, they should take the necessary steps to ensure that their actions satisfy the general interest and do not betray people's trust in public management.¹⁰⁵

¹⁰⁰ Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>. “En virtud del principio de publicidad, cualquier norma preexistente o futura, general o especial, que directa o indirectamente regule el derecho de acceso a la información o sus excepciones y limitaciones, deberá siempre interpretarse de manera consistente con los principios sentados en la LGLAIP y este reglamento, y siempre del modo más favorable al acceso a la información”.

¹⁰¹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

¹⁰² United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Available at: <http://www.ifai.org.mx/English>

¹⁰³ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Title VII. “Article 1. Pursuant to the fourth transitory provision of the Constitution, it shall be understood that those legal precepts currently in force and issued prior to the promulgation of Law No. 20.050 that establish secrecy or privilege with respect to certain acts or documents, on the grounds indicated by Article 8 of the Constitution, shall be understood to meet the qualified quorum requirements” (De conformidad a la disposición cuarta transitoria de la Constitución Política, se entenderá que cumplen con la exigencia de quórum calificado, los preceptos legales actualmente vigentes y dictados con anterioridad a la promulgación de la ley N° 20.050, que establecen secreto o reserva respecto de determinados actos o documentos, por las causales que señala el artículo 8° de la Constitución Política”).

¹⁰⁴ This is the case in countries such as Peru and Uruguay. The systematic interpretation of their legal framework indicates that the right of access to information is the rule and secrecy is the exception. However, it is not established that in the event of a statutory inconsistency or vacuum this law prevails over other provisions.

¹⁰⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 15. Available at:

84. Along these lines, the Inter-American Court, in the previously cited *Case of Gomes-Lund et al. (Guerrilha do Araguaia)*, held that “to guarantee the full and effective exercise of this right, it is necessary for the laws and management of the State to be governed by the principles of good faith and maximum disclosure.”¹⁰⁶ The principle of good faith, in turn, is a development of the provisions established in Article 30 of the American Convention on the purpose of restrictions to the rights and freedoms recognized by the American Convention.

85. Based on the principle of good faith, the Model Law adopted by the OAS General Assembly recommends that legislation establish expressly that “everyone tasked with interpreting this Law, or any other legislation or regulatory instrument that may affect the right to information, must adopt any reasonable interpretation of the provision that best gives effect to the right to information.”¹⁰⁷

86. Some of the legal systems that were studied have provisions designed to guarantee several of the aspects embodied in the principle of good faith.

87. Along these lines, Article 83 of the Constitution of Colombia establishes that the actions of individuals and public authorities must conform to the postulates of good faith.¹⁰⁸ This provision is reiterated in Law No. 962 of 2005, which provides in Article 1 that the purpose of the statute is “to facilitate relations between private individuals with the Public Administration in such a way that any dealings with the Administration for the exercise of activities or rights or the fulfillment of obligations be carried out in accordance with the principles established in Articles 83, 84, 209, and 333 of the Political Charter.”¹⁰⁹

88. Laws in Mexico, Nicaragua, Guatemala, and El Salvador, for their part, prescribe that each entity subject to the law create an administrative unit to provide guidance to individuals in their requests for access to information. Thus in Mexico, Article 28 of the Federal Transparency and Access to Governmental Public Information Act provides that each entity subject to the law must designate a “liaison unit,” whose functions shall include receiving and processing the requests; providing assistance and guidance to individuals in completing their requests; and handling the necessary internal procedures to deliver the information.¹¹⁰

89. In Nicaragua, the Law on Access to Public Information establishes that public entities subject to the Law shall have an office of access to public information. It likewise establishes that the directors of these offices and the qualified personnel under their responsibility “shall make their best effort to facilitate and enable citizens to find and obtain access to the information requested. They shall also facilitate the printing of the document for immediate consultation, or the copying or photocopying at the

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<http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

¹⁰⁶ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230.

¹⁰⁷ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 8. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

¹⁰⁸ Political Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>

¹⁰⁹ This law, known as an “anti-red tape” (*antitrámites*) law, issues provisions on streamlining the administrative processes and procedures of State bodies and entities and of private entities that exercise public functions or provide public services. Republic of Colombia. Law 962 of 2005. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html. “facilitar las relaciones de los particulares con la Administración Pública, de tal forma que las actuaciones que deban surtirse ante ella para el ejercicio de actividades, derechos o cumplimiento de obligaciones se desarrollen de conformidad con los principios establecidos en los artículos 83, 84, 209 y 333 de la Carta Política”.

¹¹⁰ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

applicant's expense, and make it available for sale to the public at a price that may not exceed the cost of publication."¹¹¹

90. Something similar occurs in Guatemala, where Article 19 of the Law on Access to Public Information establishes that "[t]he head of each entity subject to this law must designate a public servant, employee, or internal body to function as an information unit, which should have a liaison in every office or branch the entity may have around the country." Article 20, in turn, contemplates that these public information units have such obligations as giving guidance to interested parties in how to formulate requests for access to information, providing the information requested or providing grounds for a negative response when the request is inadmissible.¹¹²

91. Finally, in El Salvador as well, Article 48 of the Access to Public Information Law orders that "public sector bodies subject to this law shall have public information access units" and that the entities' directors shall appoint the information official in charge of this unit. The official's functions include helping individuals prepare their requests and giving them guidance regarding the offices that can provide them with the information they are seeking (Art. 50(c)). In addition, Article 68 establishes that interested parties have the right to "assistance in accessing information and help in preparing requests."¹¹³

92. In Panama, Article 7 of the Transparency Law provides that employees of the entities subject to the law must assist and guide those who request information.¹¹⁴ In that country, it is the

¹¹¹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 11. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 11: "Tanto el servidor público que se encuentre a cargo de la Oficina de Acceso a la Información Pública, como el personal calificado a su cargo, brindarán sus mejores esfuerzos para facilitar y hacer posible a los ciudadanos la localización y el acceso a la información solicitada. También facilitarán la impresión del documento para su inmediata consulta, o copia o fotocopia a costa del solicitante; igualmente, dispondrán la venta al público por un precio que no podrá superar el costo de edición." According to Article 4 n, this is "an office directly subordinated to the highest authority of each public entity which has been assigned the functions inherent to the application of this Law within the agency to which it belongs, particularly as regards enabling access to the information referred to in this Law" ("dependencia subordinada directamente a la máxima autoridad de cada entidad pública a la que le han sido asignadas las funciones inherentes a la aplicación de la presente Ley dentro del organismo a que pertenece, particularmente en lo relativo a posibilitar el acceso a la información a que se alude en la presente Ley").

¹¹² Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "El titular de cada sujeto obligado debe designar al servidor público, empleado u órgano interno que fungirá como Unidad de Información, debiendo tener un enlace en todas las oficinas o dependencias que el sujeto obligado tenga ubicadas a nivel nacional."

¹¹³ Republic of El Salvador. Law on Access to Public Information. The law was approved by Decree 534 of 2011 and entered into force on May 8, 2011. Available at: <http://www.accesoinformacionsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

¹¹⁴ Republic of Panama. Law on Transparency in Public Administration (Ley de Transparencia en la Gestión Pública). Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. Article 7 of the Law on Transparency of Public Functions provides: "The official receiving the request shall have thirty calendar days from the date the request is presented to provide a response in writing. If the institution does not have the document(s) or records requested, the person making the request shall be notified to that effect. If the official has knowledge that another institution has or could have the documents or similar documents in its possession, he/she has the obligation to inform the petitioner. In the event of a complex or extensive request, the official shall inform the petitioner in writing, during the abovementioned thirty-day period, of the need to extend the deadline for gathering the requested information. In no case shall this period exceed an additional thirty calendar days. A clear and simple mechanism shall be provided to verify that the information has in fact been turned over to the petitioner; this may also be done via electronic mail when such a facility is available and in all cases when the request was submitted by that means. // In the event that the information the person requests is already available to the public in written form, such as in books, compendiums, leaflets, or public administration archives, or in electronic formats available on the Internet or by any other means, the petitioner shall be notified by reliable means of the source, place, and form by which he/she can gain access to the previously published information" ("El funcionario receptor tendrá treinta días calendario a partir de la fecha de la presentación de la solicitud, para contestarla por escrito, y, en caso de que ésta no posea el o los documentos o registros solicitados, así lo informará. Si el funcionario tiene conocimiento que otra institución tiene o pueda tener en su poder dichos documentos o documentos similares, estará obligado a indicárselo al solicitante. De tratarse de una solicitud compleja o extensa, el funcionario informará por escrito, dentro de los treinta días calendario antes señalados, la necesidad de extender el término para recopilar la información solicitada. En ningún caso, dicho término podrá exceder de treinta días calendarios adicionales. Se deberá prever un mecanismo claro y simple de constancia de la entrega efectiva de la información al solicitante, que puede hacerse también a través de correo electrónico cuando se disponga de tal facilidad y, en todo caso, cuando la solicitud hubiere sido presentada por esa vía.// En caso de que la información solicitada por la persona ya esté disponible al público en medios impresos tales como libros, compendios, Continued...

Supreme Court that has taken it upon itself to apply in practice the principle of good faith. In 2007, the Court granted a *habeas data* action that alleged that a party subject to the law had acted in bad faith, since although he had indicated that a piece of information had already been published, he did not provide the necessary references to be able to access it. In view of these circumstances, the Court found the following:

The Ministry of Public Works considers that simply by making it known that the information is available in a digitalized system, which can be accessed via the Internet, the principle of disclosure has been met, while the plaintiff maintains that this reference, which does not specify the number and exact date from the Official Gazette where the information is found, disregards the legal commitment established in Law No. 6 of January 22, 2002... This legal circumstance highlights the fact that the general recommendation made to the applicant by the Ministry of Public Works, that he should look for the rest of the information requested in the digitalized system of Official Gazettes, is not sufficient to guarantee that the principle of disclosure has been met. In this case, the Ministry of Public Works shirked... its duty to specify to the applicant the source, place, and manner in which to access the information available on the Internet, which in the case of the systematized Official Gazettes means identifying the address or route of electronic access, the mechanism for making a connection or link, and the date and number of the Official Gazette with the information... For the reasons laid out here, the Plenum of the Supreme Court, administering justice on behalf of the Republic and under authority of the law, grants the habeas data action filed.¹¹⁵

93. In the Dominican Republic, both the General Law on Free Access to Public Information, as well as its regulatory decree, provide for assistance to the person requesting information. Thus, where necessary, the Party Responsible for Access to Information must assist the person in formulating the petition. Similarly, Chapter VII of the regulatory decree regulations establishes measures to promote a culture of transparency, prescribing plans for training and outreach as well as study programs at all educational levels.¹¹⁶

94. In Trinidad and Tobago, Section 14 of the Freedom of Information Act establishes that “[a] public authority shall take reasonable steps to assist any person” who has made a request that does not comply with the requirements. The same article stipulates that “[w]here a request in writing is made to a public authority for access to an official document, the public authority shall not refuse to comply with the request on the ground that the request does not comply with section 13(2), without first giving the

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trípticos, archivos públicos de la administración, así como también en formatos electrónicos disponibles en Internet o en cualquier otro medio, se le hará saber la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada”).

¹¹⁵ Republic of Panama. Supreme Court of Justice - Plenum. Habeas Data Action. First Instance. Case No. 842-06. March 2, 2007. Opinion by Judge Esmeralda Arosemena de Troitiño. Pag. 144. Available at: <http://www.organojudicial.gob.pa/wp-content/blogs.dir/8/files/2009/libros/rj2007-03.pdf>. See also, the sentence of the Supreme Court of Justice – Plenum. Habeas Data Action. May 3, 2002. “[E]l Ministerio de Obras Públicas estima que con sólo dar a conocer que los datos se encuentran disponibles en un sistema digitalizado, al que se puede acceder vía Internet, se da cumplimiento al principio de publicidad, mientras que el activador judicial sostiene que esa referencia, que no da cuenta del número y fecha exacta de la Gaceta Oficial donde se encuentra la información, desatiende el compromiso legal que establece la Ley 6 de 22 de enero de 2002. [...] Este escenario legal, pone de relieve que la recomendación general que le efectuó el Ministerio de Obras Públicas al peticionario, de consultar el resto de la información solicitada en el sistema digitalizado de Gacetas Oficiales, no posee la suficiencia para acreditar el cumplimiento del principio de publicidad. En este caso el Ministerio de Obras Públicas soslayó [...] (el deber) de precisarle al peticionario, la fuente, el lugar y la forma de acceder a la información disponible en Internet, lo que, tratándose de Gacetas Oficiales sistematizadas, equivale a identificar la dirección o ruta de acceso electrónico, el mecanismo de conexión o de enlace y la fecha y número de Gaceta Oficial donde reposa la información [...] Por las consideraciones que se dejan expuestas, el Pleno de la Corte Suprema, administrando justicia en nombre de la República y por autoridad de la ley, concede, la acción de Hábeas Data presentada.”

¹¹⁶ Dominican Republic. General Law on Access to Public Information. Law 200-04. Article 7. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>; Decree No. 130-05 approving the Regulations of the General Law on Access to Public Information. Articles 42-43. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>

applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that does comply with that section.” Section 14 also states that the public authority “shall take reasonable steps to assist any person in the exercise of any other right under this Act.”¹¹⁷

95. Antigua and Barbuda's statute contains similar provisions that develop the principle of good faith. Section 17 creates an obligation of public officials to provide assistance to petitioners who may need it, especially persons who are illiterate, and establishes that the procedures and formats for requesting information shall not unreasonably delay the processing of requests or place an undue burden on those making requests.¹¹⁸

96. In Canada, Section 4(2.1) of the Access to Information Act stipulates that “[t]he head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.”¹¹⁹

97. Finally, while the U.S. FOIA does not expressly refer to the principle of good faith, Executive Order 13392 on “Improving Agency Disclosure of Information,” issued in 2005, establishes in Section 1(b) that “FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency’s website), and about the status of a person’s FOIA request and appropriate information about the agency’s response.”¹²⁰

C. Content and Scope of the Right of Access to Information

98. The right of access to information contemplates a series of normative conditions for it to be adequately implemented and guaranteed. Indeed, as the Inter-American Court and the IACHR have established, for it to be understood that this right is truly guaranteed, it is necessary, among other things: for laws regulating it to ensure that a) this right applies to all persons, without discrimination and without the need to prove any direct interest; b) for all State agencies in all branches and levels of government, as well as anyone who executes public resources or provides essential public services to the community, to be bound by this right; and finally, c) the object of this right must be regulated in such a way that there will be no arbitrary or disproportionate exclusions. The next section of this report indicates how these matters are regulated in the various legal systems that were studied.

1. Every Person Has the Right of Access to Information

99. The right of access to information is a universal human right. Accordingly, everyone, regardless of location, has the right to request access to information, as established in Article 13 of the American Convention.¹²¹

¹¹⁷ Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

¹¹⁸ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

¹¹⁹ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

¹²⁰ United States of America. Executive Order 13392—Improving Agency Disclosure of Information. December 19, 2005. Available at: <http://edocket.access.gpo.gov/2005/pdf/05-24255.pdf>

¹²¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 16. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

100. In this regard, the Inter-American Court has specified that it is not necessary to prove a direct interest or personal stake in order to obtain State-held information, except in cases in which a legitimate restriction permitted by the Convention is applied, under the terms explained below.¹²²

101. The Model Law adopted by the General Assembly is governed by the principle of universal access to this right and, based on that principle, it prescribes that “[a]ny person making a request for information to any public authority” shall have the right “to make an anonymous request for information” and “to make a request without providing justifications for why the information is requested.”¹²³

102. Moreover, anyone who gains access to State-held information has, in turn, the right to disseminate the information so that it circulates in society, so that society can become familiar with it, have access to it, and evaluate it. In this way, the right of access to information shares the individual and social dimensions of the right to freedom of expression, both of which must be guaranteed simultaneously by the State.¹²⁴

103. Most of the legal systems studied establish that all persons are entitled to the right of access to information. In some countries, this definition does not include more detail about this right, while in others the definition is accompanied by specifics regarding its exercise.

104. Thus in Colombia, Article 12 of Law No. 57 of 1985 provides that “[e]veryone has the right to consult the documents kept in public offices and to be issued copies of them, as long as the documents are not of a privileged nature pursuant to the Constitution or the law, or do not have to do with defense or national security.”¹²⁵ Nevertheless, where the Code of Administrative Litigation establishes, in Article 5, that “[a]ny person may respectfully petition the authorities, verbally or in writing, through any means,” it specifies “the reasons on which [the petition] is based” as a requirement of the written petitions, by which the universality of the right is restricted.¹²⁶

105. The General Law on Free Access to Public Information of the Dominican Republic establishes, in its first article, that “[e]veryone has the right to request and receive information that is complete, truthful, appropriate, and timely, from any agency of the Dominican State, and from all corporations, stock companies, or publicly traded companies with State participation.” However, the procedure for exercising the right of information and access to information requires, under Article 7 of the law, that the requests for access identify “the justification of the reasons for which the data or information is requested.” Nonetheless, the law’s rules of procedure, adopted under Decree No. 130-05, indicate in Article 15 that “the description of the purpose of the reasons why the information required is requested, in terms of Article 7(d) of the Law, in no way and in no case shall impede the applicant’s broadest access to that information, nor should it grant the official the ability to reject the request. In this sense, it is sufficient that the applicant invoke any simple interest related to the information that is sought.”¹²⁷

¹²² I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

¹²³ OAS General Assembly, Resolution AG/RES. 2607 (XL-O/10), which adopts a Model Inter-American Law on Access to Information. June 8, 2010. Article 5. Available at: http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf

¹²⁴ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

¹²⁵ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. “Toda persona tiene derecho a consultar los documentos que reposen en las oficinas públicas y a que se le expida copia de los mismos, siempre que dichos documentos no tengan carácter reservado conforme a la Constitución o la Ley, o no hagan relación a la defensa o seguridad nacional.”

¹²⁶ Republic of Colombia. Contentious Administrative Code. Decree 01 of 1984. Available at: http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html. “Toda persona podrá hacer peticiones respetuosas a las autoridades, verbalmente o por escrito, a través de cualquier medio.”

¹²⁷ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>; Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/traspacidad/decreto-130-05.pdf>. Art. 1: “Toda persona tiene derecho a solicitar y a recibir información completa, veraz,

106. For its part, Article 1 of Ecuador's Organic Law establishes that "access to public information is a right of persons which is guaranteed by the State."¹²⁸

107. In Jamaica, the Access to Information Act establishes a universal dimension to that right, without any need to prove a direct interest. Thus, in addition to the provisions establishing a general right of access, pursuant to Section 6(1) of the law, "every person" has that right. Under Section 6(3), an applicant for access to public information "shall not be required to give any reason for his or her request."¹²⁹

108. In Antigua and Barbuda, Section 15(1) establishes the right of every person to obtain access to information. Section 17(4), meanwhile, clarifies that "(t)he reason for a request for information made to a public authority is irrelevant for the purpose of deciding whether the information should be provided."¹³⁰

109. In the United States, the FOIA recognizes the universal right to public information by establishing the right of any person to request information from the government. Section 552(a) (3) (A) stipulates that agencies "shall make the records promptly available to any person." The law does not establish restrictions based on citizenship or residency.¹³¹

110. Along similar lines, this principle is recognized in the legislation of Trinidad and Tobago. According to Section 4 of the country's Freedom of Information Act, "applicant" means a person who has made a request in accordance with section 13. Moreover, Section 11(1) establishes: "Notwithstanding any law to the contrary and subject to the provisions of this act, it shall be the right of every person to obtain access to an official document."¹³²

111. In El Salvador, Article 18 of the Constitution provides that every person is entitled to petition any entity of the State.¹³³ In harmony with this principle, Article 2 of the 2011 Access Law provides that "every person has the right to request and receive information that is generated, administered, or held by public institutions and other bodies subject to the law in a timely and truthful manner, without having to prove any direct interest or reason whatsoever."¹³⁴

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adecuada y oportuna, de cualquier órgano del Estado Dominicano, y de todas las sociedades anónimas, compañías anónimas o compañías por acciones con participación estatal." Art. 15 reads: "[l]a descripción de la motivación de las razones por las cuales se requiere la información solicitada, en los términos del Artículo 7 inciso d de la LGLAIP, en modo alguno y en ningún caso puede impedir el más amplio acceso del requirente a la misma ni otorga al funcionario la facultad de rechazar la solicitud. En este sentido, al solicitante le basta con invocar cualquier simple interés relacionado con la información buscada".

¹²⁸ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. "[E]l acceso a la información pública es un derecho de las personas que garantiza el Estado."

¹²⁹ Jamaica. Access to Information Act. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

¹³⁰ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

¹³¹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(A). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

¹³² Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

¹³³ Political Constitution of El Salvador. Available at: <http://www.csi.gob.sv/leyes.nsf/305364d9d949871586256d48006fa206/7c9c3e6418fb38fa06256d02005a3dccc?OpenDocument>

¹³⁴ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "Toda persona tiene derecho a solicitar y recibir información generada, administrada o en poder de las instituciones públicas y demás entes obligados de manera oportuna y veraz, sin sustentar interés o motivación alguna."

112. In Guatemala and Chile, laws on access to public information provide that all natural or legal persons are entitled to request and have access to public information. Moreover, these laws add that this right may be exercised without discrimination. Thus in Guatemala, the Law on Access to Information provides that its purpose is to “guarantee to any interested person, without any discrimination whatsoever, the right to request and have access to public information held by the authorities and those subject to this law,” and establishes as active parties under this right “all individual or legal persons, public or private, who have the right to request, have access to, and obtain the public information they have requested as established in this law”¹³⁵ (underscore added).

113. In Chile, the principle of universal access and non-discrimination is also provided. Article 11(g) of the Law on Access to Public Information establishes that “the agencies of the Administration of the State must turn over information to anyone who so requests, under equal conditions, without making arbitrary distinctions and without requiring a statement of cause or justification for the request” (underscore added).¹³⁶

114. In Nicaragua, in addition to the principle of non-discrimination, the principle of multi-ethnicity is recognized. In practical terms this means that the information requested by persons of different ethnicities must be provided in their native language so as to guarantee that its content is understood.¹³⁷ A similar provision is found in Mexico, where Article 1 of the Federal Transparency and Access to Governmental Public Information Act provides that the purpose of the act is to guarantee access by every person to the information held by the government.¹³⁸

115. In other countries, the determination that all persons have the right to access information is accompanied by explicit mention of the fact that those requesting information do not have to prove a direct interest in the request. Thus in Peru, Article 7 of the Law on Access to Public Information provides that “every person has the right to request and receive information from any entity of the Public Administration. In no case shall a statement of cause be required to exercise this right.”¹³⁹ Similarly, Panama's Transparency Law also establishes that everyone “has the right to request, without having to provide any justification or motivation, information of public access in the possession of or known to the institutions indicated in this Law.”¹⁴⁰ Along these same lines, in Uruguay it is established that “[a]ccess to public information is a right of all persons, without discrimination for reasons of nationality or the character

¹³⁵ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. See Articles 1, No. 1, and 5. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. Art. 1(1): “Garantizar a toda persona interesada, sin discriminación alguna, el derecho a solicitar y a tener acceso a la información pública en posesión de las autoridades y sujetos obligados por la presente ley.” Art. 5: “Es toda persona individual o jurídica, pública o privada, que tiene derecho a solicitar, tener acceso y obtener la información pública que hubiere solicitado conforme lo establecido en esta ley”.

¹³⁶ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “los órganos de la Administración del Estado deberán entregar información a todas las personas que lo soliciten, en igualdad de condiciones, sin hacer distinciones arbitrarias y sin exigir expresión de causa o motivo para la solicitud”.

¹³⁷ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 3, No. 3, establishes the principle of multi-ethnicity and provides: “The Nicaraguan people are multi-ethnic by nature, and thus public information must also be provided in the different languages that exist along the Atlantic Coast of the country.”

¹³⁸ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

¹³⁹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. “toda persona tiene derecho a solicitar y recibir información de cualquier entidad de la Administración Pública. En ningún caso se exige expresión de causa para el ejercicio de este derecho.” In addition, Article 13 states that the administrative entity may not refuse information based on the applicant's identity.

¹⁴⁰ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 2. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. “derecho a solicitar, sin necesidad de sustentar justificación o motivación alguna, la información de acceso público en poder o en conocimiento de las instituciones indicadas en la presente Ley”.

of the applicant, and it is exercised without the need to justify the reasons for requesting the information.”¹⁴¹

116. In Argentina, Article 6 of the General Regulations on Access to Public Information of the Federal Executive Branch—approved, along with other regulations, through Decree No. 1172 of 2003—establishes: “Any natural or juridical person, public or private, has the right to request, obtain access to, and receive information, it not being necessary to prove a subjective right or legitimate interest or to have a professional lawyer.”¹⁴² This principle of active legitimacy has been developed in case law. In the *Case of Jorge A. Vago v. Ediciones La Urraca S.A. et al*, the Supreme Court recognized the following:

*[T]he National Constitution, in Articles 14 and 32, and the Pact of San José, Costa Rica, approved by Law No. 23.054, contemplate the right of all persons to freedom of thought and expression and 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 (Art. 13, para. 1 of the aforementioned Pact). The right of information, which is of an individual nature, acquires a connection of meaning with the right to information, which is of a social nature, by guaranteeing all persons the right to have knowledge of and participate in everything related to political, governmental, and administrative processes, cultural resources, and manifestations of the spirit as an essential human right.*¹⁴³

117. Canada's statute establishes certain direct restrictions to the universality of the right of access to information. In fact, its Access to Information Act, in Section 4(1), restricts the exercise of this right to Canadian citizens and permanent residents within the meaning of section 2(1) of the *Immigration and Refugee Protection Act*.¹⁴⁴ This provision poses a problem, as it unjustifiably restricts the exercise of this right, contrary to the principle of universality established by Inter-American standards. Canada's Information Commissioner has made statements along these lines, and his office is promoting debate about amending the provision.¹⁴⁵

118. On another point, none of the countries studied prohibits individuals from disseminating public information, which would be a step backward with regard to protection of the collective scope of the right to access to information. Judicial precedents have also been developed in this regard, such as the

¹⁴¹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 3°. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “El acceso a la información pública es un derecho de todas las personas, sin discriminación por razón de nacionalidad o carácter del solicitante, y que se ejerce sin necesidad de justificar las razones por las que se solicita la información”.

¹⁴² Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. “Toda persona física o jurídica, pública o privada, tiene derecho a solicitar, acceder y recibir información, no siendo necesario acreditar derecho subjetivo, interés legítimo ni contar con patrocinio letrado”.

¹⁴³ Republic of Argentina. Supreme Court of Justice of the Nation. *Case of Jorge A. Vago v. Ediciones La Urraca S.A. et al*. Judgment of November 19, 1991. Whereas paragraph 5. Available at: <http://www.csn.gov.ar/jurisp/jsp/fallos.do?usecase=mostrarHjFallos&fallold=62115>. “la Constitución Nacional en sus arts. 14 y 32 y el Pacto de San José de Costa Rica aprobado por la ley 23.054 contemplan el derecho de toda persona a pensar y expresar su pensamiento y a buscar, recibir y difundir información e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística o por cualquier otro procedimiento de su elección (Art. 13, inc. 1° del Pacto cit.). El derecho de información, de naturaleza individual, adquiere conexión de sentido con el derecho a la información, de naturaleza social, al garantizar a toda persona el conocimiento y la participación en todo cuanto se relaciona con los procesos políticos, gubernamentales y administrativos, los recursos de la cultura y las manifestaciones del espíritu como un derecho humano esencial”.

¹⁴⁴ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

¹⁴⁵ See Department of Justice. “Strengthening the *Access to Information Act*. A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act.” April 11, 2006. Available at: <http://www.justice.gc.ca/eng/dept-min/pub/atia-lai/atia-lai.pdf>

decision in which Peru's Constitutional Court recognized that the right of access to information has a collective dimension that allows public functions to be monitored.¹⁴⁶

2. Subjects with Obligations under the Right of Access to Information

119. The right of access to information creates obligations for all public authorities of all branches of government and autonomous agencies, at all levels of government. This right is also binding on those who carry out public functions, provide public services, or execute public resources on behalf of the State. With respect to the latter, the right of access establishes the obligation to provide information exclusively with respect to managing public resources, carrying out the services under their purview, and fulfilling the aforementioned public functions.¹⁴⁷

120. In this regard, reaffirming existing case law, the Inter-American Juridical Committee's resolution on "Principles on the Right of Access to Information" specifies, in its second principle, that "[t]he right of access applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions."¹⁴⁸

121. Similarly, the Model Law on Access to Information adopted by the OAS General Assembly recommends to the States that the law be applied "to all public authorities, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory authorities, non-state bodies which are owned or controlled by government, and private organizations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake. [...]"¹⁴⁹

122. As is explained below, in some States the access obligation applies directly to parties that are not of a public nature but carry out public functions or execute public services—as in the case of Antigua and Barbuda, Ecuador, Guatemala, Nicaragua, the Dominican Republic, Panama, and Peru—while some refer to other parties that are indirectly subject to the law—as in the case of Mexico—or have been omitted from it. On this point, it is worth mentioning that while the States should recognize as subject to the law not only State institutions but also private persons that carry out public functions or receive contributions from the State, in these cases the duty to provide information refers exclusively to the public activities they perform or those they carry out with State contributions, so that the right to the confidentiality of private information is simultaneously protected.

123. In Guatemala, Article 2 of the Law on Access to Public Information establishes that those bound by the principle of disclosure are "State agencies, municipalities, autonomous and decentralized institutions, and private entities that receive, invest, or manage public funds, including trusts constituted with public funds and public works or services subject to concession or management."¹⁵⁰

¹⁴⁶ Republic of Peru. Judgment of the Constitutional Court. Docket No. 04912-2008-PHD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04912-2008-HD.html>

¹⁴⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 19. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

¹⁴⁸ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 2. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

¹⁴⁹ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a "Model Inter-American Law on Access to Public Information." June 8, 2010. Article 3. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

¹⁵⁰ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "La presente ley es de orden público, de interés nacional y utilidad social; establece las normas y los procedimientos para garantizar a toda persona, natural o jurídica, el acceso a la información o actos de la administración pública que se encuentre en los archivos, fichas, registros, base, banco o cualquier otra forma de almacenamiento de datos que se encuentren en los organismos del Estado, municipalidades, instituciones autónomas y descentralizadas y las entidades privadas que perciban,

124. Likewise, Article 6 states that those subject to the statute shall be understood to mean “any individual or legal person, public or private, national or international, of any type; institution or entity of the State; agency, organization, entity, office, institution, or any other body that manages, administers or executes public resources, State assets, or acts of the public administration in general that is required to provide public information to anyone who requests it.”¹⁵¹

125. Panama's Transparency Law establishes, in subparagraph 8 of Article 1, that institutions subject to the provisions of the law are understood to mean “[a]ny agencies or offices of the State, including those belonging to the Executive, Legislative, and Judicial branch; the Public Prosecutor's Office; decentralized, autonomous, and semiautonomous entities; the Panama Canal Authority; municipalities, local governments, and community governing boards; mixed-capital enterprises, cooperatives, foundations, trusteeships, and nongovernmental organizations that have received or receive funds, capital, or assets from the State.”¹⁵²

126. Along the same lines, Nicaragua's Law on Access to Public Information establishes, in its Article 1, that those subject to the disclosure of information are “public entities or institutions, mixed and State-subsidized corporations, as well as private entities that administer, manage, or receive public resources, tax benefits or other benefits, concessions, or advantages.”¹⁵³ Article 4 (d) also includes under those subject to the law “all mixed or private enterprises that are concession holders for public services; and those persons under public or private law who, in the exercise of their activities, act in support of the aforementioned entities or receive resources from the General Budget of the Republic subject to accountability.”¹⁵⁴

127. For its part, Article 1 of the General Law on Free Access to Public Information of the Dominican Republic establishes that all persons are entitled to receive information and imposes an obligation on any agency of the Dominican State, as well as all corporations, stock companies, or publicly trade companies with State participation. These categories include: agencies and entities of the centralized government; autonomous and/or decentralized State agencies and entities, including the

...continuation

inviertan o administren fondos públicos, incluyendo fideicomisos constituidos con fondos públicos, obras o servicios públicos sujetos a concesión o administración”.

¹⁵¹ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. Art. 6: “Sujetos obligados. Es toda persona individual o jurídica, pública o privada, nacional o internacional de cualquier naturaleza, institución o entidad del Estado, organismo, órgano, entidad, dependencia, institución y cualquier otro que maneje, administre o ejecute recursos públicos, bienes del Estado, o actos de la administración pública en general, que está obligado a proporcionar la información pública que se le solicite.” Article 6 of the law establishes an extensive list of public and private entities subject to norms on access to information. These include any NGOs, foundations, and associations that receive, administer, or execute public funds.

¹⁵² Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. “Toda agencia o dependencia del Estado, incluyendo las pertenecientes a los Órganos Ejecutivo, Legislativo y Judicial, el Ministerio Público, las entidades descentralizadas, autónomas y semiautónomas, la Autoridad del Canal de Panamá, los municipios, los gobiernos locales, las juntas comunales, las empresas de capital mixto, las cooperativas, las fundaciones, los patronatos y los organismos no gubernamentales que hayan recibido o reciban fondos, capital o bienes del Estado”.

¹⁵³ Republic of Nicaragua. Law No. 621 of 2007, which issues the Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 1: “entidades o instituciones públicas, las sociedades mixtas y las subvencionadas por el Estado, así como las entidades privadas que administren, manejen o reciban recursos públicos, beneficios fiscales u otros beneficios, concesiones o ventajas.” Paragraph (c) of Article 4 explains the definition of public entities and institutions: “The branches of the State (Legislative, Executive, Judicial, and Electoral) with their offices, attached or independent agencies, Autonomous and Governmental Bodies, including their enterprises; Municipal Governments and the Autonomous Regional Governments of the Atlantic Coast with their corresponding offices and enterprises; and autonomous entities established in the Constitution of Nicaragua.”

¹⁵⁴ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 4: “toda entidad mixta o privada que sea concesionaria de servicios públicos; y las personas de derecho público o privado, cuando en el ejercicio de sus actividades actúen en apoyo de las entidades antes citadas o reciban recursos provenientes del Presupuesto General de la República sujetos a la rendición de cuentas.”

National District and municipal agencies; self-sufficient and/or decentralized State agencies and entities; commercial enterprises and corporations belonging to the State; bodies and institutions under private law that receive resources from the national budget to achieve their purposes; the legislative branch, in terms of its administrative activities; and the judicial branch, in terms of its administrative activities.¹⁵⁵

128. In El Salvador, Article 7 of the Access Law provides that those bound by this law are “State bodies, their offices, autonomous institutions, municipalities, or any other entity or institution that administers public resources or State assets, or carries out governmental actions in general.” The law explains that public resources shall also be understood to mean “those funds stemming from any agreement or treaty that the State may enter into with other States or international institutions...” In addition, this article establishes that the law's standards also apply to “semi-public enterprises and natural and legal persons who manage resources or public information or carry out governmental functions, national or local, such as public contracting, public works concessions, or public services.” In these latter cases, the obligation is restricted to “allowing access to information concerning the administration of the funds or public information granted and the public functions conferred, as the case may be.”¹⁵⁶

129. Article 8 of Peru's Law on Transparency and Access to Public Information establishes that public administration entities are subject to the law.¹⁵⁷ According to Article 1 of Law No. 27444, the Law on General Administrative Procedures, these include private legal persons that provide public services or exercise administrative functions by virtue of a concession, delegation, or authorization from the State.¹⁵⁸ In addition, Article 9 of the Transparency Law provides that private legal persons that provide public services are obligated to provide information only about the characteristics of the public services they provide, their rates, and the administrative functions they perform.¹⁵⁹

¹⁵⁵ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr!%3d&tabid=69&mid=421>

¹⁵⁶ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 7: “Están obligados al cumplimiento de esta ley los órganos del Estado, sus dependencias, las instituciones autónomas, las municipalidades o cualquier otra entidad u organismo que administre recursos públicos, bienes del Estado o ejecute actos de la administración pública en general. Se incluye dentro de los recursos públicos aquellos fondos provenientes de Convenios o Tratados que celebre el Estado con otros Estados o con Organismos Internacionales, a menos que el Convenio o Tratado determine otro régimen de acceso a la información. / También están obligadas por esta ley las sociedades de economía mixta y las personas naturales o jurídicas que manejen recursos o información pública o ejecuten actos de la función estatal, nacional o local tales como las contrataciones públicas, concesiones de obras o servicios públicos. El ámbito de la obligación de estos entes se limita a permitir el acceso a la información concerniente a la administración de los fondos o información pública otorgados y a la función pública conferida, en su caso”.

¹⁵⁷ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

¹⁵⁸ Article 1 of Law No. 27444 establishes: “For the purposes of this Law, a Public Administration “entity” or “entities” shall be understood to mean: 1. The Executive Branch, including Ministries and Decentralized Public Bodies; 2. The Legislative Branch; 3. The Judiciary; 4. Regional Governments; 5. Local Governments; 6. The Bodies on which the Political Constitution of Peru and the laws confer autonomy; 7. The remaining entities and bodies, projects and programs of the State whose activities are carried out by virtue of administrative powers and thus are considered subject to the common norms of public law, except when an express mandate of law refers them to another regime; and 8. Private legal persons that provide public services or exercise administrative functions by virtue of concession, delegation, or authorization by the State, in accordance with the rules governing this matter.” (“Para los fines de la presente Ley, se entenderá por “entidad” o “entidades” de la Administración Pública: 1. El Poder Ejecutivo, incluyendo Ministerios y Organismos Públicos Descentralizados; 2. El Poder Legislativo; 3. El Poder Judicial; 4. Los Gobiernos Regionales; 5. Los Gobiernos Locales; 6. Los Organismos a los que la Constitución Política del Perú y las leyes confieren autonomía. 7. Las demás entidades y organismos, proyectos y programas del Estado, cuyas actividades se realizan en virtud de potestades administrativas y, por tanto se consideran sujetas a las normas comunes de derecho público, salvo mandato expreso de ley que las refiera a otro régimen; y 8. Las personas jurídicas bajo el régimen privado que prestan servicios públicos o ejercen función administrativa, en virtud de concesión, delegación o autorización del Estado, conforme a la normativa de la material.”) Available at: http://www.pcm.gob.pe/InformacionGral/sgp/2005/Ley_27444_Procedimiento_Administrativo.pdf

¹⁵⁹ The Constitutional Court of Peru has addressed the issue of disclosure of information by companies that provide public services. In a lawsuit filed against American Airlines over the refusal to provide access to information requested regarding its provision of services, the Court ruled that airline transportation is by nature a public service. Thus it concluded that information related to that service must be provided to any citizen who requests it. See, Judgment of the Constitutional Court. Docket No. 02636-2009-PHD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/02636-2009-HD.html>

130. Chile, Jamaica, and Colombia establish as entities subject to the law only legal persons that have a State participation equal to or above 50% of shares.

131. In Chile, Article 2 of the Transparency Law provides that parties obligated by the right to access to public information, under the terms of the law, are “ministries, intendancies, governorates, regional governments, municipalities, the armed forces, public and security forces, and public agencies and services created to carry out administrative functions.” Other parties subject to the law are public enterprises created by law, State enterprises, and corporations in which the State has a stock participation greater than 50% or a majority on the board of directors. Also, the Comptroller General of the Republic and the Central Bank shall adjust to comply with the provisions of the Law, in the cases it expressly states.¹⁶⁰

132. In Jamaica, the Access to Information Act applies to all public authorities, including those companies in which the State holds more than 50% of shares or is in a position to influence policy (Section 3(d)), and any other entity that provides services of a public nature which are essential to the welfare of society, subject to an affirmative resolution by the Minister responsible for the document and the approval of Parliament (Section 5(3)(b)). However, Section 5(6) establishes that the act shall not apply to the Governor-General, in the exercise of the powers conferred on him by the Constitution of Jamaica or under any other law; the judicial functions of (i) a court or (ii) the holder of a judicial office or other office connected with a court; the security or intelligence services in relation to their strategic or operational intelligence-gathering activities; and any entity as the Minister may specify by order subject to affirmative resolution, which is approved by Parliament.¹⁶¹

133. For its part, Article 14 of Colombia's Law No. 57 of 1985 provides that public offices—therefore entities subject to this law—are those of “the Office of the Attorney General of the Nation, the Office of the Comptroller General of the Republic, the Ministries, Administrative Departments, the oversight agencies, and Special Administrative Units; the Governorates, Intendancies, Police Districts, Mayoralties, and those offices' Secretariats; and those of other administrative offices that are created by the Departmental Assemblies, Intendancy Councils or Police District Councils, and the Municipal Councils, or that function with authorization from these same Bodies; and the offices of Public Establishments, State Industrial or Commercial Enterprises, and Mixed-Economy Corporations in which official participation is greater than fifty percent (50%) of its equity, whether they be national, departmental, or municipal entities; and all others over which the Office of the Comptroller General of the Republic exercises fiscal control.”¹⁶²

134. In Mexico, Article 3 (XIV), of the Federal Transparency and Access to Governmental Public Information Act establishes that the “disclosing parties” are the Federal Executive, the Federal Public Administration, and the Attorney General's Office; the Federal Legislative Branch; the Judicial

¹⁶⁰ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “los ministerios, las intendancias, las gobernaciones, los gobiernos regionales, las municipalidades, las Fuerzas Armadas, de Orden y Seguridad Pública, y los órganos y servicios públicos creados para el cumplimiento de la función administrativa”.

¹⁶¹ Jamaica. Access to Information Act. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

¹⁶² Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. “la Procuraduría General de la Nación, la Contraloría General de la República, los Ministerios, los Departamentos Administrativos, las Superintendencias y las Unidades Administrativas Especiales; las de las Gobernaciones, Intendencias, Comisarías, Alcaldías y Secretarías de estos Despachos, así como las de las demás dependencias administrativas que creen las Asambleas Departamentales, los Consejos Intendenciales o Comisariales y los Concejos Municipales o que se funden con autorización de estas mismas Corporaciones; y las de los Establecimientos Públicos, las Empresas Industriales o Comerciales del Estado y las Sociedades de Economía Mixta en las cuales la participación oficial sea superior al cincuenta por ciento (50%) de su capital social, ya se trate de entidades nacionales, departamentales o municipales y todas las demás respecto de las cuales la Contraloría General de la República ejerce el control fiscal”.

Branch and the Federal Council of the Judiciary; autonomous constitutional entities¹⁶³; the federal administrative courts; and any other federal entity. The law's Title Two regulates access to information held by the executive branch. Title Three has to do with access to information held by "other disclosing parties." It establishes, in Article 61, that federal government bodies outside the executive branch that are subject to the Federal Transparency Act "shall establish, by means of regulations or resolutions of a general character, the bodies, criteria and institutional procedures enabling the access by private parties to information in terms of the principles and terms consigned herein."¹⁶⁴

135. There is an additional category known as "other disclosing parties." According to Article 11 of the Federal Transparency and Access to Governmental Public Information Act: "The reports submitted by national political parties and political associations to the Federal Electoral Institute and the audits and reviews ordered by the Public Funds Auditing Commission of the Political Parties and Associations must be publicized upon completion of the respective auditing procedure." Under Article 12 of the law, the disclosing parties must "publish all information related to the amounts and recipients of public funds for whatever reason, as well as the reports rendered by said recipients on the use and destination of said resources."¹⁶⁵

136. With regard to Uruguay, the law on various occasions mentions the obligations of those subject to the law and sets forth a broad definition of who they are but does not identify them specifically. In this respect, Article 2 of the law establishes that "any public body, whether of the State or not," is subject to the law.¹⁶⁶

137. In Argentina, Canada, the United States, and Trinidad and Tobago, there are official authorities who are exempt from the obligation to grant access to the right. Argentina is unique in that it does not have a statute on access to public information. The national executive branch issued Decree No. 1172 of 2003, which contains the General Regulations on Access to Public Information of the Federal Executive Branch. These regulations require entities of the federal executive branch to publish and disclose information they produce or hold. The regulations also apply to private organizations that have received contributions from the national public sector and to private enterprises that provide a public service or make use of an asset in the public domain.¹⁶⁷ However, the regulations' provisions do not apply

¹⁶³ Pursuant to Article 3 (IX), autonomous constitutional entities are the Federal Electoral Institute, the National Human Rights Commission, the Central Bank, universities, and other higher education institutions that have been conferred autonomy by the law, and any other entity consigned in the Federal Constitution of the United Mexican States.

¹⁶⁴ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. The same Article 61 mentions as "other disclosing parties" the Federal Legislative Branch, through the Senate, the House of Representatives, the Permanent Commission, and the Federal Auditor's Office; the Federal Judicial Branch, through the Supreme Court of Justice, the Federal Council of the Judiciary, and the Administrative Commission of the Federal Electoral Institute; and the constitutional autonomous bodies and administrative-law courts within the sphere of their competence."

¹⁶⁵ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

¹⁶⁶ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

¹⁶⁷ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. Article 2 of the decree establishes: "Sphere of application. These General Regulations apply in the sphere of the agencies, entities, enterprises, corporations, offices, and all other bodies that operate under the jurisdiction of the national executive branch.//The provisions of these regulations are also applicable to private organizations that have been granted subsidies or contributions from the national public sector, as well as to institutions or trusts whose management, supervision, or preservation is the responsibility of the National State through its jurisdictions or entities and the private enterprises that have been authorized, through permit, license, concession, or any other contractual means, to provide a public service or to make use of an asset in the public domain" ("Ámbito de aplicación. El presente Reglamento General es de aplicación en el ámbito de los organismos, entidades, empresas, sociedades, dependencias y todo otro ente que funcione bajo la jurisdicción del Poder Ejecutivo Nacional.// Las disposiciones del presente son aplicables asimismo a las organizaciones privadas a las que se hayan otorgado subsidios o aportes provenientes del sector público nacional, así como a las instituciones o fondos cuya administración, guarda o conservación esté a cargo del Estado Nacional a través de sus jurisdicciones o entidades y a las empresas privadas a quienes se les hayan otorgado mediante permiso, licencia, concesión o cualquier otra forma contractual, la prestación de un servicio público o la explotación de un bien del dominio público").

to the other branches or other levels of government, and they can be modified at any time by decision of the executive branch. Despite these limitations, the Supreme Court of Justice has issued some decisions in which it orders the national legislative branch to allow access to the information in its possession.

138. This occurred in the *Case of the Center for Implementation of Public Policies E. and C. (CIPPEC) v. the Senate*, regarding the Senate's failure to publish its parliamentary and administrative decrees. The Senate had argued that this omission did not violate the right to information established in Article 42 of the Constitution, among other things, because the information being requested did not involve government acts but internal institutional acts having to do exclusively with the Senate's institutional administrative management, an administrative activity that falls under its sphere of confidentiality.¹⁶⁸

139. On that point, the Court indicated that in the absence of an explicit legal exception, the principle of disclosure prevails, as in this case in which the Senate "has not established [...] that there has been any prior statute—or even an order—classifying the type of tactical, financial, and regulatory information being requested as secret or privileged in any way."¹⁶⁹

140. In Trinidad and Tobago, Section 4 of the Freedom of Information Act specifies what it means by "public authority" with an exhaustive list of the entities subject to the definition. These include: Parliament; the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a court of summary jurisdiction; the Cabinet as constituted under the Constitution; a Ministry or a department or division of a Ministry; the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or any of its divisions; a municipal corporation; a regional health authority; a statutory body, responsibility for which is assigned to a Minister of Government; a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State; and a Service Commission established under the Constitution or other written law.¹⁷⁰

141. The law also includes, in the same Section 4, "a body corporate or unincorporated entity," which includes any such entity that exercises any function on behalf of the State; is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; and is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control.¹⁷¹

142. However, Section 5(1) indicates that the Freedom of Information Act does not apply to the President; "a commission of inquiry issued by the President"; or "[s]uch public authority or function of a public authority as the President may, by order subject to negative resolution of Parliament, determine."

143. In the United States, the FOIA applies only to agencies and departments of the executive branch, not to the legislative or judicial branches or to state and local governments. Section 5 U.S.C. § 552(f) (1) stipulates that "agency" includes "any executive department, military department, Government

¹⁶⁸ Republic of Argentina. National Chamber of Appeals for Federal Administrative Litigation. Division III. *Case of Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para X, 2-3. The judgment is available at: <http://www.accesolibre.org/descargas/pdf/1158331282.pdf>

¹⁶⁹ Republic of Argentina. National Chamber of Appeals for Federal Administrative Litigation. Division III. *Case of Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para X. The judgment is available at: <http://www.accesolibre.org/descargas/pdf/1158331282.pdf>

¹⁷⁰ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

¹⁷¹ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”¹⁷²

144. In the case of Canada, the Access to Information Act, in Section 3(a), defines a “government institution” as “(a) any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I, and (b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.”¹⁷³

145. It is relevant to note that the Federal Court has interpreted this provision restrictively. In 2008, the Information Commissioner of Canada filed applications for judicial review with respect to four cases (2008 FC 766): between the Information Commissioner of Canada and the Minister of National Defence (Docket T-210-05); the Information Commissioner and the Prime Minister (Docket T-1209-05); the Information Commissioner and the Minister of Transport (Docket T-1211-05); and the Information Commissioner and the Commissioner of the Royal Canadian Mounted Police (Docket T-1210-05).¹⁷⁴ Among the issues to be considered was whether the Prime Minister’s Office, the Office of the Minister of Transport, and the Office of the Minister of National Defence were “government institutions” under Subsection 4(1) and Schedule I of the Access Act.¹⁷⁵

146. The Court concluded that the offices of the ministers and the Prime Minister’s Office are separate from the departments over which the ministers and the Prime Minister preside and therefore are not “government institutions” as defined in the Access Act.

147. In its judgment, the court noted that the Department of National Defence, the Department of Transport, and the Privy Council Office are among the “government institutions” expressly listed in Schedule I but, by contrast, the Offices of the Ministers of National Defence and Transport and the Prime Minister’s Office are not. While the court recognized that the ministers and the Prime Minister are the heads of their respective departments, it concluded that neither they nor their offices are “part of” these institutions.¹⁷⁶

148. Finally, in Antigua and Barbuda the law applies both to public authorities and to some private bodies. In terms of the public authorities to whom the law applies, Section 3 of the law establishes its application to: the Government; a Ministry of the Government and its offices; the Barbuda Council; and a body that is: (i) established by or under the Constitution or any other law; (ii) owned, controlled or substantially financed from public funds; and (iii) carrying out a function conferred by law or by the Government. It also includes any other body carrying out a public function as the Minister may designate.¹⁷⁷

3. Object or Scope of the Right

149. The right of access to information covers information that is in the State’s custody, administration, or possession; information the State produces or is legally obligated to produce; information in the control of those who perform or administer public functions, services or funds, solely

¹⁷² United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

¹⁷³ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

¹⁷⁴ *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (F.C.), 2008 FC 766, [2009] 2 F.C.R. 86. Available on the Federal Court site, at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

¹⁷⁵ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

¹⁷⁶ *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (F.C.), 2008 FC 766, [2009] 2 F.C.R. 86. [56]. Available on the Federal Court site, at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

¹⁷⁷ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

with respect to those services, functions and funds; and information that the State collects and is required to collect in the fulfillment of its functions.¹⁷⁸

150. Along these lines, the Inter-American Juridical Committee's resolution on "Principles on the Right of Access to Information" indicates that the "right to access applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium."¹⁷⁹

151. For its part, the OAS General Assembly, in its Model Inter-American Law on Access to Information, has recognized that the "right of access to information applies broadly to all information in possession of public authorities, including all information which is held or recorded in any format or medium."¹⁸⁰

152. In Chile, the Constitution establishes that the acts and resolutions of State bodies shall be public, as is the material on which they are based and any procedures used.¹⁸¹ The Law on Transparency¹⁸² broadens this by declaring that disclosure also extends to all records, files, contracts and agreements, and in general any information produced with public funding, regardless of the medium or format in which it is stored.¹⁸³

153. Article 5 of Ecuador's Organic Law on Transparency provides that public information means "all documents, in any format, in the control of the public institutions and legal persons to whom this Law refers, contained, created or obtained by them, which fall under their responsibility or have been produced with State resources."¹⁸⁴

154. Likewise, Guatemala's Law on Access to Public Information, in Article 9, paragraph 6, defines public information as "information in possession of those subject to the law, contained in the files, reports, studies, records, resolutions, official communications, correspondence, agreements, directives, guidelines, circulars, contracts, accords, instructions, notes, memorandums, statistics, or in fact any other record documenting the exercise of the faculties or activities of the entities subject to the law and their public servants, regardless of their source or the date on which they were produced. The documents may

¹⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 21. Available at: <http://www.cidh.org/pdf%20files/RELEAcceso.pdf>

¹⁷⁹ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 3. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

¹⁸⁰ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a "Model Inter-American Law on Access to Public Information." June 8, 2010. Preamble. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

¹⁸¹ Political Constitution of Chile. Article 8. Available at: http://www.camara.cl/camara/media/docs/constitucion_politica_2009.pdf

¹⁸² Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 10, para. 2: "Access to information comprises the right to access the information contained in acts, resolutions, records, files, contracts, and agreements, as well as any information prepared with public funding, contained in any format or medium, save for the legal exceptions" ("El acceso a la información comprende el derecho de acceder a las informaciones contenidas en actos, resoluciones, actas, expedientes, contratos y acuerdos, así como a toda información elaborada con presupuesto público, cualquiera sea el formato o soporte en que se contenga, salvo las excepciones legales").

¹⁸³ Article 11 of the law also establishes three principles for interpreting the object of the right of access to information. They are: the principle of relevance, which presumes that all State information held by public entities is important, independent of its date of creation, origin, classification, or handling; the principle of openness or transparency, by which all information in the possession of State bodies is presumed to be public, unless it is expressly classified as secret; and the principle of divisibility, by which the fact that some parts of an administrative act may be classified does not mean that the entire document is classified, and therefore access should be provided to the information that may be known.

¹⁸⁴ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. "Se considera información pública, todo documento en cualquier formato, que se encuentre en poder de las instituciones públicas y de las personas jurídicas a las que se refiere esta Ley, contenidos, creados u obtenidos por ellas, que se encuentren bajo su responsabilidad o se hayan producido con recursos del Estado".

be in any medium, whether written, printed, audio, visual, electronic, on computer, or holographic, as long as they are not confidential or classified as temporarily secret.”¹⁸⁵

155. In the Dominican Republic, the LGLAIP prescribes that persons have the right to access the information contained in acts and records of the public administration, as well as to be informed periodically, when necessary, of the activities carried out by entities and individuals that fulfill public functions (Art. 2). This right “also encompasses the freedom to seek, request, receive, and disseminate information belonging to the administration of the State, and to ask questions of the entities and individuals that carry out public functions, having the right to obtain a copy of documents that compile information on the exercise of the activities that fall under their purview, with the sole limitations, restrictions, and conditions established in the instant law”. In addition for purposes of applying the law, records and files are understood to mean “all documents kept or recorded in written, optical, acoustic, or any other form that fulfill aims or purposes of a public nature.”¹⁸⁶

156. Along the same lines, Article 3, paragraph V, of Mexico's Federal Transparency and Access to Governmental Public Information Act defines information as “the documents issued, obtained, acquired, transformed or kept by the Disclosing parties under any title.” In addition, paragraph III clarifies that “documents” means “[t]he files, reports, studies, certificates, resolutions, official communications, correspondence, directives, circulars, contracts, agreements, notes, memoranda, statistics or any other record evidencing the exercise of the authority or activity of the disclosing parties and their government officials, regardless of their source or date of issuance. Documents may be kept in any recording means, whether written, printed, sonic, visual, electronic or holographic.”¹⁸⁷

157. In the case of Mexico, it is interesting to note that Article 11 of the Act provides that the reports that political parties submit to the Federal Electoral Institute are also public, as are the audits and reviews ordered by the Public Funds Auditing Commission of the Political Parties and Associations. The same article indicates that any citizen may ask the Electoral Institute to provide information on the use of public funds allocated to political parties.¹⁸⁸

158. In Nicaragua, Article 4, subparagraph (k), of the Law on Access to Information establishes that public information means “information that the public administration produces, obtains, classifies, and stores in the exercise of its attributions and functions, as well as any information in possession of private entities that relates to public resources, tax benefits or other benefits, concessions, or advantages.”¹⁸⁹ Along the same lines, Article 10 of Peru's law provides that the law applies to

¹⁸⁵ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Es la información en poder de los sujetos obligados contenida en los expedientes, reportes, estudios, actas, resoluciones, oficios, correspondencia, acuerdos, directivas, directrices, circulares, contratos, convenios, instructivos, notas, memorandos, estadísticas o bien, cualquier otro registro que documente el ejercicio de las facultades o la actividad de los sujetos obligados y sus servidores públicos, sin importar su fuente o fecha de elaboración. Los documentos podrán estar en cualquier medio sea escrito, impreso, sonoro, visual, electrónico, informático u holográfico y que no sea confidencial ni estar clasificado como temporalmente reservado”.

¹⁸⁶ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CxmpGj6hr1%3d&tabid=69&mid=421>. “Este derecho [...] también comprende la libertad de buscar, solicitar, recibir y difundir informaciones pertenecientes a la administración del Estado y de formular consultas a las entidades y personas que cumplen funciones públicas, teniendo derecho a obtener copia de los documentos que recopilen información sobre el ejercicio de las actividades de su competencia, con las únicas limitaciones, restricciones y condiciones establecidas en la presente ley. / Para los efectos de esta ley se entenderá por actas y expedientes a todos aquellos documentos conservados o grabados de manera escrita, óptica, acústica o de cualquier otra forma, que cumplan fines u objetivos de carácter público. No se considerarán actas o expedientes aquellos borradores o proyectos que no constituyen documentos definitivos y que por tanto no forman parte de un procedimiento administrativo.”

¹⁸⁷ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

¹⁸⁸ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

¹⁸⁹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “La información que produce, obtiene, clasifica y almacena la administración pública en el ejercicio de sus atribuciones y funciones, así como

information contained in written documents, photographs, recordings, magnetic or digital support, or in any other format, as long as it has been created or obtained by the public administration or is in its possession or under its control. The article also determines that “any type of documentation funded by the public budget that serves as a basis for an administrative decision, as well as the minutes of official meetings, shall be considered public information.”¹⁹⁰

159. In El Salvador, subparagraph c) of Article 6 defines as public information any information that is “held by those bodies bound by the law, contained in documents, archives, data, databases, communications, and any type of records that document the exercise of their powers or activities, recorded in any medium, whether printed, optical, or electronic, independent of their source or date of preparation, and that is not confidential. Such information may have been created, obtained, transformed, or kept by these bodies for any reason.”¹⁹¹

160. For its part, Jamaica's Access to Information Act applies to any official document in the State's possession, subject to the exceptions established in the same act. Section 6(1) establishes that subject to the provisions of this act, every person shall have a right to obtain access to an official document, other than an exempt document. Section 3 of the same law, for its part, defines an official document as one held by a public authority in connection with its functions as such, whether or not it was created by that authority or before January 5, 2004, when the law went into effect.¹⁹²

161. In Trinidad and Tobago, Section 4 of the Freedom of Information Act defines “document” as “information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable

...continuation

aquella que esté en posesión de entidades privadas en lo que se refiere a los recursos públicos, beneficios fiscales u otros beneficios, concesiones o ventajas.” The same Article 4 of the law contains a series of definitions that are essential for interpreting the object of the right: “...e. Document: Medium or instrument of any kind, including electronic, designed to record or store information for its preservation and representation. // f. Archive: Organized collection of documents derived from and related to the administrative management of entities or organizations, in whatever medium these documents are stored, including electronic documents, and independently of the method that may be used to recover them. // g. Books: Printed medium used to systematically record a specific part of the administrative or financial activities or information of the entity in question. // h. Database: Organized collection of data with a common feature, implemented through an electronic medium. i. Register: Inclusion of data in a document or in documents in an archive. // j. Administrative File: This is a collection of documents that have been duly identified and numbered, or registered in any way, including the reports and resolutions in which administrative procedures are laid out chronologically” (“e. Documento: Medio o instrumento de cualquier naturaleza, incluyendo electrónica, destinado a registrar o almacenar información, para su perennización y representación. // f. Archivo: Conjunto organizado de documentos derivados y relacionados a las gestiones administrativas de las entidades u organizaciones, cualquiera que sea el soporte en que estén almacenados, incluyendo documentos electrónicos, y con independencia del método que sea necesario emplear para obtener su recuperación. // g. Libros: Medio impreso utilizado para registrar de manera sistemática una parte específica de las actividades o datos administrativos o financieros de la entidad que lo utiliza. // h. Base de datos: Conjunto organizado de datos, con una caracterización común, instrumentados en soporte electrónico. // i. Registro: Inclusión de datos en un documento, o de documentos en un archivo. // j. Expediente Administrativo: Es el conjunto de documentos debidamente identificados y foliados, o registrados de cualquier naturaleza, con inclusión de los informes y resoluciones en que se materializa el procedimiento administrativo de manera cronológica”).

¹⁹⁰ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. “[S]e considera como información pública cualquier tipo de documentación financiada por el presupuesto público que sirva de base a una decisión de naturaleza administrativa, así como las actas de reuniones oficiales.”

¹⁹¹ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Información pública: Es aquella en poder de los entes obligados contenida en documentos, archivos, datos, bases de datos, comunicaciones y todo tipo de registros que documenten el ejercicio de sus facultades o actividades, que consten en cualquier medio, ya sea impreso, óptico o electrónico, independientemente de su fuente, fecha de elaboración, y que no sea confidencial. Dicha información podrá haber sido generada, obtenida, transformada o conservada por éstos a cualquier título.”

¹⁹² Jamaica. Access to Information Act. Available at: <http://www.moj.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>

record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record.”¹⁹³

162. It is worth noting that the Trinidad and Tobago law includes a provision in Section 21(1) that allows a public authority to refuse to grant access to documents in accordance with requests “if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations and if before refusing to provide information on these grounds the authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.”¹⁹⁴

163. Similarly, Antigua and Barbuda's legislation, in Section 4(1), defines a “record” as “any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified.” Section 23(1) determines that a public authority is not required to comply with a request for information “which is vexatious or unreasonable or where [the institution] has recently complied with a substantially similar request from the same person.”¹⁹⁵

164. In the United States, the law has a broad definition of what is considered a document to which access may be obtained. FOIA Section 552(f) (2) establishes as a document or “record” any information that would be an agency record subject to the requirements [of the Law] when maintained by an agency in any format, including an electronic format”; and “any information [...] maintained for an agency by an entity under Government contract, for the purposes of records management.”¹⁹⁶ The law also determines that in responding to a request for records, an agency “shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.”¹⁹⁷

165. Other countries have less comprehensive definitions of what is subject to the right of access to information. Thus, Article 10 of Panama's Law on Access to Public Information establishes the following as subject to the right: information about institutions' operations, decisions made, and programs being managed; budget structure and execution, statistics, and any other information related to the institutional budget; and programs carried out by the institution and public acts related to the public contracts carried out by the institution. The law also establishes that the Ministry of Economy and Finance and the Office of the Comptroller General of the Republic shall present and publish, on a quarterly basis, a report on the execution of the State budget, which will provide information at least on the development of the Gross Domestic Product by sector and the performance of the most relevant activities per sector.¹⁹⁸

166. Uruguay's Law on Access to Information defines the scope of the right to access to information in Article 2, which establishes: “Public information is considered to be any information that comes from or is in possession of any public agency, whether or not it is of the State, save for the exceptions or secrets established by law, as well as information that is secret or confidential.”¹⁹⁹

¹⁹³ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

¹⁹⁴ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

¹⁹⁵ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

¹⁹⁶ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(f)(2) and (a)(3)(C). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

¹⁹⁷ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(C). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

¹⁹⁸ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

¹⁹⁹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Se

167. In Colombia, Article 12 of Law No. 57 of 1985 establishes that documents covered by this right are those held in the offices of the entities subject to the law.²⁰⁰ In one of its first decisions, Judgment T-473/92, the Constitutional Court established that the provision should not be interpreted to mean that the only documents that are accessible are those issued by the State, but rather that the right to access refers to any document that the State manages or archives, with the exception of those withheld by express provision under the law. In this regard, the Court stated:

Given that, under the terms of Article 74 of the Constitution, the notion of a public document is clearly not confined to any restricted concept that may be established by different laws, and thus the nature of the subject or entity that produces it or the way it is produced is not as important as the objective fact that it does not contain information that is considered expressly secret under the law, the notion covers, for example, records, reports, studies, accounts, statistics, directives, instructions, circulars, notes, and responses from public entities regarding the interpretation of the right or a description of administrative procedures, views or opinions, provisions or decisions in writing, audio or visual records, non-personal databanks, etc.

Added to the foregoing is the access to other documents whose public nature is determined by the conduct of those who hold them, or determined by custom, regardless of whether the presence or involvement of the public administration is an essential requisite—assuming, of course, that it does not go against the law or a right of others.

It is therefore clear that in the aforementioned situation there could be documents that arise from relations between private entities whose owners have decided, either formally or implicitly, to allow them to be accessed by the public.²⁰¹

168. In Argentina, Article 5 of the General Regulations on Access to Public Information of the Federal Executive Branch establishes that “for these effects, information is considered to be any record of written or photographic documents, recordings, magnetic or digital medium, or any other format that has been created or obtained by the parties mentioned in Article 2 or that is in their power or under its control, or whose production has been completely or partially funded by the public treasury, or that provides a basis for a decision of an administrative nature, including the minutes of official meetings.”²⁰² As has

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considera información pública toda la que emane o esté en posesión de cualquier organismo público, sea o no estatal, salvo las excepciones o secretos establecidos por ley, así como las informaciones reservadas o confidenciales”.

²⁰⁰ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. Article 12 of Law. No. 57 of 1985 establishes that “[a]ll persons have the right to consult the documents kept in public offices and the right to be issued a copy of them, as long as said documents are not of a privileged nature pursuant to the Constitution or the law, or are not related to defense or national security.”

²⁰¹ Republic of Colombia. Constitutional Court. Judgment T-473/92. July 14, 1992. Available at: <http://www.corteconstitucional.gov.co/relatoria/1992/T-473-92.htm>. “Puesto que en los términos del artículo 74 de la Carta la noción de documento público no se circunscribe, como se ve, al concepto restringido que consagra cualquiera de las ramas del ordenamiento y, de consiguiente, no cuenta tanto el carácter del sujeto o entidad que lo produce o la forma misma de su producción sino el hecho objetivo de que no contenga datos que por expresa disposición de la ley deban ser mantenidos en reserva, la noción cobija, por ejemplo, expedientes, informes, estudios, cuentas, estadísticas, directivas, instrucciones, circulars, notas y respuestas provenientes de entidades públicas acerca de la interpretación del derecho o descripción de procedimientos administrativos, pareceres u opiniones, previsiones y decisiones que revistan forma escrita, registros sonoros o visuales, bancos de datos no personales, etc. / A lo anterior, se agrega el acceso a otros documentos cuyo carácter de públicos está determinado por la conducta manifiesta de sus titulares o por la costumbre, sin que sea requisito indispensable la presencia o concernimiento de la administración pública. Siempre, eso sí, que no sea contra la ley o derecho ajeno. / “Es claro, por tanto, que en la anterior situación bien pueden encontrarse documentos surgidos de relaciones entre particulares cuyos titulares hayan decidido, formalmente o por conducta concluyente, permitir su acceso al público”.

²⁰² Republic of Argentina. Decreto 1172/2003. Anexo VII. Reglamento General del Acceso a la Información Pública para el Poder Ejecutivo Nacional. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. “Se considera información a los efectos del presente, toda constancia en documentos escritos, fotográficos, grabaciones, soporte magnético, digital o en cualquier otro formato y que haya sido creada u obtenida por los sujetos mencionados en el artículo 2º o que obre en su poder o bajo su

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already been indicated, the Regulations apply only to the executive branch, and thus, in principle, the definition does not apply to information in the custody, management, or possession of other entities.

169. It is important to mention, however, that Law No. 25.152 of 2009, regulating the management of public resources (better known as the fiscal solvency law), provides in Article 1 that the statute applies to all branches of the national government. In the aforementioned judgment in the *Case of CIPPEC v. the Honorable Senate Chamber*, the National Chamber of Appeals for Federal Administrative Litigation affirmed that the legislative branch is included among those for whom the law is intended:

Law No. 25.152 on fiscal solvency provides, in its Art. 1, that it applies to all branches of the national State; thus the legislative branch falls within its scope. And Art. 8 of the aforementioned Law No. 25.152 allows access to one piece of information expressly characterized as "public" at the will of the legislative authority: the execution of the budget related to expenditures and resources to the highest level of disaggregation (Art. 8, para. a).

Moreover, Art. 8, para. (m) prescribes that also considered "public" is any other relevant information necessary to fulfill not only the regulations of the national financial administration system—in reference to the regime of Law 24.156, from which the defendant is excluded—but also those "established in this law." As "this law" No. 25.152, applicable to the defendant, provides that budget information may be accessed "up to its most disaggregated form," it is clear that the information, broken down to its most disaggregated form, must be sent to the plaintiff.²⁰³

170. In Canada, the Access to Information Act, section 3 defines “record” as “any documentary material, regardless of medium or form.” However, this provision has been interpreted restrictively in case law.²⁰⁴ In the aforementioned case, *Information Commissioner v. Minister of National Defence et al.*,²⁰⁵ the office of the Commissioner argued that all documents created or obtained by the ministers (or on their behalf), related to the fulfillment of their duties and functions with respect to the administration of the departments they head, were subject to the Access to Information Act. The Federal Court disagreed with the Commissioner. According to the Court, control is not a defined term, as the Parliament did not restrict the notion of control to the power to dispose of the documents in question. Therefore, in reaching a finding of whether the records are under the control of a government institution, the court may consider ultimate control as well as immediate control, and *de jure* as well as *de facto* control. Accordingly, the contents of the records and the circumstances in which they came into being are

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control, o cuya producción haya sido financiada total o parcialmente por el erario público, o que sirva de base para una decisión de naturaleza administrativa, incluyendo las actas de las reuniones oficiales”.

²⁰³ Republic of Argentina. National Chamber of Appeals in Federal Administrative Litigation. Chamber III. *Caso Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para. X. Available at: http://www.accesolibre.org/fallos_view.php?id=37 “[L]a ley 25.152 de solvencia fiscal, prevé, en su Art. 1º, que la misma es aplicable a todos los poderes del Estado nacional -por lo que el Legislativo se halla comprendido en sus efectos-. Y el Art. 8º de dicha ley 25.152 permite acceder a una información expresamente calificada como ‘pública’ por voluntad de Legislador: la ejecución presupuestaria en lo relativo a gastos y recursos hasta su último nivel de desagregación (Art. 8º. inc. a)./ Además, el Art. 8º, inc. m) prescribe que será también ‘pública’ toda otra información relevante necesaria para que pueda ser controlado el cumplimiento, no solo de las normas del sistema nacional de administración financiera - en alusión al régimen de la ley 24.156, del cual la demandada se halla excluida- sino también de ‘las establecidas en la presente ley’. Como ‘la presente ley’ 25.152, aplicable al demandado, prevé que se podrá acceder a la información presupuestaria “hasta su último nivel de desagregación”, es claro que la información desagregada hasta su máximo nivel es la que debe ser transmitida a la fundación actora”.

²⁰⁴ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

²⁰⁵ *Canada (Information Commissioner) v. Canada (Minister of National Defence) (F.C.)* 2008 FC 766, [2009] 2 F.C.R. 86. Available on the Federal Court site, at <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Access to Information Act.²⁰⁶

4. Obligations Imposed on the State by the Right of Access to Information

171. The right of access to public information creates different obligations for the State. This section explains some of the most important obligations and lays out how these are regulated in the different legal systems that were studied.

a. Obligation to respond to requests in a timely, complete, and accessible manner

172. The State has the obligation to provide a substantive response to requests for information. Indeed, Article 13 of the American Convention, by protecting the right of all persons to access State-held information, establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.²⁰⁷ In this regard, inter-American doctrine has specified that any exceptions “must have been established by law to ensure that they are not at the discretion of public authorities.”²⁰⁸

173. As discussed below, States should ensure the full satisfaction of the right to access to information through the creation of a simple remedy that is readily accessible to all persons and which, *inter alia*, is either free or sufficiently low in cost so as not to discourage requests for information.²⁰⁹ To this effect, the aforementioned Model Law on Access to Information, of the General Assembly, prescribes that “the process of requesting information should be regulated by clear, fair and non-discriminatory rules which set clear and reasonable timelines, provide for assistance to those requesting information, assure that access is free or limited to the cost of reproduction of records and require specific grounds for the refusal of access.”²¹⁰

174. The legal systems of all the countries studied provide the obligation to respond to requests for information presented by individuals. They establish a time limit for the parties subject to the law to be able to respond to requests for information, a period that varies between 7 days (as in the case of Peru) to 30 calendar days (as in Panama). In the majority of cases, it is stipulated that the time period may be extended, provided there is a reason to justify an extension. Several legal systems also provide that if the information has already been published in any medium, the response of the entity subject to the law may be limited to providing the information the applicant needs to identify the publication.

²⁰⁶ Based on this reasoning, the Court found in the instant case that some specific documents did not fall under the jurisdiction of the Access to Information Act. It should be noted that these cases are not yet settled law. The Information Commissioner has appealed the court's decision in the cases involving the Minister of National Defence, the Prime Minister, and the Minister of Transport. The Attorney General, meanwhile, has cross-appealed the case involving the former Prime Minister and appealed the Royal Canadian Mounted Police case. In the interim, the records at issue in these cases may not be disclosed pending the determination of the appeals and cross-appeal. See Office of the Information Commissioner of Canada, Court Cases. Available at: http://www.oic-ci.gc.ca/eng/lc-cj_cc_2008-2009_1.aspx

²⁰⁷ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77; IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58 (a)-(b).

²⁰⁸ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89.

²⁰⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 26. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

²¹⁰ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Preamble. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

175. As was mentioned earlier, the majority of the countries studied have the concept of negative administrative silence, which means that when the government does not respond within the indicated period, it is understood that access to the information requested has been denied.

176. As has already been indicated in the section related to the State's burden of proof, in cases in which limitations to the right of access to information have been established, Uruguay, Guatemala, Mexico, and Colombia provide that when no response has been provided to a request within the legally provided periods, affirmative administrative silence prevails, which means that the party subject to the law must turn over the information that has been requested.

177. In Uruguay, the Law on Access to Information requires that a response to the request be given within 20 business days after it has been submitted, if it is not possible to provide the information immediately. This term may be extended for another 20 days, but the entity must provide the petitioner with a written justification as to why the extension is needed (Article 15). Article 18 of that law provides that if the time limit expires—or the limits, in the case of an extension—without the interested party having received a response, the interested party may obtain access to the information in question.²¹¹

178. Mexico's Federal Transparency and Access to Governmental Public Information Act also provides for this concept when the entity fails to respond to the request for access to information within the legal time limit. Article 44 of the law establishes that the interested party must be notified of the response to the request for information within a period not to exceed 20 business days. This may be extended by up to an equivalent period by means of a decision justifying the extension, provided the applicant is notified.²¹² Article 53 then establishes that if no response has been received to the request for access to information within the established time periods, the matter shall be construed as having been resolved affirmatively.²¹³

179. Guatemala has a very similar provision. Article 42 of the Law on Access to Public Information establishes that the information unit to which the request was made must respond within the following 10 days, and later on, Article 43 determines that this time period may be extended for 10 additional days, if the volume and extent of the response so requires.²¹⁴ Subsequently, Article 44 creates

²¹¹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. The second paragraph of Article 18 of the Law on Access to Public Information states: "(Affirmative Silence). Upon expiration of the time period of twenty business days from the submission of the request, there being no extension or the time period having expired without a specific decision having been communicated to the interested party, the applicant shall be able to access the respective information, and it shall be considered a serious offense for any official to refuse to provide it, in accordance with the provisions of Law No. 17.060, dated December 23, 1998, and Article 31 of this law" ("(Silencio positivo). Vencido el plazo de veinte días hábiles desde la presentación de la solicitud, si no ha mediado prórroga o vencida la misma sin que exista resolución expresa notificada al interesado, éste podrá acceder a la información respectiva, considerándose falta grave la negativa de cualquier funcionario a proveérsela, de conformidad con las previsiones de la Ley N° 17.060, de 23 de diciembre de 1998, y del artículo 31 de la presente ley").

²¹² United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Article 44 of the act establishes: "The reply to a request shall be notified to the interested party as soon as possible, but never in excess of twenty business days from the date on which the request is made. In addition, the cost and method for delivery of the information will be stated and the requests shall be taken care of to the greatest extent possible. Exceptionally this term may be extended up to an equivalent period if there shall be a reason justifying said extension of the term, provided the applicant is notified accordingly. The information shall be released within ten business days from the date on which the liaison unit notifies the availability of said information, provided that the applicant presents evidence of the respective payment of dues. The Regulations contain the method and terms of the internal processing of access to information requests."

²¹³ Article 53 prescribes: "The failure to answer a request for access to information within the term provided by Article 44 hereof shall be construed as an affirmative answer and the department or agency shall be required to allow the access to the information within a term not to exceed 10 business days after payment of the costs derived from the reproduction of the material, unless the Institute shall determine that the documents in question contain privileged or confidential information."

²¹⁴ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. The content of Articles 42 and 43 is as follows: "Article 42: Once a request has been presented and admitted, the Information Unit where it was presented must issue a decision within the next ten days, along one of the lines stated as follows..." "Article 43: When the volume and extent of the response so justifies, the response period to which this law refers may be extended up to ten additional days, with the interested party notified within two days before the end of the time period indicated in this law."

the concept of the default affirmative response, in which if the entity subject to the law does not respond within the period in question, that party will have the obligation to turn over the information to the petitioner within 10 days of the expiration of the time period.²¹⁵

180. In Colombia, affirmative administrative silence operates in relation to requests to view or copy documents held in public offices. Article 25 of Law No. 57 of 1985—which modified Article 22 of the Code of Administrative Litigation—provides that these requests must be resolved in a maximum period of 10 days and if the petitioner has not been given a response within that period, “it shall be understood, for all legal effects, that the request in question has been accepted. Accordingly, the document in question shall be turned over within the three (3) days immediately following.”²¹⁶

181. However, the Colombian legal framework is not so demanding when it comes to simple requests for information. To be sure, Article 6 of the Code of Administrative Litigation establishes that requests for information must be resolved within a period of 15 days. But in those cases in which it is not possible to resolve the petition within that period, the administration is authorized to inform the interested party of that fact, “stating the reasons for the delay and also indicating the date on which it will be resolved or a response will be given.” That gives the government broad discretion to extend the legal period for responding to requests for information, since it is not even established what reasons would justify the extension, nor is a maximum time period established for the extension.²¹⁷

182. El Salvador's Access to Information Law has a unique feature in this respect. Article 71 provides that an access request must be answered in a period not to exceed ten business days, provided the information has been generated within the prior five years. In cases in which the information is older, the time period may be extended for up to another ten business days. And in especially complex cases, the time period may be extended, by means of a reasoned decision, for up to five additional business days. Meanwhile, Article 82 provides that the petitioner may turn to the Institute for Access to Public Information to appeal decisions in which the entity subject to the law is denying access to particular information or denying that such information exists, or in situations in which the petitioner does not agree with the delay that has occurred, the costs being required, or the form in which the information is being turned over. The processing of the appeal is regulated by Articles 85 *et seq.* and Article 99, which states that “if the Institute has not resolved the access-to-information appeal in the established time frame, the decision that was appealed shall be understood to be revoked by operation of law.”²¹⁸

183. As has already been stated, while the other countries do not prescribe an affirmative administrative silence, they do establish the obligation to respond to requests for information within a period that, in general, may be extended, with an administrative act that explains the reasons.

184. Thus, paragraph (b) of Article 11 of Peru's Law on Access to Public Information prescribes that, once a request for information has been submitted, the public official must respond to the

²¹⁵ The aforementioned article states: “Default affirmation. When the entity subject to the law provides no response within the period and in the form that is required, the entity shall be required to grant [the information] to the interested party no later than ten days after the expiration of the time period for a response, at no cost and with no need for a request from the interested party. Failing to comply with the provisions of this article shall be grounds for criminal liability.”

²¹⁶ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. “[S]e entenderá, para todos los efectos legales, que la respectiva solicitud ha sido aceptada. En consecuencia, el correspondiente documento será entregado dentro de los tres (3) días inmediatamente siguientes”.

²¹⁷ Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html. “expresando los motivos para la demora y señalando a la vez la fecha en que se resolverá o dará respuesta”.

²¹⁸ Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “si el Instituto no hubiere resuelto el recurso de acceso a la información en el plazo establecido, la resolución que se recurrió se entenderá revocada por ministerio de la ley”.

request within 7 business days, with the possibility of an extension for 5 additional business days. In this case, it is important to note that paragraph (e) of the same Article 11 establishes that if the interested party has not received a response within the time periods provided, the request for information shall be considered to have been denied and the administrative avenue exhausted unless an appeal is filed.²¹⁹

185. In 2003, the Constitutional Court of Peru ruled on a *habeas data* action in which the plaintiff affirmed that he had requested information on the expenses incurred by former President Alberto Fujimori and his delegation during the 120 trips made overseas in the course of his presidency, and that the information that had been turned over to her was incomplete, imprecise, and inexact. The Court affirmed that the right of access to information was affected not only when the requested information was denied, but also when the information provided was imprecise, false, untimely, or incorrect:

*In the Court's opinion, the right of access to information is impaired not only when its provision is denied, without constitutionally legitimate reasons for doing so, but also when the information provided is fragmentary, outdated, incomplete, imprecise, false, untimely, or incorrect. Thus, while the right of access to information imposes on public administration bodies the affirmative duty to inform, it also establishes a negative requirement that the information provided not be false, incomplete, fragmentary, circumstantial, or confusing.*²²⁰

186. The Court concluded that, as the plaintiff had argued, the information that had been given to him was not complete, updated, and exact. Thus, it declared the *habeas data* action to be admissible and ordered that the information be turned over under the terms established in the considerations of the ruling.

187. In Panama, Article 7 of the Law on Transparency in Public Management establishes that an official who receives a request should respond to it within the following 30 calendar days, a time period that may be extended for a similar period when the request has to do with a complex subject or the response is extensive. The response may be offered in electronic form, and in the case of information that is already accessible to the public in printed or electronic form, the petitioner shall be told "the source, place, and form in which he or she can have access to the previously published information."²²¹

188. In 2004, the Plenum of the Supreme Court of Justice of Panama ruled on a *habeas data* action brought by the Ombudsman against the Ministry of Commerce and Industry. The Ombudsman indicated that several months before he had sent the Ministry a request for information related to contracts for professional services granted by that institution in 2002 and 2003. However, he had not received a response to his request, and thus he was asking that the Ministry be given a final deadline to respond. For its part, the Ministry stated that the information requested was published on the Internet and so it was unnecessary to respond to the request.²²²

²¹⁹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²²⁰ Republic of Peru. Constitutional Court of Peru, First Chamber, January 29, 2003. Docket No. 1797-2002-HD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html>. "A criterio del Tribunal, no sólo se afecta el derecho de acceso a la información cuando se niega el suministro, sin existir razones constitucionalmente legítimas para ello, sino también cuando la información que se proporciona es fragmentaria, desactualizada, incompleta, imprecisa, falsa, no oportuna o errada. De ahí que si en su faz positiva el derecho al acceso a la información impone a los órganos de la Administración pública el deber de informar, en su faz negativa, exige que la información que se proporcione no sea falsa, incompleta, fragmentaria, indiciaria o confusa".

²²¹ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. "En caso de que la información solicitada por la persona ya esté disponible al público en medios impresos [...] se le hará saber la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada".

²²² Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>

189. The Court considered that even if the requested information had already been published, it fell to the entity subject to the law to resolve the request during the period of 30 calendar days, indicating the reasons it was not providing the information and the necessary facts for the petitioner to be able to access the information. On that point, the Court said:

*In the instant matter, the Plenum cannot ignore the fact that the Minister of Commerce and Industry did not meet his obligation to respond, within the time frame of thirty calendar days, to the petition from the Ombudsman, whether by providing the information requested or indicating where it could be obtained, as required under Article 7 of Law No. 6 of 2002; thus it has been necessary for the Ombudsman to make use of a habeas data action to obtain a pronouncement from the official to whom the request was made.*²²³

190. In addition, the judgment clarified that the information requested by the Ombudsman was not on the aforementioned Internet portal; only the Ministry of Commerce's regular employee list appeared, but not the contracts for professional services issued by the Ministry of Commerce and Industry in 2002 and 2003:

*However, after inspection of the aforementioned websites, the Plenum observes that although the sites show the List of Employees or List of Personnel of the Ministry of Commerce and Industry, which includes the name of the employee, his or her status (regular or contract official), and the amount of the contract, that information is insufficient and does not satisfy the requirement of the honorable Ombudsman, who specifically requested information concerning the contracts for professional services issued by the Ministry of Commerce and Industry for 2002 and 2003, with additional details such as the identification of the person contracted, the service contracted, and the time period covered by each contract.*²²⁴

191. Consequently, the Court ordered the Ministry of Commerce and Industry to provide the information requested within the 10 days following notification of the decision.

192. In Chile, Article 14 of the Law on Access to Public Information establishes a deadline of 20 business days to respond to requests for information. This period may be extended for 10 additional business days, when there are difficulties getting the requested information together. The next line, Article 15, clarifies that when the information requested is published in print or electronic form, "the applicant shall be informed of the source, the place, and the form in which he or she can have access to that information, with which the Administration shall be understood to have complied with its obligation to inform."²²⁵

²²³ Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. "En el negocio sub-júdice, el Pleno no puede soslayar, que el Ministro de Comercio e Industrias no cumplió con su obligación de contestar, dentro del término de treinta días calendario, la petición del Defensor del Pueblo, ya sea suministrando la información requerida, o indicando dónde ésta podía obtenerse, tal como lo exige el artículo 7 de la Ley 6 de 2002, por lo que ha sido necesario que el Defensor del Pueblo utilice la acción de habeas data, para obtener un pronunciamiento del funcionario requerido".

²²⁴ Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. "Sin embargo, luego de la verificación a los sitios Web antes mencionados, el Pleno advierte que aunque en éstos aparece publicada la Planilla de Empleados o Planilla de Personal del Ministerio de Comercio e Industrias, en la cual se incluye el nombre del funcionario, su status (funcionario regular o de contrato), y el monto del contrato, dicha información es insuficiente y no satisface el requerimiento del señor Defensor del Pueblo, quien solicitó concretamente la información concerniente a los contratos por servicios profesionales extendidos por el Ministerio de Comercio e Industrias para los años 2002 y 2003, con detalles adicionales como la identificación de la persona contratada, el servicio contratado, y el tiempo que cubrió cada contrato".

²²⁵ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. "[S]e comunicará al solicitante la fuente, el lugar y la forma en que puede tener acceso a dicha información, con lo cual se entenderá que la Administración ha cumplido con su obligación de informar".

193. In Ecuador, as well, the second paragraph of Article 9 of the Organic Law on Transparency and Access to Public Information establishes that the party subject to the law shall have a maximum period of 10 days to respond to requests for information, a period that may be expanded for 5 additional days by means of a reasoned decision which must be notified to the petitioner.²²⁶

194. In Nicaragua, meanwhile, Article 28 of the Law on Access to Public Information establishes a maximum period of 15 business days to respond to requests for information. Pursuant to Article 29, this period may be extended for 10 additional business days with a written communication based on one of the following four circumstances: “a. The pieces of information requested are, in total or in part, in another State division or are located far from the office where the information was requested; b. The request requires prior consultation with other administrative bodies; c. The information requested is voluminous and more time is needed to gather it; d. The information requested requires prior analysis because it is believed to fall under one of the exceptions established by this law.”²²⁷

195. In the case of Nicaragua, it is also important to highlight that, as was stated previously, paragraph 3 of the law's Article 3 provides that, in accordance with the principle of multi-ethnicity, “public information must also be provided in the different languages that exist along our country's Atlantic Coast.”²²⁸

196. In Jamaica, Section 7(3) of the Access to Information Act establishes that the public authority shall, “upon request, assist the applicant in identifying the documents to which an application relates”; “acknowledge receipt of the application in the prescribed manner”; and grant access to the document specified if it is not an exempt document. Section 7(4) of the Act states that an authority shall respond to an application as soon as practicable, but not later than 30 days after the date of receipt of the application. This period may be extended for a further period of up to 30 days, provided there is reasonable cause to do so. Section 7(5) of the Act establishes that the authority's response “must state its decision on the application, and where the authority decides to refuse, defer access, or extend the [response] period for up to 30 days, it must state the reasons therefore and the options available to an aggrieved applicant.”²²⁹

197. In Antigua and Barbuda, Section 18 prescribes that a party subject to the law must respond to a request for information as soon as practicable and in any event within 20 business days. The same section authorizes an extension of up to another 20 days in exceptional cases. Subparagraph 2 of Section 18 establishes that when information is directly related to safeguarding the life or liberty of a person, the response must be provided within 48 hours.²³⁰

198. In the Dominican Republic, Article 8 of the LGLAIP establishes that “[a]ny application for information requested under the terms of this law must be satisfied within a period of no more than fifteen (15) business days. The period may be extended on an exceptional basis for another ten (10) business days in cases involving circumstances that make it difficult to gather the information requested. In this case, the agency to which the request has been made shall, by written notice signed by the responsible

²²⁶ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

²²⁷ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “a. Que los elementos de información requeridos se encuentran en todo o en parte, en otra dependencia del Estado o se encuentre alejada de la oficina donde se solicitó; b. Que la solicitud, requiera de alguna consulta previa con otros órganos administrativos; c. Que la información requerida sea voluminosa y necesite más tiempo para reunirse; d. Que la información solicitada necesite de un análisis previo por considerarse que está comprendida en las excepciones establecidas de esta ley.”

²²⁸ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “[L]a información pública deberá proveérsele también en las distintas lenguas existentes en la Costa Atlántica de nuestro país.”

²²⁹ Jamaica. Access to Information Act. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

²³⁰ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

authority before the period of fifteen (15) days has expired, communicate the reasons for making use of the exceptional extension.”²³¹

199. In Canada, Section 7 of the Access to Information Act imposes the obligation to notify the person who made the request if access to the requested record or a part thereof is refused, or to give the person access to the record, within 30 days. Section 8(1) prescribes that if the institution that receives a request considers that another government institution has a greater interest in the record requested, the head of the institution may, within 15 days, transfer the request and shall give notice of the transfer to the person who made the request.²³²

200. In the United States, FOIA Section 552(a)(3)(A) establishes that each agency, upon receiving a request, must “promptly” make the records available to any person.²³³ Under FOIA, government agencies have 20 business days in which to respond to requests for information by granting or denying access.²³⁴ The law prescribes “unusual circumstances” in which the time limits may be extended. Such “unusual circumstances” are defined as the need to collect the requested records from field facilities; the need to search for, collect, and examine a voluminous amount of separate and distinct records; or the need for consultation with another agency having a substantial interest in the determination.²³⁵

201. In some circumstances—when the person requesting the records demonstrates a compelling need and in other cases determined by the agency—the law provides for expedited processing of requests for records, in which a determination must be made within 10 days. Administrative appeals in these cases must also be expeditious. “Compelling need” means that “a failure to obtain the information on an expedited basis may pose an imminent threat to the life or physical safety of an individual” or, “with respect to a request made by a person primarily engaged in disseminating information, that there is urgency to inform the public” concerning activity by the federal government.²³⁶

202. Public agencies must assign an individualized tracking number for each request received that will take longer than 10 days to process and provide that tracking number to the person making the request. They must also establish a telephone line or Internet service that provides information about the status of a request, using the assigned tracking number, including the date on which the agency originally received the request and an estimated date on which the agency will complete action on the request.²³⁷

²³¹ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>. “Toda solicitud de información requerida en los términos de la presente ley debe ser satisfecha en un plazo no mayor de quince (15) días hábiles. El plazo se podrá prorrogar en forma excepcional por otros diez (10) días hábiles en los casos que medien circunstancias que hagan difícil reunir la información solicitada. En este caso, el órgano requerido deberá, mediante comunicación firmada por la autoridad responsable, antes del vencimiento del plazo de quince (15) días, comunicar las razones por las cuales hará uso de la prórroga excepcional”.

²³² Canada. Access to Information Act. Available at <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>. This standard has also been addressed in Canadian case law. See, e.g., Federal Court. *Statham v. The President of the Canadian Broadcasting Corporation and the Information Commissioner of Canada*. T-782-08 of 2009. Office of the Information Commissioner of Canada. Available at: http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra_2008-2009_19.aspx

²³³ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(A). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²³⁴ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²³⁵ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(B)(i) and (a)(6)(B)(iii)(I),(II) y (III), respectively. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²³⁶ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(E). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²³⁷ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(7)(A)-(B). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

203. In Trinidad and Tobago, the Freedom of Information Act establishes that a public authority shall notify the applicant of the approval or refusal of his request as soon as practicable but in any case not later than 30 days after the day on which the request is duly made.²³⁸ It further stipulates, in Section 16(1), that where “(a) a request is duly made by an applicant to a public authority for access to an official document; (b) the request is approved by the public authority, and (c) any fee prescribed under section 17 that is required to be paid before access is granted has been paid, the public authority shall forthwith give the applicant access to the official document.” Section 8(3) provides an obligation to provide access to corresponding public versions of documents in cases involving documents that have already been deemed to be exempt and for which it is practicable to delete the exempt portions.²³⁹

204. In, Argentina, Article 12 of the General Regulations on Access to Public Information of the Federal Executive Branch establishes that the responsible party must respond to a request for information within a period of no more than 10 days, which may be extended by a like period, as long as a reasoned decision is provided.²⁴⁰

b. Obligation to provide an administrative remedy that satisfies the right of access to information

205. The full satisfaction of the right of access to information requires States to include in their legal systems an effective and adequate legal recourse that all individuals can use to request the information they need. To guarantee that the right to access is truly universal, this recourse must include several characteristics: (a) it must be a simple recourse that is easy for everyone to access and only demands basic requirements, such as a reasonable method of identifying the requested information and the details required for the administration to turn over the information to the interested party; (b) it must be free of charge or have a cost low enough so as not to discourage requests for information; (c) it must establish strict but reasonable deadlines for the authorities to turn over the information requested; (d) it must allow requests to be made orally in the event that they cannot be made in writing—for example, if the person does not know the language or does not know how to write, or in cases of extreme urgency; (e) it must establish an obligation for administrators to advise the petitioner on how to make a request, including advising the petitioner on the authority competent to respond to the request, up to and including filing the request for the petitioner and keeping him or her informed of its progress; and (f) it must establish the obligation to the effect that in the event a request is denied, the decision must be reasoned and there must be a possibility of appealing the denial before a higher or autonomous body, as well as later challenging the denial in court.²⁴¹

206. With regard to the obligation of creating a special mechanism to make the right to access enforceable, the Inter-American Court has held that the State must guarantee “the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision, and providing information, and which is administered by duly trained officials.”²⁴²

²³⁸ Trinidad and Tobago. The Freedom of Information Act. Section 15. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

²³⁹ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

²⁴⁰ Republic of Argentina. General Rules regarding Access to Public Information for the National Executive Branch. Decree No. 1172/2003. Annex VII. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

²⁴¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 26. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

²⁴² I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 163.

207. As the UN, OAS, and OSCE rapporteurs for freedom of expression stated in their 2004 Joint Declaration, “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.”²⁴³ As the Inter-American Juridical Committee stated, in its Principles on the Right of Access to Information, “[c]lear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.”²⁴⁴

208. All the countries studied have established rules for the administrative procedures used to obtain access to information. This includes creating an administrative remedy and determining the requirements the applications must meet and how applications are processed within the administration. As will be explained below, States such as Mexico and Chile also have an autonomous, specialized body tasked with reviewing the administration’s denials of requests and making a final decision. The experience and practice of these two institutions has been enormously important in strengthening the effective guarantee of the right to access, and shows the importance of these types of specialized authorities in the various legal systems.

209. In establishing rules for the administrative remedies and procedures to obtain access to information, most of the countries establish a simple and easily accessible remedy that does not require anyone to hire an attorney in order to request access to information. The majority also meet the requirements that the request be free of charge—apart from any costs that issuing copies could entail and that in some cases may become a barrier that impedes access to information—and that tight deadlines be established to respond to requests for access to information. Likewise, the parties subject to the law are required to provide justifications when requests for access to information are denied. Nevertheless, as has already been indicated, in some places the remedies have not operated as prescribed by the law because appropriate implementation policies have not been adopted. However, this subject will be left for future studies, since this report is basically geared toward an analysis of the various legal frameworks.

210. In terms of the other requirements mentioned above, some countries contemplate the possibility of presenting verbal requests for access to information (Guatemala, Nicaragua, Uruguay, Colombia, and El Salvador), or requests by telephone or other electronic means (such as in Jamaica), but in the majority of cases the petition must be written, whether on paper or electronically. It can also be seen that some countries establish the duty of public servants to advise interested parties in how to formulate a request for information (Antigua and Barbuda, Guatemala, Nicaragua, Mexico, Jamaica), although not all countries have adequate policies in place for proper implementation. In nearly all the legal systems, the petitioner is required to identify him or herself, but in Colombia and the Dominican Republic the petitioner must also state his or her direct interest in the information being requested. As will be seen below, some of these requirements have been clarified in case law, in an attempt to adapt national legal frameworks to meet international standards.

211. Article 18 of Guatemala’s Law on Access to Public Information provides that “access to public information shall be free of charge, for the effects of study and consultation in the offices of the party subject to the law.”²⁴⁵ The law then establishes that the petition may be presented in writing, verbally or electronically, and that the person who receives the request may not argue lack of jurisdiction to resolve it, because if such is the case, the request must be forwarded immediately to the appropriate

²⁴³ Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

²⁴⁴ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 5. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

²⁴⁵ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[E]l acceso a la información pública será gratuito, para efectos de análisis y consulta en las oficinas del sujeto obligado”.

party. The simplicity of the remedy lies in the flexibility of the format for filing a request, because while ideally the request will be filled out completely, this has not been established as a prerequisite for its being able to proceed. The law requires petitioners to identify themselves, but it does not require that they demonstrate a direct interest in the information being requested.²⁴⁶ The deadline in which to respond to the request is 10 days. Title IV of the law establishes rules for an appeal before the highest authority of the entity subject to the law; this can be lodged by petitioners who have been denied information or who are unsatisfied with the information provided to them. Pursuant to the second paragraph of Article 60, once “[t]he review process has been exhausted, the administrative phase is concluded, and the interested party may file the respective *amparo* appeal in order to have his or her constitutional right prevail, without prejudice to any other type of legal actions.”²⁴⁷

212. In Nicaragua, Article 26 of the Law on Access to Public Information establishes that a request for access to information may be made “verbally, in writing, or by electronic means,” and that “the entity shall record the particulars of the request on a form and provide a copy of the form to the interested party, with the information required under this Law.”²⁴⁸ In addition, Article 6 prescribes that those subject to the law have the obligation to provide guidance to petitioners who have different capacities or special language needs, and then the last paragraph of Article 27 establishes the obligation to provide guidance to the petitioner when his/her written request is not clear and understandable, or does not contain the necessary information, or when the petitioner has filed it with an office that does not have jurisdiction.²⁴⁹ The law also provides that access to information is free of charge,²⁵⁰ and that it is not necessary to

²⁴⁶ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Agotado el procedimiento de revisión se tendrá por concluida la fase administrativa pudiendo el interesado interponer la acción de amparo respectiva a efecto de hacer prevalecer su derecho constitucional, sin perjuicio de las acciones legales de otra índole.” Articles 38 and 41 of the Law establish the following: “Article 38. Procedures for access to public information. The procedures for access to public information begin with a request presented verbally, in writing, or electronically by the interested party to the entity subject to the law, through its Information Unit. The form for requesting information shall have the purpose of facilitating access to public information, but it shall not constitute a prerequisite for being able to access the right to public information. The person at the Information Unit who receives the request may not argue lack of jurisdiction or lack of authorization to receive it, and is obligated, as part of his/her responsibility, to immediately forward the request to the appropriate party” (“Procedimiento de acceso a la información pública. El procedimiento para el acceso a la información pública se inicia mediante solicitud verbal, escrita o vía electrónica que deberá formular el interesado al sujeto obligado, a través de la Unidad de Información. El modelo de solicitud de información tendrá el propósito de facilitar el acceso a la información pública, pero no constituirá un requisito de procedencia para ejercer el derecho de acceso a la información pública. La persona de la Unidad de Información que reciba la solicitud no podrá alegar incompetencia o falta de autorización para recibirla, debiendo obligadamente, bajo su responsabilidad, remitirla inmediatamente a quien corresponda”).

“Article 41. Request for information. All access to public information shall be carried out by petition of the interested party, in which the following details shall be included: 1. Identification of the entity subject to the law to whom the petition is addressed; 2. Identification of the applicant; 3. Clear and precise identification of the information being requested. The request for information shall not be subject to any other formality, nor may it be required that the person express a reason or specific interest for the request” (Solicitud de información. Todo acceso a la información pública se realizará a petición del interesado, en la que se consignarán los siguientes datos: 1. Identificación del sujeto obligado a quien se dirija; 2. Identificación del solicitante; y, 3. Identificación clara y precisa de la información que se solicita. La solicitud de información no estará sujeta a ninguna otra formalidad, ni podrá exigirse la manifestación de una razón o interés específico como requisito de la misma”).

²⁴⁷ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

²⁴⁸ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “Los interesados ejercerán su derecho de solicitud de acceso a la información pública, ante la entidad que la posea de forma verbal, escrita o por medio electrónico, cuando las entidades correspondientes dispongan de la misma electrónicamente; la entidad registrará en un formulario las características de la solicitud y entregará una copia del mismo al interesado, con los datos que exige la presente Ley”.

²⁴⁹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

²⁵⁰ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 31: “A request for and access to public information by persons shall be free of charge. In accordance with the provisions of Article 7 of this Law, the public entity shall be authorized to charge a reasonable amount to recover reproduction costs, not to exceed: a. The cost of the materials used to reproduce the information. b. The cost of delivery (if necessary)” (“La consulta y el acceso a la información pública que realicen las personas será gratuito. De conformidad con lo establecido en el artículo 7 de la presente Ley, la reproducción de la información habilitará a la entidad pública a realizar el cobro de un monto de recuperación razonable que no

demonstrate a direct interest in the information being requested.²⁵¹ Article 27 requires that the applicant identify him or herself and provide a clear, precise description of the information being requested. The next line, Article 28, determines that it is the obligation of the respective authorities to respond to the requests that are presented, immediately or within a period of no more than 15 business days from the date on which the request was made. Article 37 of the law determines that the administration's responses may be appealed with the respective office for the coordination of access to public information.²⁵²

213. Colombia also provides that requests for information, via the right to petition, are free and may be made either in writing or orally. The requests may be made without the assistance of a lawyer and, in general, there are no particular formats, which makes the remedy simple.²⁵³ In the case of written requests, Article 5 of the Code of Administrative Litigation establishes certain additional requirements, such as the full identification of the petitioner, the object of the petition, the reasons on which the petition is based, and the designation of the authority to whom the petition is addressed. Law No. 57 of 1985 explicitly establishes a preference for processing requests for information made by journalists.²⁵⁴ The response must be issued within a period not to exceed 15 business days²⁵⁵. Pursuant to Articles 11 and 12 of the Code, in the case of petitions individuals make based on their own personal interest, the administration must tell the petitioner if his/her application is incomplete and indicate which information or documents are missing.²⁵⁶ The administration's responses may be challenged through ordinary administrative remedies and subsequently through the judicial remedies explained below.

214. In El Salvador, Article 66 of the law provides that any person may present "to the Information Officer a request, in written, verbal, or electronic form or by any other suitable means, in free

...continuation

podrá ser superior a: a. El costo de los materiales utilizados en la reproducción de la información. b. El costo de envío (si fuese el caso)".

²⁵¹ Article 28 of the Law on Access to Public Information of Nicaragua indicates: "In no case shall the delivery of information be conditional on providing reasons or justification for its use, nor shall it be required to demonstrate any specific interest" ("En ningún caso la entrega de información estará condicionada a que se motive o justifique su utilización, ni se requerirá demostrar interés alguno").

²⁵² Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

²⁵³ Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html. The Code of Administrative Litigation establishes regulations regarding the submission of oral and written petitions to the administration. Article 5: "Any person may respectfully petition the authorities, verbally or in writing, through any means." Yet the same article establishes that "the authorities may require that certain petitions generally be submitted in writing" and that "in some cases, forms may be created in which the interested parties can fill out the parts that are applicable and add any pertinent information or clarification." For its part, Article 25 of Decree No. 2150 of 1995, in accordance with amendments made to it by Law No. 962 of 2005, establishes that petitions may also be submitted via certified mail or electronic mail ("Toda persona podrá hacer peticiones respetuosas a las autoridades, verbalmente o por escrito, a través de cualquier medio". Empero, el mismo artículo establece que "las autoridades podrán exigir, en forma general, que ciertas peticiones se presenten en forma escrita" y que "en algunos de estos casos podrán elaborar formularios para que los diligencien los interesados, en todo lo que les sea aplicable, y añadan las informaciones o aclaraciones pertinentes". A su vez, el artículo 25 del Decreto 2150 de 1995, de acuerdo con la reforma que le fuera introducida por la Ley 962 de 2005, establece que las peticiones también pueden ser presentadas a través del correo certificado y el correo electrónico").

²⁵⁴ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html. Article 23 establishes: "If the request for the copying or photocopying of documents is made by a journalist accredited at that time it shall be handled on a preferential basis."

²⁵⁵ Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html. Article 6: "Petitions shall be resolved or answered within fifteen (15) days following the date they are received. Where it is not possible to resolve or respond to the petition in that period, the interested party shall be informed to that effect and be given the reasons for the delay and the date on which the request will be resolved or answered" ("Las peticiones se resolverán o contestarán dentro de los quince (15) días siguientes a la fecha de su recibo. Cuando no fuere posible resolver o contestar la petición en dicho plazo, se deberá informar así al interesado, expresando los motivos de la demora y señalando a la vez la fecha en que se resolverá o dará respuesta").

²⁵⁶ Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html

form or using the forms approved by the Institute.”²⁵⁷ The law explains that in those cases in which the request is verbal, a form should be filled out. The petitioner should identify him or herself and provide the necessary information for the entity subject to the law to be able to send the information. However, “in no case shall the release of the information be on condition that grounds or justification be given for its use, nor shall the person be required to prove any direct interest.”²⁵⁸ Access to information is governed by the cost-free principle.²⁵⁹ The cost of reproducing or sending documents may not be greater than the cost of the materials used or the cost of sending them.²⁶⁰ The petitioners have the right to be assisted in preparing their applications.²⁶¹ If the information being requested is available to the public in printed form, in electronic formats available on the Internet, or in any other medium, the petitioner shall be informed in writing of the source, place, and form in which it may be consulted, reproduced, or acquired.²⁶² Responses or omissions on the part of those subject to the law may be appealed to the Institute for Access to Public Information and subsequently to the Court of Administrative Litigation of the Supreme Court of Justice.²⁶³

215. In the Dominican Republic, the General Law on Free Access to Information, in Chapter II of the Procedure for the Exercise of the Right to Information and Access to Information, indicates in Article 7 that access requests should be made in writing and should contain at least: the “[c]omplete name and information about the person making the request”; a “[c]lear, exact identification of the data and information being requested”; “[i]dentification of the public authority that holds the information”; and “the justification for why the data and information are being requested.”²⁶⁴ Nevertheless, the regulatory decree of this law indicates that it is enough for the petitioner merely to invoke a simple interest in the information being sought.²⁶⁵

216. In terms of other requirements, public access to information is free as long as it does not have to be reproduced. When reproduction is necessary, “the rates charged by the institutions must be

²⁵⁷ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “una solicitud, en forma escrita, verbal, electrónica o por cualquier otro medio idóneo, de forma libre o en los formularios que apruebe el Instituto”.

²⁵⁸ Republic of El Salvador. Law on Access to Public Information. Art. 66. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁵⁹ Republic of El Salvador. Law on Access to Public Information. Art. 61. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁶⁰ Republic of El Salvador. Law on Access to Public Information. Art. 61. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁶¹ Republic of El Salvador. Law on Access to Public Information. Art. 68. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁶² Republic of El Salvador. Law on Access to Public Information. Art. 62. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁶³ Republic of El Salvador. Law on Access to Public Information. Articles 82 *et seq.*, 101. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

²⁶⁴ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “La solicitud de acceso a la información debe ser planteada en forma escrita y deberá contener por lo menos los siguientes requisitos para su tramitación: a) Nombre completo y calidades de la persona que realiza la gestión; b) Identificación clara y precisa de los datos e informaciones que require; c) Identificación de la autoridad pública que posee la información...”

²⁶⁵ Dominican Republic. Decree No. 130-05 approving the Regulations of the Ley General de Libre Acceso a la Información Pública. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>. Article 15 of the regulations states: “ARTICLE 15.- The description of the reasons given to justify the request for information, under the terms of Article 7, paragraph d, of the LGLAIP, shall in no way and in no case impede the applicant’s broadest access to the information, nor shall it grant the official the authority to reject the application. In this regard, the applicant need only state a simple interest in the information he or she is seeking, said applicant being responsible for the use and purpose for any information that may be obtained.”

reasonable and be calculated based on the cost of supplying the information.”²⁶⁶ According to article 11, “the information requested may be turned over in person, by telephone, fax, regular mail, certified mail, or e-mail, or by means of Internet formats that the administration has prepared for that purpose.”²⁶⁷ Article 13 of the law establishes that, “If the information being requested is already available to the public in written form, such as in books, compendiums, leaflets, or public administration archives, or in electronic formats available on the Internet or by any other means, the petitioner shall be notified by reliable means of the source, place, and form by which he or she can gain access to the previously published information.”²⁶⁸

217. In Chile, Article 12 of the Law on Access to Public Information requires that the request be presented in writing. If the entity has the necessary infrastructure, it is possible to present the request electronically. But the right to file a request verbally is not established, which makes access to information difficult for those who do not know how to write or who speak another language. Otherwise, the remedy is free and simple. Article 12 of the Law on Access to Public Information requires petitioners to identify themselves, but it does not require them to provide reasons for requesting the information. Likewise, the law contemplates the principle of facilitation, which requires eliminating any demands that could impede the exercise of this right.²⁶⁹ It also indicates that if the entity that receives the petition does not have jurisdiction, it should send the request to the authority that can act on it.²⁷⁰ Finally, Article 15 of the law provides that if the requested information already exists in a printed or electronic document, the party subject to the law is understood to comply with the duty to respond by indicating to the petitioner “the source, the place, and the form in which to obtain access to said information.”²⁷¹ The responsible parties’ responses—or lack of response—may be appealed to the Council for Transparency²⁷².

218. Panama's Law on Transparency establishes that requests for information must be made in writing, whether on paper or electronically. Making a request does not require a lawyer, and although it is not necessary to demonstrate a direct interest in the information being requested, the petitioner must identify him or herself.²⁷³ Article 4 of the law provides that access to information is free of charge, except

²⁶⁶ Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 14. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “las tarifas cobradas por las instituciones deberán ser razonables y calculadas, tomando como base el costo del suministro de la información”.

²⁶⁷ Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 11. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “La información solicitada podrá ser entregada en forma personal, por medio de teléfono, facsímil, correo ordinario, certificado o también correo electrónico, o por medio de formatos disponibles en la página de Internet que al efecto haya preparado la administración”.

²⁶⁸ Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 13. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “En caso de que la información solicitada ya esté disponible al público en medios impresos, tales como libros, compendios, trípticos, archivos públicos de la administración, así como también en formatos electrónicos disponibles en Internet o en cualquier otro medio, se le hará saber por medio fehaciente, la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada”.

²⁶⁹ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 11(f)-(g). Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

²⁷⁰ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 13. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[L]a fuente, el lugar y la forma en que puede tener acceso a dicha información”.

²⁷¹ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 15. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

²⁷² Detailed information on avenues of access for this procedure are on the website of Chile's Council for Transparency. For more information about this remedy in particular, see: <http://www.consejotransparencia.cl/que-pasa-cuando-presento-un-reclamo-ante-el-consejo/consejo/2010-02-09/132654.html>

²⁷³ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. Article 5 of the Law on Transparency of Public Functions: “The petition shall be made in writing on regular paper or by electronic mail, when the institution in question has the same mechanism available to respond, and shall require no formalities or legal representation. The petition should detail to the extent possible the information being requested, and should be presented at the office designated by each institution to receive correspondence. Once the petition has been received, it shall be brought to the immediate attention of the official to whom it is addressed.” (“La petición se hará por escrito en papel simple o por medio de correo electrónico, cuando la institución correspondiente disponga del mismo mecanismo

for the cost of the copies. Lastly, it establishes a 30-day deadline for responding to requests, one of the longest such periods found in this study.²⁷⁴ Articles 17 and 18 of the law provide that responses—or lack of same—from the administration may be challenged by filing a *habeas data* action.²⁷⁵

219. Uruguay's Law on the Right of Access to Public Information also provides, in its Article 13, that a request for access to information must be presented in writing. The same law establishes very few prerequisites for the application; these include the petitioner's obligation to identify him or herself. However, Article 3 establishes that it is not necessary to “justify the reasons for which the information is being requested.” The party subject to the law has up to 20 business days to respond to the request,²⁷⁶ and the access to the information must always be free of charge, although the applicant must assume copying costs.²⁷⁷ The administration's actions with regard to the request may be challenged by means of a legal action on access to public information, which is regulated in Chapter V of the law.²⁷⁸

220. In Canada, a request for information must be made in writing to the government institution that has the record, and it must provide sufficient detail to enable an “experienced employee of the institution with a reasonable effort to identify the record.”²⁷⁹ Likewise, where a request for access has been transferred, pursuant to Section 8, the request shall be deemed to have been made to the government institution to which it was transferred on the day on which the request was originally made. The law also defines under which conditions a government institution has a greater interest in a record: if the record was originally produced in or for the institution; or, in the case of a record not originally produced in or for a government institution, the institution was the first government institution to receive the record or a copy thereof.²⁸⁰

221. As previously indicated, Section 7 of the Access to Information Act of Canada establishes the obligation for the governmental institution to notify the applicant, within a deadline of 30 days, whether

...continuation

para responderlo, sin formalidad alguna, ni necesidad de apoderado legal, detallando en la medida de lo posible la información que se requiere, y se presentará en la oficina asignada por cada institución para el recibo de correspondencia. Recibida la petición, deberá llevarse de inmediato al conocimiento del funcionario a quien se dirige”).

²⁷⁴ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. Article 7 of the Law on Transparency: “The official receiving the request shall have thirty calendar days from the date the request is presented to provide a response in writing. If the institution does not have the document(s) or records requested, the person making the request shall be notified to that effect.” (“El funcionario receptor tendrá treinta días calendario a partir de la fecha de la presentación de la solicitud, para contestarla por escrito, y, en caso de que ésta no posea el o los documentos o registros solicitados, así lo informará”).

²⁷⁵ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Articles 17-18. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

²⁷⁶ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 15. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Art. 3: “El acceso a la información pública es un derecho de todas las personas [...] que se ejerce sin necesidad de justificar las razones por las que se solicita la información”. Article 15 of the Law on Transparency establishes that: “Any physical or legal person may formulate a petition of access to information that is in the possession of entities subject to the law. When an institution receives a petition from the interested party, it is required to allow access or, if possible, respond to the request at the time it is made. Otherwise, it shall have a maximum period of twenty business days in which to allow or deny access or to respond to the request. The time period may be extended, with well-founded reasons given in writing, by another twenty business days if exceptional circumstances are involved.” (“Cualquier persona física o jurídica podrá formular la petición de acceso a la información en poder de los sujetos obligados. Ante la petición formulada por el interesado, el organismo requerido está obligado a permitir el acceso o, si es posible, contestar la consulta en el momento en que sea solicitado. En caso contrario tendrá un plazo máximo de veinte días hábiles para permitir o negar el acceso o contestar la consulta. El plazo podrá prorrogarse, con razones fundadas y por escrito, por otros veinte días hábiles si median circunstancias excepcionales”).

²⁷⁷ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 17. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

²⁷⁸ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

²⁷⁹ Canada. Access to Information Act. Sec. 6. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>.

²⁸⁰ Canada. Access to Information Act. Section 8(2)-(3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

access to the requested record has been denied, or access to the information has been approved. Also, Section 8(1) establishes that if the institution that receives the request considers that another government institution is responsible for the requested record, the head of the institution may, within fifteen days, transfer the request and notify the person making the request of the transfer in writing.²⁸¹ Also, the Access to Information Act establishes the position of the Information Commissioner, whose duties include, among others, receiving complaints (a) from persons who have been refused access to a record requested or a part thereof; (b) from persons who have been required to pay an amount they consider unreasonable; (c) when persons consider that an extension on the time limit for providing the information is unreasonable; and (d) from persons who have not been given access to a record or a part thereof in the official language requested by the person, or have not been given access in that language within a period of time that they consider appropriate, or have not been given access in the format they requested. The Information Commissioner shall also handle complaints on any other matter relating to requesting or obtaining access to records under the Access to Information Act.²⁸²

222. In the United States, an agency must determine within 20 business days whether to comply with a request and shall immediately notify the person making the request of such determination and the reasons for it. The notification must also inform the person of the right to appeal to the head of the agency any adverse determination. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making the request of the FOIA provisions for judicial review.²⁸³

223. The FOIA establishes an administrative remedy to appeal in the event that a request for access to information has been denied or a response delayed, the agency has failed to conduct an adequate search for the information, prohibitive fees have been imposed, or based on other matters that may interfere with access to the documents. The remedy is administered in a decentralized manner, under the responsibility of each government agency or entity.²⁸⁴

224. In Ecuador, Article 19 of the Organic Law on Transparency establishes that requests for information must be made in writing, and must include the clear identification of the applicant and the location of the information or subject of the search. As subparagraph (b) of Article 4 provides, this carries no cost, unless the entity that turns over the information has incurred expenses, in which case the applicant must pay them before being given the information. As provided in Article 21 and Title Five of the law, the response—or lack of response—by the entity subject to the law may be challenged via administrative remedies, the judicial remedy of access to information, or an *amparo* action.²⁸⁵

225. Peru's Law on Transparency does not specify how a request for information must be made to the administration. However, Article 10 of the law's regulations, adopted through Supreme Decree No. 072-2003, establishes that the request shall be presented in writing, whether in person at the entity's unit for receiving such requests, or through the entity's transparency portal. A format was designed for the requests, although the petition may be submitted by other written means. Article 11 of the law establishes that the request should be made to the official in each entity designated to handle petitions for information or, if this function has not yet been assigned, to the official who has the

²⁸¹ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>. Canadian case law has also decided regarding this standard. See also, Federal Court. *Statham vs. President of the Canadian Broadcasting Corporation, CBC and Information Commissioner of Canada*. T-782-08 of 2009. Office of the Information Commissioner of Canada. Available at: <http://reports.fja.gc.ca/eng/2010/2009fc1028.html>

²⁸² Canada. Access to Information Act. Section 30.1-31. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

²⁸³ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²⁸⁴ See United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(E)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

²⁸⁵ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

information or the immediate supervisor.²⁸⁶ The petitioner must identify him or herself, but Article 7 of the law establishes that the person is not required to provide reasons for the petition.²⁸⁷ According to paragraph (b) of Article 11, the entity has seven days in which to respond to the request, which may be extended by another five days. The law provides that when the agency to which a request has been made does not have the requested information but knows where it is and what has become of it, the agency must make this known to the petitioner.²⁸⁸ Article 11 of the regulations provides that when the petition does not meet the necessary requirements, the entity must ask the interested party to rectify the petition within the following 48 hours under penalty of its being closed.²⁸⁹ Article 17 of the law establishes that access to information is free of charge, except for the costs of reproducing the requested information.²⁹⁰ Paragraph d) of Article 11 prescribes that if the request is not answered within the established time limits, it shall be deemed to have been denied.²⁹¹ Both in this case and in the case of an outright denial, the petitioner must file an appeal, if a higher body exists, in order to exhaust administrative remedies. If the decision is unfavorable or if there has been no response within a period of 10 days, the interested party may initiate an administrative litigation proceeding or opt for a constitutional *habeas data* proceeding.²⁹²

226. In 2007, Peru's Constitutional Court issued a decision in a *habeas data* case in which it ruled on the *gratis* nature of information. The action had been brought against the District Municipality of Alto Nanay, due to the plaintiff's not having been given information having to do with the 2004-2005 budget and the providers that supplied services to the municipality during that period. The defendant entity responded that it did not have a list of providers and that the request had been answered, explaining that the petitioner was first required to pay an amount for "processing."²⁹³

227. In its ruling, the Court underscored the municipality's obligation of active transparency in such matters, but not before emphasizing the principle of disclosure and the exceptional nature of secrecy. In this regard, it stated:

It should also be noted that a social and democratic State of Law is based on the principle of disclosure (Article 39 and 40 of the Constitution), under which the acts of the public authorities and the information in their possession are subject to being known by all citizens. Access to such information may be restricted as an exception, as long as other constitutional rights are protected, but that must be done in line with the criteria of reasonableness and proportionality.

[...][I]t is worth noting that Article 5, paragraph 3, of the text of Law No. 27806, Law on Transparency and Access to Public Information, indicates that 'Public Administration entities shall establish progressively, in accordance with their budget, the dissemination

²⁸⁶ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁸⁷ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁸⁸ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁸⁹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁹⁰ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁹¹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁹² Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

²⁹³ Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Para. 7. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>

via the Internet of the following information: 3. The purchases they make of goods and services. The publication shall include the detail of the amounts committed, the providers, the quantity and quality of the goods and services acquired.' Along these lines, as has already been indicated above, the defendant must turn over the information requested on this point by the petitioner. (Boldface and underscore original)²⁹⁴

228. The Court therefore ordered that the information be turned over to the petitioner and established that he was not obligated to pay any sum of money since, as had been established by the law, charging any amount other than what it would cost to reproduce the information was prohibited.

With regard to the payment sought by the Municipality, it is not possible for the Municipality to charge any amount for processing, as Article 20 of the TUO of Law No. 25806 prohibits charging for anything other than the costs of reproduction.²⁹⁵

229. In Mexico, Article 40 of the Federal Transparency and Access to Public Governmental Information Act establishes that a request for information must be presented in writing, whether in free form or using the forms approved by the Federal Institute for Access to Information and Data Protection. The requests are filed with the respective agency's "liaison unit" and in all cases must contain the applicant's identification, the description of the documents requested, and optionally, the means by which the applicant would like to receive the response. The applicant is not required to justify or provide grounds for the request, nor prove any interest in the information.²⁹⁶ Article 27 establishes that the cost of obtaining the information may not exceed the value of making and mailing copies, if necessary.²⁹⁷

230. The same Article 40 establishes that the liaison units should assist individuals in formulating their requests for information, especially when the applicant is illiterate. In cases in which the information requested does not fall under the agency's purview, the liaison unit must advise the individual as to the competent agency or department. Likewise, the liaison unit must inform the interested party within 10 business days after the request is filed if the application lacks the necessary elements for the information to be identified or if it includes incorrect data.²⁹⁸

231. Article 47 prescribes that requests for information, as well as the responses to such requests and the information released, are public.²⁹⁹ Subsequently, Article 48 provides that the liaison

²⁹⁴ Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Paras. 4-5. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>. "Asimismo es de señalar que un Estado social y democrático de Derecho se basa en el principio de publicidad (artículo 39º y 40º de la Constitución), según el cual los actos de los poderes públicos y la información que se halla bajo su custodia son susceptibles de ser conocidos por todos los ciudadanos. Excepcionalmente el acceso a dicha información puede ser restringido siempre que se trate de tutelar otros bienes constitucionales, pero ello debe ser realizado con criterios de razonabilidad y proporcionalidad. // [...] [E]s del caso señalar que el artículo 5º inciso 3 del Texto Único Ordenado de la Ley N.º 27806, Ley de Transparencia y Acceso a la Información Pública, señala que '[l]as entidades de la Administración Pública establecerán progresivamente, de acuerdo a su presupuesto, la difusión a través de Internet de la siguiente información: 3. Las adquisiciones de bienes y servicios que realicen. La publicación incluirá el detalle de los montos comprometidos, los proveedores, la cantidad y calidad de bienes y servicios adquiridos'. En ese sentido, como ya se señaló supra, la demandada debe entregar la información solicitada en este extremo por el recurrente".

²⁹⁵ Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>. "En relación al pago solicitado por la Municipalidad no resulta posible a ésta cobrar monto alguno por concepto de movilidad, toda vez que el artículo 20º del TUO de la Ley Nº 25806 prohíbe el cobro de cualquier concepto distinto a los costos de reproducción".

²⁹⁶ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

²⁹⁷ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

²⁹⁸ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 40. Available at: <http://www.ifai.org.mx/English>

²⁹⁹ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

units have no obligation to respond to “offensive” requests or to applications involving content identical to information that has already been released in reply to a request by the same person. In this case, or when the information requested has already been made public, it is sufficient to inform the applicant where the information can be found.³⁰⁰

232. The administration's actions in response to a request for information may be contested before the Federal Institute for Access to Information and Data Protection (IFAI) through a writ of review, under a procedure established in Chapter IV of the law.³⁰¹

233. In Jamaica, the Access to Information Act establishes an obligation to assist the applicant and delineates specific response times. Negative responses must state the reasons for refusal and indicate the options available to the applicant.³⁰² Section 7(2) also establishes that applications for access to information may be made in writing or transmitted by telephone or other electronic means.³⁰³ For its part, Section 30(1) of the law prescribes the possibility that applicants may apply for an administrative review of those decisions by the public authority to “(a) refuse to grant access to the document; (b) grant access only to some of the documents specified in an application; (c) defer the grant of access to the document; or (d) charge a fee for action taken or as to the amount of the fee.”³⁰⁴ The decision in this review shall be taken by the responsible Minister, in relation to some documents, or by the Permanent Secretary in the relevant Ministry or the principal officer of the public authority whose decision is subject to review,³⁰⁵ and the request for review must be made within a 30-day period from the time the applicant is notified of the relevant decision.³⁰⁶ Likewise, the authority who undertakes the review has 30 days to respond to it.³⁰⁷ Section 32 of the Access to Information Act, together with its Second Schedule, establishes the possibility of an appeal remedy before a specialized court, both for decisions that have been subject to internal review and for any other type of decisions granted under the law.³⁰⁸

234. In Antigua and Barbuda, Section 17(1) of the law provides that applications must be made in writing. A person who is illiterate may receive assistance from an official, who shall receive the oral request and fill out the necessary forms.³⁰⁹ According to Section 19, responses to applications must be made in writing and must state the form in which access to the information requested will be provided, the applicable fee, if any, and the right of appeal to the Commissioner or to a judicial review available to the applicant. If the application is refused, the response must indicate adequate reasons for the refusal. A person whose application is denied in full or in part, who has not received a response, or who considers

³⁰⁰ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

³⁰¹ See United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Arts. 49-60. Available at: <http://www.ifai.org.mx/English>. Detailed information on avenues of access for this procedure are on the website of the Federal Institute for Access to Public Information (IFAI). To review the petition procedure, see: <http://www.ifai.org.mx/SolicitudInfo/SolicitudInfoPublica> (in Spanish).

³⁰² Jamaica. Access to Information Act, 2002. Section 7(3)-(5). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰³ Jamaica. Access to Information Act, 2002. Section 7(2)-(5). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁴ Jamaica. Access to Information Act, 2002. Section 30(1). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁵ Jamaica. Access to Information Act, 2002. Section 31(2). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁶ Jamaica. Access to Information Act, 2002. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁷ Jamaica. Access to Information Act, 2002. Section 31(3)(b). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁸ Jamaica. Access to Information Act, 2002. Section 32 and Second Schedule. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³⁰⁹ Antigua and Barbuda. The Freedom of Information Act. Section 17(2). Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

that the fee requested to cover the cost of the search is excessive may lodge a complaint with the Information Commissioner, an independent post created to guarantee that the law is implemented correctly.³¹⁰ The Commissioner is invested with the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.³¹¹

235. In Trinidad and Tobago, Section 13 of the Freedom of Information Act provides that a request for access to a document shall be made, in the form set out in the schedule of the law, to the relevant public authority, and shall identify the official document or provide sufficient information to enable it to be identified. The request may specify in which of the forms described in section 18 the applicant wishes to be given access, and it should be addressed to the responsible Minister.³¹²

236. Where the public authority decides that the applicant is not entitled to access to the document, that provision of access to the document be deferred, or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision. The notice shall "state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision."³¹³ Section 38(1) establishes the right to lodge a complaint with the Ombudsman; this must be made in writing within 21 days of receiving notice of the refusal. The Ombudsman shall, after examining the document if it exists, make such recommendations with respect to the granting of access to the document as he thinks fit.³¹⁴

237. Finally, in Argentina, as has been noted, there is no law on access to information, but the executive branch issued the General Regulations on Access to Public Information of the Federal Executive Branch, which among other things, regulates the procedures to satisfy the right of access to information. Article 9 of the regulations establishes that access to information is free of charge, but that copying costs must be covered by the petitioner.³¹⁵ Article 10 then establishes that the information shall be provided with no other requirements than those contemplated in the regulations.³¹⁶ These are established in Article 11, which provides that the request shall be presented in writing and in all cases the applicant must identify him or herself. However, the same article clarifies that the applicant may not be obligated to state his or her interest in the information.³¹⁷ In addition, the Decree establishes that the entity to which the request is made has up to 10 days to resolve the request. The regulation does not establish the administration's obligation to advise the applicant in preparing the petition.³¹⁸ For cases in which the response is unfavorable or imprecise, incomplete, or untimely, Article 18 of the regulations establishes that the petitioner may go before the Regulations Enforcement Authority, which is the Office of the Deputy Secretary for Institutional Reform and the Strengthening of Democracy, at the Central Office of the Cabinet of Ministers, which has the task of verifying and requiring compliance with the

³¹⁰ Antigua and Barbuda. The Freedom of Information Act. Section 19. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

³¹¹ Antigua and Barbuda. The Freedom of Information Act. Section 44(1). Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

³¹² Trinidad and Tobago. The Freedom of Information Act. Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

³¹³ Trinidad and Tobago. The Freedom of Information Act. Section 23(1)(a). Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

³¹⁴ Trinidad and Tobago. The Freedom of Information Act. Sec. 38A(1). Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

³¹⁵ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

³¹⁶ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

³¹⁷ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

³¹⁸ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

obligations established in the regulations. However, the decisions of the compliance authority constitute mere recommendations; that is, they are not binding. The applicant may also make use of the *amparo por mora de la Administración* legal action, regulated in the Law on Administrative Procedures.³¹⁹

c. Obligation to provide an appropriate, effective judicial remedy for reviewing denials of requests for information

238. The States should enshrine the right to a judicial review of any administrative decision denying access to information through a recourse that is simple, effective, quick, and not burdensome, and that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.³²⁰ Such a remedy should: (a) review the merits of the controversy to determine whether the right to access was violated; and (b) if that was the case, order the corresponding government body to turn over the information. In these cases, the recourses should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes.³²¹

239. The Inter-American Court has established that a judicial remedy is compatible with the requirements of the American Convention as long as it is adequate and effective.³²² That is, it must be adequate to protect the right that has been infringed upon³²³ and be able to produce the desired result.³²⁴ The absence of an effective remedy will be considered a transgression of the American Convention.³²⁵

240. The Inter-American Court has also established that the guarantee of an effective judicial remedy against violations of fundamental rights "is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society in the sense set forth in the Convention."³²⁶

³¹⁹ Republic of Argentina. Law No. 19.549 of 1972, with its later amendments, regulates administrative procedures. Its Article 28, substituted by Article 1 of Law No. 21.686 of 1977, regulates the *amparo por mora* [appeal due to delay] as follows: "Article 28. A party to an administrative proceeding may go to court to request that the case be handled on an expedited basis. Such an order shall be applicable in the event that the administrative authority had allowed the established time period to expire, or, if there are no established time periods, in the event that an unreasonable amount of time has passed without a decision or resolution on processing or on the merits of what the interested party is requesting. Once the petition is filed, the judge shall rule on whether it can proceed, taking into account the circumstances of the case. The judge may, if it is deemed pertinent, order the intervening administrative authority to report, within a time period set by the judge, on the reasons for the delay being alleged. The judge's decision is non-appealable. Once the judge's order has met with a response or the time period has expired without it being carried out, the judge shall rule with respect to the *mora* action, ordering, if pertinent, that the responsible administrative authority carry out the procedure within a reasonable period that is established based on the nature and complexity of the order or the processing steps that are pending." ("El que fuere parte en un expediente administrativo podrá solicitar judicialmente se libre orden de pronto despacho. Dicha orden será procedente cuando la autoridad administrativa hubiere dejado vencer los plazos fijados y en caso de no existir éstos, si hubiere transcurrido un plazo que excediere de lo razonable sin emitir el dictamen o la resolución de mero trámite o de fondo que requiera el interesado. Presentado el petitorio, el juez se expedirá sobre su procedencia, teniendo en cuenta las circunstancias del caso, y si lo estimare pertinente requerirá a la autoridad administrativa interviniente que, en el plazo que le fije, informe sobre las causas de la demora aducida. La decisión del juez será inapelable. Contestado el requerimiento o vencido el plazo sin que se lo hubiere evacuado, se resolverá lo pertinente acerca de la mora, librando la orden si correspondiere para que la autoridad administrativa responsable despache las actuaciones en el plazo prudencial que se establezca según la naturaleza y complejidad del dictamen o trámites pendientes"). Available at: <http://www.enre.gov.ar/web/bibliotd.nsf/042563ae0068864b04256385005ad0be/820b1dac79d15b4603256e740055aa2f?OpenDocument>

³²⁰ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Paras. 137.

³²¹ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Paras. 116-139.

³²² I/A Court H.R. *Case of the Serrano-Cruz Sisters v. El Salvador*. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118. Para. 134.

³²³ I/A Court H.R. *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4. Para. 64.

³²⁴ I/A Court H.R. *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4. Para. 66.

³²⁵ I/A Court H.R. *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. Para. 24.

³²⁶ I/A Court H.R. *Case of the Serrano-Cruz Sisters v. El Salvador*. Judgment of November 23, 2004. Series C No. 118. Para. 134; *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114. Para. 131; *Case of the 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109. Para. 193.

241. The countries studied have different types of judicial remedies for contesting the administration's responses or failures to respond to requests for access to public information. However, in practice, the remedy is not always truly effective in satisfying this right, because sometimes the matter is not resolved within a reasonable period that would be adequate to protect the right effectively. In some dates, the remedy consists of a special mechanism for guaranteeing the right of access to information (such as in Uruguay, Jamaica, Chile, and Ecuador); a constitutional action (such as the protection remedies of *amparo* or *tutela* in Colombia); or administrative litigation, which tends to take the longest time to be resolved. In some legal systems, the interested party may choose which remedy to pursue among different ones that are available.

242. Uruguay's Law on Access to Public Information creates the legal action of access to public information,³²⁷ allowing a denial of access to information or administrative silence toward requests that have been duly processed to be challenged in court. The procedure for this action is regulated in Chapter V of the law, which establishes that the action may be filed directly by the interested party or through an attorney and that the judge, on petition of one of the parties or *sua sponte*, "may rectify any procedural errors within the summary nature of the process, to preserve the adversarial process."³²⁸ The law also establishes very short terms for scheduling a public hearing and for issuing a decision.³²⁹ The judgment may be appealed and the decision of the court of second instance must be handed down within a very short period of time.³³⁰

243. Chile's Law on Access to Information provides that decisions by the Council for Transparency may be challenged by means of an illegality claim in the Court of Appeals in the area where plaintiff resides. If the Council had ordered that access to information be allowed, the measure is suspended until the Court rules on the merits. The terms for resolution are short, and there is no remedy against the decision of the Court of Appeals. If the judgment is in favor of allowing access to information, a maximum period will be established in which that must take place, and a decision will be made as to whether it is necessary to open a disciplinary investigation.³³¹

244. Ecuador's Organic Law on Transparency and Access to Public Information also created and regulated, in its Article 22,³³² the remedy of access to information.³³³ The action may be filed before

³²⁷ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Article 22 of the LAIP establishes: "Any person has the right to lodge an effective legal action that guarantees full access to the information of his or her interest." ("Toda persona tendrá derecho a entablar una acción judicial efectiva que garantice el pleno acceso a las informaciones de su interés").

³²⁸ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Articles 24, 30. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "El tribunal, a petición de parte o de oficio, subsanará los vicios de procedimiento, asegurando, dentro de la naturaleza sumaria del proceso, la vigencia del principio de contradictorio".

³²⁹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 26. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "[T]he parties shall be called to a public hearing within a term of three days from the date of the filing of the suit. The judgment will be given at the hearing or at the latest within twenty-four hours of its conclusion. Only in exceptional cases may the hearing be extended for up to three days." ("[S]e convocará a las partes a una audiencia pública dentro del plazo de tres días de la fecha de la presentación de la demanda. La sentencia se dictará en la audiencia o a más tardar, dentro de las veinticuatro horas de su celebración. Sólo en casos excepcionales podrá prorrogarse la audiencia por hasta tres días").

³³⁰ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 29. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "The court of appeals will decide in agreement, within four days following receipt of the files[...]" ("El tribunal de alzada resolverá en acuerdo, dentro de los cuatro días siguientes a la recepción de los autos [...]").

³³¹ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Articles 28-30. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

³³² Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

any civil judge or trial court in the district of the responsible entity that holds the information. The case may proceed if access to information has been denied, either tacitly or expressly—even if the denial is based on the privileged or confidential nature of the information being requested—and when the information provided is incomplete, altered, or false. The formalities of the remedy are minimal³³⁴ and the time periods for a resolution are short.³³⁵ The judge may hand down precautionary measures, and upon concluding that the information being requested must be provided, he or she will order that it be turned over within a period not to exceed 24 hours. The administrative authority may challenge the decision in the Constitutional Court. It is important to emphasize that the access-to-information remedy does not limit the possibility of filing a constitutional *amparo* action, a characteristic that can also be found in other legal systems.

245. In the case of Jamaica, the Second Schedule of the Freedom of Information Act establishes the conditions for the creation of a specialized tribunal to hear appeals related to the law. That tribunal has been operating since 2004.³³⁶ The remedy of appeal that may be lodged before the tribunal is prescribed in Section 32 and applies both to requests that have been submitted to internal review and to other types of decisions established by the law.³³⁷ For those decisions subject to internal review, the law provides for the possibility of appeal against the decision or where no notification of a decision has been given within the period required by the act. The time period for lodging an appeal is within 60 days after the notification of the authority's decision or, where no notification has been given, 60 days after the expiration of the period required for a response. The 60-day period may be extended by the tribunal if the appellant's delay is justifiable. On the hearing of an appeal, the burden of proof shall lie on the public authority that made the decision. With respect to the tribunal's decision, it may issue any decision which

...continuation

³³³ The 2008 Constitution assigned constitutional status to the action of access to public information. Article 91 states: "The action of access to public information shall be to guarantee access to information when it has been expressly or tacitly denied, or when the information provided is incomplete or inaccurate. The action may be brought even if the denial is based on the secret, reserved, or confidential nature of the information or any other classification of such. The confidential nature of the information must have been stated prior to the petition, by competent authority and in accordance with the law." ("La acción de acceso a la información pública tendrá por objeto garantizar el acceso a ella cuando ha sido denegada expresa o tácitamente, o cuando la que se ha proporcionado no sea completa o fidedigna. Podrá ser interpuesta incluso si la negativa se sustenta en el carácter secreto, reservado, confidencial o cualquiera otra clasificación de la información. El carácter reservado de la información deberá ser declarado con anterioridad a la petición, por autoridad competente y de acuerdo con la ley").

³³⁴ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. The law contemplates the following: a) Identification of the appellant; b) Bases of fact and law; c) Indication of the authority of the entity subject to the law who refused the information; and d) Legal claim.

³³⁵ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Paragraph 5 *et seq* of Article 22 of the Organic Law on Transparency: "The judges or the tribunal shall decide to hear the case within a period of forty-eight hours, as long as there is no cause that would justify a refusal, other than the formalities required under this Law. // On the same day the Access to Information Remedy is lodged, the judge or tribunal shall convene the parties, on a one-time basis and by means of a written communication, to be heard in a public hearing to be held within the twenty-four hours immediately following. // The respective decision shall be handed down within a maximum period of two days from the date on which the hearing was held, even if the holder of the information did not attend. Once the remedy is in process, the representatives of the entities or natural persons against whom the action was brought shall, within a period of eight days, turn over to the judge all the information that has been requested. // In the event that the information is classified as secret or confidential, this must be established with documentation and reasons provided, with the legal and correct classification from the index list under the terms of this Law. If the classification of the information as secret or confidential is fully justified, the judge or tribunal shall confirm the denial of access to information." ("Los jueces o el tribunal, avocarán conocimiento en el término de cuarenta y ocho horas, sin que exista causa alguna que justifique su inhibición, salvo la inobservancia de las solemnidades exigidas en esta Ley. // El juez o tribunal en el mismo día en que se plantee el Recurso de Acceso a la Información, convocará por una sola vez y mediante comunicación escrita, a las partes para ser oídas en audiencia pública a celebrarse dentro de las veinticuatro horas subsiguientes. // La respectiva resolución deberá dictarse en el término máximo de dos días, contado desde la fecha en que tuvo lugar la audiencia, aun si el poseedor de la información no asistiere a ella. Admitido a trámite el recurso, los representantes de las entidades o personas naturales accionadas, entregarán al juez dentro del plazo de ocho días, toda la información requerida. // En el caso de información reservada o confidencial, se deberá demostrar documentada y motivadamente, con el listado índice la legal y correcta clasificación en los términos de esta Ley. Si se justifica plenamente la clasificación de reservada o confidencial, el juez o tribunal, confirmará la negativa de acceso a la información").

³³⁶ Decisions of the Appeal Tribunal may be viewed at: <http://www.ati.gov.jm/tribunal-decisions.html>

³³⁷ Jamaica. Access to Information Act, 2002. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

could have been made on the original application, as long as it does not nullify a certificate classifying a document as exempt under Section 23 of the same act. The tribunal has the authority to inspect exempt documents, but must maintain their confidentiality.³³⁸ However, the law does not establish a mandatory time period in which the tribunal must make the relevant decision.

246. In Canada, the Access to Information Act establishes, in Sections 41 to 53, the procedure for judicial review by the Federal Courts. Pursuant to Section 41, any person who has been refused access to a record or a part thereof may, if a complaint has been made to the Information Commissioner, apply to the Federal Court for a review of the matter within 45 days after results of an investigation of the complaint are reported to the complainant.³³⁹

247. In Colombia, Article 21 of Law No. 57 of 1985 establishes that when the administration denies someone the right to view or receive the information requested, the interested party may lodge an appeal (*recurso de insistencia*). In such cases, upon the petitioner's filing of the appeal, the party subject to the law must send the documentation to the Court of Administrative Litigation with jurisdiction in the place where the information being requested is located, which shall decide in sole instance, within a period not to exceed the following 10 business days.³⁴⁰

248. In Colombia, the administration's decision may also be challenged in the courts through a constitutional protective action (*tutela*), designed to safeguard fundamental rights. This type of action is expeditious, as a decision at first instance must be made within 10 days. It is also a free and informal process—an action may even be brought verbally before any judge in the defendant's district—and does not require a lawyer.³⁴¹ However, the Constitutional Court has stated in case law that when the government denies access to information on grounds that it is classified as secret under the law, the interested party must first exhaust the *recurso de insistencia* before bringing a *tutela* action. In those cases in which the government has denied access to information for different reasons (for example, invoking the Constitution) or has simply not responded to the petition for information or has delayed in responding, the interested party may have direct recourse to *tutela*.³⁴²

249. Article 17 of Panama's Transparency in Public Management Law provides that anyone may bring a constitutional action of *habeas data* when the information they requested was denied to them or was provided in an incomplete or inexact form. The action is filed in the higher courts that consider *amparo* actions, when the official who is the defendant has jurisdiction at the provincial or municipal level, or with the Plenum of the Supreme Court of Justice itself, when the official's jurisdiction extends over two or more provinces or across the country.³⁴³ Pursuant to Article 19, it is a summary procedure, it does not require the presence of a lawyer, and it is governed in different aspects by the rules of *amparo* actions for constitutional guarantees.³⁴⁴ Regarding the requirements for a *habeas data* action, the Supreme Court of Justice has stated the following:

³³⁸ Jamaica. Access to Information Act, 2002. Section 32(7). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

³³⁹ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/AA-1.pdf>

³⁴⁰ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html

³⁴¹ See Art. 86. Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>; Decree 2591 of 1991. Available at: http://www.secretariassenado.gov.co/senado/basedoc/decreto/1991/decreto_2591_1991.html

³⁴² See, in this regard, Constitutional Court of Colombia. Judgment T-881 of 2004. September 9, 2004. Available at: <http://www.corteconstitucional.gov.co/relatoria/2004/T-881-04.htm>; Constitutional Court of Colombia. Judgment T-534 of 2007, July 12, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-534-07.htm>; Constitutional Court of Colombia. Judgment T-1025 of 2007, December 3, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-1025-07.htm>

³⁴³ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 18. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

³⁴⁴ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

*It is noted that a Habeas Data action, as a mechanism that guarantees the right of access to information, is not subject to rigorous technical formalities that condition whether or not it can proceed. Nevertheless, this does not mean that it should ignore basic requirements such as: 1) the provision of the original document in which the information is requested, with its respective seal indicating that it was received by the relevant authority; 2) the completion of the time period the authority has to respond to the request; and 3) that the information involved is subject to free and public access.*³⁴⁵

250. In Argentina, Article 14 of the Regulations of the Federal Executive Branch provide that when a request for access has not received a timely response from the administration, or the response was ambiguous, partial, or imprecise, the remedy is an *amparo por mora* [appeal due to delay], provided for in Article 28 of Law No. 19.459 and its amendments, or the Law on Administrative Procedure.³⁴⁶ Nevertheless, in these cases, judges tend not to resolve the request on its merits, as they can only order that the case be handled on an expedited basis. Thus, the action used for protecting the right of access to information is mainly the constitutional action of *amparo*, which is admissible “against any act or omission by the public authority that, currently or imminently, injures, restricts, alters, or threatens, in an arbitrary or manifestly illegal manner, the rights or guarantees that are explicitly or implicitly recognized by the National Constitution, with the exception of the right to individual liberty protected by *habeas corpus*.”³⁴⁷

251. In Guatemala, Article 54 of the law establishes that decisions made by the entity subject to the law regarding requests for access to information may be challenged through an administrative appeal before the entity's highest authority. The second paragraph of Article 60 provides that when the appeal remedy has been exhausted, the governmental avenue comes to an end, after which the interested party is authorized “to file the respective *amparo* action in order to have his or her constitutional right prevail, without prejudice to legal actions of any other type.”³⁴⁸ The *amparo* action is contemplated in the Constitution itself, which in Article 265 provides that *amparo* is intended “to protect persons against threats of violations of their rights or to restore their rights when a violation has occurred. There is no sphere in which *amparo* does not apply, and it can proceed as long as the authority's acts, resolutions, dispositions, or laws implicitly threaten, restrict, or violate the rights guaranteed by the Constitution and the laws.”³⁴⁹

³⁴⁵ Republic of Panama. Judgment Supreme Court of Justice – Plenum. Habeas Data Action. May 11, 2009. Opinion by Anibal Salas Céspedes. RJ 2009. P. 111. Available at: <http://www.organojudicial.gob.pa/wp-content/blogs.dir/8/files/2009/libros/rj2009-05.pdf>. “Se advierte que la acción de Hábeas Data, como mecanismo que garantiza el derecho de acceso de la información no está sujeto a formalidades técnicas rigurosas que condicionan su procedencia. No obstante, esto no significa que deba desatenderse requerimientos básicos como: 1) La aportación del documento original en que se solicita la información, con su respectivo sello de recibido por la autoridad correspondiente; 2) el cumplimiento del plazo que tiene la autoridad para atender la solicitud y 3) que se trate de una información de acceso libre o público”.

³⁴⁶ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

³⁴⁷ Republic of Argentina. Article 1 of the Amparo Action Law. Law No. 16.986 of 1966. Available at: http://www.mjus.gba.gov.ar/legislacion/todos/normas_nacionales/leyes/ley16.986_amparo.pdf. “contra todo acto u omisión de autoridad pública que, en forma actual o inminente, lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, los derechos o garantías explícita o implícitamente reconocidas por la Constitución Nacional, con excepción de la libertad individual tutelada por el hábeas corpus”.

³⁴⁸ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “interponer la acción de amparo respectiva a efecto de hacer prevalecer su derecho constitucional, sin perjuicio de las acciones legales de otra índole”.

³⁴⁹ Political Constitution of the Republic of Guatemala. Available at: http://www.tse.org.gt/descargas/Constitucion_Politica_de_la_Republica_de_Guatemala.pdf. “proteger a las personas contra las amenazas de violaciones a sus derechos o para restaurar el imperio de los mismos cuando la violación hubiere ocurrido. No hay ámbito que no sea susceptible de amparo, y procederá siempre que los actos, resoluciones, disposiciones o leyes de autoridad lleven implícitos una amenaza, restricción o violación a los derechos que la Constitución y las leyes garantizan”. The constitutional action of *amparo* was regulated by means of the “Law of Amparo, Habeas Corpus, and Constitutionality.” Decree No. 1-86 of the National Constituent Assembly.

252. Peru's Law on Transparency provides, in subparagraph (g) of Article 11 that once the administrative avenue has been exhausted, an interested party who has not obtained the requested information may "opt for initiating administrative litigation proceedings, in accordance with the provisions of Law No. 27584, or opt for the constitutional process of *Habeas Data*, in accordance with the provisions of Law No. 26301."³⁵⁰ The administrative litigation action may be filed by any person who has been denied access to information either expressly or tacitly.³⁵¹ Jurisdiction falls to the judge in the defendant's area of residence or in the place where the pertinent action took place, and the process has short time limits.³⁵²

253. For its part, Title IV of the Constitutional Procedural Code, prescribed in Law No. 28.237 of 2004, regulates the *habeas data* procedure.³⁵³ There, Article 61 establishes that any person may use this procedure "to access information in the control of any public authority" or "to learn about, update, include, and suppress or rectify any information or data related to his or her person" that may be recorded in public entities or in private institutions that provide services or access to third parties. Pursuant to Article 65, the *habeas data* procedure is the same as that provided for the *amparo* process. Articles 53 and 58 of the law establish a summary process both at first and second instance.³⁵⁴

254. Nicaragua's Law on Access to Public Information provides, in Article 37, that anyone who has been denied access to information or has not received a response within the established time periods may go before the administrative litigation jurisdiction. The action must meet the requisites and procedures established in the law on the subject.³⁵⁵ In this regard, Law No. 350 of 2000 (Law on the Regulation of Jurisdiction in Administrative Litigation Matters) establishes a procedure that is not easy for ordinary citizens to satisfy; it requires seeking specialized counsel, as it establishes prerequisites in such

³⁵⁰ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. "optar por iniciar el proceso contencioso administrativo, de conformidad con lo señalado en la Ley N° 27584 u optar por el proceso constitucional del Hábeas Data, de acuerdo a lo señalado por la Ley N° 26301".

³⁵¹ Republic of Peru. Article 4 of Law No. 27584. "Law to Regulate the Administrative Litigation Proceeding" establishes what conduct may be challenged through an administrative litigation action. Available at: <http://www.congreso.gob.pe/comisiones/2001/justicia/lev27584.htm>

³⁵² Article 25.2, modified by Legislative Decree No. 1067 on June 28, 2008, provides that the maximum periods that may apply are: "a) Three days to challenge or oppose the evidence, from the time of notification of the decision admitting the evidence; b) Five days to file objections or arguments in defense, from the time of notification of the action; c) Ten days to respond to the action, from the notification of the decision admitting the action for processing; d) Fifteen days to issue a formal accusation or remand the case to the court, from the time it was received; e) Three days to request a verbal report, from the notification of the decision establishing that the matter is pending judgment; f) Fifteen days to issue a judgment, from the time the parties were notified of the formal accusation or from the time the oral report was made, depending on the case; g) Five days to appeal the judgment, from the time of notification." ("El artículo 25.2 de la Ley 27584, modificada por Decreto Legislativo No. 1067 de 28 de junio de 2008, dispone que los plazos máximos aplicables son: "a) Tres días para interponer tacha u oposiciones a los medios probatorios, contados desde la notificación de la resolución que los tiene por ofrecidos; b) Cinco días para interponer excepciones o defensas, contados desde la notificación de la demanda; c) Diez días para contestar la demanda, contados desde la notificación de la resolución que la admite a trámite; d) Quince días para emitir el dictamen fiscal o devolver el expediente al órgano jurisdiccional, contados desde su recepción; e) Tres días para solicitar informe oral, contados desde la notificación de la resolución que dispone que el expediente se encuentra en el estado de dictar sentencia; f) Quince días para emitir sentencia, contados desde la notificación del dictamen fiscal a las partes o desde la realización del informe oral, según sea el caso; g) Cinco días para apelar la sentencia, contados desde su notificación". República de Perú. Ley 27584. Ley que Regula el Proceso Contencioso Administrativo"). Available at: <http://www.pcm.gob.pe/InformacionGral/ogaj/archivos/DL-1067.pdf>.

³⁵³ Republic of Peru. Code of Constitutional Procedure. Law No. 28237. Arts. 61 *et seq.* Available at www.tc.gob.pe/Codigo_Procesal.html

³⁵⁴ Republic of Peru. Code of Constitutional Procedure. Law No. 28237. Available at www.tc.gob.pe/Codigo_Procesal.html. Article 61 provides: "[T]oda persona puede acudir [al recurso de habeas data] para: 1) Acceder a información que obre en poder de cualquier entidad pública [...] 2) Conocer, actualizar, incluir y suprimir o rectificar la información o datos referidos a su persona que se encuentren almacenados o registrados en forma manual, mecánica o informática, en archivos, bancos de datos o registros de entidades públicas o de instituciones privadas que brinden servicio o acceso a terceros [...]".

³⁵⁵ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

a way that if the complainant does not meet them he or she could end up losing the right.³⁵⁶ And since it is a regular administrative remedy, it is not resolved quickly.

255. In El Salvador, the Access to Information Law establishes only that “individuals may appeal denials of their requests to the Court of Administrative Litigation of the Supreme Court of Justice”.³⁵⁷ The process is governed by the norms established in the 1979 Law on Administrative Litigation Jurisdiction.³⁵⁸

256. In Mexico, the *amparo* is the last resort for challenging any acts by authorities believed to infringe on fundamental rights, including decisions of the Federal Institute for Access to Information and Data Protection (IFAI) that deny the right of access to information. *Amparo* appeals are heard by the national judiciary.³⁵⁹

257. In the United States, the FOIA establishes that if an agency confirms a denial upon appeal, or does not respond to the appeal within a period of 20 days, the petitioner has the right to seek judicial recourse by filing a complaint in District Court and the government has the obligation to notify the petitioner of his or her rights.³⁶⁰

258. Section 39 of Trinidad and Tobago’s Freedom of Information Act establishes judicial review before the High Court of a decision denying access to information.³⁶¹ The application shall be heard and determined by a Judge in Chambers unless the Court, with the consent of the parties, directs otherwise. The judicial review is governed by the provisions of the Judicial Review Act.³⁶²

259. The General Law on Access to Public Information (LGLAIP) of the Dominican Republic establishes that if the person requesting information were not satisfied with the response received, he or she could appeal the decision to a “higher hierarchical body.” The decision of the latter may be appealed judicially with the Court of Administrative Litigation. The citizen may also file a constitutional *amparo* remedy with the same Court of Administrative Litigation in all cases in which the agency or person from whom information has been requested has not satisfied the request in the time established for that purpose, or the body or higher hierarchical entity has not ruled on the appeal that was filed. Such an appeal must specify the steps taken and the harm that could be caused by the delay. Copies must also be provided of the documents by which the information was requested or the appeal was filed. If the Court decides to hear the appeal, it will require the relevant public administration agency to report on the cause of the delay and “will set a short, expedited time period” for the response. Once there has been a response to that request, or the time period in which to do so has expired, the court will hand down the

³⁵⁶ Republic of Nicaragua. Law No. 350 of 2000. Law to Regulate the Administrative Litigation Jurisdiction. Art. 14 *et seq.* Available at: <http://www.poderjudicial.gob.ni/arc-pdf/Ley%20350.pdf>

³⁵⁷ Republic of El Salvador. Law on Access to Public Information. Art. 101. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “[L]os particulares podrán impugnar las respuestas negativas a sus pretensiones ante la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia”.

³⁵⁸ Republic of El Salvador. Law on Contentious Administrative Jurisdiction. Available at: http://www.ute.gob.sv/uteweb/publicaciones/ley_jurisidccion_contencioso_administrativa.pdf

³⁵⁹ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Article 59 of the Federal Access to Public Governmental Information Act states: “The resolutions issued by the Institute shall be final and conclusive for the departments and agencies. Private entities may appeal them before the Federal Judicial Power.”

³⁶⁰ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

³⁶¹ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

³⁶² Trinidad and Tobago. The Judicial Review Act. Act No. 60 of 2000. Available at: <http://www.tparliament.org/legislations/a2000-60.pdf>

relevant decision, in protection of the injured right, in which it will set a time period for the government agency to resolve the petition for information in question.³⁶³

260. Finally, in the case of Antigua and Barbuda, Section 45 of the Freedom of Information Act establishes that once a decision has been issued by the Information Commissioner, the complainant or the relevant public authority or private body may, within 28 days, apply to the High Court for a review of the decision. If no such application is made within that period, section 46 provides that the Information Commissioner's decision shall become binding, and the failure to carry it out shall be treated as a contempt of court.³⁶⁴

d. Obligation of active transparency

261. The right of access to information imposes on the State the obligation to provide the public with the maximum amount of information proactively, at least in terms of: a) the State's structure, functions and operating and investment budget; b) information needed for the exercise of other rights—for example, information that affects social rights such as the rights to pension, health, or education; c) the availability of services, benefits, subsidies, or contracts of any kind; and d) the procedure for filing complaints or requests, if it exists. The information should be complete, understandable—written in language that is accessible—and up-to-date. Also, given that significant segments of the population do not have access to new technologies yet many of their rights can depend on their having information about how to realize them, the State must find effective ways to fulfill its obligation of active transparency in such circumstances.³⁶⁵

262. On the right to active transparency, the UN, OAS, and OSCE rapporteurs for freedom of expression stated, in their 2004 Joint Declaration, that “[p]ublic authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.”³⁶⁶

263. The scope of this obligation is also explained in the Inter-American Juridical Committee's resolution on “Principles on the Right of Access to Information,” which establishes the following: “Public bodies should disseminate information about their functions and activities—including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts—on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.”³⁶⁷ Along these lines, this obligation includes the duty to refrain from interfering with the right of access to information of all kinds, which extends to the circulation of information that may or may not have the personal approval of those who represent the authority of the State at any given time.

264. The OAS General Assembly, in its Resolution AG/RES. 2607 (XL-O/10), which adopts a “Model Inter-American Law on Access to Information,” clarified some of the State's obligations in terms of

³⁶³ Dominican Republic. General Law on Access to Public Information. Law 200-04. Articles 27-29. Available at: <http://www.senado.gob.do/dnn/MarcoNormativo/LeyGeneraldeLibreAccesoalInformaci%C3%B3n.aspx>

³⁶⁴ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

³⁶⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document OEA/Ser.LV/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 30-32. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

³⁶⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document OEA/Ser.LV/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 33. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>; Joint Declaration by the Rapporteurs on Freedom of Expression from the UN, the OAS and the OSCE, December 6, 2004. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

³⁶⁷ Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 4. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

active transparency. The resolution prescribes that “even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable.” Article 9 of the Model Law establishes the obligation to “[make] information available proactively so as to minimize the need for individuals to make requests for information.” For its part, Article 12 of the Model Law lays out in detail the main classes of information subject to proactive disclosure by a public authority.³⁶⁸

265. The obligation of entities subject to the law to provide information to the public proactively is contemplated in the legal systems analyzed in this study, although to very different degrees.

266. Countries such as Chile, Uruguay, Nicaragua, Ecuador, and Mexico establish the obligation to publish an extensive catalog of information. For example, Article 7 of Chile’s Transparency Law, which establishes the active transparency obligation for State agencies, contains a catalog of information that should be posted permanently on the website, which must also be updated on a monthly basis. The information that must be disclosed includes each agency’s organizational structure, its functions and powers, mechanisms for citizen participation, and everything having to do with contracting procedures and the transfer of public funds.³⁶⁹

267. Uruguay’s Law on Access to Public Information also provides, in its Article 5, the obligation for parties subject to the law to publish proactively, on their websites, a minimum amount of information on matters such as their organizational structure, functions, budgetary allocation and execution, contracting, and mechanisms for citizen participation, along with the address and unit to which

³⁶⁸ Under the Model Law, information that should be disclosed without waiting for a request to exist includes: a) a description of its organizational structure, functions, duties, locations of its departments and agencies, operating hours, and names its officials; b) the qualifications and salaries of senior officials; c) the internal and external oversight, reporting and monitoring mechanisms relevant to the public authority including its strategic plans, corporate governance codes and key performance indicators, including any audit reports; d) its budget and its expenditure plans for the current fiscal year, and past years, and any annual reports on the manner in which the budget is executed; e) its procurement procedures, guidelines and policies, contracts granted, and contract execution and performance monitoring data; f) the salary scales, including all components and sub-components of actual salary, relevant to all employee and consultant categories within the public authority (including all data related to current reclassification of posts); g) relevant details concerning any services it provides directly to members of the public, including customer service standards, charters and protocols; h) any direct request or complaints mechanisms available to members of the public regarding acts, or a failure to act, by that public authority; i) a description of the powers and duties of its senior officers, and the procedure they follow to make decisions; j) any statutes, policies, decisions, rules, guidelines, manuals or other records containing interpretations, practices or precedents regarding the discharge by that public authority of its functions, that affect the general public; k) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority; l) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information and an internal appeal; m) its Disclosure Log, in accordance with Article 18, containing a list of requests received and records released under this Law, which shall be automatically available, and its Information Asset Register, in accordance with Article 17; n) a complete list of subsidies provided by the public authority; o) frequently requested information; and p) any additional information deemed appropriate by the public authority. OAS General Assembly, Resolution AG/RES. 2607 (XL-O/10), which adopts a Model Inter-American Law on Access to Information. OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2840/10 Corr.1. “Model Inter-American Law on Access to Information.” April 29, 2010. Article 12. Key Classes of Information. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf; OAS. General Assembly. Resolution AG/RES. 2607 (XL-O/10), which adopts a “Model Inter-American Law on Access to Information.” June 8, 2010. Available at: http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf

³⁶⁹ Republic of Chile. Law on Transparency in Public Administration and Access to Information in Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 7 of the statute establishes that each entity subject to the law must publish on its website the following matters, which should be updated at least once a month: Its organizational structure; the authorities, functions, and attributions conferred on each of its internal units or bodies; the legal or regulatory framework that applies; permanent staff and contract and fee-based personnel, with their respective remunerations; contracting information, indicating those contracted and identifying the principal partners and shareholders of the provider corporations or companies, as the case may be; any transfers of public funds that are made; any acts and resolutions that affect third parties; the procedural steps and requirements an interested party must meet to obtain access to the services the respective public body provides; the design, allocated amounts, and criteria for accessing subsidy programs and other benefits provided by the body in question, as well as the lists of beneficiaries of the social programs being implemented; citizen participation mechanisms, if any; information on the budget allocated, as well as reports on its execution; and the results of audits.

requests to obtain information may be addressed. The article also provides that the information must be organized and systematized to ensure “broad and easy access to interested parties.”³⁷⁰

268. In the previously mentioned Judgment 48 in Mercedes, Uruguay, the Court also referred to the obligation of active transparency. The Court affirmed that the information that had been requested—related to the Soriano Departmental Assembly’s expenditures for official advertising—not only was not of a privileged nature, but that it was part of the information that the entity should disclose proactively:

*[N]ot only is the information that was requested not confidential, but Article 5 of the Law in question, when it establishes rules regarding the dissemination of public information, establishes that public bodies, whether or not they are of the State, must disclose on a permanent basis, at least the following information: ‘...D) Information on budget allocated and its execution, with the results of any relevant audits. E) Concessions, licenses, permits, or authorizations granted, specifying the holders or beneficiaries of each. F) Any statistical information of a general interest, in accordance with the purposes of each body.’ It must be said, based on the foregoing, that the requested information not only is not confidential, but that it is public by its very essence.*³⁷¹

269. In Nicaragua, Articles 20 and 21 of the Law on Access to Information establish the minimum information that public entities and private entities subject to the law, respectively, must publish proactively on their websites. Public entities must make public the organizational structure of the agency, its functions, its employees’ salaries, the services it offers, the budget it manages, and information related to contracting processes, as well as any requirements and forms for accessing services and programs the agency offers.³⁷² With regard to private entities, Article 21 establishes that they must disclose any

³⁷⁰ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Art. 5. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Entities subject to the law are required to provide information, at a minimum, on the following subjects: organizational structure; the authority conferred on each administrative unit; salary scales, functions of posts, and compensation system; budget allocation and execution, along with the results of respective audits; concessions, bids, permits, or authorizations granted, specifying their holders and beneficiaries; all statistical information of a general interest, in accordance with the purposes of each entity; and mechanisms in place for citizen participation. Article 5 provides: “Los sujetos obligados deberán prever la adecuada organización, sistematización y disponibilidad de la información en su poder, asegurando un amplio y fácil acceso a los interesados”.

³⁷¹ Oriental Republic of Uruguay. Judgment No. 48 of Juzgado Letrado de Segundo Turno de Mercedes. September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. “No solo no es confidencial la información que se solicitó sino que en el artículo 5 de la Ley que nos ocupa, cuando regula sobre la difusión de la información pública, establece que los organismos públicos, sean o no estatales, deberán difundir en forma permanente, la siguiente información mínima: “...D) Información sobre presupuesto asignado, su ejecución, con los resultados de las auditorías que en cada caso corresponda. E) Concesiones, licitaciones, permisos o autorizaciones otorgadas especificando los titulares o beneficiarios de éstos, F) Toda información estadística de interés general, de acuerdo a los fines de cada organismo”. Vale decir, que por lo que viene de señalarse, la información solicitada no solo no es confidencial, sino que es pública por esencia”.

³⁷² Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 20. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 21 provides: “Las entidades privadas sometidas a la presente Ley, tendrán el deber de publicar, al igual que las entidades del Estado, la siguiente información básica: a) Las concesiones, contratos, subvenciones, donaciones, exoneraciones u otros beneficios o ventajas; licencias, permisos o autorizaciones, que les fueron otorgadas por el Estado, sus bases y contenidos; b) Las obras e inversiones obligadas a realizar, las ya realizadas y las pendientes por realizar, en base a los compromisos adquiridos en el contrato de concesión, licencia, permiso o autorización ; c) Las clases de servicios que prestan, así como sus tarifas básicas, la forma de calcularlas, los demás cargos autorizados a cobrar; d) Procedimientos establecidos para la interposición de reclamos y recursos; e) Información anual de actividades que incluirá un resumen de la cantidad de reclamos recibidos y las resoluciones en cada caso; f) Toda aquella información que permita a los ciudadanos, comprobar el grado de cumplimiento de los objetivos públicos convenidos entre el Estado o sus entidades con el Ente Privado, así como el uso que hace de los bienes, recursos y beneficios fiscales u otros beneficios, concesiones o ventajas otorgados por el Estado”. Article 20 prescribes that, at a minimum, the following information must be published on each entity’s website: its organizational structure, the legal norms that govern it, and the services it provides; the number of its directors and public servants responsible for the Office for Access to Public Information and the Institutional Database; the monthly remuneration of all personnel, including temporary and contracted workers; any calls for quotes or bids; documents justifying the granting of permits, concessions, or licenses and the contracting of personnel, as well as the results of contracts, bids, and acquisition processes for goods or services; the results of audits; the recipients and authorized use of any public funds paid, whatever their purpose; the services and support programs offered, as well as any procedures, requirements,

“concessions, contracts, grants, donations, advantages, licenses, or authorizations” they receive from the State; “any works or investments they are carrying out, have already completed, or are scheduled” as a result of the contracts or authorizations; the “types of services they provide, as well as their basic fees and method of calculating them”; procedures established for filing claims and remedies; and an annual report of activities.³⁷³ In the case of Nicaragua the law also establishes that each public entity must present the information in a systematized way so as to facilitate access to it. In addition, the Nicaraguan law is the only one that provides that entities subject to the law “must, in a timely and complete manner, place at the disposal of indigenous peoples and communities of African descent, any information, evaluations, studies, prospects, or public information of any other nature, so as to contribute to the process of their development and socioeconomic well-being, based on the knowledge of their own reality”.³⁷⁴

270. In Ecuador, Article 7 of the Organic Law on Transparency and Access to Public Information contains a list of the minimum updated information that must be published on the websites of the entities subject to the law. The list coincides on various points with those that have already been mentioned in the countries studied, but it extends the obligation to information related to workers’ monthly remuneration, including all additional income.³⁷⁵ The article also establishes the special obligation of the judiciary, the Constitutional Court, and the Court of Administrative Litigation to publish their judgments. In the last paragraph, the law prescribes that the information must be published in an organized, chronological manner, “without grouping together or generalizing, so that citizens may be informed accurately and without confusion.”

271. In the Dominican Republic, the General Law on Access to Public Information (LGLAIP) includes three ways of complying with the principle of active transparency. First, Article 3 of the law establishes that the authorities should maintain a permanent, updated service for information on certain matters of public relevance.³⁷⁶ Second, Article 4 establishes, “on an obligatory basis,” that any information

...continuation

or forms for accessing them; general balance sheets and reports on results and financial status; annual information on activities, which “shall include a summary of the results of the applications for access to public information”; the results of oversight, evaluations, audits, and investigations to which the entity has been subject; the program for public works and acquisitions, and calls for competitions for the contracting of personnel; and any actions lodged against administrative acts of the entity and the decisions that have been handed down to resolve them.

³⁷³ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 21. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

³⁷⁴ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information, Art. 25. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

³⁷⁵ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 7. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. (“sin agrupar o generalizar, de tal manera que el ciudadano pueda ser informado correctamente y sin confusiones”). Among the matters included in Article 7 are: the functional operating structure and its legal underpinnings; a complete directory of the institution; the monthly remuneration for each post; the services offered and how to access them; the complete text of all collective contracts in effect in the institution; any application forms or formats that may be needed for procedures in its particular area of work; the annual budget managed by the institution and how it is spent; results of internal and government audits of budget implementation; complete and detailed information on procedures each agency carries out before and during contracts and in adjudications and payments; the list of companies and individuals who have failed to comply with contracts with the institution; the institution’s plans and programs underway; details about contracts related to external or internal credit; mechanisms for providing an accounting to citizens; the per diems and work reports of authorities, dignitaries, and public servants; and the name and address of the person responsible for handling public information.

³⁷⁶ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. These include, under Article 3: “a) Budgets and calculations of resources and approved expenses, their evolution and status of execution; b) Programs and projects, with their budgets, time frames, execution, and oversight; c) Calls for bids, competitions, purchases, expenses, and results; d) Lists of officials, legislators, magistrates, employees, categories, functions, and remunerations, and the sworn statement of patrimony, when the person is required by law to submit it; e) List of beneficiaries of assistance programs, subsidies, scholarships, pensions, and retirement funds; f) Account status of public debt, its due dates and payments; g) Laws, decrees, resolutions, dispositions, regulatory frameworks, and any other type of norm; h) Indexes, statistics, and official values; i) Legal and contractual regulatory frameworks for providing public services; conditions, negotiations, fee schedules, controls, and sanctions; j) Any other information that must be made available to the public pursuant to special statutes.”

especially requested by interested parties must be made available and continually updated. To comply with these objectives, the highest-level authorities in each entity must establish systems that provide access to interested parties and must publish such information via any means available. Third, Article 5 creates the obligation of all branches and institutions of the State to set up their respective websites so as to make information available on their structure, members, operating regulations, projects, management reports, and databases, among other things.³⁷⁷

272. In Mexico, Article 7 of the Federal Transparency and Access to Public Governmental Information Law contemplates the obligation of active transparency on a whole range of issues, which include the entity's organizational structure, the functions and services it provides, its budget, and its contracting procedures.³⁷⁸ The law also establishes that information "must be published in such a form that it may be easily handled and understood by the individuals, ensuring its quality, truthfulness, opportunity and reliability."

273. Guatemala's Law on Access to Public Information provides, in Article 10, that entities subject to the law must always keep updated information available, at a minimum, on a range of subjects, including the entity's organizational structure, functions, contracting processes, its budget and an inventory of its property, and "the honorariums, allowances, bonuses, and per diems" given to its employees.³⁷⁹ The law also contemplates the particular obligations of the executive, legislative, and judicial branches³⁸⁰ to publish information, and establishes special obligations for international public or private entities and for nongovernmental entities that manage public funds.³⁸¹ It is also interesting to note that Article 10, paragraph 28, requires State entities to maintain an updated report "on information related to the sociolinguistic background of those who use its services, so as to adjust these services accordingly."³⁸²

³⁷⁷ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>

³⁷⁸ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Items contained in Art. 7 of the law include: the organizational chart; the authority conferred upon each administrative unit; the directory of government officials; monthly salary by position, including compensation systems, as prescribed in the respective provisions; the address of the liaison unit; the goals and objectives of each administrative unit; the services these units offer; procedures, requirements, and forms; information on the budget allocated and reports on its execution; results of budgetary audits; the design, execution, amounts allocated, and criteria to access subsidized programs, as well as the lists of beneficiaries of social programs; the concessions, permits, or authorizations granted and the names of the holders thereof; the contracts entered into; the legal framework applicable to each of the disclosing parties; the reports issued by the disclosing parties under the law; and mechanisms for citizen participation.

³⁷⁹ Republic of Guatemala. Law on Access to Public Information, Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. ("honorarios, dietas, bonos y viáticos"). The information required to be published, under Article 10 of the LAIP, includes: the organizational structure and functions of each agency, including its normative framework; the address and telephone numbers of the entity and its departments; the directory of employees and public servants; the number and names of public officials, public servants, employees, and advisers who work at the entity subject to the law and all of its offices, including the salaries and any other financial remuneration applicable to each post; the institutions' mission and objectives and its annual operating plan, and results achieved in carrying these out; procedural manuals; budget allocations for each budget period and the programs it carries out; monthly reports on budget execution for each area and unit; deposits made up of public funds; information related to quotes and bids for the acquisition of goods; information on the contracting of all goods and services used by the entities subject to the law; the list of any publicly funded travel authorized by the entities; contracts for the maintenance of equipment, vehicles, buildings, facilities, and installations; the amounts allocated, access criteria, and lists of beneficiaries of subsidy programs, scholarships, or transfers granted with public funds; contracts, licenses, or concessions for the use or exploitation of State assets; the list of works in progress or completed that are funded wholly or in part with public funds; contracting as a result of processes to seek quotes or bids, and their respective contracts; the list of direct purchases made by the offices of the entities subject to the law; and the final reports of government or private audits the entities have undergone.

³⁸⁰ Republic of Guatemala. Law on Access to Public Information. Articles 11-13. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

³⁸¹ Republic of Guatemala. Law on Access to Public Information. Articles 10(24)-(25). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

³⁸² Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

274. In Colombia, Article 1 of Law No. 57 of 1985 establishes that “the Nation, the Departments, and the Municipalities shall include in their respective official Journals, Gazettes, or Bulletins all governmental and administrative acts of which public opinion should be aware so as to become informed about the management of public affairs and to exercise effective control over the conduct of the authorities, and any other acts that under the law must be published in order to produce legal effects.”³⁸³ Then, Article 7 of Law No. 962 of 2005 provides that the administration must make available to the public, via electronic means, any laws, decrees, administrative acts, and other documents of public interest.³⁸⁴ In line with Article 8, all public institutions must also inform the public, via printed or electronic means, about the different agencies’ functions, regulations, procedures and processes, and location, work hours, and contact information.³⁸⁵ In addition, Decree No. 1151 of 2008, which establishes general guidelines for e-government strategies, provides that the entities should set up an Internet portal to provide information online, along with basic search mechanisms. However, these provisions are limited to State entities and do not establish the minimum information that these portals must include.³⁸⁶

275. In El Salvador, the Access Law establishes, in Article 10, an extensive list of types of information that entities subject to the law must proactively disclose and update. Among the data that must be disclosed is the regulatory framework of every agency that is bound by the law, as well as its structure and functions, its leadership and the qualifications of its officials, the budget assigned to it, a list of its advisors, the monthly salary of each budgeted employee, the record of its work, the services that it offers, the lists of any international trips taken with public funds, the address of the unit providing access to information and how to reach the official in charge, the accounting reports and all information related to its programs of subsidies and financial incentives, a list of works in progress, permissions granted, public contracts and acquisitions, mechanisms for citizen participation, and statistics regarding the institution’s compliance with these norms.³⁸⁷ The law establishes that in addition to related information in Article 10, the Legislative Body, the Presidency of the Republic and the Council of Ministers, the Judicial Body, the National Council of the Judiciary, the Supreme Electoral Court, the Court of Accounts, and the Municipal Councils must publish different information related to their specific work.³⁸⁸ Article 18 provides that the information shall be made available to the public via any medium, but that the Institute for Access to Information will promote the use of information technologies.³⁸⁹

276. In Panama, the Transparency in Public Management Law provides that State institutions must have available in printed form and on their respective websites, and must periodically publish,

³⁸³ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 1. Available at: http://www.unal.edu.co/secretaria/normas/ex/L0057_85.pdf. “La Nación, los Departamentos y los Municipios incluirán en sus respectivos Diarios, Gacetas o Boletines oficiales todos los actos gubernamentales y administrativos que la opinión deba conocer para informarse sobre el manejo de los asuntos públicos y para ejercer eficaz control sobre la conducta de las autoridades, y los demás que según la ley deban publicarse para que produzcan efectos jurídicos”.

³⁸⁴ This obligation exists “without prejudice to the legal obligation to publish in the Official Gazette.” Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 7. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html#7

³⁸⁵ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 8. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html#7

³⁸⁶ Republic of Colombia. Decree No. 1151 of 2008. April 14, 2008. Available at: <http://programa.gobiernoonlinea.gov.co/apc-aa-files/5854534aee4eee4102f0bd5ca294791f/Decreto1151Abril14de2008.pdf>

³⁸⁷ Republic of El Salvador. Law on Access to Public Information. Art. 101. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

³⁸⁸ Republic of El Salvador. Law on Access to Public Information. Arts. 11-17. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=None>

³⁸⁹ Republic of El Salvador. Law on Access to Public Information. Art. 18. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=None>

information related to budgetary allocation and execution, their organizational structure, contracting procedures, and the rules of procedure to access public information.³⁹⁰

277. Argentina's Regulations on Access to Public Information of the Federal Executive Branch are limited to providing, in Article 10 that entities to which the regulations apply must publish "basic information" to guide the public in exercising its right to access to information.³⁹¹ But the Argentine State has many laws that establish the obligation of certain State entities or institutions to disclose specific information. Such is the case with the Senate and Chamber of Deputies, whose regulations provide for the disclosure of information on legislative activity,³⁹² and with the judiciary, whose regulations establish the obligation to proactively publish its complete payroll, acts related to bidding and public contracts, and the annual budget of the Court, along with its monthly implementation reports and biannual statistics.³⁹³

278. In Jamaica, Section 4 of the Access to Information Act establishes the obligation of the public authorities to publish information in accordance with the law's First Schedule, which establishes that the following must be published: (a) a description of the subject area of the public authority; (b) a list of the public authority's departments and agencies, specifying in each case the subjects they handle, their locations, and the hours they are open to the public; (c) the title and business address of the principal officer; (d) a declaration of the manuals or other documents containing the public authority's interpretations, rules, guidelines, practices, or precedents, as well as documents containing particulars of schemes administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject.³⁹⁴ The First Schedule also establishes the obligation to make the documents available for inspection and for purchase by the general public. The information in question must also be published in the Gazette and, after the publication of the statement under paragraph 1(d), updated at least once every 12 months. If a document contains information considered exempt under the parameters of the law, the authority shall, "unless impracticable or unreasonable to do so", prepare a public version of the document; that is, provide a document that has been altered only to the extent necessary to exclude the exempt matter.

279. The Canadian law contemplates the obligation of active transparency in the Access to Information Act. Under Article 5(1) of the law, the designated Minister must publish, on a periodic basis not less frequently than once each year, a publication containing "(a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each

³⁹⁰ Article 9 establishes that entities subject to the law must periodically publish updated information with respect to the following subjects, documents, and policies: the institution's internal rules of procedure; its general policies; internal procedural manuals; its organizational structure; the location of documents by category, record, and archives and the official responsible for them; and descriptions of the institution's forms and rules of procedure for obtaining information and the place these can be found. Article 11, in turn, establishes that information considered to be of a public nature and of free access to interested parties includes information related to the contracting and appointment of officials, employee lists, representation costs, travel expenses, emoluments, per-diems, and other payments made to officials of any level and/or others who perform public functions. It is important to note that Article 8 of the law's regulations establishes that, for the effects of Article 11, an interested party is understood to mean someone who is "directly tied to the information being requested." This would seem to suggest that not everyone may request the information to which Article 11 refers. Republic of Panama. Ley de Transparencia en la Gestión Pública. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. The law's regulations are found at: http://www.oas.org/juridico/spanish/pan_res34.pdf

³⁹¹ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

³⁹² Republic of Argentina. Rules of the Senate of the Nation. Available at: <http://secgral.unsl.edu.ar/docs/Reglamento%20Senadores%202005.pdf>; Rules of the Honorable Chamber of Deputies of the Nation, ordered by Resolution 2019/96. Available at: <http://www.biblioteca.ius.gov.ar/reglamento-diputadosA.html>. By way of example, Article 104 of the Senate Rules of Procedure provide for the publication of minutes of the resolutions adopted and information about the sessions and the projects under discussion, while Articles 45 and 110 of the Chamber of Deputies Regulations establish the obligation of active transparency in matters related to legislative work.

³⁹³ See Supreme Court of Justice. Acordado 1/2004. Docket 315/2004 - General Adm. Available at: <http://www.dplf.org/uploads/1191953169.pdf>

³⁹⁴ Jamaica. Access to Information Act, 2002. First Schedule. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

division or branch of each government institution; (b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act; (c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and (d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.”³⁹⁵

280. In the United States, the system for access to information has placed significant emphasis on proactively providing useful information for users. The 1996 FOIA amendments introduced the use of electronic means to require public agencies to make significant volumes of information available to the public through “electronic reading rooms.”³⁹⁶ Specifically, the FOIA contains provisions regarding the types of information that must be made generally available.³⁹⁷ In addition, it imposes the obligation to disclose information related to the exercise of freedom of information itself. Every agency subject to FOIA must prepare a report that provides an accounting of the law’s implementation and the activities it produced, and actively make this information public.³⁹⁸

281. Along those lines, the FOIA establishes that each agency shall separately state and currently publish in the Federal Register for the guidance of the public: “(A) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each amendment, revision, or repeal of the foregoing.”³⁹⁹

282. In Trinidad and Tobago, Section 7 of the Freedom of Information Act lays out all information that must be published proactively.⁴⁰⁰ This includes: “the particulars of the organization and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority”; “the categories of documents that are maintained in the possession of the public authority”; “the material that has been prepared by the public authority under this part of the law for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material”; “the literature available by way of subscription services”; the procedure to be followed by a person when a request for access to a document is made to a public authority; a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, requests for access to documents; and “all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have

³⁹⁵ Canada. Access to Information Act. Section 5(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

³⁹⁶ United States of America. FOIA Update. Vol. XVII. No. 4. 1996. Available at: http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page1.htm

³⁹⁷ United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

³⁹⁸ United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

³⁹⁹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(1). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁴⁰⁰ Trinidad and Tobago. The Freedom of Information Act. Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection,” among others.⁴⁰¹

283. In Antigua and Barbuda, Section 10 of the Freedom of Information Act establishes the duty of every public authority to publish annually a description of its “structure, functions, and finances”; relevant details concerning “any services it provides; a record of any request or complaint mechanisms available to members of the public”; a guide containing information about its systems for keeping records and information; a description of the powers and duties of its senior officers, any regulations, rules, and management policies; the content of all decisions it has adopted which affect the public, along with the reasons for them; and any mechanisms or procedures by which members of the public may make representations.⁴⁰²

284. Lastly, Peru establishes the obligation of active transparency only with regard to two types of information. In fact, Peru’s Law on Access to Information provides that the entities subject to the law must publish their organizational structure and budget information.⁴⁰³

e. Obligation to produce or gather information

285. The State has the obligation to produce or gather the information it needs to fulfill its duties, pursuant to international, constitutional, or legal norms.⁴⁰⁴

286. In this regard, for example, the IACHR has already established in its report on “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights,”⁴⁰⁵ that “[t]he obligation of the State to take positive steps to safeguard the exercise of social rights raises important implications to do, for example, with the type of statistical information that it should produce. From this perspective, the generation of information suitably disaggregated to identify these disadvantaged sectors or groups deprived of the enjoyment of rights is not only a means to ensure the effectiveness of a public policy, but a core obligation that the State must perform in order to fulfill its duty to provide special and priority assistance to these sectors. For example, the disaggregation of data by sex, race or ethnicity is an essential tool for highlighting problems of inequality.”⁴⁰⁶

287. In the same document, the IACHR recalled that “[t]he Committee on Economic, Social and Cultural Rights has drawn attention to the state obligation to produce information bases with which to validate indicators and, in general, access to many of the guarantees covered by each social right.

⁴⁰¹ Trinidad and Tobago. The Freedom of Information Act. Sec. 7. Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁴⁰² Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁴⁰³ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. Article 5 of the Law on Access to Information establishes that government agencies shall progressively disseminate on the Internet, in accordance with their budget, a range of information such as: general information, primarily including the dispositions and communications that they have issued, their organizational structure, an organizational chart, procedures, the legal framework to which they are subject, and the Single Ordered Text on Administrative Procedures, which regulates this process. Budget information, with data on budgets executed, investment projects, and salary levels and benefits of senior officials and personnel in general, as well as their remuneration, their acquisition of goods and services, and the official activities that senior agency officials will carry out or have already carried out. In addition, Title IV establishes the entities’ obligations to make their finances public.

⁴⁰⁴ IACHR. Annual Report 2008. OEA/Ser.L/V/II. 134. Doc. 5. February 25, 2009. Vol. III: *Annual Report of the Special Rapporteur for Freedom of Expression*. Chap. III. Para. 162. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁴⁰⁵ IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). Para. 58. OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

⁴⁰⁶ IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). Para. 58. OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

Accordingly, this obligation is essential for the enforceability of these rights.”⁴⁰⁷ Finally, the IACHR has indicated that international law contains clear and explicit obligations to produce information on the exercise of rights by sectors that have traditionally suffered exclusion and discrimination.⁴⁰⁸

288. The Inter-American Court, for its part, recognized in the *Case of Gomes-Lund et al. (Guerrilha do Araguaia)* that the right of access to information is not fully satisfied with a response from the State indicating that the information requested does not exist. When the State has the obligation to preserve, produce, or gather certain information and nonetheless deems that the information does not exist, it must explain all the steps it took to try to recover or reconstruct the information that was lost or illegally removed.⁴⁰⁹

289. Some of the legal systems that were studied do not refer to the State’s duty to produce or gather information. However, some of them establish, appropriately, that the State must turn over any information it is required to produce or to gather, and that the parties subject to the law must compile or assemble data already in their possession to comply with the standards regarding the right of access to information.

290. Argentina’s Regulations on Access to Public Information of the Federal Executive Branch contemplates the duty of the responsible parties to generate and update basic information, an undetermined concept that must be specified in each institution. Thus, Article 10 of the regulations states that “the subjects in whose control the information lies must... generate, update, and make known basic information, in sufficient detail for it to be singled out, in order to guide the public in exercising its right.” And in terms of producing information to respond to requests, paragraph 2 of Article 5 is very clear in determining that while the party that is asked for information may be required to provide it, that does not imply “the obligation to create or produce information it does not have at the moment the request is made, unless the State is legally obligated to produce it, in which case it must produce it.”⁴¹⁰

291. In Chile, the second paragraph of Article 17 of the draft that would become the Law on Access to Public Information established that “the institutions of the State Administration are not obligated to produce information that is not in their possession to satisfy the request for access to information.” However, that paragraph was eliminated as the legislation went through Congress.⁴¹¹ But Article 21 of the law, which establishes the secrecy or confidentiality grounds that allow access to requested information to be completely or partially denied, provides in subparagraph c) of paragraph 1, that such a denial would be possible “[w]here there are requests of a generic nature that refer to a great number of administrative acts

⁴⁰⁷ IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Para. 78. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

⁴⁰⁸ IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Para. 58. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) creates the obligation for the State to “ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes.” Available at: <http://www.oas.org/en/iachr/mandate/Basics/belemdopara.asp>

⁴⁰⁹ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf

⁴¹⁰ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. Art. 10: “Los sujetos en cuyo poder obre la información deben [...] generar, actualizar y dar a conocer información básica, con el suficiente detalle para su individualización, a fin de orientar al público en el ejercicio de su derecho”. Art. 5(2): “la obligación de crear o producir información con la que no cuente al momento de efectuarse el pedido, salvo que el Estado se encuentre legalmente obligado a producirla, en cuyo caso debe proveerla”.

⁴¹¹ Republic of Chile. See Decision A97-09. August 18, 2009. Council for Transparency. Para. 6(a). Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A97-09/A97-09_decision_web.pdf. “[L]os órganos de la Administración del Estado no están obligados a producir información que no exista en su poder para satisfacer la solicitud de acceso a la información”.

or background information, or for which a response would unduly divert officials from carrying out their regular job duties.”⁴¹²

292. The Council on Transparency of Chile has ruled on this point on several occasions. In a 2009 decision, it stated the following with respect to how to interpret the removal of the second paragraph of Article 17 from the original draft legislation:

*Thus, the removal of the provision establishing that institutions of the State Administration were not required to prepare information, and restricting their duty to providing only information that already existed, was not an involuntary omission on the part of the legislator. On the contrary, the legislator’s intention was to eliminate this restriction so as to allow asking government agencies to prepare documents, as long as the information involved is in the administration’s possession and there is a financial limit: not to cause excessive costs or unforeseen expenses in the institution’s budget.*⁴¹³

293. In its Decision No. A080 of 2009, the Council on Transparency of Chile ruled on a request for information made to the Civil Register and Identification Service, which had been denied on grounds that producing it “would involve unduly diverting officials from the fulfillment of their regular job duties.” In deciding on the case, the Council concluded that it was possible to require the entity subject to the law to collect, process, and systematize information in its possession, without that implying that a duty to create information was being imposed:

*That by virtue of what was previously indicated, it can be concluded that the Civil Register only includes part of the information that was requested, and that collecting, processing, and systematizing it along the lines requested, albeit with the limitations that have been noted, would not imply creating information. Neither does the collection, processing, and systematization of that information so that it be turned over as requested with the abovementioned restrictions imply, in this Council’s judgment, unduly diverting officials from their regular duties, and so the grounds cited are inadmissible.*⁴¹⁴

294. In Mexico, Article 42 of the Federal Transparency and Access to Public Governmental Information Act establishes that “departments and agencies are only required to release the documents found in their archives.”⁴¹⁵ However, both the IFAI and the Supreme Court Committee on Access to Information have found that the right of access to information is only satisfied when the information requested is made available to the applicant, even if that means processing or assembling information

⁴¹² Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “tratándose de requerimientos de carácter genérico, referidos a un elevado número de actos administrativos o sus antecedentes o cuya atención requiera distraer indebidamente a los funcionarios del cumplimiento regular de sus labores habituales”.

⁴¹³ Republic of Chile. Decision A97-09, of August 18, 2009, of the Council for Transparency. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A97-09/A97-09_decision_web.pdf. “Por lo tanto, la supresión de la norma que establecía que los órganos de la Administración del Estado no estaban obligados a elaborar información y restringía su obligación a entregar sólo información ya existente no fue una omisión involuntaria del legislador. Por el contrario, la intención del legislador fue eliminar esta restricción lo que permite solicitar a los órganos de la Administración elaborar documentos, en tanto la información que allí se vuelque obre en poder de la Administración y con un límite financiero: no irrogar al Servicio un costo excesivo o un gasto no previsto en el presupuesto institucional”.

⁴¹⁴ Republic of Chile. Decision A080 of 2009. Council for Transparency. Para. 8. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A80-09/A80-09_decision_web.pdf. “Que en virtud de lo señalado precedentemente, puede concluirse que el Registro Civil sólo posee parte de la información requerida y su recolección, procesamiento y sistematización para entregarla en los términos solicitados, aunque con las limitaciones anotadas, no implicaría la creación de información. Por otra parte, cabe ultimar que la misma recolección, procesamiento y sistematización de dicha información, en orden a que se entregue del modo requerido con las restricciones referidas, tampoco implica, a juicio de este Consejo, una distracción indebida de sus funcionarios de sus labores habituales, de forma tal que resulta improcedente la causal invocada”.

⁴¹⁵ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Art. 42. Available at: <http://www.ifai.org.mx/English>

that is dispersed across different administrative units. Along these same lines, entities subject to the law have taken the initiative to produce information without the need for a request. That is what happened with the Investigative Commission created by the Supreme Court of Justice in the case of the Guardería ABC (ABC Daycare Center),⁴¹⁶ in which the Court ruled that the Commission “shall establish whether these events involved a serious violation of individual guarantees, and shall analyze the overall performance of the system of public daycare centers that operate under the same or a similar arrangement, with the goal of preventing, or at least minimizing, the possibility that another case like the Guardería ABC could happen again.”⁴¹⁷

295. For its part, Article 20 of Ecuador’s Organic Law on Transparency establishes that a request for access to information “does not imply that public administration entities and other bodies indicated in Article 1 of this Law have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the institution or entity shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information.”⁴¹⁸ (Emphasis not in original text) It also prescribes that “neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession, except for those they must produce for their institutional purposes.”⁴¹⁹ The second paragraph of the same article clarifies that “producing” information is not understood to mean “gathering or compiling information that may be dispersed in the various departments or areas of the institution, in order to provide summaries, statistics, or indexes requested by the petitioner.”⁴²⁰

296. A similar provision is found in Uruguay’s Law on Access to Information.⁴²¹ The same is the case with Peru’s Law on Access to Public Information, with the difference that the Peruvian law does

⁴¹⁶ On June 5, 2009, in the city of Hermosillo, Sonora, a fire broke out in the facilities of “Guardería ABC, Sociedad Civil.” As a result, 49 children lost their lives and another 75 were injured. The daycare center involved took care of children of beneficiaries of Mexican Social Security Institute under an arrangement known as “subrogation.”

⁴¹⁷ See Supreme Court of Justice of the Nation (Mexico). “Plenum of Ministers Approves Protocols for Commission Investigating the Events at Guardería ABC.” Available at: <http://www2.scjn.gob.mx/fi1-2009/Noticia.html>. “[La Comisión] establecerá si en esos acontecimientos hubo violación grave de las garantías individuales, y se analizará el desempeño global del sistema de guarderías públicas que funcionan bajo el mismo o similar esquema, con el propósito de evitar, o por lo menos minimizar, la posibilidad de que ocurra otro suceso similar al de la Guardería ABC”.

⁴¹⁸ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf> [underscore not in original]. “no implica la obligación de las entidades de la administración pública y demás entes señalados en el artículo 1 de la presente Ley, a crear o producir información, con la que no dispongan o no tengan obligación de contar al momento de efectuarse el pedido. En este caso, la institución o entidad, comunicará por escrito que la denegación de la solicitud se debe a la inexistencia de datos en su poder, respecto de la información solicitada”.

⁴¹⁹ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf> [underscore not in original]. “[La ley] tampoco faculta a los peticionarios a exigir a las entidades que efectúen evaluaciones o análisis de la información que posean, salvo aquellos que por sus objetivos institucionales deban producir”.

⁴²⁰ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “recopilación o compilación de información que estuviese dispersa en los diversos departamentos o áreas de la institución, para fines de proporcionar resúmenes, cifras estadísticas o índices solicitados por el peticionario”.

⁴²¹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Art. 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Article 14. (Limits on access to public information) The request for access to information does not imply that entities subject to this Law have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the institution shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information. Neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession, except for those they must produce for their institutional purposes. // The production of information is not understood to mean gathering or compiling information that may be dispersed in the various areas of the institution, in order to provide information to the petitioner.” (Emphasis not in original text) (“(Límites del acceso a la información pública).- La solicitud de acceso a la información no implica la obligación de los sujetos obligados a crear o producir información que no dispongan o no tengan obligación de contar al momento de efectuarse el pedido. En este caso, el organismo comunicará por escrito que la denegación de la solicitud se debe a la inexistencia de datos en su poder, respecto de la información solicitada. Esta ley tampoco faculta a los peticionarios a exigir a los organismos que efectúen evaluaciones o análisis de la información que posean, salvo aquellos que por sus cometidos institucionales deban producir. // “No

not include the part indicating that producing information is not understood to mean gathering or compiling information that may be dispersed throughout the institution's various offices.⁴²² For its part, El Salvador's Access to Information Law provides that "bodies subject to the law must release only information in their possession." The law adds that the obligation of access to public information shall be considered satisfied when the relevant copies are issued or the documents containing the information are made available to the applicant for direct consultation.⁴²³

297. Nicaragua's Law on Access to Information does not establish rules on this subject. However, its Article 6 creates offices for access to information in each entity subject to this law, in order to "facilitate access to information for those who demand it, creating a system for organizing information and archives, with a respective index for the information in its keeping."⁴²⁴ Paragraph 3 of Article 10 of the Regulations of the Access Law assigns to these offices the duty of disseminating and collecting the basic information that public entities must disseminate proactively—a duty established in Articles 20 and 21 of the law—and making sure the entities periodically update the information.⁴²⁵

298. The respective laws in Panama and in Guatemala are limited to establishing that if the information requested does not exist, the relevant official shall so state in the response. Thus, Article 7 of the Panamanian law prescribes that when an official who receives a request "does not possess the document(s) or record(s) requested, he or she shall so state," within the time period provided to respond to the request.⁴²⁶ And Article 42 of Guatemala's law provides that once a request for information has been presented and admitted, the information unit must provide a response along one of four lines, with the last being to notify that the information does not exist.⁴²⁷

299. In the Dominican Republic, the LGLAIP does not expressly establish rules on this subject. However, as indicated previously, Article 4 of the law orders the public authorities to systematize

...continuation

se entenderá producción de información, a la recopilación o compilación de información que estuviese dispersa en las diversas áreas del organismo, con el fin de proporcionar la información al peticionario").

⁴²² Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. August 2, 2002. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. Article 13, para. 3, of the Law on Access to Public Information provides: "The request for information does not imply that entities of the Public Administration have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the entity of the Public Administration shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information. Neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession." (Emphasis not in original text) ("La solicitud de información no implica la obligación de las entidades de la Administración Pública de crear o producir información con la que no cuente o no tenga obligación de contar al momento de efectuarse el pedido. En este caso, la entidad de la Administración Pública deberá comunicar por escrito que la denegatoria de la solicitud se debe a la inexistencia de datos en su poder respecto de la información solicitada. Esta Ley tampoco permite que los solicitantes exijan a las entidades que efectúen evaluaciones o análisis de la información que posean").

⁴²³ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "Los entes obligados deberán entregar únicamente información que se encuentre en su poder".

⁴²⁴ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 3 (2). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). "facilitar, a las personas que así lo demanden, el acceso a la información, creando un sistema de organización de la información y los archivos, con su respectivo índice de la información a su resguardo".

⁴²⁵ Republic of Nicaragua. Regulations to the Law on Access to Public Information, Decree No. 81-2007, Gazzette No. 6. January 9, 2008. Available at: http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento_ley621.pdf

⁴²⁶ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁴²⁷ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 1 (4). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

information of public interest, “both to provide access to interested parties and to publish it via any means available.”⁴²⁸

300. In the United States⁴²⁹ and in Trinidad and Tobago⁴³⁰, the respective freedom of information laws require the agencies subject to the law to produce annual information on the number of requests for information they receive, the approximate time it took to respond, and the number of employees dedicated to responding, among other relevant information, in order to evaluate how the mechanism is working.

301. In Colombia, Canada, and Jamaica there is no provision or legal development along the lines of fulfilling this obligation.

f. Obligation to create a culture of transparency

302. The State has the obligation to promote, within a reasonable period of time, a true culture of transparency. This involves systematic campaigns to inform the general public about the existence of the right of access to information and ways of exercising that right. Along these lines, the Inter-American Juridical Committee’s “Principles on the Right of Access to Information” indicates that “[m]easures should be taken to promote, to implement and to enforce the right to access to information including...implementing public awareness-raising programmes.”⁴³¹

303. With regard to this principle, the Model Law on Access to Information adopted by the General Assembly creates the State’s obligation, through the post of Information Commissioner, “to promote awareness and understanding of the Law and its provisions among the public, including through publishing and disseminating a guide on the right of access to information.”⁴³² The Model Law also delegates to the Ministry of Education or its equivalent the responsibility to “ensure that core education modules on the right to information are provided to students in each year of primary and secondary education.”⁴³³

304. Some of the legal systems studied expressly establish the State’s obligation to create a culture of transparency. Ecuador, Guatemala, the Dominican Republic, and Nicaragua, in addition to assigning an official responsible for developing and carrying out the training of public employees and citizens in general, provide for the development of educational programs in schools and educational institutions.

305. Hence, Article 8 of Ecuador’s Organic Law on Transparency provides that “all entities that make up the public sector” must implement programs for outreach and training on the right of access to information, which must be geared toward public servants and civil society organizations. It also establishes that universities and other educational institutions should develop “programs for awareness, outreach, and promotion of these rights” and that all centers that make up the basic education system

⁴²⁸ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>. “tanto para brindar acceso a las personas interesadas, como para su publicación a través de los medios disponibles”.

⁴²⁹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(e)(1). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁴³⁰ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁴³¹ Inter-American Juridical Committee. Principles on the Right of Access to Information. Resolution 147 OEA/Ser. Q, CJI/RES. 147 (LXXIII-O/08) of the 73rd regular period of sessions. August 7, 2008. Principle 10. Available at: http://www.oas.org/cji/CJI-RES_147_LXXII-O-08_esp.pdf

⁴³² OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 62. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

⁴³³ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 70. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

should include in their curriculum content related to “promotion of citizen rights to information and communication, particularly related to access to public information, *habeas data*, and *amparo*.”⁴³⁴

306. In the Dominican Republic, Chapter VII of the Regulations to the General Law on Free Access to Public Information refers expressly to “Promoting a culture of transparency.” The regulations establish, in Article 42, that “the National Institute of Public Administration (INAP) shall design and implement a training and outreach plan designed to raise awareness, train, and update members of the OAs and public servants in general, on the importance of transparency and the right of access to information, as well as on the dissemination and application of the Access Law and its regulatory and related provisions.”⁴³⁵ For its part, Article 43 orders the State Secretariat of Education to promote and include, in its study plans and programs at every educational level, “content related to transparency in the public administration and in society in general and to the exercise of the right of access to public information in a democratic society.”⁴³⁶ Finally, Article 44 orders “all public and private educational institutes at the tertiary level” to include, in their “curricular and extracurricular activities, content that promotes awareness, dissemination, research, and debate on issues related to transparency and the right of access to public information.”⁴³⁷

307. In Guatemala, Article 50 of the Law on Access to Public Information, entitled “Culture of Transparency,” orders that the educational authorities include “the issue of the right to access to public information in the study curriculum at the primary, middle, and higher level.”⁴³⁸

308. Nicaragua’s Law on Access to Public Information includes a chapter designed to “promote a culture of accessibility of public information.” Articles 44 and 45 provide that the Ministry of Education and public and private universities and technical institutes must guarantee that the educational plans and programs offered, both to students and professors, include content on the right to access to information and to *habeas data* in a democratic society.⁴³⁹

309. For its part, Article 33 of Chile’s Law on Access to Information establishes that the Council for Transparency is the entity responsible for providing training to public employees and the

⁴³⁴ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Las universidades y demás instituciones del sistema educativo desarrollarán programas de actividades de conocimiento, difusión y promoción de estos derechos. Los centros de educación fiscal, municipal y en general todos los que conforman el sistema de educación básica, integrarán en sus currículos contenidos de promoción de los derechos ciudadanos a la información y comunicación, particularmente de los accesos a la información pública, *habeas data* y *amparo*”.

⁴³⁵ Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 42. Available at: onapi.gob.do/pdf/marco-legal/trasparesencia/decreto-130-05.pdf. “El Instituto Nacional de Administración Pública (INAP) diseñará e implementará un plan de capacitación y difusión destinado a concientizar, capacitar y actualizar, a los integrantes de las OAI y a los servidores públicos en general, en la importancia de la transparencia y en el derecho de acceso a la información, así como en la difusión y aplicación de la Ley de Acceso y sus normas reglamentarias y concordantes”.

⁴³⁶ Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 43. Available at: onapi.gob.do/pdf/marco-legal/trasparesencia/decreto-130-05.pdf. “de contenidos relacionados con la transparencia en la administración pública y en la sociedad en general y con el ejercicio del derecho de acceso a la información pública en una sociedad democrática”.

⁴³⁷ Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 44. Available at: onapi.gob.do/pdf/marco-legal/trasparesencia/decreto-130-05.pdf. “Todos los institutos educativos de nivel terciario, públicos y privados, incluirán en sus actividades curriculares y extracurriculares, contenidos que promuevan la concientización, difusión, investigación y el debate acerca de temas relacionados con la transparencia y el derecho de acceso a la información pública”.

⁴³⁸ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “el tema del derecho al acceso a la información pública en la currícula de los estudios de niveles primario, medio y superior”.

⁴³⁹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Arts. 44, 45. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument) (“promoción de la cultura de asequibilidad a la información pública”).

general public.⁴⁴⁰ The same holds true in El Salvador, where the Access Law establishes that the Institute for Access to Information shall promote “a culture of transparency in society and among public servants,” and shall develop training courses for public servants on matters related to transparency, access to information, protection of personal information, and management of archives.⁴⁴¹ But the law further provides that each entity subject to the law should periodically train its employees in this subject area, and that the Ministry of Education shall include, at every level of study plans and programs in formal education, content on the important democratizing role of transparency, the right of access to public information, and the right to citizen participation in decision-making and oversight of public management.⁴⁴²

310. In Mexico, Article 37 of the Federal Transparency and Access to Governmental Public Information Act establishes the attributions of the Federal Institute for Access to Information and Data Protection. Paragraphs XII, XIII, and XIV establish the Institute’s obligations to promote—and in some cases carry out—the training of public servants in access to information, and to make them aware of the benefits of public handling of information and their responsibilities with regard to properly using and preserving information. The Institute also has the task of preparing and publishing studies to publicize and expand awareness of the law.⁴⁴³

311. In Antigua and Barbuda, Part II of the Freedom of Information Act is called “Measures to Promote Openness.” Among other measures, the act requires the Information Commissioner to compile a practical guide to facilitate the exercise of the right to freedom of information; directs public authorities to designate specialized information officers; establishes obligations for public authorities to publish information proactively; orders that records be maintained in a manner that facilitates access to information; and establishes that all public authorities must ensure the provision of appropriate training for their officials on the right to information and submit annual reports to the Information Commissioner on compliance with the obligations under the act.⁴⁴⁴

312. Finally, in Uruguay, the Law on Access to Information created the Unit for Access to Public Information as an agency for the control and promotion of compliance with its provisions. Paragraphs (e) and (h) of Article 21, which establishes the unit’s functions, provide that its tasks include providing training to officials of entities required to provide information, as well as promoting educational and publicity campaigns that focus on the right of access to information.⁴⁴⁵

g. Obligation of adequate implementation

⁴⁴⁰ Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 33 of the law establishes the functions of the Council for Transparency, which include: “g) To implement, directly or through third parties, activities to train public officials in transparency and access to information. h) To implement activities related to outreach and information to the public regarding matters in its jurisdiction.” (“g) Realizar, directamente o a través de terceros, actividades de capacitación de funcionarios públicos en materias de transparencia y acceso a la información; h) Realizar actividades de difusión e información al público, sobre las materias de su competencia”).

⁴⁴¹ Republic of El Salvador. Law on Access to Public Information. Art. 58(c) y (m). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. (“una cultura de la transparencia en la sociedad y entre los servidores públicos”).

⁴⁴² Republic of El Salvador. Law on Access to Public Information. Arts. 45-47. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁴⁴³ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 37. Available at: <http://www.ifai.org.mx/English>

⁴⁴⁴ Antigua and Barbuda. Freedom of Information Act. No. 19 of 2004. November 5, 2004. Arts. 8- 14. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁴⁴⁵ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 21 (e), (h). Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

313. The State has a duty to implement access laws adequately. This implies at least three actions. First, the State must design a plan that allows for the real and effective satisfaction of the right of access to information within a reasonable time period. This obligation implies a duty to budget the necessary funds to be able to progressively meet the demand that the right of access to information will generate.

314. Second, the State must adopt laws, policies, and practices to adequately preserve and manage information. Along those lines, the 2004 Joint Declaration by the UN, OAS, and OSCE rapporteurs for freedom of expression explains that “[p]ublic authorities should be required to meet minimum record management standards,” and that “[s]ystems should be put in place to promote higher standards over time.”⁴⁴⁶

315. Third, as already mentioned, the State should adopt a systematic policy for training the public officials who will be satisfying the right of access to information in all of its facets. This obligation also entails training public officials in the laws and policies on creating and maintaining archives related to information the State is obligated to safeguard, manage, and produce or gather. Along these lines, the Inter-American Court has referred to the State’s obligation to provide “training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right.”⁴⁴⁷

316. As a measure to carry out these objectives, the aforementioned Model Law suggests the creation of a specialized entity it calls an “Information Commission,” which should be responsible for promoting the effective implementation of the law in question in each Member State. Among other specifications, the Model Law prescribes that this entity should have full legal personality and operative, budgetary, and decision-making autonomy.⁴⁴⁸

317. Generally, the legal systems studied do not refer to designing a strategic plan to ensure the effective application of the right of access to information. Some countries—such as Antigua and Barbuda, Mexico, Chile, Canada, Uruguay, and El Salvador—have created entities designed to ensure compliance with the provisions of the access to information law, while the others have simply established special units within each entity for the same purpose.

318. In Chile, the policy for document conservation consists of annually admitting into the National Archives any State agency documents that are at least five years old.⁴⁴⁹ The destruction of any document requires a decree or resolution, for which an official record must be made indicating how the pertinent rules have been met.⁴⁵⁰

319. Article 32 of the Access to Public Information Act of Chile gives the Council for Transparency the general task of “promoting transparency of the public function, overseeing compliance with the rules governing transparency and dissemination of information of the State administration bodies, and guaranteeing the right of access to information.”⁴⁵¹ In addition, Article 33 provides that it falls to the

⁴⁴⁶ Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

⁴⁴⁷ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 165. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

⁴⁴⁸ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Information.” June 8, 2010. Article 55. Available at: http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf

⁴⁴⁹ Republic of Chile. D.F.L N° 5.200 de 1929 of the Ministry of Public Education. Article 2. Available at: <http://www.leychile.cl/Navegar?idNorma=129136>

⁴⁵⁰ Republic of Chile. Circular No. 28.704 of 1981 of the Office of the Comptroller General of the Republic. Reiterated in rulings 3.191/2001, 1.333/2009, 41.098/2009, 49.118/2009 of the Office of the Comptroller. Available at: http://163.247.57.65/assets/files/documentos/circular_28704_contraloria_sobre Eliminacion_de_documentos.pdf

⁴⁵¹ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 32. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[P]romover la transparencia
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Council to issue general instructions on compliance with the law, make recommendations to the State administration bodies, and carry out, either directly or through third parties, training activities for public officials and outreach activities for the general public, etc.⁴⁵²

320. In Canada, the Office of the Information Commissioner was created to implement the Access to Information Act.⁴⁵³ The Information Commissioner is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and House of Commons;⁴⁵⁴ the term is for seven years with the possibility of reappointment for an additional term.⁴⁵⁵ Under the law, the Information Commissioner has the rank and powers of a deputy head of a department; must engage exclusively in the duties of the office of Information Commissioner under the law; and must not hold any other office at the same time.⁴⁵⁶ The law also provides for the appointment of such officers and employees as are necessary to enable the Information Commissioner to perform his/her duties and functions.⁴⁵⁷

321. The Canadian law also establishes responsibilities within each government office for implementing the mechanisms of access to information. Under Section 70(1), the designated Minister shall “(a) cause to be kept under review the manner in which records under the control of government institutions are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access to records; (b) prescribe such forms as may be required for the operation of this Act and the regulations; (c) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; (c.1) cause statistics to be collected on an annual basis for the purpose of assessing the compliance of government institutions with the provisions of this Act and the regulations relating to access; and (d) prescribe the form of, and what information is to be included in, reports made to Parliament.”⁴⁵⁸

322. As has been mentioned, Antigua and Barbuda’s Freedom of Information Act creates in Part V the post of Information Commissioner as an independent, autonomous authority in charge of verifying proper compliance with the law. The Information Commissioner’s functions include handling citizen complaints, designing guides and manuals on the implementation of the law and the implementation of access to information, and receiving reports from the public authorities on the implementation of the content of the law in each office.⁴⁵⁹

323. Peru’s Law on Transparency and Access to Information establishes, in Article 6, that the entities responsible for creating the budget must, while allocating funds, take into account the obligations imposed by the law with regard to active transparency.⁴⁶⁰ Moreover, the Law on the National Archives System (Law No. 25323) and the Law on Transparency lay out complementary rules on the preservation

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de la función pública, fiscalizar el cumplimiento de las normas sobre transparencia y publicidad de la información de los órganos de la Administración del Estado, y garantizar el derecho de acceso a la información”.

⁴⁵² Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 33. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁴⁵³ Canada. Access to Information Act. Section 54. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁴ Canada. Access to Information Act. Section 54(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁵ Canada. Access to Information Act. Section 54(2)-(3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁶ Canada. Access to Information Act. Section 55(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁷ Canada. Access to Information Act. Section 58(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁸ Canada. Access to Information Act. Section 70(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁴⁵⁹ Antigua and Barbuda. The Freedom of Information Act. Sections 35, 37. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁴⁶⁰ Republic of Peru. Law 25323, Law on the National System of Archives. Available at: http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley_No_25323.pdf

and safeguarding of information.⁴⁶¹ Thus, Article 18 of the Law on Transparency provides that the State has the responsibility of creating and maintaining public records, and that “[i]n no case shall the Public Administration entity be able to destroy the information in its possession”; rather, it must send the information to the National Archives, within the time periods stipulated by the relevant law. It also prescribes that “[t]he National Archives may destroy information that has no public use, once a reasonable time period has passed in which said information has not been needed and in accordance with the law governing the National Archives.”⁴⁶²

324. In Nicaragua, Article 8 of the Access to Public Information Law establishes that “[t]he senior management of each of the [entities subject to the law] shall provide the necessary financial resources for the installation and operation of the access to public information office.”⁴⁶³ Article 53 of the Law on Access to Public Information contains a temporary provision ordering the Ministry of Finance and Public Credit to “include, in the relevant budgetary reforms, proposed adjustments to ensure that all entities included in the budget are able to meet the provisions established under the law.” The law also establishes that “all non-budgeted, autonomous, unconsolidated, and decentralized entities” should adjust their budgets to be able to comply with the obligations derived from the right to access to information.⁴⁶⁴

325. Further, with regard to the preservation and management of archives, Article 9 of the Nicaraguan Law on Access to Public Information establishes that offices that handle access to public information must maintain a “record, number, and detailed description of the archives, books, and databases found therein.”⁴⁶⁵ Article 12 then establishes that Access to Information Offices should create and maintain duly updated indexes that describe the content of the archives, books, and databases, as well as appropriate records of the administrative acts, regulations, and administrative files, so as to facilitate consultation by citizens.⁴⁶⁶ Article 40 indicates the obligation of all public institutions to create a database of the information they produce, manage, or hold, and the database should be accessible to the public.⁴⁶⁷

⁴⁶¹ Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. Available at: http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley_No_25323.pdf

⁴⁶² According to the information available, the Office of the Ombudsman is the entity responsible for developing plans or policies for the training of public officials, and it is the institution that conducts the training. NGOs have reportedly carried out an important role in this task as well. Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. Art. 18. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf. “En ningún caso la entidad de la Administración Pública podrá destruir la información que posea. // La entidad de la Administración Pública deberá remitir al Archivo Nacional la información que obre en su poder, en los plazos estipulados por la Ley de la materia. El Archivo Nacional podrá destruir la información que no tenga utilidad pública, cuando haya transcurrido un plazo razonable durante el cual no se haya requerido dicha información y de acuerdo a la normatividad por la que se rige el Archivo Nacional”.

⁴⁶³ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information, Art. 8. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁴⁶⁴ Ley 621 de 2007, a través de la cual se expide la Ley de Acceso a la Información Pública de Nicaragua. Art. 53. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁴⁶⁵ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 9. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁴⁶⁶ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 12. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁴⁶⁷ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 12. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument) Article 7 of the Regulations of the Law on Access to Information of Nicaragua also indicates that it is the responsibility of each entity's highest administrative authority to establish the specific guidelines and criteria to organize and preserve archives and documents. This task should be based on what has been established by the respective office for coordinating access to public information, the Joint Permanent Commission of the Nicaraguan Institute of Culture, and the National Institute of Information on Development. Art. 7. Regulations to the Law on Access to Public Information. Decree No. 81-2007. Gazette No. 6. Jan. 9, 2008. Available at: http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento_ley621.pdf

326. Finally, Article 14 of the Nicaraguan Law on Access to Public Information creates the National Commission on Access to Information,⁴⁶⁸ whose function is to “formulate proposals for public policies, promote the preparation and training of the human resources needed under this Law, promote the dissemination of and compliance with this Law in all entities subject to it, and subscribe technical cooperation agreements with bodies involved in access to information in other countries.”⁴⁶⁹

327. Guatemala’s Law on Access to Public Information, in its Article 70, indicates that entities subject to the law shall create information units, without that involving additional budgetary outlays, since these units “shall be made up of existing public officials except in cases that are duly justified...”⁴⁷⁰ The same law contains different provisions that require the proper management, preservation, and safeguarding of information. Specifically, the law’s Article 10 (26) establishes that “[t]hose responsible for the archives of each of the entities subject to the law shall publish, at least once a year, through the *Diario de Centro América*, a report on the operations and purpose of the archive, its systems for recording and categorizing information, its procedures, and the ease of access to the archive.”⁴⁷¹ In addition, Articles 36 and 37 establish rules regarding the safeguarding of documents and administrative archives.⁴⁷²

328. Moreover, Article 51 of the law establishes that each entity subject to the law shall offer ongoing programs to keep its public servants up to date on the right to access to public information and the right to the protection of individuals’ personal data,⁴⁷³ without prejudice to the Human Rights Ombudsman’s obligation, contemplated in paragraph 5 of Article 49, to develop a training program for officials of the entities subject to the law.⁴⁷⁴

⁴⁶⁸ Inter-institutional entity made up of the officials who coordinate access to public information in the branches of the State, the autonomous regional governments of the Atlantic Coast, and the municipal governments.

⁴⁶⁹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 14. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “Crease la Comisión Nacional de Acceso a la Información Pública, [...] cuyas funciones serán las de formular propuestas de políticas públicas, promover la formación y capacitación de los recursos humanos que demanda la presente Ley, promoverla divulgación y el cumplimiento de la presente Ley en todas las entidades sujetas a la misma, suscribir acuerdos de cooperación técnica con los órganos de acceso a la información pública de otros países”.

⁴⁷⁰ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 70. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[L]as unidades de información de los sujetos obligados no supondrá erogaciones adicionales en el Presupuesto General de Ingresos y Egresos del Estado, sino que deberán integrarse con los funcionarios públicos existentes, salvo casos debidamente justificados”.

⁴⁷¹ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 10(26). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁴⁷² Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. The aforementioned articles establish: “Article 36. Safeguarding of documents. Public information that is located or may be located in administrative archives may not be destroyed, altered, modified, mutilated, or hidden by determination of the public servants who produce, process, manage, file, or safeguard the information, unless such actions were part of the exercise of public functions and were justified on legal grounds.//Failing to comply with this provision shall be sanctioned in accordance with this law and other applicable laws.” (“Salvaguarda de documentos. La información pública localizada y localizable en los archivos administrativos no podrá destruirse, alterarse, modificarse, mutilarse u ocultarse por determinación de los servidores públicos que la produzcan, procesen, administren, archiven y resguarden, salvo que los actos en ese sentido formaren parte del ejercicio de la función pública y estuvieren jurídicamente justificados. //El incumplimiento de esta norma será sancionado de conformidad con esta ley y demás leyes aplicables”).

“Article 37. Administrative archives. With regard to the information, documents, and files that are part of the administrative archives, in no case may they be destroyed, altered, or modified without justification. Public servants who do not comply with this article and the previous article of this law may be removed from their posts and subject to the provisions of Article 418—Abuse of Authority—and 419—Failing to Comply with Duties—under Criminal Code. If this involves individuals who, directly or indirectly, assist, provoke, or incite the destruction, alteration, or modification of historic archives, the crime of deprivation of national patrimony shall apply, as regulated in the Criminal Code.”

⁴⁷³ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 51. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁴⁷⁴ Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 49(5). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

329. Panama's Law on National Archives—Law No. 13 of 1957⁴⁷⁵—provides in its Article 9 that “no document that is archived may be destroyed, transferred, or in any way removed from the State's control, without prior authorization from the National Board of Documents and Archives.”⁴⁷⁶ In principle, the Office of the Ombudsman is the entity in charge of complying with and implementing the Transparency Law.

330. Uruguay and Argentina have provisions related to the training of officials and the preservation of archives. In Argentina, Article 18 of the Regulations on Access to Public Information of the Federal Executive Branch establishes that the Office of the Deputy Secretary for Institutional Reform and the Strengthening of Democracy, which is under the Central Office of the Cabinet of Ministers, shall “verify and require compliance with the obligations established therein.”⁴⁷⁷ Support for that task falls to those designated by each agency as responsible for access to public information. The training is limited to the federal executive branch.⁴⁷⁸

331. In terms of the custodianship of archives, Law No. 15.930 of 1961, on the General Archives of the Nation, establishes that the General Archives oversees all government administrative archives.⁴⁷⁹ In addition, Decree Law No. 232 of 1979 refers to the preservation of the various archives of the public administration.⁴⁸⁰ Article 1 provides that the State Ministries and Secretariats shall submit to the consideration of the General Secretariat of the Office of the President of the Nation—Office of the Deputy Secretary of Public Functions—any proposed measures “regarding their respective archives and related to the disposal, microfilming, preservation, and/or transfer of documents.”⁴⁸¹ Then, Article 2 determines that “the General Secretariat of the Office of the President of the Nation (Office of the Deputy Secretary of Public Functions) shall require, in each case, a ruling from the General Directorate of the General Archives of the Nation with respect to the projects to which the preceding article refers.”⁴⁸²

332. In Uruguay, Law No. 18.220, creating the National System of Archives, was approved in January 2008. The law establishes the State's obligation to preserve and organize its documentary patrimony, ensuring that all archives have adequate equipment and infrastructure.⁴⁸³

⁴⁷⁵ Republic of Panama. National Archives Law of Panama. Law 13 of 1957. Available at: http://www.asamblea.gob.pa/legispan/PDF_NORMAS/1950/1957/1957_046_0967.pdf

⁴⁷⁶ Republic of Panama. National Archives Law of Panama. Law 13 of 1957. Available at: http://www.asamblea.gob.pa/legispan/PDF_NORMAS/1950/1957/1957_046_0967.pdf. “Nadie puede destruir, enajenar o de cualquier modo sustraer del poder del Estado documento alguno que esté archivado, sin la autorización previa de la Junta Nacional de Documentación y Archivos”.

⁴⁷⁷ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 18. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. (“verificar y exigir el cumplimiento de las obligaciones establecidas en el mismo”).

⁴⁷⁸ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

⁴⁷⁹ Republic of Argentina. Law No. 15.930. October 5, 1961. Available at: http://www.igj.gov.ar/archivos/AccesoInfoPub/Normativa/normativa_nacional/LEY_15930_ARCHIVOS.pdf

⁴⁸⁰ Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Available at: http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf

⁴⁸¹ Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Art. 1. Available at: http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf. “todo proyecto de medidas a proponer o dictar - según el caso - sobre sus respectivos archivos y que se relacionen con el descarte de documentos, su microfilmación, conservación y/o traslado”.

⁴⁸² Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Art. 2. Available at: http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf. “[L]a Secretaría General de la Presidencia de la Nación (Subsecretaría de la Función Pública) requerirá, en cada caso, el dictamen de la Dirección General del Archivo General de la Nación respecto de los proyectos a que se refiere el artículo precedente”.

⁴⁸³ Oriental Republic of Uruguay. Law No. 18.200. National System of Archives, published in Official Gazette No. 27400. January 8, 2008. Available at: <http://informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-18220.pdf>

333. Finally, Law No. 18.381 created the Unit for Access to Public Information as a decentralized body of the Agency for the Development of Electronic-Government Management and the Information and Knowledge Society (Agesic).⁴⁸⁴ The unit is the entity that oversees enforcement of the law, and it is tasked with carrying out all necessary actions to ensure compliance with the law's objectives. Its functions, contemplated in Article 21, include training the officials that belong to the entities subject to the law and promoting educational and publicity campaigns to reaffirm the nature of the right of access to information as a fundamental right.⁴⁸⁵

334. In El Salvador, Article 51 of the Access Law created the Institute for Access to Public Information, which has legal personality and administrative and financial autonomy and is tasked with ensuring that the law is enforced. The law provides that the national general budget "shall establish the appropriate budgetary line item for the installation, configuration, and operation of the Institute."⁴⁸⁶ In addition, the law regulates the management of archives by the entities subject to the law; to this end, it establishes that the Institute shall prepare and update technical guidelines for managing, cataloging, conserving, and protecting public information.⁴⁸⁷

335. In Colombia, while there are provisions related to the training of officials, none of them is designed to emphasize the importance of the right of access to information. In terms of the preservation and custodianship of archives, Colombia has a law on archives and various provisions that establish regulations on this matter.⁴⁸⁸ Law No. 594 of 2000 creates the National System of Archives, which seeks to integrate all public national agencies whose purpose is to safeguard the documentary patrimony. It also establishes that the General Archives of the Nation is the entity responsible for coordinating and guiding the archival functions and policies regarding the preservation and proper use of the nation's documentary patrimony.⁴⁸⁹

336. In Ecuador, Article 11 of the Organic Law on Transparency provides that the Office of the Ombudsman is the entity responsible for the promotion, vigilance, and guarantees established in the law.⁴⁹⁰ Article 8 prescribes that all entities subject to the law shall implement programs to disseminate and promote the right to access to information, which should be geared toward public servants and civil society organizations. It also indicates that the universities and centers that make up the educational system shall develop programs to promote the rights of access to public information, *habeas data*, and *amparo*.⁴⁹¹

⁴⁸⁴ See Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 19. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁴⁸⁵ Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 21. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁴⁸⁶ Republic of El Salvador. Law on Access to Public Information. Art. 108. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "deberá establecer la partida presupuestaria correspondiente para la instalación, integración y funcionamiento del Instituto".

⁴⁸⁷ Republic of El Salvador. Law on Access to Public Information. Art. 40. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁴⁸⁸ In recent decades, various laws have been issued regarding archives. These include Law No. 80 of 1989, creating the General Archives of the Nation and issuing other measures; Law No. 136 of 1994, on provisions to modernize the organization and operations of municipalities; Law No. 190 of 1995, on offenses and crimes related to archives; Law No. 200 of 1995, on punishable conduct of public servants with regard to archives; and Law No. 594 of 2000, the General Law on Archives. This is available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html.

⁴⁸⁹ Republic of Colombia. General Law of Archives. Law 594 of 2000. Official Gazette No. 44.093. July 20, 2000. Art. 18. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html

⁴⁹⁰ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 11. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

⁴⁹¹ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

337. Rules on the custodianship, management, and preservation of information were established in the Law of the National Archives System, passed in 1982. Its Article 13 categorizes archives as active, intermediate or temporary, or permanent.⁴⁹² Articles 14 and 17 specify that archives that are used frequently and contain documents that are less than 15 years old are considered active; intermediate archives are those that temporarily process information that is more than 15 years old; and permanent archives are those “whose documentation, due to its specific characteristics and importance, constitutes a source of study and research in any field.” In addition, Article 10 of the Law on Transparency and Access to Information addresses the subject of archives and establishes that all entities subject to the law have the obligation “to create and maintain public records in a professional manner so that the right to information may be exercised fully; thus in no case shall the lack of technical standards to manage and archive information and documents be used to justify impeding or hampering the exercise of access to public information, or worse still to destroy the information.”⁴⁹³

338. In the Dominican Republic, Article 24 of the LGAIP establishes that “agencies or individuals that carry out public functions or manage State resources shall provide the necessary amounts in their budgets to publish, in mass media outlets of extensive national circulation, the proposed regulations and acts of a general nature” related to requirements or formalities that govern relations between individuals and the administration or that are required of individuals to be able to exercise their rights and activities.⁴⁹⁴

339. Meanwhile, the General Law on Archives of the Dominican Republic, Law No. 481-08,⁴⁹⁵ creates the National System of Archives (SNA) and establishes the principles and regulations governing national archive-related activity and defines the functions and powers of the agencies that make up the system. One of the principles governing the archive function, prescribed in Article 11 of the aforementioned law, is that of free access, which is established as “the right of every citizen, except for the restrictions established by the law.”⁴⁹⁶

340. In the United States, the FOIA establishes a decentralized system for implementation, in which each agency is responsible for naming its own personnel responsible for serving the public and supervising compliance with the law, as well as preparing guidelines and manuals. The FOIA also stipulates that each agency should produce detailed information on the law’s implementation and send it to the Attorney General, who is responsible for oversight.⁴⁹⁷

341. In Trinidad and Tobago, the Freedom of Information Act stipulates, in Section 41(1) that the Minister of Government may prepare regulations to make the law effective and to order and/or

⁴⁹² Republic of Ecuador. Law on National System of Archives, published in Official Gazette No. 265, June 16, 1982. Art. 13. Available at: <http://www.sinar.gov.ec/contenidos.php?menu=15>. “Archivos permanentes son aquellos cuya documentación, por sus características específicas e importancia constituye fuente de estudio e investigación en cualquier rama”.

⁴⁹³ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “[C]rear y mantener registros públicos de manera profesional, para que el derecho a la información se pueda ejercer a plenitud, por lo que, en ningún caso se justificará la ausencia de normas técnicas en el manejo y archivo de la información y documentación para impedir u obstaculizar el ejercicio de acceso a la información pública, peor aún su destrucción”.

⁴⁹⁴ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “entidades o personas que cumplen funciones públicas o que administren recursos del Estado deberán prever en sus presupuestos las sumas necesarias para hacer publicaciones en los medios de comunicación colectiva, con amplia difusión nacional, de los proyectos de reglamentos y actos de carácter general”.

⁴⁹⁵ Dominican Republic. General Law on Archives. Law No. 481-08. Available at: http://dgcp.gob.do/transparencia/MARCO_LEGAL_TRANSPARENCIA/Ley_No_481_08_de_Archivo.pdf

⁴⁹⁶ Dominican Republic. General Law on Archives. Law No. 481-08. Available at: http://dgcp.gob.do/transparencia/MARCO_LEGAL_TRANSPARENCIA/Ley_No_481_08_de_Archivo.pdf. “derecho de todo ciudadano, salvo las restricciones establecidas por la ley”.

⁴⁹⁷ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(i)-(l). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

authorize what is needed. In addition, every public authority shall maintain and preserve documents related to its functions, along with copies of any official documents it creates or holds in its possession, custody, or control.⁴⁹⁸

5. Limitations to the Right of Access to Information

a. Legal establishment and regulation of exceptions

342. As an essential element of the freedom of expression protected by the American Convention, the right of access to information is not an absolute right, but may be subject to limitations. Nevertheless, such limitations must be in strict accordance with the requirements derived from Article 13.2 of the American Convention; that is, they must be truly exceptional, be established clearly in law, pursue legitimate objectives, and be necessary to accomplish the purpose being sought.⁴⁹⁹

343. As to legal establishment, this being a right established in Article 13 of the American Convention, limitations to the right to seek, receive, and impart information must be prescribed by law, expressly and in advance, to ensure that they are not left to the government's discretion. Their establishment must be sufficiently clear and specific so as not to grant an excessive degree of discretion to the public officials who decide whether or not to disclose the information.⁵⁰⁰

344. In the opinion of the Inter-American Court, such laws must have been enacted "for reasons of general interest," in keeping with the common good as an integral element of public order in a democratic state. The Inter-American Court's definition in Advisory Opinion OC-6/86 is applicable in this respect, according to which the word "laws" does not refer to just any legal norm, but rather to general normative acts passed by legislative bodies that are constitutionally established and democratically elected, according to procedures established in the Constitution, and tied to the general welfare.⁵⁰¹

345. As to the principle of necessity, the State must demonstrate that in establishing restrictions on access to information under its control, it has met the requirements established in the American Convention. In that regard, the Inter-American Juridical Committee's resolution on "Principles on the Right of Access to Information" established that "the burden of proof in justifying any denial of access to information lies with the body from which the information was requested."⁵⁰²

346. When there are grounds allowed by the American Convention for a State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.⁵⁰³ As the IACHR has explained, if the State denies access to information, it must provide sufficient explanation of the legal standards and the reasons supporting such decision, demonstrating that the decision was not discretionary or arbitrary, so that individuals can determine whether the denial meets the requirements set forth in the American

⁴⁹⁸ Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Section 42(1). Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁴⁹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 45. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

⁵⁰⁰ See IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(f).

⁵⁰¹ I/A Court H.R. *The Word "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. Available at: http://corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf; See I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

⁵⁰² Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 7. Available at: https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf

⁵⁰³ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

Convention.⁵⁰⁴ Along the same lines, the Inter-American Court has specified that an unfounded failure to provide access to information, without a clear explanation of the reasons and rules on which the denial is based, also constitutes a violation of the right to due process protected by Article 8.1 of the American Convention, in that decisions adopted by the authorities that may affect human rights must be duly justified; otherwise, they would be arbitrary decisions.⁵⁰⁵

347. Limitations imposed upon the right of access to information—like any limitations imposed on any aspect of the right to freedom of thought and expression—must be necessary in a democratic society to satisfy a compelling public interest. Among several options for accomplishing this objective, the one that least restricts the protected right must be chosen. The restriction must (i) be conducive to attaining this objective, (ii) be proportionate to the interest that justifies it, and (iii) interfere to the least extent possible with the effective exercise of the right.⁵⁰⁶

348. Finally, the exceptions regime should set forth a reasonable time period, and once that period has expired, the information must be made available to the public. In this sense, material may be kept confidential only while there is a certain and objective risk that, were the information revealed, one of the interests that Article 13.2 of the American Convention orders protected would be disproportionately affected.⁵⁰⁷

349. In the opinion of the Inter-American Court, the establishment of restrictions to the right of access to State-held information by the practice of its authorities, without respecting the provisions of the American Convention, (a) “creates fertile ground for discretionary and arbitrary conduct by the State in classifying information as secret, reserved or confidential”, and (b) “gives rise to legal uncertainty concerning the exercise of this right and (c) the State’s powers to limit it.”⁵⁰⁸

350. The Inter-American Court ruled specifically on the issue of “confidential” or “secret” information in another area concerning public access to information, namely the provision of information on serious human rights violations to the judicial and administrative authorities in charge of investigating such cases and identifying those responsible. In the *Case of Myrna Mack-Chang v. Guatemala*,⁵⁰⁹ the Inter-American Court established that the Ministry of National Defense had refused to provide certain documents related to the operation and structure of the Presidential General Staff, which were necessary to advance the investigation of an extrajudicial execution. The Attorney General's Office and federal judges had repeatedly requested the information, but the Ministry of National Defense refused to provide it, invoking State secrecy pursuant to Article 30 of the Guatemalan Constitution. In the opinion of the Court, “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the

⁵⁰⁴ IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(c) and (d). Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

⁵⁰⁵ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 120. See also, I/A Court H.R. *Case of Palamara-Iribarne. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 216. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf; *Case of YATAMA.* Judgment of June 23, 2005. Series C No. 127. Para. 152. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf

⁵⁰⁶ IACHR. 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (The Right to Access to Information). Para. 53.

⁵⁰⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 54. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON.%20PORTADA.pdf>

⁵⁰⁸ I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 98. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

⁵⁰⁹ I/A Court H.R. *Case of Myrna Mack-Chang.* Judgment of November 25, 2003. Series C No. 101. Paras. 180-182. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf

ongoing investigation or proceeding.”⁵¹⁰ In this respect, the Inter-American Court adopted the considerations of the IACHR, which had argued before the Court that “[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other hand... [P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the ‘clandestinity of the Executive branch’ and to perpetuate impunity. Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act... Thus, what is incompatible with the Rule of Law and effective judicial protection ‘is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside any control system...’”⁵¹¹ In this context, the Inter-American Court considered that the refusal of the Ministry of National Defense to provide the documents requested by the judges and the Attorney General's Office, alleging State secrecy, amount to an obstruction of justice.⁵¹²

351. The Court ruled along these same lines in the *Case of Gomes-Lund et al. (Guerrilha do Araguaia)*.⁵¹³ In that judgment, the Court found that the State had violated the right of access to information of the relatives of victims of military raids by failing to turn over, in a timely manner, any information that may have existed about the raids. In giving the grounds for its assertion, the Court began by clarifying the scope of the right of access to information of victims of serious human rights violations. The Court found that the victims have the right to obtain access, directly and in a timely manner, to information regarding human rights violations.⁵¹⁴ The Court indicated that the authority accused of violating human rights may not have the authority to establish whether or not it will turn over the requested information or to establish whether such information exists.⁵¹⁵ When the State has the obligation to preserve or gather information and nevertheless believes that the information does not exist, it must explain all the steps it took to try to recover or reconstruct the information that was lost or illegally removed;⁵¹⁶ otherwise, the right of access to information is violated.⁵¹⁷ Finally, the Court held that the right of access must be guaranteed through an appropriate and effective remedy that can be resolved within a reasonable time period.⁵¹⁸

⁵¹⁰ I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 180.

⁵¹¹ I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 181.

⁵¹² I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 182.

⁵¹³ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 199 *et seq.* Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf

⁵¹⁴ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 200.

⁵¹⁵ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

⁵¹⁶ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

⁵¹⁷ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

⁵¹⁸ I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 219-25.

352. Likewise, the Model Law on Access to Information establishes a strict regime of exceptions, which must be legitimate and strictly necessary in a democratic society. Given their exceptional nature, the law contemplates a limited list of reasons for which access to this right may be restricted, which includes: some private interests; a clear, probable, and specific risk of substantial harm to certain public interests; and confidential communications, “including legally privileged information.”⁵¹⁹

353. Regulating exceptions to the right of access is one of the most complex and important subjects in each legal system. In some cases, the law itself presents some difficulties, and in others it is the interpretation and application of the law that has led to problems in implementation. In this monitoring report, the Office of the Special Rapporteur is confining itself to describing each legal system so that in future reports it can address best practices and challenges in this area.

354. In most of the countries studied, laws on access to information enshrine the principle of maximum transparency and the obligation to provide reasons for denying requests for access, and establish the grounds that authorize those subject to the law not to turn over information that has been requested. In addition, the laws of Nicaragua and Guatemala establish expressly that when the entity subject to the law believes it is necessary to classify certain information as privileged or confidential, it must conduct a proportionality test before taking such a decision.

355. In general, the grounds for withholding information refer to the confidentiality of personal data and the withholding of information that could affect other interests protected by the Convention, such as national security. In some exemplary cases such as Guatemala, Mexico, Peru, and Uruguay, the law establishes that information on human rights violations may not be classified. Likewise, in cases such as that of Mexico, entities subject to the law are required to develop public indexes of information considered secret. Mexico, Nicaragua, and Guatemala specify the grounds for secrecy classification more precisely than many other laws with broad or vague provisions on subjects such as the defense of national security.

356. Nevertheless, in studying the different legal systems, it is clear that in no small number of cases some of the exceptions are very broad, without there being a clear and precise conceptual definition of the terms used for the exceptions or legal criteria for limiting them. Consequently, the true scope is established through the process of implementation, a subject that will be addressed in future reports. Further, many legal systems have not established an obligation to prepare redacted public versions of documents that may have classified portions; thus, entities subject to the law may have the erroneous idea that if a portion of a document is confidential, the entire content may be withheld, which goes against the principle of maximum disclosure. Where this issue is not addressed within the legal framework, it should be resolved in the implementation of the relevant laws.

357. On another point, regarding the time frames for withholding information, Ecuador, Nicaragua, Panama, Uruguay, Peru, Chile, Mexico, the Dominican Republic, and Guatemala establish maximum initial periods for keeping information secret. All of them authorize an extension of the period, but only Nicaragua, Panama, Chile, and Guatemala contemplate a maximum period for extension.⁵²⁰ Ecuador, Uruguay, Peru, and Mexico leave open the time frame for extending secrecy.⁵²¹ In Colombia,

⁵¹⁹ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 41. Available at: http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf

⁵²⁰ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Arts. 28, 29. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument); Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 7. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf; Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State (Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado). Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>; Republic of Guatemala. Law on Access to Public Information. Art. 44. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵²¹ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 9(2). Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>; Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 18. Available at: [http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-](http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la)

the law establishes only the maximum period for withholding information, which may vary between 20 and 30 years, depending on the material.⁵²² Argentina does not address this issue in its Regulations on Access to Information of the Federal Executive Branch. Finally, it is important to note that Chile has established that the period for classifying matters of national defense and foreign affairs is indefinite.⁵²³

358. The following section explains in more detail the content of the legal systems that were studied.

359. In Chile, limitations to the right of access to information are the exception, in that Article 21 of the Law on Access to Public Information establishes that “the only grounds for secrecy or confidentiality based on which access to information may be denied in whole or in part” are those contemplated in that law.⁵²⁴ Further, Article 5 of the law prescribes that the exceptions must be contemplated in laws passed by a qualified quorum.⁵²⁵ Nevertheless, the law establishes an exception by setting forth, in its transitory first article, that secrecy classifications legally established for acts and documents before the promulgation of Law No. 20.050 of 2005 are presumed to be legitimate.⁵²⁶

360. Article 21 of the law establishes that access to information may be denied, in whole or in part, only when the disclosure of the information could affect: the functioning of the agency to which the request is made; the rights of other persons; national security; public health; the country’s international relations or economic interests; and, in line with the provisions established in Article 8 of the Constitution, in cases involving documents that have been declared privileged or secret through a qualified quorum law.⁵²⁷ Nevertheless, as was already noted, it is problematic that the law’s transitory first article establishes that secrecy classifications legally established for acts and documents before the promulgation of Law No. 20.050 of 2005, which amended the Constitution, are presumed to be legitimate—without an exhaustive analysis of these restrictions. Also problematic is subparagraph (c) of Article 21 (1), which establishes as grounds for the denial of information the fact that the request could affect the functioning of the respective agency, inasmuch as this involves “requests of a generic nature that refer to a great number of administrative acts or background information, or for which a response would unduly divert officials from carrying out their regular job duties.”⁵²⁸ In this regard, however, the law

...continuation

[informacion-publica.pdf](#); Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Art. 11. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf; United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 44. Available at: <http://www.ifai.org.mx/English>

⁵²² See Republic of Colombia. Law 57 of 1985, Art. 13; Law 594 of 2000. Art. 28 (establishing that classifications regarding any legal document will end after 30 years from their issue); Law 1097 of 2006. Art. 5 (establishing a period of classification of 20 years for “classified expenses”).

⁵²³ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Art. 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵²⁴ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[L]as únicas causales de secreto o reserva en cuya virtud se podrá denegar total o parcialmente el acceso a la información”.

⁵²⁵ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵²⁶ The transitory first article actually reproduces the fourth transitory provision of the Constitution, which provides that “those laws currently in force on matters that, pursuant to this Constitution, should be the object of organic constitutional laws, or approved through a qualified quorum, fulfill these requirements and shall continue to be applied to the extent that they are not contrary to the Constitution, as long as the relevant laws are not enacted.” Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>.

⁵²⁷ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 21. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵²⁸ Republic of Chile. Constitutional reform introducing various modifications to the Political Constitution of the Republic. Law 20.050 of 2005. Art. 21(1)(c). Available at: <http://www.leychile.cl/Navegar?idLey=20050>; Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “requerimientos de carácter genérico, referidos a un elevado número de actos

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itself establishes a guarantee that has operated adequately: the Council for Transparency, whose decisions, as already explained briefly, have applied constitutional and international guarantees to interpret these standards regarding open content.⁵²⁹

361. Chile's Law on Access to Public Information prescribes, in paragraph 3 of Article 16, that a denial of a request for information must include the reasons and indicate the relevant legal provision.⁵³⁰ In the *Case of Banco de la Nación v. the Council for Transparency*, of 2009, it was found that denying information based on the argument that the official in question was not considered to have jurisdiction did not constitute an acceptable justification. Consequently, it was ordered that the requested information must be turned over.⁵³¹

362. Article 22 of the law establishes that acts or documents that have been classified as secret by a law keep that status until another qualified quorum law lifts the secrecy. It also provides that once five years have passed from the notification of an act classifying a document as secret, the body that made the notification may extend it for another five years, in whole or in part, on its own initiative or at the request of any person, after evaluating "the danger of harm that could be occasioned by its termination."⁵³² Secrecy classifications of material related to national defense or foreign affairs constitute an exception to this rule, since these are classified indefinitely. The same article provides that the results of government-ordered surveys and opinion polls shall be confidential until the respective presidential term ends.⁵³³ Finally, Article 23 provides that agencies of the State administration must maintain "an updated index of the acts and documents designated as secret or classified."⁵³⁴

363. Ecuador's Organic Law for Transparency establishes in Article 17 that the right to obtain access to public information may be denied "exclusively" in the cases contemplated in that article or in those having to do with personal public information, which is defined as confidential in Article 6.⁵³⁵ The law makes a distinction between two situations in which it is possible to classify information. On the one hand, Article 17 prescribes that secret information consists of information contained in the documents classified as such by the National Security Council, with justification provided and based on reasons of national defense. Alternatively, information shall be considered classified if it is characterized as such by laws that are in force.⁵³⁶ This provision makes it impossible to determine whether secrecy classifications always meet the standards defined by the Convention. In any case, the Constitution of Ecuador

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administrativos o sus antecedentes o cuya atención requiera distraer indebidamente a los funcionarios del cumplimiento regular de sus labores habituales".

⁵²⁹ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Articles 31 *et seq.* Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵³⁰ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 13. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵³¹ Judgment A-69-09 of the Seventh Chamber of the Santiago Court of Appeals. October 23, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A69-09/A69-09_decision_web.pdf

⁵³² Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. "el peligro de daño que pueda irrogar su terminación".

⁵³³ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁵³⁴ Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 23. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. "Los órganos de la Administración del Estado deberán mantener un índice actualizado de los actos y documentos calificados como secretos o reservados de conformidad a esta ley".

⁵³⁵ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Article 6 provides that confidential information is personal public information "derived from inalienable personal and fundamental rights."

⁵³⁶ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 17. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

establishes, in Article 91, that “the secret nature of the information shall have been declared prior to the petition, by an authority with standing and in keeping with the law.”⁵³⁷ As to other matters, the concepts of security or national defense are not defined, a situation that allows for a broad interpretation of these terms and that, as a result, suggests important challenges when it comes to implementation.

364. In addition, Article 18 of Ecuador's Organic Law on Transparency determines that information classified as secret shall remain so for a period of 15 years, or a shorter period if the grounds for classifying it come to an end. It also establishes the possibility of extending the period if the grounds that gave rise to the classification continue, but the law does not specify the maximum period in this case. Finally, it establishes that public institutions must prepare, on a biannual basis, a public index of documents classified as secret.⁵³⁸

365. It is interesting to note that transitory Article 4 of the Organic Law on Transparency and Access to Public Information in Ecuador provided that, within six months following the law's entry into force, all entities subject to the law were to prepare an index listing all information in their custody classified as secret that was in line with the law's specifications.⁵³⁹ The remaining information was to be made available to the public, within a maximum period of two months. The measure also prescribed that “any information classified as having restricted access, and which is more than fifteen years old, shall be declassified and opened freely to the public.”⁵⁴⁰

366. Limitations to the right to information are expressly established as exceptions in the case of Guatemala, whose Law on Access to Information establishes, in Article 1.5, that one of its purposes is to establish “as an exception and on a limiting basis” the assumptions by which the right of access to information is restricted.⁵⁴¹ The Law on Access to Information establishes that access may not be gained to confidential or secret information. In Article 21, the law establishes that limitations to the right apply only based on the grounds contemplated in the Constitution, in the law, or in international treaties or agreements.⁵⁴² Under Article 22, confidential information includes data on individuals received by public agencies or officials under guarantee of confidence, sensitive personal data, information classified under professional secrecy, and any other classified as such by law.⁵⁴³ Article 23 considers secret information to include, among other things, that which is related to classified military and diplomatic matters such as national security, unresolved legal cases, information related to industrial secrecy or intellectual property, and studies provided to the President of the Republic in order to guarantee national defense and security and public order.⁵⁴⁴ Article 9(9) defines the concept of national security as “all such matters that are part of the policy of the State to preserve the physical integrity of the nation and its territory, in order to protect all elements that make up the State from any aggression produced by hostile foreign or national groups, and those matters that refer to the survival of the Nation-State in relation to other States.”⁵⁴⁵

⁵³⁷ Constitution of the Republic of Ecuador. Art. 91. Available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf. “El carácter reservado de la información deberá ser declarado con anterioridad a la petición, por autoridad competente y de acuerdo con la ley”.

⁵³⁸ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 17. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

⁵³⁹ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

⁵⁴⁰ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “[T]oda información clasificada como de acceso restringido, que tenga más de quince años, deberá ser desclasificada y abierta libremente al público”.

⁵⁴¹ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁴² Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁴³ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁴⁴ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁴⁵ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[T]odos aquellos asuntos que son parte de la política del Estado para preservar la integridad física de la nación y de su territorio a

367. It is important to mention that, significantly, Article 4 of the same law provides that “in no case may information related to investigations of violations of fundamental human rights or crimes against humanity be considered confidential or secret.”⁵⁴⁶ This provision represents an important step forward in the region in the area of access to information, and it is in line with what the Inter-American Court has stated in the cases that have already been mentioned.⁵⁴⁷

368. In addition, Article 25 of the Guatemalan law establishes the procedure that must be carried out in order to declare particular information as secret. It requires that the decision be made through a resolution, which must indicate the source of the data, the reasons for classifying the information and the parts of the document considered secret, the period during which it will be classified, and the authority responsible for preservation. The same article establishes that classification resolutions that do not meet the aforementioned prerequisites shall be considered null and void, and that in any case, a resolution may be appealed.⁵⁴⁸ Article 26, meanwhile, provides that the authority who classifies the information must demonstrate the harm that its disclosure could engender. The authority must prove that the information falls within the limitations to access contemplated in the Law on Access, that the release of the information could jeopardize the interest protected by the same law, and that “the prejudice or damage that could be incurred through the release of the information is greater than the public interest in knowing the information in question.”⁵⁴⁹

369. Article 20 of the Law on Access to Information establishes that one of the obligations of the Public Information Units is to provide the information requested or provide reasoned grounds for refusal.⁵⁵⁰ According to Article 42 of the same law, when the Public Information Units receive a request, they may turn over the information or refuse to provide it. The latter may occur when the person requesting the information did not clarify or correct the request in the given time period, when the information being requested is classified as secret, or when the information does not exist.⁵⁵¹

370. Finally, Articles 27 and 28 of the access law establish that information may be classified as secret for a maximum period of seven years, which may be extended only for five more years if the grounds for its classification continue. The law provides that the review remedy applies to extensions. In addition, the secrecy classification may cease if the reasons that led to the classification no longer exist, or if it is so ordered by a judicial body or by the responsible authority.⁵⁵²

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fin de proteger todos los elementos que conforman el Estado de cualquier agresión producida por grupos extranjeros o nacionales beligerantes, y aquellos que se refieren a la sobrevivencia del Estado-Nación frente a otros Estados”.

⁵⁴⁶ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “En ningún caso podrá clasificarse como confidencial o reservada la información relativa a investigaciones de violaciones a los derechos humanos fundamentales o a delitos de lesa humanidad”.

⁵⁴⁷ See, I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 274. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

⁵⁴⁸ Republic of Guatemala. Law on Access to Public Information. Art. 25. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁴⁹ Republic of Guatemala. Law on Access to Public Information. Art. 26. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[E]l perjuicio o daño que pueda producirse con la liberación de la información es mayor que el interés público de conocer la información de referencia”.

⁵⁵⁰ Republic of Guatemala. Law on Access to Public Information. Art. 20. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁵¹ Republic of Guatemala. Law on Access to Public Information. Art. 42(2). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁵⁵² Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

371. In Mexico, the exceptional nature of limitations to the right to access to information is derived from the principle of maximum disclosure of public information set forth in Article 6 of the Federal Transparency and Access to Public Governmental Information Act.⁵⁵³ Moreover, Articles 13 and 14 specifically spell out the grounds for privilege and confidentiality. In principle, entities subject to the law must make available to the public any information it requests, except when it involves privileged or confidential information. Articles 13 and 14 provide that information may be classified as privileged if that information could: compromise the national security or national defense, or the public security; impair international relations or damage the country's financial or monetary situation; jeopardize the life, security, or health of any person; or seriously prejudice law enforcement activities, crime prevention or prosecution, the administration of justice, tax collection, migratory control operations, or procedural strategies in judicial or administrative actions.⁵⁵⁴ The following information is also considered privileged: that information which may be treated as confidential under a specific legal provision; commercial, industrial, fiscal, bank, or fiduciary secrets or any other information considered as such pursuant to a legal provision; criminal investigations; judicial or administrative-law cases prosecuted in the form of lawsuits, as long as they have not become final and conclusive; public officer liability proceedings, as long as no final and conclusive administrative-law or jurisdiction ruling has been issued; and information containing opinions, recommendations, or points of view that are part of the deliberation process of government officials, as long as a final decision has not been issued.⁵⁵⁵

372. This law contemplates several more specific definitions of the concepts employed in the clauses having to do with privilege. Thus, national security is considered grounds for privilege both in the Federal Transparency and Access to Public Governmental Information Act and in the National Security Act. In Article 3 (XII) of the Federal Transparency Act this is defined as “[a]ll actions designed to protect the integrity, stability, and preservation of the Mexican State, the democratic governability, the external defense and internal security of the Federation aimed at the general welfare of society allowing the pursuit of the purposes of the constitutional State.”⁵⁵⁶ Article 6(5) of the National Security Act, for its part, establishes that confidential government information shall be understood to mean “the personal data given to an agency by public servants, as well as personal data provided to the Mexican State to determine or prevent a threat to national security.”⁵⁵⁷ It is worth noting that in July 2010 the Mexican Federal Congress approved the Federal Law on the Protection of Personal Data Held by Private Entities. The law applies to private entities that are natural persons or entities of a private nature that handle personal data. It establishes that the Federal Institute for Access to Information and Data Protection [Instituto Federal de Acceso a la Información y Protección de Datos (IFAI)] shall be the guarantor institution for personal data.⁵⁵⁸

373. Significantly, Article 14(VI) of the Federal Transparency and Access to Public Governmental Information Act makes it clear that the privileged nature of information may not be invoked “during investigations of gross human rights violations or crimes against humanity.”⁵⁵⁹ Further, in an

⁵⁵³ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁵⁵⁴ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 13. Available at: <http://www.ifai.org.mx/English>

⁵⁵⁵ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 14. Available at: <http://www.ifai.org.mx/English>

⁵⁵⁶ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 3(XII). Available at: <http://www.ifai.org.mx/English>

⁵⁵⁷ United States of Mexico. National Security Law. Art. 6(V). Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LSegNac.pdf>

⁵⁵⁸ United States of Mexico. Federal Law on the Protection of Personal Data Held by Private Entities (Ley Federal de Protección de Datos Personales en Posesión de los Particulares). Available at: http://www.ifai.org.mx/pdf/pot/marco_normativo/LFPDPPP.pdf

⁵⁵⁹ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

extremely important provision, Article 17 establishes that the administrative units shall prepare on a semi-annual basis “a list of cases classified as privileged.” This list shall not be considered privileged information.⁵⁶⁰ However, as will be noted below, problems have arisen in applying this law, resulting from the interpretation of the restrictions to information involving open judicial cases.

374. In addition, the law's Article 18 provides that confidential information is information provided under those terms by private parties to the disclosing parties, as well as personal data whose dissemination is subject to the private party's consent.⁵⁶¹

375. In terms of the procedure to verify the legitimacy of secrecy classifications, in Mexico Article 45 of the law establishes that when an administrative unit finds that information requested by an interested party has been classified, it must immediately inform the Information Committee of the situation so the Information Committee can decide whether to confirm, amend, or revoke the classification.⁵⁶² If the Information Committee decides to deny access to the information, it must inform the applicant, providing grounds for the decision and indicating what remedy may be filed before the Federal Institute for Access to Information and Data Protection (IFAI). In effect, as has been mentioned, in Mexico the law establishes an important guarantee to ensure that the interpretation of exceptions is in line with constitutional and international guarantees: It created IFAI as the body responsible for “promoting and disseminating the exercise of the right of access to information, resolving issues related to denials of requests for access to information, and protecting personal data held by public offices and entities”.⁵⁶³ The operation of this institute demonstrates the importance of having an autonomous, specialized body in this area. Its important case law will be studied in future reports.⁵⁶⁴

376. Recently, a reform to Article 16 of the Mexican Federal Code of Criminal Procedures⁵⁶⁵ was approved, which seriously restricts access to files from preliminary investigations. At the time this study was being completed, the Office of the Special Rapporteur received information about an unconstitutionality action brought by the National Human Rights Commission (CNDH),⁵⁶⁶ alleging that the aforementioned Article 16 is invalid. Along with the CNDH, the IFAI has deemed that the unjustified

⁵⁶⁰ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁵⁶¹ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁵⁶² United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁵⁶³ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act, Art. 33. Available at: <http://www.ifai.org.mx/English>

⁵⁶⁴ It is important to note that the IFAI oversees compliance with the Federal Transparency and Access to Governmental Public Information Act only within the federal public administration. The judicial and legislative branch and autonomous bodies do not have an independent oversight body. Also, the legal and institutional framework guaranteeing the effective exercise of the right of access to information before the federal executive does not always exist at the state and municipal level. In this regard, there are both regulatory and practical challenges for the effective exercise of the right of access to information at the level of the federated entities, or states.

⁵⁶⁵ Article 16 of the Federal Code of Criminal Procedures establishes, in its relevant section, that, “For the effects of access to government public information, only a public version shall be provided of a decision not to bring criminal proceedings, on condition that a period equal to the statute of limitations for the offense has elapsed, pursuant to the Federal Criminal Code, as long as this period is not less than three years or longer than twelve years from the time the determination was made final.” (“Para efectos de acceso a la información pública gubernamental, únicamente deberá proporcionarse una versión pública de la resolución de no ejercicio de la acción penal, siempre que haya transcurrido un plazo igual al de prescripción de los delitos de que se trate, de conformidad con lo dispuesto en el Código Penal Federal, sin que pueda ser menor de tres ni mayor de doce años, contado a partir de que dicha resolución haya quedado firme”). United States of Mexico. Federal Code of Criminal Procedure, last reform published in Official Gazette of the Federation 10-24-2011. Art. 16. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/7.pdf>

⁵⁶⁶ Unconstitutionality action brought by the National Human Rights Commission (CNDH). AC 26/09. February 5, 2009. Document provided to the Office of the Special Rapporteur by the IFAI during the onsite visit.

restrictions to access involving preliminary investigations that ended, or are completely inactive, violate the guarantees of access to public information contained in Article 6 of the Constitution.⁵⁶⁷

377. The Office of the Special Rapporteur recognizes the need to maintain the secrecy of ongoing preliminary investigations so as to not harm the investigation and to protect sensitive information. However, releasing a public version of information about investigations that have ended or have been inactive for years—after protecting sensitive data and other elements whose need to remain privileged has been demonstrated, as a means of protecting other legitimate interests—promotes the public nature of the process and serves as a guarantee for proper inter-institutional and social control over the justice system. That is precisely the purpose of the right of access to information.

378. Finally, the Transparency Act establishes, in Article 15, that the maximum period for treating information as privileged shall be 12 years, but that the information may be declassified before that time if the reasons that gave rise to the classification no longer exist. It also provides that, in exceptional cases, disclosing parties may request an extension of privilege if it can be proved that the grounds that led to it continue.⁵⁶⁸

379. Nicaragua's Law on Access to Public Information expressly states in Article 3(2) that all information in possession of the entities subject to the Law is public in nature and subject to free access by the public, save for the exceptions established in the Law.⁵⁶⁹ In addition, Article 15 determines that public information shall be considered secret when it has been expressly classified as such by agreement of the head of each agency.⁵⁷⁰ The law expressly establishes that the classification of information as privileged or secret must be made by the highest administrative authority of each entity, by means of an agreement which is duly reasoned and which states the legal grounds on which the decision is based. In Nicaragua, the maximum period for a secrecy classification is 10 years, which may be extended for an additional 5 years if the grounds for the classification are still in place. Moreover, the classification will cease once the reasons for classifying the information no longer exist.⁵⁷¹

380. Article 15 of Nicaragua's Law on Access to Public Information establishes the following as information that shall be classified: information that could harm the security of the State's territorial integrity and/or the defense of national sovereignty; information "whose disclosure could hamper or frustrate activities to prevent or prosecute crime and organized crime"; information related to "bank secrecy or trade, industrial, scientific, or technical secrets that belong to third parties or to the State"; information that jeopardizes "international relations, litigation before international courts, or negotiation strategies for commercial agreements or integration accords"; and "draft judgments, resolutions, and agreements in process of being decided by a single authority or panel of authorities."⁵⁷²

381. It is important to emphasize that the law itself specifies that under the grounds related to the security of the territorial integrity of the State and/or the defense of national sovereignty, only certain information may be classified, such as "1. Planning and strategies related to military defense or internal

⁵⁶⁷ IFAI. Report on Unconstitutionality Action 26/2009. Document IFAI/ALI/069/09. March 25, 2009. Document provided to the Office of the Special Rapporteur by the IFAI during the onsite visit. See also, IACHR. Office of the Special Rapporteur for Freedom of Expression. August 25, 2010. Press Release 84/10. *IACHR and UN Rapporteurs for Freedom of Expression Publish Preliminary Report Regarding Visit to Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=813&IID=1>

⁵⁶⁸ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

⁵⁶⁹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁵⁷⁰ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁵⁷¹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Article 17. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁵⁷² Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

communications that refer to military defense. 2. Plans, operations, and intelligence reports related to defense, military intelligence, and military counterintelligence. 3. Inventories, specifications, and locations of weapons, equipment, ammunition, and other means intended for national defense, as well as the locations of military units with restricted access. 4. Acquisition and destruction of weapons, equipment, ammunition, and replacement parts from the inventory of the Nicaraguan Army, without prejudice to that which has been established in laws and provisions on this subject. 5. Military exercises designed to raise the Nicaraguan Army's combat capabilities. 6. Names and general information about the members of the intelligence units related to defense, military intelligence, and military counterintelligence. 7. Plans, inventories, or other information considered to fall under regional secrecy in the regional treaties to which Nicaragua is a signatory.”⁵⁷³

382. In the view of the Office of the Special Rapporteur, it is in keeping with the general principle of maximum disclosure to establish, as the aforementioned provision does, the criteria that serve to apply and interpret particularly ambiguous exceptions to the right of access to information, such as the exception related to defense of sovereignty or national security. In this regard, defining the content of these somewhat open-ended clauses helps to provide better guidelines to officials and greater security to those entitled to access.

383. Even so, some of the grounds for secrecy continue to be defined broadly and therefore will require legal and administrative implementation measures, such as the existence of public criteria regarding classified information and effective protection mechanisms.

384. One of these mechanisms can be found in a particularly important provision of the law: Article 3 (7), which establishes the principle of proof of harm.⁵⁷⁴ Pursuant to this provision, the authority who categorizes certain information as being of restricted access must argue that the information falls under one of the grounds for exception established in the law, that the release of the information could jeopardize the public interest, and that “the harm that could be produced by the release of the information is greater than the public interest in knowing the information in question.”⁵⁷⁵ Along the same lines, Article 35 of the law establishes that the refusal to grant a request for access to public information “must be reasoned, under penalty of nullity.”⁵⁷⁶ In the next line, Article 36 that the decision must be notified to the person making the request no later than the third day after it is made, indicating the legal grounds on which the decision is based.⁵⁷⁷ The law provides that the decision may be appealed through an administrative remedy, even when it is not necessary to exhaust the government avenue to have access to the jurisdiction of administrative litigation. Nevertheless, on this point it is important to caution that regular judicial remedies tend to have more extensive time periods than remedies designed especially for the protection of these type of rights, especially when they are filed with specialized autonomous bodies. That is what occurs in Mexico, thanks to the IFAI, or in Chile, thanks to the Council for Transparency.

385. Another country that has expressly established disclosure as the rule is Panama. Article 1 of its law contemplates a series of definitions, and its subparagraph 11 contemplates the principle of disclosure, under which any information that emanates from the public administration is of a public nature,

⁵⁷³ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 15(a). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁵⁷⁴ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁵⁷⁵ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 7(c). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “[E]l daño que puede producirse con la liberación de la información es mayor que el interés público de conocer la información de relevancia”.

⁵⁷⁶ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “Toda denegatoria de acceso a información pública deberá motivarse bajo pena de nulidad”.

⁵⁷⁷ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

save for the established exceptions, which relate to confidential information⁵⁷⁸ and information subject to restricted access.⁵⁷⁹ The law's fifth chapter establishes rules regarding the action of *habeas data* to guarantee the right of access to information to persons when public officials have not provided them with the information they requested or have done so imprecisely or incompletely.⁵⁸⁰

386. Pursuant to Article 1(5) of Panama's Law on Transparency in Public Administration, confidential information is any information in the possession of agents of the State, or of any public institution, that relates to individuals' private data, such as their medical and psychological data, information about their intimate life, their criminal and police history, their correspondence, and public officials' personnel files.⁵⁸¹ Article 1(7), in turn establishes that information with restricted access refers to data held by agents of the State, or by any public institution, disclosure of which has been limited only to the officials who should have knowledge of it.⁵⁸² Thus, Article 14 establishes that the following is considered to be of restricted access: "national security information handled by security forces; trade secrets or confidential commercial information obtained by the State through its regulation of economic activities; matters related to [disciplinary] proceedings or jurisdictional matters before the Public Prosecutor's Office and the judiciary that are accessible only to the parties of the case, until they have reached final judgment; information having to do with investigative proceedings carried out by the Public Prosecutor's Office, public law enforcement, the Judicial Technical Police, the General Customs Office, the National Council on Security and Defense, the Office of Patrimonial Liability of the Comptroller General's Office, the Financial Analysis Office for the Prevention of Money Laundering, the Commission on Free Competition and Consumer Affairs, and the Oversight Agency for Public Services; information regarding the existence of oil and mineral deposits; minutes, notes, correspondence, and documents related to any type of diplomatic, commercial or international negotiations; documents, files, and transcripts that friendly nations provide to the country in criminal, police, or other investigations; the minutes, notes, files, and other records or written evidence regarding discussions or activities of the Cabinet Council and the President or Vice President of the Republic, with the exception of those related to the approval of contracts"; and "the transcripts of meetings and information obtained by Legislative Assembly Commissions when they meet in the exercise of their oversight functions" to gather any of the information detailed above.⁵⁸³

⁵⁷⁸ In accordance with the provisions of Article 1(5). Republic of Panama. Law on Transparency in Public Administration. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁷⁹ In accordance with the provisions of Article 1(7). Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸⁰ Republic of Panama. Law No. 6. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Arts. 17-19. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸¹ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸² Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸³ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 14 (1-9). Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. "Se considerará de acceso restringido, cuando así sea declarado por el funcionario competente, de acuerdo con la presente Ley: 1. La información relativa a la seguridad nacional, manejada por los estamentos de seguridad. 2. Los secretos comerciales o la información comercial de carácter confidencial, obtenidos por el Estado, producto de la regulación de actividades económicas. 3. Los asuntos relacionados con procesos o jurisdiccionales adelantados por el Ministerio Público y el Órgano Judicial, los cuales sólo son accesibles para las partes del proceso, hasta que queden ejecutoriados. 4. La información que versa sobre procesos investigativos realizados por el Ministerio Público, la Fuerza Pública, la Policía Técnica Judicial, la Dirección General de Aduanas, el Consejo Nacional de Seguridad y Defensa, la Dirección de Responsabilidad Patrimonial de la Contraloría General de la República, la Dirección de Análisis Financiero para la Prevención de Blanqueo de Capitales, la Comisión de Libre Competencia y Asuntos del Consumidor y el Ente Regulador de los Servicios Públicos. 5. La información sobre existencia de yacimientos minerales y petrolíferos. 6. Las memorias, notas, correspondencia y los documentos relacionados con negociaciones diplomáticas, comerciales e internacionales de cualquier índole. 7. Los documentos, archivos y transcripciones que naciones amigas proporcionen al país en investigaciones penales, policivas o de otra naturaleza. 8. Las actas, notas, archivos y otros registros o constancias de las discusiones o actividades del Consejo de Gabinete, del Presidente o Vicepresidentes de la República, con excepción de aquellas correspondientes a discusiones o actividades relacionadas con las aprobaciones de los contratos. 9. La transcripción de las reuniones e información obtenida por las Comisiones de la Asamblea Legislativa, cuando se reúnan en el ejercicio de sus funciones fiscalizadoras para recabar información que podría estar incluida en los numerales anteriores".

387. When a State institution of Panama denies access to information on grounds that is privileged, it must do so by means of a reasoned resolution that establishes the reasons for the refusal, based on the statute.⁵⁸⁴ In a case decided by the Supreme Court on September 16, 2003, a *habeas data* action was granted against the administration, as it had denied access to information that was classified, but had done so without explaining the decision by means of a resolution.⁵⁸⁵

388. Pursuant to Article 14 of the statute, the maximum period the information may be withheld is 10 years, which may be extended for an additional 10 years if the executive, legislative or judicial organs believe there are still valid reasons for maintaining the secrecy. The period of secrecy may not exceed 20 years. If the grounds for secrecy cease to exist before the additional restriction period expires, the information should be published.⁵⁸⁶

389. In Peru, access to information has been established as the rule and limitations as an exception to the presumption of disclosure that falls to all public information. Article 15-C of the statute establishes the principle in the following terms: "The cases established in Articles 15, 15-A, and 15-B are the only ones in which the right of access to public information may be limited; hence they must be interpreted restrictively as they involve a limitation to a fundamental right. No exception to this Law may be established by a lesser-ranking norm."⁵⁸⁷

390. Articles 15, 15-A, and 15-B, in turn, establish three categories for classifying limitations to access to information. Information is secret when it refers to military and intelligence matters; privileged when it has to do with police matters and matters of international relations and national security; and confidential when it has to do with individuals' personal data and intimate information, as well as with banking, tax, industrial, or commercial secrets.⁵⁸⁸ It is very important to emphasize that, significantly, the last paragraph of Article 15-C establishes that "information related to the violation of human rights or of the 1949 Geneva Conventions, carried out under any circumstances, by any person, shall not be considered to be classified information."⁵⁸⁹ Nevertheless, as in other laws, some of the exceptions established by this statute contain broad and general formulations, and thus will require legal and administrative implementation measures, such as the existence of public indexes and criteria related to privileged information or specialized implementation bodies.

391. In terms of the procedure, Peru's law establishes, in Article 13, that a response denying access to information must always be explained, based on one of the exceptions established in the statute itself. The response must be made in writing and must expressly state the reasons the exception is being applied and the time period for which the requested information will be withheld. Article 13 further establishes that access may not be denied based on the identity of the person making the request.⁵⁹⁰

⁵⁸⁴ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. Article 16. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸⁵ Supreme Court of Justice of Panama (Plenum). Habeas Data Action. Opinion by Justice Virgilio Trujillo López. September 16, 2003. Available at: <http://www.organojudicial.gob.pa/wp-content/uploads/2011/03/rj2010-04.pdf>

⁵⁸⁶ Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁵⁸⁷ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Art. 15-C. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

⁵⁸⁸ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

⁵⁸⁹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

⁵⁹⁰ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

392. Finally, Article 15 of the law provides that the classification shall be for five years, but it establishes that if the responsible official deems it is necessary to extend it, the decision must be justified in writing, specifying the additional period during which the information shall remain classified. The classification may be extended again through the same procedure, and no maximum period is established for keeping the information classified, which presents the problems already noted at the beginning of this chapter.⁵⁹¹

393. Uruguay establishes, in Article 4 of the Law on Transparency, that all information in possession of or under control of entities subject to the law “is presumed to be public.”⁵⁹² Likewise, Article 8 establishes that any exceptions to public information “shall be interpreted strictly and shall comprise those defined as secret by the law and those defined below as being of a classified and confidential nature.”⁵⁹³ Article 9, for its part, establishes that classified information is that which refers to matters such as public security or national defense, international relations, and financial stability; that which could jeopardize the life, human dignity or health of persons; that which leaves scientific discoveries unprotected; or information that could be presumed to cause a loss of competitive advantages for the party subject to the law or damage that party's production process.⁵⁹⁴ For its part, Article 10 provides that confidential information consists of personal data requiring informed consent, and data provided to entities subject to the law related to a person's patrimony, to facts of a financial, accounting, juridical or administrative nature that refer to a natural or legal person and which could be used by a competitor, and information protected by a contractual confidentiality clause.⁵⁹⁵ Some of the clauses cited offer broad content with no concrete definition of criteria. In this regard, it is important for legal and administrative implementation measures to be introduced, such as public indexes and criteria dealing with classified information, or perhaps specialized bodies responsible for implementing the measures.

394. One of the grounds for withholding information refers to contractual confidentiality clauses, under which information may be considered privileged even if it does not necessarily pursue a legitimate purpose, as the law does not establish a limitation to this clause.⁵⁹⁶ It will be up to the enforcement authority, then, to define the scope of this provision.

395. It is important to mention that Article 12 of the statute provides, significantly, that the restrictions mentioned are not applicable “when the information being requested refers to human rights violations or may be relevant in investigating, preventing, or averting violations of these rights.”⁵⁹⁷

396. Article 18 of the law establishes that access to information may be denied only by means of a reasoned decision that indicates the legal provisions on which it is based.⁵⁹⁸

⁵⁹¹ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

⁵⁹² Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁵⁹³ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Las excepciones a la información pública serán de interpretación estricta y comprenderán aquellas definidas como secretas por la ley y las que se definan seguidamente como de carácter reservado y confidencial”.

⁵⁹⁴ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁵⁹⁵ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁵⁹⁶ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 10(I)(C). Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁵⁹⁷ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “[C]uando la información solicitada se refiera a violaciones de derechos humanos o sea relevante para investigar, prevenir o evitar violaciones de los mismos”.

397. Finally, Article 11 establishes that the information may be classified for a period of up to 15 years. This period may be extended when it is duly justified that the reasons that led to the classification remain.⁵⁹⁹ No maximum period is established for the extension, which presents the problems already mentioned at the beginning of this chapter.

398. In the Dominican Republic, the principle of disclosure establishes access to information as the rule and secrecy as the exception. Article 3 of the General Law on Free Access to Public Information prescribes that “all acts and activities of the public administration [...] shall be subject to being public.”⁶⁰⁰ Articles 17 and 18 establish the type of information that may be classified.⁶⁰¹ Article 23 of the regulations, in turn, indicates that the most senior executive authorities in each of the agencies mentioned in the law “shall be those responsible for classifying the information that is prepared, held, safeguarded, or managed by the body, institution, or entity for which he or she is responsible, as well as for denying access to the information.”⁶⁰²

399. The same statute establishes restrictions based on “compelling public interests” and “compelling private interests.”⁶⁰³ Article 17 includes among the former: information linked to the defense or security of the State that has been classified as “secret”; information whose release could negatively affect the success of a measure of a public nature or the operation of the banking or financial system; information whose release could affect a legal strategy prepared by the administration in the processing of a judicial case; information classified as “secret” in the safeguarding of scientific, technological, communications, industrial, or financial strategies and projects; information that could harm the principle of equality among bidders for a State contract; information involving the advice, recommendations, or opinions produced as part of the deliberative and consultative process prior to the government's taking a decision; information involving commercial, industrial, scientific, or technical secrets; information for which secrecy imposed by law or judicial or administrative decisions in particular cases may not be violated; and information whose disclosure could affect persons' right to privacy, place their lives or security at risk, or jeopardize public security, the environment, or the public interest in general.⁶⁰⁴ For its part, Article 18 considers “compelling private interests” justifying the denial of information those that have to do with personal data, the disclosure of which could mean an invasion of privacy, and intellectual property. As was already observed in examining similar provisions, some of the grounds that are stated are especially broad. Thus, as long as more precise legislative parameters are not established, it will be up to the enforcement authorities to make such grounds concrete through clear and precise regulations, and to adequately specify and justify how they will be implemented.

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⁵⁹⁸ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁵⁹⁹ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁶⁰⁰ Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>. “Todos los actos y actividades de la administración pública [...] estarán sometidos a publicidad”.

⁶⁰¹ Dominican Republic. General Law on Access to Public Information. Ley 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>. “Las máximas autoridades ejecutivas de cada uno de los organismos, instituciones y entidades [...] serán las responsables de clasificar la información que elabore, posea, guarde o administre dicho organismo, institución o entidad a su cargo, así como de denegar el acceso a la información”.

⁶⁰² Dominican Republic. Decree No. 130-05 approving the Regulations for General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>

⁶⁰³ See Dominican Republic. General Law on Access to Public Information. Law 200-04. Arts. 17, 18, 22, 25. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>

⁶⁰⁴ See Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>

400. When an institution classifies a particular piece of information as secret based on the provisions established in Articles 17 and 18 of the statute, it must justify its decision and indicate the following, according to Article 29 of the law's regulations: "a) The name and position of the person classifying the information; b) The agency, institution, entity, and/or other source that produced the information; c) The dates or events established for public access, or the date on which the five-year period of classification will have expired; d) The reasons on which the classification is based; e) If applicable, the parts of the information that are classified as secret and those that are available for public access. The parts of the information that have not been classified as secret may be considered public information to which persons who so request may have access. f) The designation of the authority responsible for preserving the information."⁶⁰⁵

401. The law establishes a maximum classification period of five years, but leaves open the possibility for the period to be changed through special legislation. In fact, Article 21 of the law establishes that "[w]hen not provided otherwise in the specific laws regulating classified information, it shall be considered that the legal classification term is... five years. Once this period has expired, a citizen has the right to access this information, and the authority or entity in question has the obligation to provide the means to issue the pertinent copies."⁶⁰⁶

402. In El Salvador, the Access Law establishes the principle of maximum disclosure as one of the criteria governing its interpretation and application. According to this principle, "the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law."⁶⁰⁷ Article 19 of the law establishes the following information as privileged: military plans and secret political negotiations; information that could harm or jeopardize national defense and public security; information that could damage diplomatic relations; information that could clearly endanger the life, security, or health of any person; information relating to the deliberative process of public servants, as long as a final decision has not been made; information that could seriously prejudice the prevention, investigation, or prosecution of crimes or the administration of justice or the verification of compliance with the law; information that could compromise government strategies and operations in ongoing judicial or administrative procedures; and information that could create an undue advantage for one person to the detriment of a third party.⁶⁰⁸

403. For a piece of information to be classified as secret, according to the Law on Access to Public Information of El Salvador the entity subject to the law must issue a resolution justifying its decision. Article 21 establishes that this administrative act must lay out that the information meets the grounds for exceptions established in Article 19, that its disclosure could pose a threat to the legal interest protected by the secrecy provision, and that the damage that could result from releasing the information is

⁶⁰⁵ Dominican Republic. Decree No. 130-05 approving the Regulations for General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>. "a) El nombre y cargo de quien clasifica la información; b) El organismo, institución, entidad y/u otra fuente que produjo la información; c) Las fechas o eventos establecidos para el acceso público, o la fecha correspondiente a los 5 años de la clasificación original; d) Los fundamentos de la clasificación; e) En caso de corresponder, la partes de información que se clasifican como reservadas y aquellas que están disponibles para el acceso público. Las partes de la información que no hayan clasificado como reservadas serán consideradas como información pública a la que tendrán acceso las personas que así lo soliciten. f) La designación de la autoridad responsable de su conservación".

⁶⁰⁶ See Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrI%3d&tabid=69&mid=421>. "Cuando no se disponga otra cosa en las leyes específicas de regulación en materias reservadas, se considerará que el término de reserva legal [...] es de cinco años. Vencido este plazo, el ciudadano tiene derecho a acceder a estas informaciones y la autoridad o instancia correspondientes estará en la obligación de proveer los medios para expedir las copias pertinentes".

⁶⁰⁷ Republic of El Salvador. Law on Access to Public Information. Article 4(a). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "[L]a información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones expresamente establecidas por la ley".

⁶⁰⁸ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

greater than the public interest in making it known.⁶⁰⁹ Further, pursuant to Article 22, the Access to Public Information Units of the various bodies subject to the law must prepare on a semiannual basis an index of the information that has been classified as secret.⁶¹⁰ The Institute for Access to Information shall maintain a centralized record of indexes of classified information, which may be consulted by the public.⁶¹¹

404. It is important to mention that the final paragraph of Article 19 provides that information may not be characterized as classified “when it has to do with the investigation of grave violations of fundamental rights or crimes of international significance.”⁶¹² At the same time, it must be noted that Article 110 of the Access Law establishes that its provisions shall apply to all information in the hands of the bodies subject to the law; thus, any conflicting provisions in other laws are repealed.⁶¹³ However, the same article lays out an extensive list of provisions that continue to be in force, independent of their content.

405. Article 24 of the law regulates confidential information. Information is classified as such “when it concerns the right to personal and family privacy, honor, and self-image”, as well as medical records; information “that has been provided on a confidential basis to entities subject to the law”; personal information whose release requires individuals' consent; and “secrets of a professional, trade, industrial, fiscal, banking, fiduciary or any other nature, and which are considered to be such by virtue of a legal disposition.”⁶¹⁴

406. Finally, Article 20 provides that the information classified as privileged pursuant to the provisions of Article 19 shall remain as such for a maximum period of seven years, although the information may be declassified before this period expires if the grounds for classifying it no longer apply.⁶¹⁵ The article also establishes that the Institute for Access to Information may extend the classification period for up to five additional years, provided the bodies subject to the law so request and if it can be justified that the reasons for classifying the information in the first place continue to apply.⁶¹⁶ In the case of secrecy grounds having to do with military plans and secret political negotiations, as well as with information that could jeopardize national defense and public security, additional extensions may be given, provided that the body subject to the law duly justifies the need to continue classifying the information.⁶¹⁷

⁶⁰⁹ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹⁰ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹¹ Republic of El Salvador. Law on Access to Public Information. Article 23. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹² Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹³ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹⁴ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Es información confidencial: a. La referente al derecho a la intimidad personal y familiar, al honor y a la propia imagen, así como archivos médicos cuya divulgación constituiría una invasión a la privacidad de la persona. b. La entregada con tal carácter por los particulares a los entes obligados, siempre que por la naturaleza de la información tengan el derecho a restringir su divulgación. c. Los datos personales que requieran el consentimiento de los individuos para su difusión. d. Los secretos profesional, comercial, industrial, fiscal, bancario, fiduciario u otro considerado como tal por una disposición legal”.

⁶¹⁵ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹⁶ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶¹⁷ Republic of El Salvador. Law on Access to Public Information. Art. 20. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

407. In Jamaica, the Access to Information Act recognizes the right of every person to obtain access to an official document, other than an exempt document, thus establishing access to information as the rule and secrecy as the exception. Part III of the act establishes the documents that are exempt from disclosure, which include: those documents whose disclosure would prejudice security, defense, or international relations (Section 14); documents created for the consideration of the Cabinet; documents relating to law enforcement if their disclosure could endanger any person's life or safety; documents that would be privileged on the ground of legal professional privilege; information that could have a substantial adverse effect on the national economy if disclosed prematurely; documents that reveal the government's deliberative process; information related to trade secrets; information that could result in the destruction of, damage to, or interference with, the conservation of any historical or archaeological sites; and documents that contain information that affects personal privacy.⁶¹⁸ As in other cases that have been discussed, some of these exceptions are phrased in broad and general terms, and thus without greater legislative precision, it falls to the enforcement authority to define the scope of the exceptions in accordance with the Constitution and international standards in this area.

408. In Jamaica, an authority that refuses access to information based on a belief that the information meets one of the grounds for considering the requested document as exempt from disclosure must issue a certificate to that effect, clarifying which documents or which parts of a document are exempt and specifying the basis for each exemption. Section 30 of the Access to Information Act establishes access to an internal review procedure for those cases in which access to a document is refused, only partial access is granted, access to a document is deferred, or a fee is charged for access.⁶¹⁹

409. For its part, Section 6(2) of the act establishes a general time period for the exemption of documents, specifying that: "[t]he exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years,"⁶²⁰ or such shorter or longer period as the Minister may specify by order, subject to approval of Parliament.⁶²¹

410. In Antigua and Barbuda, the law establishes access to information as a general principle. It contemplates a limited list of exceptions, which are the only ones that may be used to refuse requests for information. In any case, Section 24 states that when these exceptions are invoked, a public authority must weigh the interest or the right that is protected in denying access to the information with the public interest in disclosure.⁶²²

411. The types of information that may be restricted by the public authorities relate to the following matters: personal information, unless the person involved has consented to disclosure; information covered by a legal privilege such as attorney-client privilege; confidential information related to trade secrets or information obtained in confidence from another State; information that would likely endanger the life, health, or safety of any person; sensitive information related to the administration of justice or prevention of crime; information that would likely cause serious prejudice to defense or national security; information that would likely cause serious prejudice to the country's economy or commercial interests or to the environment; and information related to Cabinet deliberations or to government matters that are not final.⁶²³

⁶¹⁸ Jamaica. Access to Information Act. Sections 14-22. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

⁶¹⁹ Jamaica. Access to Information Act. Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

⁶²⁰ Jamaica. Access to Information Act. Section 6(2). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf

⁶²¹ Jamaica. Access to Information Act. Section 6(2). Available at: http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf.

⁶²² Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁶²³ Antigua and Barbuda. The Freedom of Information Act. Sections 26-33. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

412. Section 34 of the act provides that information related to sections 27 to 32 apply only to the extent that the harm they seek to protect against would likely continue to occur.⁶²⁴ Information related to Sections 28(c), 30, 31, and 32, for its part, would be exempt for no more than thirty years, “or such other longer or shorter period as the Minister may, by Order published in the Gazette, prescribe either generally or in respect of any particular class of records.”

413. In the case of Canada, the Access to Information Act contains a specific chapter on exemptions. Under Section 13(1), government institutions shall refuse to disclose any record that contains information that was obtained in confidence from the government of a foreign State, an international organization, a provincial government or institution, a municipal or regional government or institution, or an aboriginal government.⁶²⁵

414. Section 14 of the law establishes that “[t]he head of a government institution may refuse to disclose any record that contains information whose disclosure could be expected to be injurious to the conduct by the government of Canada of federal-provincial affairs.”⁶²⁶ Section 15 establishes the limitations on access to records whose disclosure could be injurious to the conduct of international affairs, the defense of Canada or any State allied or associated with Canada, or the detection, prevention, or suppression of subversive or hostile activities.⁶²⁷

415. Section 16 establishes limitations on access to records related to the investigation of crime or activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*, if the record came into existence less than 20 years prior to the request.⁶²⁸ The same section refers to limitations to access to “information that could reasonably be expected to facilitate the commission of an offence” and “information that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services.”⁶²⁹ Section 17 establishes that access to “information the disclosure of which could reasonably be expected to threaten the safety of individuals may be refused.”⁶³⁰

416. For its part, Section 10 stipulates that when the head of a government institution refuses to give access to a record requested, the notice given must state that the record does not exist or state the specific provision of the Access to Information Act on which the refusal was based. The notice shall also state that the person who made the request has a right to make a complaint to the Information Commissioner.⁶³¹

417. Finally, Section 25 establishes that the head of a government institution shall grant access to any part of a restricted record that does not contain confidential information.⁶³²

418. In the United States, Section (b) of the FOIA allows nine exceptions to access to information: (1) matters that are “(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy⁶³³ and (B) are in fact properly

⁶²⁴ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁶²⁵ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶²⁶ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶²⁷ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶²⁸ Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶²⁹ Canada. Access to Information Act. Art. 16(2-3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶³⁰ Canada. Access to Information Act. Art. 17. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶³¹ Canada. Access to Information Act. Art. 10. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶³² Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

⁶³³ United States of America. The Freedom of Information Act, 5 U.S.C. § 552(b). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

classified pursuant to such Executive order”; (2) internal agency rules; (3) exemptions by statute⁶³⁴; (4) trade secrets; (5) inter-agency or intra-agency memorandums; (6) personnel and medical files (privacy); (7) certain information compiled for law enforcement purposes; (8) information related to the regulation or supervision of financial institutions; and (9) geological data concerning wells.⁶³⁵

419. Complementing the statute, Executive Order 13526—Classified National Security Information, issued on December 29, 2009,⁶³⁶ prescribes a uniform system for classifying, safeguarding, and declassifying national security information.⁶³⁷ It details the procedures and principles governing the classification of information, including classification standards, levels, authorized authorities, categories, duration, identification and markings, prohibitions and limitations, and challenges.⁶³⁸ It also stipulates rules for declassifying information and/or downgrading its category, specifying who has the authority to do so and other aspects such as automatic declassification and systematic declassification reviews.⁶³⁹

420. Part 3, Section 3.1, of Executive Order 13526—Classified National Security Information establishes that information shall be declassified as soon as it no longer meets the standards for classification under the order. Subparagraph (d) establishes that it is “presumed that information that continues to meet the classification requirements under the order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.”⁶⁴⁰

421. The FOIA section on the obligation to respond indicates that each agency shall determine within 20 days after the receipt of a request for information whether to comply with the request and shall immediately notify the person making the request of such determination “and the reasons therefor.”⁶⁴¹ However, this same specification is not made with respect to the resolution of administrative appeals, although it could reasonably be understood that the obligation to provide a justification would also apply to this determination.⁶⁴²

⁶³⁴ The intent of the third exception is to limit the disclosure of information that other federal laws consider secret. This exception incorporates such laws as the Census Act, which prohibits the use of information for purposes other than that for which it was provided; the National Security Act, which exempts from disclosure “the names, titles, salaries, and number of persons employed by” the National Security Agency; or the Central Intelligence Agency (CIA) Act, which restricts public access to its operating files. Available at: <http://uscode.house.gov/download/pls/50C15.txt>

⁶³⁵ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(b). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁶³⁶ United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at: <http://www.state.gov/documents/organization/135190.pdf>

⁶³⁷ United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at: <http://www.state.gov/documents/organization/135190.pdf>. Executive Order 13526 establishes three levels of classifications in Section 1.2(a), which are: “top secret,” disclosure of which could cause exceptionally grave damage to the national security; “secret,” disclosure of which could cause serious damage to the national security; “confidential,” disclosure of which could cause damage to the national security. It also states: “(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information. (c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.”

⁶³⁸ United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

⁶³⁹ United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

⁶⁴⁰ United States of America. Executive Order 13526 – Classified National Security Information. Sec. 3.1(d). December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

⁶⁴¹ United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

⁶⁴² United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

422. In Trinidad and Tobago, the Freedom of Information Act contains a chapter on “exempt documents,” which defines the types of documents whose disclosure may be restricted. These include: Cabinet documents; documents containing information that, if disclosed, would likely prejudice the defense of the Republic of Trinidad and Tobago or prejudice the lawful activities of the security or intelligence services; documents whose disclosure would prejudice Trinidad and Tobago's international relations; the government's internal working documents; those related to the work of law enforcement if disclosure could prejudice the investigation of a breach of the law or the enforcement or proper administration of the law or prejudice a fair trial; documents containing trade secrets; documents containing information that would be reasonably likely to have a substantially adverse effect on the country's economy and commercial activities; and documents containing information that has been prohibited from disclosure based on a written law in force.⁶⁴³

423. The grounds for refusing access to a document must be provided. Section 27(3) specifies that “[w]here a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 23 shall state the public interest considerations on which the decision is based.”⁶⁴⁴

424. Paragraph (2) of Section 24 indicates that exemptions shall cease to apply to a document brought into existence on or after the commencement of the Freedom of Information Act when a period of 10 years has elapsed since the last day of the year in which the document came into existence. In addition, Section 24 (3) does not exempt documents containing purely statistical, technical, or scientific material, unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.⁶⁴⁵

425. Importantly, Section 35 establishes that a public authority shall give access to an exempt document where there is reasonable evidence of significant abuse of authority or neglect in the performance of official duty; injustice to an individual; danger to the health or safety of an individual or of the public; or unauthorized use of public funds.⁶⁴⁶

426. In the case of Colombia, the exceptional nature of the limitations is not clear, given that provisions on confidentiality are dispersed throughout different types of laws and there is no legal precept that specifically establishes the preeminence in interpretation of the right to access to information. Nevertheless, the Constitutional Court has developed the exceptional nature of confidentiality in its case law. Thus, in judgment C-887 of 2002, the Court affirmed that every person has the right to obtain access to information and that only the law and the Constitution may restrict this right.

[T]he general rule on disclosure of public documents is enshrined in the Constitution itself, and only the law is authorized to establish exceptions to the right to access public documents. The Court has recognized this from its first decisions, in finding that 'the exercise of the right to access to public documents must, then, conform to the postulates of the Constitution and the law, as is expressly provided in Article 74. That is: only the Founding Charter and the law may establish limits to the exercise of this right which, of

⁶⁴³ Trinidad and Tobago. The Freedom of Information Act. Sections 24-34. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁶⁴⁴ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf.

⁶⁴⁵ Trinidad and Tobago. The Freedom of Information Act. Available at: http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

⁶⁴⁶ Trinidad and Tobago. The Freedom of Information Act. Available at http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf

*course, includes the right to inspect documents in situ and not just, as could be thought, the right to request copies.*⁶⁴⁷

427. Law No. 57 of 1985 does not specifically establish what are the limitations to the right to information, although Article 21 provides that the public administration shall may refuse a request to inspect or copy a document only by means of a reasoned decision that explains the privileged nature of the document, indicating the pertinent legal provisions that apply.⁶⁴⁸ Limitations to the right of access to information are dispersed throughout the legal system, with all the problems of legal uncertainty that implies. The Constitution itself establishes that Congress may not demand from the government information regarding instructions in diplomatic matters or negotiations of a classified nature.⁶⁴⁹ For its part, Article 9 of Law No. 63 of 1923 establishes that the sessions of the Council of Ministers as a consultative body are completely privileged;⁶⁵⁰ Article 4 of Law. 10 of 1961 provides that persons who work in the oil industry shall provide the government with a series of data, and that the government shall hold as confidential any information that could compromise those persons' legitimate interests;⁶⁵¹ Article 2 of Decree No. 1651 of 1961 establishes the confidential nature of data contained in statements related to income and assets⁶⁵²; Article 12 of Law No. 57 of 1985 provides that information on defense and national security is not open to the public;⁶⁵³ Article 27 of the General Law on Archives provides that those responsible for public and private archives must guarantee the rights to personal and family privacy, and persons' right to honor and reputation;⁶⁵⁴ and the Sole Disciplinary Code⁶⁵⁵ and the Organic Law on the Financial System⁶⁵⁶ establish the confidentiality of investigations during certain stages; and so on.

428. Meanwhile, Articles 13 of Law No. 57 of 1985⁶⁵⁷ and Article 28 of Law No. 594 of 2000⁶⁵⁸ establish that the legal confidentiality of any document shall cease once 30 years have passed since it was issued. Other laws establish different time periods for certain types of information. Thus, for example,

⁶⁴⁷ Constitutional Court of Colombia, Judgment C-887 of 2002. Available at: <http://www.corteconstitucional.gov.co/relatoria/2002/C-887-02.htm>. "La regla general sobre publicidad de los documentos públicos está consagrada en la propia Constitución, y únicamente la ley está habilitada para establecer las excepciones al derecho de acceder a los documentos públicos. Así lo ha reconocido la Corte desde sus primeros pronunciamientos al considerar que 'el ejercicio del derecho al acceso a documentos públicos debe, pues, ceñirse a los postulados de la Constitución y la ley tal como lo dispone expresamente el artículo 74. Vale decir: solo la Carta Fundamental y la ley pueden establecer límites al ejercicio de este derecho que por supuesto, incluye la consulta de los documentos in – situ y no sólo como pudiera pensarse, la solicitud de copias".

⁶⁴⁸ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html

⁶⁴⁹ Political Constitution of Colombia. Article 136. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>

⁶⁵⁰ Republic of Colombia. Law 63 of 1923. Art. 9. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1923/ley_0063_1923.html

⁶⁵¹ Republic of Colombia. Law 10 of 1961. Art. 4. Available at: http://www.anh.gov.co/media/normatividadHidrocarburos/Ley_10_de_1961.pdf

⁶⁵² Decree 1651 of 1961, published in Official Gazette No. 30583. August 10, 1961. Available at: <http://www.imprenta.gov.co>

⁶⁵³ Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html

⁶⁵⁴ Republic of Colombia. Ley 594 de 2000. Enacting the General Law on Archives. Available at: <http://www.archivogeneral.gov.co/?idcategoria=2023>

⁶⁵⁵ See Republic of Colombia. Law 734 of 2002. Enacting the Sole Disciplinary Code (Código Disciplinario Único). Available at: http://www.secretariasenado.gov.co/senado/basedoc/ley/2002/ley_0734_2002.html

⁶⁵⁶ See Republic of Colombia. Decree 663 of 1993. Organic Statute of the Financial System. Available at: http://www.secretariasenado.gov.co/senado/basedoc/ley/2002/ley_0734_2002.html

⁶⁵⁷ Republic of Colombia. Law 57 of 1985, ordering the publicity of official acts and documents. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html

⁶⁵⁸ Republic of Colombia. General Law of Archives. Law 594 of 2000. Official Gazette No. 44.093. July 20, 2000. Article 28. Available at: http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html

Article 5 of Law No. 1097 of 2006 established a confidentiality period of 20 years related to “discretionary expenditures.”⁶⁵⁹

429. Finally, in the case of Argentina—which, as has been mentioned, does not have a statute but rather an executive order that regulates the matter with respect to the executive branch— Article 16 of the Regulations on Access to Public Information determines that entities subject to the law “may only exempt themselves from providing information that has been requested when a Law or Decree so establishes...” and when one of the grounds contemplated in the same article is involved. Thus, the regulations allow for other legal provisions, including administrative decrees, to establish limitations to access to information.⁶⁶⁰ In particular, the fact that information may also be classified as secret through a decree casts doubt on the exceptional nature of the restrictions to the right to access.⁶⁶¹

430. The limitations to access contained in the Regulations on Access include classified information, especially as relates to security, defense, or foreign policy; secrets related to economic or scientific activities; information that could jeopardize the financial system; personal data of a sensitive nature; and information that could endanger a person's life or security.⁶⁶² Otherwise, different laws and regulations provide for information to be withheld. Such is the case, for example, with Law No. 25.520 on National Intelligence⁶⁶³ and Decree No. 950 of 2002, which regulates it,⁶⁶⁴ these provide that information related to intelligence efforts shall be subject to classification.⁶⁶⁵ Also, Article 101 of Law No. 11683 on Fiscal Procedures establishes the secrecy of sworn statements of income, communications, and reports presented to the Federal Administration of Public Income, as well as the administrative litigation proceedings where such information is assigned.⁶⁶⁶ Similarly, Law No. 21.526⁶⁶⁷, involving financial entities, establishes financial secrecy in its Articles 39 and 40, and Law No. 17.622⁶⁶⁸, creating the National Institute of Statistics and Census, stipulates in its Article 10 that information provided to the bodies of the National Statistics System is secret and may be used only for statistical purposes.

431. Pursuant to Article 13 of the General Regulations on Access to Public Information, the denial of a request for access to particular information must be duly reasoned, and may be based only on the fact that the information does not exist or that it is included in one of the established grounds for secrecy.⁶⁶⁹

⁶⁵⁹ Republic of Colombia. Law 1097 of 2006. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2006/ley_1097_2006.html

⁶⁶⁰ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf. “sólo pueden exceptuarse de proveer la información requerida cuando una Ley o Decreto así lo establezca”.

⁶⁶¹ In addition, according to information the Office of the Special Rapporteur has received, in practice the private nature of information and *habeas data* are commonly used to deny access to information.

⁶⁶² Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

⁶⁶³ Republic of Argentina. Law 25.520. Law on National Intelligence, enacted December 3, 2001. Available at: http://www.mindef.gov.ar/institucional/marco_legal/ley-25520.php

⁶⁶⁴ Republic of Argentina. Decree 950/2002. Regulations for the Law on National Intelligence. Available at: <http://www.espaciosjuridicos.com.ar/datos/DECRETOS/Decreto%20950-2002%20Ley%20de%20Inteligencia%20Nacional.htm>

⁶⁶⁵ Article 16 provides that only the President of the Nation or the official to whom such an authority has been expressly delegated may authorize its disclosure. In addition, Article 10 of the Decree establishes five security classifications to which documents may be subject, namely: strictly secret and confidential, secret, confidential, privileged, and public.

⁶⁶⁶ Republic of Argentina. Law No. 11.683 of January 12, 1933. Available at: <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=18771>

⁶⁶⁷ Republic of Argentina. Law 21.526. Available at: http://www.metropoliscf.com/PDF/Ley_de_Entidades_financieras.pdf

⁶⁶⁸ Republic of Argentina. Law 17622 of January 25, 1968. Creation of the National Institute of Statistics and Census. Available at: <http://www.deis.gov.ar/LEY17622.htm>

⁶⁶⁹ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

b. Regime of sanctions

432. On this subject, in their 2004 Joint Declaration, the UN, OAS, and OSCE rapporteurs for freedom of expression stated that “[n]ational authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector,” which “should include provision for sanctions for those who willfully obstruct access to information.” It adds that “[s]teps should also be taken to promote broad public awareness of the access to information law.”⁶⁷⁰

433. The Model Law on Access to Information, adopted by the OAS General Assembly, establishes that: “No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Law, as long as they acted reasonably and in good faith.” The law also indicates that it is “a criminal offense to willfully destroy or alter records after they have been the subject of a request for information.” It also stipulates a limited list of willful conduct that should be considered administrative offenses, including: obstructing access to any record; obstructing the performance by a public authority of a duty; interfering with the work of the Information Commission; failing to create a record either in breach of applicable regulations and policies or with the intent to impede access to information; and destroying records without authorization.⁶⁷¹

434. In this regard, the countries that were the objects of this study provide sanctions for violating the right to access to public information. Punishable offenses in this regard vary: some impose sanctions for the refusal of access to information, while others also penalize the destruction or modification of information or delays in providing it.

435. Ecuador's Organic Law on Transparency, in Article 23, establishes sanctions on employees or public or private officials who “incurred in acts or omissions to illegitimately deny access to public information, this being understood as information that has been completely denied or partially denied based on incomplete, altered, or false information they provided or should have provided [...]”⁶⁷² Disciplinary and administrative sanctions are applied without prejudice to any criminal or civil actions that may be brought for the same reasons; these range from monetary fines up to suspension and dismissal from the person's post. When private legal persons or individuals incur in the actions or omissions indicated in the statute, a monetary fine ranging between US \$100 and \$500 dollars is imposed for each day of failing to comply.⁶⁷³

436. In Mexico, Articles 63 and 64 of the Federal Transparency and Access to Public Governmental Information Act establish seven grounds for public servants' administrative liability for failing to comply with the provisions of the law. These are: using, appropriating, destroying, hiding, damaging, disclosing, or altering, in whole or in part and in an unlawful manner, the information in their safekeeping; acting negligently or in bad faith in the processing of the requests for access to information or in the dissemination of the information; intentionally denying information that has not been classified as privileged or confidential; fraudulently classifying as privileged information that does not meet the prescribed characteristics; releasing information classified as privileged or confidential under this statute;

⁶⁷⁰ Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

⁶⁷¹ OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Articles 64, 65, and 66. Available at: http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf

⁶⁷² Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 23. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Los funcionarios de las entidades de la Administración Pública y demás entes señalados en el artículo 1 de la presente Ley, que incurrieren en actos u omisiones de denegación ilegítima de acceso a la información pública, entendiéndose ésta como información que ha sido negada total o parcialmente ya sea por información incompleta, alterada, o falsa que proporcionaron o debieron haber proporcionado, serán sancionados [...]”.

⁶⁷³ Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 23 (c). Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

intentionally releasing incomplete information as derived from a request for access, and failing to release information as ordered by entities with jurisdiction.⁶⁷⁴ Administrative liabilities are independent of any civil or criminal liability that may be involved based on the same actions.⁶⁷⁵

437. In Uruguay, Article 31 of the Law on Access establishes four grounds that constitute serious offenses and engender administrative liability, namely: denying access to information that is not privileged or confidential; omitting information that has been requested or releasing intentionally incomplete information, acting negligently or in bad faith; allowing access to classified information; and using, hiding, disclosing, or altering, in whole or in part, the information in their safekeeping.⁶⁷⁶ It does provide for criminal sanctions for disclosing or facilitating awareness of secret or confidential information.⁶⁷⁷

438. In the case of Guatemala, Articles 36 and 37 of the Law on Access to Public Information establish that information, documents, and records that belong to administrative archives may not be destroyed, altered, or concealed by public servants, unless such actions were justified based on legal grounds.⁶⁷⁸ Failing to comply with this prohibition could lead to administrative and criminal sanctions, in the latter case for abuse of authority and failure to comply with duties. The statute also indicates that individuals who participate in the previously mentioned conduct shall be charged with the crime of destruction of the national patrimony.⁶⁷⁹

439. Title Five of the law, for its part, refers to the sanctions and liabilities for failing to comply with the law's provisions.⁶⁸⁰ There it is established that public servants or individuals who break the law shall be subject to administrative or criminal sanctions.⁶⁸¹ Punishable conduct includes the commercialization of personal data protected by the law, without the express and written authorization of the person to whom it relates,⁶⁸² the alteration or destruction of sensitive personal information contained in the archives of public institutions;⁶⁸³ the arbitrary or unjustified obstruction of access to information;⁶⁸⁴ and the disclosure of confidential or privileged information.⁶⁸⁵

⁶⁷⁴ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 63. Available at: <http://www.ifai.org.mx/English>

⁶⁷⁵ United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 64. Available at: <http://www.ifai.org.mx/English>

⁶⁷⁶ Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

⁶⁷⁷ Oriental Republic of Uruguay. Criminal Code. Article 163. Available at: http://www0.parlamento.gub.uy/Codigos/CodigoPenal/Cod_Pen.htm

⁶⁷⁸ Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁷⁹ Republic of Guatemala. Law on Access to Public Information. Articles 37, 38. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸⁰ Republic of Guatemala. Law on Access to Public Information. Article 61 *et seq.* Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸¹ Republic of Guatemala. Law on Access to Public Information. Article 61. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸² Republic of Guatemala. Law on Access to Public Information. Article 64. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸³ Republic of Guatemala. Law on Access to Public Information. Article 65. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸⁴ Republic of Guatemala. Law on Access to Public Information. Article 66. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

⁶⁸⁵ Republic of Guatemala. Law on Access to Public Information. Article 67. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

440. In 2010, the Constitutional Court of Guatemala handed down a decision in an *amparo* action filed by a national Congresswoman against the Minister of Education. The plaintiff had asked the Minister to provide her with a list with the full name, address, and identity card number of each of the beneficiaries of the “*Mi Familia Progresá*” social program. When the Ministry did not turn over the information she had requested, the Congresswoman filed an *amparo* action, arguing that she had been denied access to information. The Court’s decision of November 10, 2009, granted provisional *amparo* to the plaintiff and ordered that the information be given to her in an expedited period of three days.⁶⁸⁶

441. Then in 2010, the Court established that the Ministry had not complied with the order to turn over the documentation requested by the plaintiff. The Ministry argued that it had been unable to turn over the complete information because the beneficiaries’ identity cards fall under banking secrecy, which is classified as confidential information by the Ministry, and that the beneficiaries had provided the information based on a guarantee of confidentiality.⁶⁸⁷

442. The Court stated that the Ministry’s argument was unacceptable, as it could not be alleged that banking secrecy was grounds for denying the information requested, all the more so since the Ministry was not a banking entity. The Court also stated that the decision to classify the information as privileged came after the request for access, and so it was not applicable in this case. Finally, it affirmed that confidentiality could not be opposed when the information was requested by a State official in the context of his or her oversight functions:

*Even when it is maintained that the requested information was provided by the interested parties under guarantee of confidence, such confidentiality may not be used as an argument to oppose if the information has been requested by a State official who, based on a law, has the prerogative to request information, as long as the request is made as part of the exercise of a function to provide oversight of State activity, the way funds belonging to the public treasury are invested, and how the State Budget of Income and Expenditures is executed...*⁶⁸⁸

443. Therefore, the Court ordered the Ministry to materially turn over the information requested by the Congresswoman. Moreover, based on Articles 32 and 50, paragraph (b), of the Law of Amparo, Habeas Corpus, and Constitutionality, it sanctioned the Minister of Education by removing him from his post for having failed to comply with the order to turn over the information that was requested. The following was stated in the provisional *amparo* remedy:

All decisions of this tribunal, in the exercise of its jurisdictional function on constitutional matters, are non-appealable on the merits and thus, pursuant to the previously cited Law, they must be fully obeyed, without avoiding or evading compliance.

[...] This Court arrives at the final conclusion that the Minister of Education failed to comply with, and therefore disobeyed, the order issued to said ministerial authority by this Court, in a ruling of the tenth of November, two thousand and nine: an order which, the decision it contained having been definitive, should have been complied with completely and without excuses in the time period indicated in that ruling. Thus, it is fitting to find

⁶⁸⁶ Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>

⁶⁸⁷ Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>

⁶⁸⁸ Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>. “Aun cuando se esgrima que la información solicitada fue proporcionada por los interesados bajo la garantía de confidencia, tal confidencialidad no puede oponerse para el caso de que sea información requerida por un funcionario del Estado, que de acuerdo con una ley, ostenta una prerrogativa para solicitar información, siempre que la solicitud de aquella se haga en el marco del ejercicio de una función fiscalizadora de la actividad estatal, de la forma como se invierten fondos pertenecientes al erario público y cómo se ejecuta el Presupuesto de Ingresos y Egresos del Estado”.

*disobedience of an order issued by an amparo court, with the effect established for such in compliance in Article 50, paragraph (b) of the Law of Amparo, Habeas Corpus, and Constitutionality.*⁶⁸⁹

444. In Nicaragua, the statute establishes, in Article 47, that public servants shall be sanctioned with fines of up to six months of their monthly salary when they refuse, in an unjustified manner, to provide public information that is requested of them; destroy or alter information in their safekeeping; turn over, copy, or disseminate privileged information; or classify as privileged information that is public. These sanctions are applied without prejudice to any criminal responsibility inferred from the Criminal Code.⁶⁹⁰ In addition, Article 49 establishes that sanctions consisting of fines shall also be imposed on the head of any entity that, in contravention of the law, “classifies as privileged information that which is public.”⁶⁹¹

445. Chapter VI of Panama's Transparency Law addresses the sanctions and liabilities of officials. It establishes, in Article 20, that any official who fails to comply with the obligation to provide information after being ordered to do so by a Court is in contempt [*desacato*] and shall be sanctioned with a “minimum fine equivalente al doble del salario mensual que devenga”.⁶⁹² A recurrence shall be punished with dismissal.⁶⁹³ Article 22 provides that any official who blocks access to information and/or destroys or alters a document shall also be sanctioned with a fine.⁶⁹⁴ These fines operate without prejudice to any possible criminal or administrative liability that may be derived from the offense. In addition, the person harmed by the refusal of access to information may sue the public servant for damages that he or she may have incurred as a result.

446. In El Salvador, Article 28 of the Access Law determines that officials who disclose privileged or confidential information shall be sanctioned in accordance with the provisions of this law or other laws. It also establishes that “in the same way, persons who disclose information having knowledge of its privileged or confidential nature shall be held to account.”⁶⁹⁵ It falls to the Institute for Access to Information to take cognizance of sanctions processes and order administrative sanctions.⁶⁹⁶ Article 76 makes distinctions between very serious, serious, and minor offenses. Very serious offenses include the appropriation, destruction, concealment, or alteration of information in the custody of the person being

⁶⁸⁹ Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 of 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>. “Todas las decisiones de este tribunal, en ejercicio de la función jurisdiccional en materia constitucional, son irrecurribles por el fondo, y de ahí que de acuerdo con la Ley antes citada, deben ser plenamente acatadas, sin excusar o eludir el cumplimiento de las mismas. // (...) esta Corte arriba a la conclusión final de que existió incumplimiento y, por ende, desobediencia del Ministro de Educación a la orden emanada hacia dicha autoridad ministerial por parte de esta Corte, en auto de diez de noviembre de dos mil nueve; orden que, al estar debidamente firme la resolución que la contenía, debió ser cumplida de manera íntegra y sin excusas en el plazo señalado en aquel auto, de manera que por ello procede declarar la desobediencia de una orden emanada por un tribunal de amparo, con el efecto previsto para tal incumplimiento en el artículo 50, inciso b) de la Ley de Amparo, Exhibición Personal y de Constitucionalidad”.

⁶⁹⁰ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

⁶⁹¹ Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “El titular de cada entidad que indebidamente y en contravención a esta Ley, clasifique como información reservada, aquella que es pública, será sancionado pecuniariamente con la tercera parte de su salario mensual de uno a seis meses”.

⁶⁹² Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁶⁹³ Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 20. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf. “multa mínima equivalente al doble del salario mensual que devenga”.

⁶⁹⁴ Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 22. Available at: http://www.presidencia.gob.pa/ley_n6_2002.pdf

⁶⁹⁵ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶⁹⁶ Republic of El Salvador. Law on Access to Public Information. Article 58(e). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

investigated; the release of privileged or confidential information; the refusal to release information as ordered by the Institute; the failure to appoint an information officer for the entity subject to the law; the denial of access to information without justification; and the violation of the provisions on conservation and custody of information.⁶⁹⁷ Sanctions for very serious offenses consist of fines ranging from 20 to 40 times the monthly minimum wage. The commission of two or more very serious offenses within a one-year period shall lead to the suspension of the employee for 30 calendar days, ordered by the appropriate superior authority, unless the conduct warrants dismissal.⁶⁹⁸ Article 81 provides that the application of administrative sanctions contemplated in the law “shall be understood to be without prejudice to any criminal, civil, administrative, or other type of liability that may be incurred by the person responsible.”⁶⁹⁹

447. In Chile, the grounds for a sanction to apply are related to obstruction of access to information. Thus, Article 45 of the Law on Access to Public Information establishes that the unjustified denial of access to requested information, as well as the failure to turn the information over in a timely manner, are grounds for an administrative sanction with a “fine of 20 to 50% of their remuneration”⁷⁰⁰. A fine shall also be imposed on any authority who does not comply with the law’s provisions related to active transparency. In the case of a recurrence, the official may be suspended. The sanctioning body is the Council for Transparency.⁷⁰¹

448. In the Dominican Republic, Article 30 of the General Law on Free Access to Public Information indicates that “the public official or responsible agent who arbitrarily refuses, obstructs, or impedes an applicant’s access to the information being requested shall be sanctioned with a sentence of deprivation of liberty of six months to two years in prison, and will be ineligible to hold public posts for five years.”⁷⁰²

449. In Antigua and Barbuda, Section 48 of the law provides that any person who obstructs access to any record, obstructs a public authority’s performance of a duty to disclose information, interferes with the work of the Information Commissioner, or destroys records without legal permission commits an offense and is liable to imprisonment for up to two years or to a fine not exceeding five thousand East Caribbean dollars or both.⁷⁰³

450. Argentina and Colombia have less specific provisions. However, in both cases, delays in the release of requested information are subject to sanction. Thus, Argentina, in Article 15 of the General Regulations on Access to Public Information of the Federal Executive Branch, provides that any official who obstructs access to information, or provides information incompletely, incurs a serious offense, without prejudice to ensuing criminal or civil liability.⁷⁰⁴ In this regard, Article 249 of the Criminal Code

⁶⁹⁷ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶⁹⁸ Republic of El Salvador. Law on Access to Public Information. Article 70. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

⁶⁹⁹ Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “se entenderá sin perjuicio de las responsabilidades penales, civiles, administrativas o de otra índole en que incurra el responsable”.

⁷⁰⁰ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Arts. 45, 46. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁷⁰¹ Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Articles 46-47. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

⁷⁰² Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>. “el funcionario público o agente responsable que en forma arbitraria denegare, obstruya o impida el acceso del solicitante a la información requerida, será sancionado con pena privativa de libertad de seis meses a dos años de prisión, así como con inhabilitación para el ejercicio de cargos públicos por cinco años”.

⁷⁰³ Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

⁷⁰⁴ Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

imposes special fines and one-year ineligibility penalties on any official who, through omission or delay, fails to perform his legal duty to provide information.⁷⁰⁵

451. For its part, Article 25 of Colombia's Law No. 57 of 1985 establishes that if a response is not given to a request for access to information within the legally established period, the unwilling official shall be sanctioned with the loss of employment. Likewise, Article 29 provides that failing to comply with or violating any of the law's provisions shall be grounds for misconduct and sanctioned with the dismissal of the responsible official from his or her post.⁷⁰⁶

452. In Peru, Article 4 of the Law on Transparency determines that those officials who fail to comply with the provisions contained therein shall be sanctioned for committing a grave offense, and could even be charged criminally for committing the offense of abuse of authority.⁷⁰⁷

D. Conclusions

453. In this report, the Office of the Special Rapporteur offers a comparative study of the legal norms regulating the right to access to public information in some of the countries of the region that have access statutes or general regulations of another nature, as with Argentina. This report limits itself to describing the content of the legislation. In future efforts, the Office of the Special Rapporteur will focus on questions related to implementation, as it is mindful that putting these laws into practice requires systematic implementation policies, and that in many cases some aspects of the laws may not be implemented efficiently, effectively, or adequately.

454. This comparative evaluation confirmed the importance of establishing specific legislative instruments to ensure the right to access to public information. One general conclusion of this study is the importance that these laws expressly enshrine the principles contained in inter-American standards in this area, which lay the groundwork for this right to be fully guaranteed. This study also reveals the need for regulatory frameworks to assign responsibilities to autonomous, independent specialized units to resolve any disputes that may arise with respect to access or denial of access to public information; thus, it recommends that States follow the example of those States such as Mexico and Chile where the right to access is vigorously protected through such institutions. Finally, one important general conclusion of this study is the essential role that judges and courts should play in the implementation of the right to public information, as the final guarantors of the effective protection of human rights.

455. In general, the different legal frameworks studied have important safeguards for protecting the right of access to public information. However, there are differences among these frameworks, and in some cases the legal norms have not been designed, in the strictest sense, in keeping with the highest international standards. Nevertheless, based on the comparative information and the relevance of some of the best practices that have been developed in some States, this report may serve to establish adjustments in standards, jurisprudence, and regulations that may be necessary to advance in the protection of this right.

456. The Office of the Special Rapporteur notes that the legal systems that were studied incorporate, in one way or another, the principle of maximum disclosure. While in some countries this principle is adopted expressly, in others the principle of maximum disclosure is incorporated indirectly in some provisions. In this regard, the principle establishing that the right to access to information is the rule,

⁷⁰⁵ Republic of Argentina. Criminal Code of the Nation of Argentina. Law 11.179. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>

⁷⁰⁶ Republic of Colombia. Law 57 of 1985, ordering the publicity of official acts and documents. Available at: http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html

⁷⁰⁷ Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: http://www.peru.gob.pe/normas/docs/LEY_27806.pdf

and secrecy the exception, is contemplated in nearly all the countries that were studied, through the principle of disclosure.

457. However, only some of the legal systems studied establish expressly and directly that the State is responsible for proving the legitimacy of limitations to access to information. Likewise, not all laws establish expressly that the State has the burden to prove the legal basis for denying a request for information and must demonstrate the “proof of harm” that releasing the information would produce. The laws that have such a provision introduce a greater demand on the burden of proof regarding restrictions to access, and greater guarantees that this right will be protected.

458. Another aspect to highlight, which is appropriately included in the laws of Uruguay, Guatemala, Mexico, and Colombia, is the concept of affirmative administrative silence, meaning that if no response is given to a request for information within the legal time period, the person making the request may have access to the information. In other countries of the region that lack provisions in this area, administrative and judicial mechanisms are generally provided to challenge denials of requests. However, it is very important to incorporate the aforementioned standard into all laws in effect, as non-compliance imposes disproportionate obstacles and burdens on those entitled to this right.

459. The Office of the Special Rapporteur notes that some of the legal systems studied have provisions designed to guarantee various of the aspects embodied in the principle of good faith. However, only some countries expressly adopt this principle. While a broad interpretation of the presumption of disclosure may engender an assurance that the right to access to information will prevail in other laws, everything indicates that for this right to be guaranteed unequivocally, the law must contemplate an explicit provision to that effect.

460. The majority of the legal systems studied establish that all persons are entitled to the right of access to information. In some countries this definition does not include more detail about this right, while in others the definition is accompanied by specifics regarding its exercise—specifics which in some cases limit or restrict the right. Generally, in the majority of countries the determination that all persons have the right to access information carries an explicit mention that those who request information do not need to prove a direct interest or personal stake in making the request. However, some countries establish as a prerequisite for access that the person making the request justify or legitimize the petition, which places an unnecessary barrier in the way of effectively exercising this right. Another unjustified restriction arises in the case of countries that restrict the access right to persons who are citizens or immigrants with legal status.

461. Nevertheless, in none of the countries studied are individuals prohibited from disclosing public information—which would be a setback in terms of protection of the collective scope of the right to access to information. Case law has also developed along the lines of strengthening the right to access.

462. The Office of the Special Rapporteur has found that the legal systems studied are generally in line with the standard with regard to determining what entities are subject to the obligation to guarantee access to public information. Some States have extended this obligation directly to entities that are not public in nature but carry out public functions or execute public services—such as in the case of Ecuador, Guatemala, Nicaragua, the Dominican Republic, Panama and Peru—while others refer to entities that are indirectly subject to the law—such as in the case of Mexico—or omitted from it. On this point, it should be mentioned that while States should recognize that not only State institutions but also private persons that carry out public functions or receive support from the State are subject to the law, in such cases the duty to provide information refers exclusively to the public activities they perform or those they carry out with State support, so that the right to the confidentiality of private information is at the same time preserved.

463. In other cases, the study found that in some countries the obligation to provide access to information is excluded for companies with more than 50% private ownership, even though they execute public funds. Nevertheless, the study notes that in some States, case law and complementary legislation have served to open up this concept.

464. The study makes it possible to conclude that most of the countries studied incorporate into their laws clear definitions regarding the object of the right of access to information. Moreover, the legal systems of all the countries studied establish the obligation to respond to requests for information submitted by individuals. For such, they provide that entities subject to the disclosure requirements have a deadline in which to respond to requests for information, a period that ranges from 7 business days to 30 calendar days. In the majority of cases, the period may be extended, as long as there is a reason that justifies the extension. Several legal systems also provide that if the information has already been published, via any means, the response of the party subject to the law may simply be to give the petitioner the information that would allow the publication to be identified.

465. However, as was mentioned earlier, the majority of countries studied have the concept of negative administrative silence, which means that when the government does not respond in the period indicated, it is understood that access to the requested information has been refused. While these countries do not prescribe an affirmative administrative silence, they do establish the obligation to respond to requests for information within a period that, in general, may be extended through a reasoned decision.

466. On another point, some countries contemplate the possibility of presenting verbal requests for access to information, or requests made by telephone, but in the majority of cases the petition must be in writing, either on paper or electronically. The study notes that some countries establish the duty of public servants to advise interested parties in preparing the request for information (among them Guatemala, Nicaragua, Mexico, Jamaica), although not all the countries have sufficient policies in place for implementation.

467. The Office of the Special Rapporteur notes that all the countries studied have established regulations for the administrative procedures used to access information, as well as subsequent judicial guarantees. Included in the regulation process is the creation of an administrative remedy, as well as the determination of requirements that access requests must meet and the procedures arising from such requests. States such as Antigua and Barbuda, El Salvador, Mexico, Chile, and Canada have a specialized agency responsible for reviewing negative responses from the administration and adopting a final decision with respect to the request. The experience and practice of these institutions has been enormously important in advancing the effective guarantee of the right of access, and shows the importance of having these types of specialized authorities in the various legal systems. In all cases, it is essential to ensure the specialization and autonomy of these entities, which is evidenced to varying degrees in the systems discussed.

468. In the regulation of remedies and administrative procedures to access information, most of the countries studied establish a simple and easily accessible remedy, one that does not require contracting the services of a lawyer for requesting access to information. They also meet the requirement that the request be free of charge—independent of any costs that could be involved with making copies which in practice may become a disproportionate barrier to access the right—and that tight deadlines be established for responding to access requests. Nevertheless, in some places the remedies have not operated as the law has ordered, as adequate implementation policies have not been adopted.

469. Complementing this, the countries have different types of judicial remedies designed to challenge the government's denial of access or failure to respond to a request for access to public information. However, in practice, these remedies are not always truly effective to satisfy the right, since in some cases the matter is not resolved in an adequate period of time to protect this right effectively. In some States, the remedy consists of a special mechanism to guarantee the right of access to information (as occurs, for example, in Trinidad and Tobago, Uruguay and Chile); a constitutional action (such as the remedy of *amparo* or *tutela* in Colombia); or an administrative litigation remedy, which tends to take longer to resolve. In some legal systems, the interested party may select which remedy to pursue among several that are available.

470. This study leads to relevant conclusions in terms of the State's obligation to produce information and promote a culture of transparency. In fact, the duty of entities subject to the law to proactively provide public information is contemplated in all the legal systems that were examined in this study, although to varying degrees. Some of the legal systems studied do not refer to the State's duty to produce or gather information. However, some of them clearly establish that the State must turn over the information it is obligated to produce or gather, and that the entities subject to the law have the obligation to compile or assemble data already in their possession, in order to meet the standards of the right of access to information.

471. Similarly, some of the legal systems studied expressly provide for the obligation of the State to create a culture of transparency. States such as Ecuador, Guatemala, the Dominican Republic, and Nicaragua not only assign an official responsible for developing and executing the training of public officials and citizens in general, but also provide for educational programs to be developed in schools and educational institutions.

472. In general, the legal systems studied do not make reference to the design of a strategic plan to ensure that the right of access to information is in full effect. Some countries—such as Antigua and Barbuda, Mexico, Canada, Chile, and Uruguay—have created entities designed to ensure compliance with the provisions of the access to information law, while others have simply established special units within each entity for that purpose.

473. The States do have regulations regarding archives, either because they have issued laws on the subject or because provisions along those lines are included in their access to information law or in other laws and regulations. Finally, the legal systems of Nicaragua, and Peru order the adoption of budgetary measures to guarantee compliance with the laws.

474. All the legal systems studied have provisions establishing limitations to free access to public information. The Office of the Special Rapporteur recognizes that the regulation of exceptions to the right of access is one of the most complex and important issues in each legal system. In some cases, the statute itself presents some difficulties, while in others it is the interpretation and application of the law that has led to problems with implementation, a subject for more detailed study in future reports. What follows are some of the most relevant conclusions that relate exclusively to the design of the legal systems studied.

475. In the majority of the countries studied, the laws on access to information establish the principle of maximum transparency and the obligation to justify denials of access. They also establish the grounds that authorize an entity subject to the law not to release information that has been requested. Laws such as those of Nicaragua and Guatemala expressly establish that when an entity subject to the law deems it necessary to classify certain information as secret or confidential, the decision should be put to a proportionality test before it is issued.

476. In general, the grounds for secrecy are limited to the confidentiality of personal data and the classification of information that could prejudice other interests, such as national security. In some exemplary cases such as Guatemala, Mexico, Peru, and Uruguay, the law establishes that information on human rights violations may not be considered classified. Likewise, in cases such as that of Mexico, entities subject to the law are required to develop public indexes of the information considered privileged. The laws of Mexico, Nicaragua, and Guatemala specify the grounds for secrecy classification more precisely than many other laws with broad or vague provisions on subjects such as the defense of national security.

477. Nevertheless, in some cases the exceptions are very broad with no clear and precise conceptual definition given of the terms used or the legal criteria for establishing limits; consequently, their true scope is established in the implementation process, which will be the subject of future reports. In addition, many legal systems do not establish the obligation to separate classified information from public information, which means that entities subject to the law could be led to believe, erroneously, that if

part of a document is secret its entire content may be withheld, in contradiction to the provisions established by the principle of maximum disclosure.

478. In terms of the periods for classifying records, Ecuador, Nicaragua, Panama, Uruguay, Peru, Chile, Mexico, the Dominican Republic, Jamaica, and Guatemala establish initial maximum periods for classification. All of those countries authorize an extension of that period, but only Nicaragua, Panama, Chile, and Guatemala contemplate a maximum period of classification. Colombian law sets the maximum reserve term, which may vary from 20 to 30 years. Argentina does not address this issue in its Regulations on Access to Information of the Federal Executive Branch. Finally, it is important to note that Chile has established that the period for classifying matters of national defense and foreign affairs is indefinite.

479. In the majority of cases, some of the grounds for classifying documents continue to be broad in content and thus will require legal and administrative implementation measures, such as the existence of public criteria for classifying information and effective measures for protection. A more detailed evaluation along these lines will be the subject of future studies by the Office of the Special Rapporteur.

CHAPTER IV
REPARATIONS FOR THE VIOLATION OF ARTICLE 13 OF THE AMERICAN CONVENTION AND
OTHER RIGHTS RELATED TO ILLEGITIMATE RESTRICTIONS ON THE RIGHT TO FREEDOM OF
EXPRESSION

A. Introduction

1. A recurring question when a human rights violation or an undue restriction of a freedom that should be guaranteed by the State takes place is how to provide an effective administrative or judicial remedy in each specific case, not only in the sense of guaranteeing access to a fair procedure, but also with regard to the specific content that the judicial or administrative order must establish to restore the situation to the way it was prior to the violation or undue restriction. The difficulty of this situation is particularly acute when human rights are at issue. The question of to what point it is possible to redress human rights violations has been the subject of multiple academic and political discussion.

2. The doctrine of reparations in the field of human rights has enriched the discipline of international human rights law and provided tangible solutions for guaranteeing effective justice to specific victims of violations. In this context, the developing judicial practice of creating and strengthening standards on human rights reparations has been one of the most significant modern contributions of this branch of law, and Inter-American case law has played a fundamental role in energizing it.

3. This trend in the case law has also been reflected in matters of the violation of or undue restrictions on the rights established in Article 13 of the American Convention. Inter-American case law has made significant contributions with regard to ways of approaching the difficulty of how to redress a situation which, given the involvement of the right to freedom of expression and information, has the potential to affect not only the direct victim but also society as a whole. In addition, sensitive questions such as the lost opportunity to obtain or distribute information require specific solutions when considering full reparation of violations or restrictions.

4. This report seeks to carry out a systematic analysis of Inter-American rulings on freedom of expression, particularly of the orders for reparation issued as of October 2011 in cases which have involved violations or illegitimate restrictions of the freedom established in Article 13 of the Convention. With this purpose, the report is divided into three main parts. The first part will briefly review the right to holistic reparation under the standards established in inter-American doctrine and case law. The second part will address the cases that are the subject of this study, highlighting the significance of the damage and the measures that have been ordered by the Inter-American Court based on it. The third part presents a global review of the case law from the perspective of the five components of reparations that are recognized internationally: restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.

B. The right to reparation in inter-American human rights law

5. The concept of reparation has been developed at length in public international law,¹ to the point of becoming a basic principle of international human rights law² and international humanitarian law.³ Under the classic logic of international law, States are obligated to provide reparations for acts that are attributable to them that constitute violations of their international obligations.⁴ Consequently, the States responsible cannot invoke domestic legal provisions to justify a failure to comply with their obligation to provide reparations.

6. In keeping with international human rights law, the right to reparation has two dimensions: a substantive one and a procedural one. The substantive dimension is oriented toward providing holistic reparations for the damage caused, both pecuniary and non-pecuniary. The procedural dimension provides for the means for guaranteeing this substantive reparation and is included in the obligation to provide “effective domestic remedies,” an obligation that is set forth explicitly in the majority of human rights instruments.⁵ In this sense, the United Nations Human Rights Committee has indicated that the State obligation to grant reparations to those individuals whose rights recognized in the Covenant have been violated is a component of effective domestic remedies. According to the Committee, “Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged.”⁶

7. In a similar manner, the Inter-American Court of Human Rights has reiterated that reparations are “measures that tend to make the effects of the violation and the pecuniary and non-pecuniary damage caused disappear” and that therefore, the reparations “must bear relation to the violations.”⁷ Likewise, on finding that situations exist in which it is not possible to order the “reestablishment of the situation prior” to the violation, the Court “has found it necessary to grant various reparatory measures toward redressing the damages fully, for which reason in addition to pecuniary compensation, the measures of restitution, satisfaction and guarantees of non-repetition are especially relevant to the damage caused.”⁸

¹ For decades, the International Court of Justice has highlighted this principle in its case law. See for example: Permanent Court of Arbitration. *Chorzow Factory Case (Ger. V. Pol.)* (1928) P.C.I.J. Sr. A. No.17, at P. 47 (September 13); International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)*, Merits 1986 ICJ Report. P.149 (June 27). More recent rulings reaffirming this principle include: ICJ. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion. July 9, 2004. A/ES-10/273. P. 198.

² This principle can be found set forth in multiple human rights instruments. They include: the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment (art. 14) and the Convention on the Rights of the Child (art. 39).

³ In particular, the Hague Convention on the laws and customs of war on land (art. 3), the additional protocol to the Geneva conventions on the protection of victims of international armed conflicts (art. 91) and the Rome Statute of the International Criminal Court (art. 75).

⁴ The Draft of Articles on State Responsibility for Internationally Wrongful Acts, approved by the International Law Commission in 2001 establishes: “1. Every internationally wrongful act of a State entails the international responsibility of that State.” Draft Articles on Responsibility of States for Internationally Wrongful Acts. Arts. 28–41. In Report of the International Law Commission on the Work of Its Fifty-third Session. UN GAOR. 56th Sess. Supp. No. 10, at 43. UN Doc.A/56/10 (2001).

⁵ For a complete study on this obligation see: Dinah Shelton. *Remedies in International Human Rights Law*. Oxford University Press. Second Edition. 2005.

⁶ Human Rights Committee. General Comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant.

⁷ I/A Court H.R. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153. Para. 143.

⁸ I/A Court H.R. *Case of Chocrón-Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of July 1, 2011. Series C No. 227. Para. 145.

8. Additionally, both international human rights instruments and the rulings and case law of different international human rights protection bodies have understood that full and adequate satisfaction of the right to full reparations must guarantee that the reparation will be proportional to the violation suffered, its seriousness, and the damage caused. In this sense, both the international human rights instruments and the rulings of different international human rights protection bodies make reference to the obligation to guarantee proportional, adequate and just reparations.⁹

9. The restitution of the victim to the situation that prevailed before the human rights violation took place¹⁰ - or *restitutio in integrum*, as tribunals call it - include the different ways that a State can address the international responsibility in which it has incurred. Currently, there is international consensus that for methodological purposes establishes that the different measures of reparation that victims of violations can access can be placed in five different categories: restitution, compensation, satisfaction, rehabilitation and non-repetition guarantees. These categories are somewhat flexible, and measures of reparation can sometimes fall into more than one category.

10. Measures of restitution imply the reestablishment, as far as possible, of the situation that prevailed before the violation took place. The Inter-American Court has established that restitution can include measures such as: a) the reestablishment of the freedom of persons illegally detained; b) the returning of property illegally confiscated; c) the return to the place of residence from which the victim was displaced; d) reinstatement in a job; e) the annulment of court, administrative, criminal or police records and the elimination of the corresponding restitution; and f) the return, demarcation and granting of title for the traditional territory of indigenous communities for the protection of communal property.¹¹

11. When restitution is impossible, insufficient or inadequate, measures of compensation seek to provide redress to victims for the physical and moral damages suffered, as well as for the loss of income and opportunities, pecuniary damages (indirect damages and loss of future earnings), attacks on reputation, expenses incurred, and the costs of legal counsel and medical care. The indemnity can be monetary or in kind. In-kind compensation requires that a physical piece of property with the same characteristics and the same conditions as the one of which the victims were deprived be turned over. Monetary compensation, must be granted in a form that is appropriate and proportional to the seriousness of the violation and the circumstances of each case for all quantifiable economic damages resulting from violations.¹² Likewise, the Court has developed the concept of pecuniary¹³ and non-pecuniary¹⁴ damages and the situations in which compensation must be provided for them.

⁹ For example, the "Basic Principles and Guidelines of the UN 2006" established that the reparation should be proportional to the seriousness of the violation and the damages suffered (principle 15), that the victims must receive full and effective reparations (principle 18) and that the reparations must give priority to restitution, indicating that it must, where possible, restore the victim to the situation that prevailed before the serious violation of international human rights law took place (principle 19). UN. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Economic and Social Council. A/RES/60/147. March 21, 2006. Principle 20.

¹⁰ Some scholars and tribunals have held that restitution should place the victim in the position she or he would have been in had the violation not taken place.

¹¹ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 10 and 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹² UN. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Economic and Social Council. A/RES/60/147. March 21, 2006. Principle 20.

¹³ The Court has established that pecuniary damage involves "a loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the case." I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91. Para. 43; *Case of the "Las Dos Erres" Massacre v. Guatemala*. Judgment of November 24, 2009. Series C No. 211. Para. 275; *Case of Radilla Pacheco v. Mexico*. Judgment of November 23, 2009. Series C No. 209. Para. 360.

¹⁴ For the Court, non-pecuniary damage "may include distress and suffering caused directly to the victims or their relatives, tampering with individual core values, and changes of a non-pecuniary nature in the living conditions of the victims or their families." I/A Court H.R. *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77. Para. 84; *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits*, Continued...

12. The purpose of measures of rehabilitation, a concept which is linked to measures of restitution, is to reduce the physical and psychological suffering of the victims through measures designed to provide medical, psychological and psychiatric care in order to allow for the reestablishment of victims' dignity and reputations. The measures also include any legal and social services that the victims might need. In order to comply with these objectives, care must be provided to the victims free of charge and immediately, including the provision of medications.¹⁵

13. Measures of satisfaction are non-monetary measures aimed redressing moral damages (suffering and afflictions caused by the violation, such as tampering with individual core values and changes of a non-pecuniary nature in the living conditions of the victims). They may also include acts or projects with public scope or impact, such as the broadcasting of an official message expressing disapproval of the human rights violations at issue in order to restore the memory of the victims, recognize their dignity and comfort their next of kin.¹⁶

14. Also included in measures of satisfaction - insofar as the purpose is to publicly recognize damage suffered by the victims in order to restore their dignity - are measures to investigate and bring to trial the perpetrators of grave human rights violations; the discovery and publicizing of the truth; the search for the disappeared; the locating of the remains of the dead and the turning over of the remains to relatives; public State recognition of its responsibility along with public apologies and official testimonies; the holding of events to pay tribute to and commemorate the victims; the placement of plaques and/or monuments; and acts of apology in the memory of the victims.¹⁷ Many of these measures also serve as guarantees of non-repetition, as explained below.

15. The guarantees of non-repetition, which refer to suitable administrative, legislative or judicial measures intended to correct the conditions that allowed the victims to be affected. These measures are public in scope or impact and in many cases remedy structural problems, thus benefiting not only the victims in the case but also other members of society and groups.¹⁸ In this sense, guarantees of non-repetition may, according to their nature and purpose, consist of: a) training public officials and educating society on human rights; b) adoption of domestic legal measures; c) adoption of measures to guarantee that the violations will not be repeated, including the investigation, prosecution and punishment of those responsible.

C. Damages and reparations arising specifically from to Article 13 of the American Convention

16. As of the date of the presentation of this report, the Inter-American Court has ruled in 13 cases on violations of freedom of expression due to prior censorship, the application of criminal law, indirect restrictions on freedom of expression, acts of violence, and limitations on access information.¹⁹ A summary of each of these rulings follows, including the main factual elements, the precautionary or

...continuation

Reparations and Costs. Judgment of November 24, 2009. Series C No. 211. Para. 275; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209. Para. 371.

¹⁵ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁶ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁷ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁸ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁹ This report does not analyze the judgment in the case of *Fontevicchia and D'Amico v. Argentina*, as it was issued after the report went to press. See I/A Court H.R. *Case of Fontevicchia and D'Amico v. Argentina. Merits, Reparations and Costs*. Judgment of November 29, 2011. Series C No. 238.

provisional measures granted in order to prevent irreparable harm, the central arguments of the Court, the reparatory measures adopted, and the status of compliance with the ruling according to the decisions issued in this regard by the Inter-American Court.

1. Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile

17. The Inter-American Court ruled in this case of prior censorship imposed by Chilean court authorities on the showing of the movie *The Last Temptation of Christ*. The imposition of prior censorship was adopted at the request of a group of citizens that filed for a remedy of protection “for and in the name of [...] Jesus Christ, the Catholic Church, and themselves.”²⁰ In response to the petition, the Chilean court authorities reversed the decision through which the Film Ratings Council had authorized showing the movie to viewers over the age of 18²¹.

18. The Inter-American Court concluded that in prohibiting the film, the Chilean State had committed an act of prior censorship not compatible with Article 13 of the American Convention. The Tribunal highlighted that the State’s international responsibility for the violation of freedom of thought and expression was derived in this case from the existence of an article in the 1980 Chilean Constitution (in force at the time of the facts) setting forth a system of prior censorship on the showing and publicizing of film productions²². In keeping with this, the Court also ruled that by maintaining film censorship as part of the legal system, the Chilean State was failing to comply with its duty to adapt domestic law to the Convention in order to make the rights set forth therein effective, as established in articles 2 and 1(1) of the Convention²³.

19. By virtue of these declarations, the Inter-American Court ruled that the Chilean State must “modify its legal system in order to eliminate prior censorship and allow the cinematographic exhibition and publicity of the film ‘The Last Temptation of Christ.’” According to the Court, this decision is based on the fact that the State is obliged “to respect the right to freedom of expression and to guarantee its free and full exercise to all persons subject to its jurisdiction.”²⁴ Additionally, it ordered the payment of a sum of money for the expenses incurred by the victims.

20. In compliance with the Court’s ruling, the Chilean congress passed a constitutional reform enshrining the right to free artistic creation and replaced film censorship with a rating system regulated by law. Likewise, the movie *The Last Temptation of Christ* was re-rated so that it could be shown to members of the public above the age of 18. In response to the adoption of these measures, through an order dated November 28, 2003,²⁵ the Inter-American Court ruled the case closed and ordered the case file closed upon confirming that the State of Chile had fully complied with the judgment.

2. Case of Ivcher Bronstein v. Peru

21. The Inter-American Court ruled on this case in response to a complaint filed by the Inter-American Commission on Human Rights (IACHR) against the Republic of Peru for indirect restrictions on

²⁰ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 71.

²¹ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 71.

²² I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 72.

²³ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 88.

²⁴ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 97.

²⁵ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Monitoring Compliance with Judgment.* Resolution of November 28, 2003.

freedom of expression. The victim was a naturalized Peruvian citizen and the majority shareholder, director and president of a television channel. This media outlet was broadcasting a journalistic program critical of the Peruvian government. The program had done a series of reports on abuse, torture and acts of corruption committed by the National Intelligence Service. Following the broadcast of these reports, the petitioner was subjected to several acts of intimidation at the hands of the Army and the Executive Branch, to the point that through a manifestly arbitrary proceeding, the Director of Police nullified the petitioner's Peruvian nationality. As a consequence, a judicial authority suspended the exercise of his rights as majority shareholder of the channel and revoked his nomination as its director. Subsequent to these actions, the journalists with the program in question were blocked from entering the channel and its editorial stance was changed.²⁶

22. On February 5, 1998, the Office of the Provincial Criminal Prosecutor Specialized in Tax and Customs Violations filed a complaint against Mr. Ivcher. On that same day, the Criminal Court Specialized in Tax and Customs Violations issued an arrest warrant and opened the proceeding against Mr. Ivcher.²⁷ On March 6, 1998, the Commission granted precautionary measures to his benefit under the presumption that the opening of the criminal proceeding and the arrest warrant were directly related with the case on the violation of freedom of expression and "requested that, while Mr. Ivcher's case is pending the decision of the Commission, the State refrain from taking or executing any action or measure that would worsen his situation, including ordering his capture by Interpol."²⁸ Later, on December 9 of the same year, the Commission asked the Peruvian State to adopt precautionary measures to the benefit of the wife and daughter of Mr. Ivcher, specifically asking the State to drop the warrants issued for the arrest of the beneficiaries. In both cases, the Commission understood that the execution of the arrest warrants would constitute irreparable harm to the beneficiaries.²⁹

23. In its decision, the Inter-American Court found, *inter alia*, that the resolution nullifying the nationality of the petitioner constituted an indirect measure of restriction of his freedom of expression, as well as of the journalists' right to work on the program in question. Likewise, it found that on removing control of the media outlet from the petitioner, "the State not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society."³⁰

24. Based on this, the Tribunal ruled that the Peruvian state had violated the right to freedom of expression of the petitioner and failed to comply with the general obligation to protect rights, set forth in Article 1(1) of the Convention. As a measure of reparation regarding these points, the Court ordered that the State guarantee the petitioners' right to "seek, investigate and disseminate information and ideas"³¹ through the television channel in question. It also ordered the payment of an indemnity for the moral damage suffered by the petitioner as a result of the acts of harassment against him. It ordered that the facts leading to the violations of the Convention be investigated in order to identify and punish those responsible. Finally, it granted the payment of costs and expenses to the benefit of the victim.

²⁶ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para.76.

²⁷ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Footnote 67.

²⁸ IACHR. *Annual Report 1998*. OEA/Ser.LV/II.102. Doc. 6 rev. April 16, 1999. Chapter III. 2.A. Para.48. Available at: <http://www.cidh.org/annualrep/98eng/Table%20of%20Contents.htm>

²⁹ IACHR. *Annual Report 1998*. OEA/Ser.LV/II.102. Doc. 6 rev. April 16, 1999. Chapter III, 2.A. Para. 51. Available at: <http://cidh.oas.org/annualrep/98span/Indice.htm>

³⁰ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 163.

³¹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 182.

25. The Court declined to rule on certain request for reparations brought by the IACHR on finding that they lacked grounds because the State had already satisfied them. Specifically, the Tribunal noted that attending to the recommendations made by the IACHR, the State had restored the petitioner's Peruvian nationality³². With regard to the adoption of the legislative and administrative measures necessary to prevent the repetition of similar facts in the future, the Court noted that the State had already done so by nullifying the government's decision to not recognize the jurisdiction of the Inter-American Court and expressing its willingness to move forward with a policy of rapprochement and collaboration with the inter-American human rights system, as well as demonstrating its availability to reach a friendly settlement in this specific case³³.

26. Through an order dated August 27, 2010,³⁴ the Court found that the State of Peru had partially complied with the reparatory measures given that it still had not investigated the events that led to the violations and identified and punished those responsible. For this reason, the Court continues to supervise this pending point of compliance.

3. Case of Herrera Ulloa v. Costa Rica

27. The IACHR presented an application before the Inter-American Court against the State of Costa Rica for its having established illegitimate and disproportionate restrictions on the right to freedom of expression of a journalist with the newspaper *La Nación*. The journalist was convicted criminally and civilly for having reproduced information published in some European newspapers on the alleged unlawful behavior of a Costa Rican diplomatic official. The ruling to convict found that the journalist was guilty of the crime of defamation through the publishing of offensive material, as he had written and published several articles "mindful of the offensive nature of their content and for the sole purpose of dishonoring and besmirching the reputation of [the official]."³⁵ For punishment, the ruling ordered the payment of a fine and the publication of the operative paragraphs of the ruling in *La Nación*. Likewise, it sentenced the journalist and the newspaper to pay an indemnity for moral damages and the cost of the proceeding. Finally, it ordered *La Nación* to change the content of its digital version by removing the links between the surname of the diplomat and the articles that were the subject of the controversy and to establish new links between those articles and the operative paragraphs of the ruling.³⁶

28. In a request for precautionary measures, the Commission asked the State of Costa Rica to suspend execution of the sentence until the Commission had examined the case, to refrain from taking any action to include the journalist Herrera Ulloa in the Judicial Criminal Registry of Costa Rica and to refrain from taking any action that would affect the right to freedom of expression of the journalist and the newspaper *La Nación*. The IACHR found that the execution of the sentence would empty the decision on the merits of all meaning and cause irreparable damage not only to the right to the freedom of expression of the journalist, the newspaper, their peers and society as a whole, but also the State itself, which would have to use public funds to repay the indemnity that would be paid by the alleged victim for the news item at issue in the trial. Later, the Commission requested that the Inter-American Court of Human Rights grant provisional measures.³⁷

³² I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180.

³³ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 185 and footnote 72.

³⁴ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Monitoring Compliance with Judgment*. Order dated August 27, 2010.

³⁵ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 95 t).

³⁶ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 95 u).

³⁷ IACHR. Annual Report 2000. OEA/Ser./L/V/II.111, doc. 20 rev. April 16, 2001. Chapter III, C.1. Para. 28. Available at: <http://cidh.oas.org/annualrep/2000sp/indice.htm>; IACHR. Annual Report 2001. OAS/Ser.L/V/II.114, doc. 5 rev. April 16, 2002. Chapter III, C.1. Para. 27. Available at: <http://cidh.oas.org/annualrep/2001sp/indice.htm>

29. Upon performing a *prima facie* analysis of the relevant arguments in the criminal conviction in order to resolve the request for precautionary measures and address the pleadings of the parties, the Court found that it was necessary, among other things, to suspend the execution of the criminal aspects of the ruling and ordered the suspension to be maintained until the case was resolved definitively before the inter-American system. In its ruling on provisional measures, the Court made reference to the impossibility of separating freedom of expression from the professional work of journalists and found that taking into account that (i) a journalist's performance depends on his or her credibility, and (ii) the fact that the crime for which the journalist was accused is related to the exercise of his profession, registration in the judicial criminal registry would cause irreparable damage to journalists Herrera Ulloa that would affect his professional work and cause imminent and irreparable harm to his honor.³⁸

30. In its judgment, the Inter-American Court concluded that the sanctions imposed on the journalist constituted an unjust restriction on freedom of expression in the framework of a democratic society, as they had "a deterrent, chilling and inhibiting effect on all those who practice journalism. This, in turn, obstructs public debate on issues of interest to society."³⁹

31. As a consequence, the Court found that the State had violated the right to freedom of thought and expression. Based on this, in reparation the State was required to take all judicial, administrative and any other measures necessary to nullify the criminal judgment handed down against the journalist in all its points⁴⁰. Additionally, it ordered the payment of a certain amount of money for the reparation of moral damages, as well as for payment of the procedural expenses incurred by the victims⁴¹.

32. Through an order dated November 22, 2010,⁴² the Inter-American Court ruled the case closed and ordered the case file closed upon confirming that the State of Costa Rica had nullified the ruling issued against the petitioner along with all its effects, and that it had paid the sums of money due for compensation and expenses.

4. Case of Ricardo Canese v. Paraguay

33. In this case, the Inter-American Court studied the situation of Ricardo Canese, a presidential candidate in the 1992 elections in Paraguay. He was criminally charged with defamation as a consequence of statements that he made about his opponent during the course of the campaign. Specifically, the petitioner pointed to a connection that existed between his opponent and the family of former dictator Stroessner. Based on these statements, Canese was convicted in first and second instance and sentenced to prison and the payment of a fine. Likewise, he was permanently prohibited from leaving the country during the entire proceeding, which lasted eight years and close to four months, a prohibition that was only lifted under exceptional circumstances and inconsistently.⁴³

³⁸ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Order of the Court. September 7, 2001. Paras. 7-11. Available at: http://corteidh.or.cr/docs/medidas/lanacion_se_04.pdf

³⁹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 133.

⁴⁰ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

⁴¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Paras. 200 and 202.

⁴² I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Monitoring Compliance with Judgment*. Judgment of November 22, 2010.

⁴³ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 69.

34. Finally, once the case was being processed before the Inter-American system, in a judgment dated December 11, 2002, the Supreme Court of Justice of Paraguay annulled the rulings to convict, absolving Canese of criminal liability and its consequences.

35. The Inter-American Court found that the proceeding and the criminal sentence initially handed down against Canese constituted an unnecessary and excessive sanction that limited open debate on subjects in the public interest and restricted the freedom of expression of the affected individual during the rest of the electoral campaign. The Tribunal highlighted that in the context of a presidential election campaign "opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism," for which reason in this case, "the judge should have weighed respect for the rights or reputations of others against the value for a democratic society of an open debate on topics of public interest or concern."⁴⁴

36. The Court concluded that the State was responsible, *inter alia*, for the violation of Article 13 of the Convention in connection with Article 1(1). As a measure of reparation, given that the ruling to convict had been revoked and that *restitutio in integrum* was not possible, it was necessary to set economic compensation. Thus the Court ordered the State to pay a sum of money for non-pecuniary damages, as "the criminal proceedings filed against Mr. Canese, the criminal conviction imposed by the competent courts, and the restriction of his right to leave the country during almost eight years and four months affected his professional activities and had an inhibiting effect on his exercise of freedom of expression."⁴⁵ However, the Court refrained from ordering payment for pecuniary damages, given that they were not proven during the proceeding. Likewise, the Court ordered the State to "publish once in the Official Gazette and in another newspaper with national circulation the chapter of this judgment on proven facts, without the corresponding footnotes, and its operative paragraphs"⁴⁶ and noted that the judgment in itself constituted a form of reparation.⁴⁷ Finally, it ordered the reimbursement of the expenses incurred in the litigation before the Inter-American Court, as domestic courts had assigned costs to the plaintiff.⁴⁸

37. The Inter-American Court viewed positively that the Supreme Court of Justice of Paraguay had annulled the ruling handed down against Mr. Canese⁴⁹. Likewise, it recognized the reforms of criminal law and criminal procedure that, among other measures, lowered the penalties for the crime of defamation and established fines as an alternative to prison time⁵⁰. In light of this, the Court refrained from ordering measures of reparation intended to nullify the ruling or adjust the domestic legal system to the Convention.

38. Through an order dated August 6, 2008, the Court ruled the case closed and ordered the case file closed upon confirming that the State of Paraguay had fully complied with the measures of reparation ordered in the judgment handed down on August 31, 2004.⁵¹

⁴⁴ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 105.

⁴⁵ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 206.

⁴⁶ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 209.

⁴⁷ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 211.

⁴⁸ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 214.

⁴⁹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Paras. 199 and 200.

⁵⁰ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 210.

⁵¹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of August 6, 2008.

5. Case of Palamara Iribarne v. Chile

39. The Inter-American Court ruled in this case on the situation of a civilian official of the Chilean Armed Forces who was charged with and convicted for the crimes of disobedience and failure to comply with military duties and *desacato*. The official was sentenced to serve time in a military prison, pay a fine and be suspended from duties for having tried to publish the book "Ethics and Intelligence Services" without authorization from his military superiors, as well as for having given statements to the media that were critical of the actions taken by the military criminal justice system in his case. Both before and during the criminal proceeding, the military authorities took various measures to prevent the publication and distribution of the aforementioned book.⁵²

40. The Inter-American Court found that the State committed acts of prior censorship and submitted the petitioner to subsequent liability not compatible with Article 13 of the Convention. Regarding the censorship, it concluded that "the control measures adopted by the State to prevent the distribution of the book "Ética y Servicios de Inteligencia" ("Ethics and Intelligence Services") by Mr. Palamara-Iribarne constituted acts of prior censorship that are incompatible with the parameters set by the Convention inasmuch as there was no element that, pursuant to said treaty, would call for the restriction of the right to freely publish his work."⁵³ With regard to subsequent liability, it indicated that "the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression."⁵⁴

41. Based on this, the Inter-American Court ordered the State to pay a compensation for the pecuniary and non-pecuniary damages suffered by Mr. Palamara, as well as to pay his costs and expenses⁵⁵. Likewise, it ordered that the necessary measures be taken to nullify the criminal and military proceedings and the rulings handed down against the petitioner⁵⁶, and that the publication of the book be permitted, with the copies of the book and material that were confiscated returned⁵⁷. The Court also ordered the State to publish once in the Official Newspaper and in another newspaper with national circulation the chapter of the judgment on proven facts and the judgment's operative paragraphs. It also ordered that the full judgment be published on a government website⁵⁸. Finally, it established that the State must "adopt such measures as may be required to repeal and modify whatever legal provisions may be incompatible with the international standards on freedom of thought and expression, in a manner such that all persons are allowed to exercise democratic control over all State institutions and officials, through the free expression of their ideas and opinions on their performance in office without fearing future retaliation."⁵⁹ The Court also ordered the State "to set limits on the subject-matter and personal

⁵² I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 63.

⁵³ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 78.

⁵⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 88.

⁵⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 239, 243 and 248.

⁵⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 253.

⁵⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 250.

⁵⁸ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 252.

⁵⁹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 254.

jurisdiction of military courts such that under no circumstance may a civilian be subjected to the jurisdiction of military courts.”⁶⁰

42. Through an order dated July 1, 2011, the Court declared that it would keep the monitoring procedure open until the State had complied with the pending points in the case of *Palamara Iribarne v. Chile* regarding: a) adopting the measures necessary to reform domestic law on freedom of thought and expression; b) adjusting the domestic legal system such that should the existence of criminal military jurisdiction be considered necessary, it would be limited to hearing cases on operational crimes committed by soldiers on active duty; and c) guaranteeing due process in the criminal military jurisdiction and judicial protection with regard to the actions of military authorities.⁶¹

6. Case of *Claude Reyes et al v. Chile*

43. In this case, the Inter-American Court weighed a claim submitted by Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton against the State of Chile for having denied them access to information they requested on a deforestation project that was to be carried out in Chile by a foreign company. The victims requested information from the Foreign Investment Committee (CIE in its Spanish Acronym) of the Chilean State on a project by the company Trillium that could have an environmental impact. The CIE’s response to the request for information filed by Reyes, Cox and Longton was late and incomplete.⁶²

44. The Inter-American Court found that the information that was not turned over by the State was in the public interest⁶³. In addition, the Inter-American Court found that the request for information was related to the verification of proper actions and performance of duties of a State agency⁶⁴. The Court found that the restriction applied to the victims’ right to access to information was not based on a law⁶⁵; was not part of a legitimate objective allowed by the American Convention; nor was it necessary in a democratic society, as the authority in charge of responding to the request did not issue a written decision providing the reasons for which access to all the information requested was not permitted⁶⁶.

45. The Court concluded that the State had violated the right to freedom of thought and expression set forth in Article 13 of the Convention and had failed to comply with the general obligation to respect and guarantee rights and freedoms as set forth in Article 1(1) of the Convention. Likewise, on having failed to take those measures that were necessary and compatible with the Convention for making the right to access to information under State control effective, the Court concluded that Chile failed to comply with the general obligation to adopt domestic legal provisions as set forth in Article 2 of the Convention.⁶⁷

⁶⁰ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 256.

⁶¹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2011.

⁶² I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 57.

⁶³ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 73.

⁶⁴ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 73.

⁶⁵ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 94.

⁶⁶ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 95.

⁶⁷ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para.174.1.

46. As measures of reparation, the Court ordered the State to pay costs and expenses⁶⁸ and that it must “provide the information requested by the victims, if appropriate, or adopt a justified decision in this regard;”⁶⁹ to publish the chapter on proven facts and the operative paragraphs of the judgment in the official newspaper and another newspaper with broad circulation⁷⁰; to adopt “the necessary measures to guarantee the protection of the right of access to State-held information, and these should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials;”⁷¹ and to train State officials in charge of responding to requests for access to information on the inter-American rules and standards that govern this right⁷².

47. Through an order dated November 24, 2008, the Inter-American Court ruled the case closed on finding that the State had fully complied with the judgment.⁷³

7. Case of *Kimel v. Argentina*

48. In this case, the Inter-American Court examined the situation of Argentine journalist and writer Eduardo Kimel, who was convicted of the crime of slander and given a suspended sentence of one year in prison and the payment of an indemnization. The conviction came after the publication of a book written by the journalist in which he harshly criticized the actions of a judge in the investigation of several homicides committed during the military dictatorship.⁷⁴

49. The Inter-American Court concluded that the Argentine State violated Article 13 of the American Convention in having unnecessarily and disproportionately used its punitive power on Kimel.⁷⁵ According to the Court, given that the journalist’s criticism made reference to the actions of a judge in the exercise of his duties in a subject of obvious public interest, the State should have shown greater tolerance towards the assertions he made, as they formed part of democratic oversight through public opinion.⁷⁶ It also highlighted that in the debate over matters of public interest, the Convention protects both expression that is inoffensive and well-received as well as public opinions that “shock, irritate or disturb public officials or any sector of society.”⁷⁷

⁶⁸ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 167.

⁶⁹ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

⁷⁰ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 160.

⁷¹ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 163.

⁷² I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 165.

⁷³ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Monitoring Compliance with Judgment*. Order of November 24, 2008.

⁷⁴ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 41 *et seq.*

⁷⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 80, 94-95.

⁷⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 88-89.

⁷⁷ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 88.

50. In light of this, the Inter-American Court ordered the State to pay a sum of money for the pecuniary and non-pecuniary damages suffered by the petitioner,⁷⁸ as well as to pay his costs and expenses.⁷⁹ Likewise, it ordered the State to nullify the criminal ruling handed down against Mr. Kimel, to eliminate his name from the criminal records registry,⁸⁰ and to publish the chapter on proven facts and the operative paragraphs of the judgment in the official newspaper and in another media outlet with broad circulation.⁸¹ It additionally ordered the domestic legal system to be adjusted to correct the lack of precision in criminal proceedings with regard to slander and defamation such that freedom of expression is not affected.⁸² Finally, for the first time in a case of this nature, it ordered the State to carry out a public act of recognition of responsibility.⁸³

51. Through an order dated May 18, 2010, the Inter-American Court ruled that the State had complied with its obligations to make payments, eliminate Mr. Kimel's name from the registry of criminal offenders, publish certain parts of the judgment, and adjust domestic law.⁸⁴ Later, through an order dated November 15, 2010, the Court found that the State had complied with the obligation to carry out a public act of recognition of its responsibility, but ruled to keep the monitoring proceeding open until the obligation to nullify Mr. Kimel's criminal conviction had been fulfilled.⁸⁵

8. Case of *Tristán Donoso v. Panama*

52. In this case, the Inter-American Court addressed the situation of attorney Tristán Donoso, who was sentenced to 18 months in prison and the payment of an indemnity for the crime of slander over accusations he made against the Attorney General of the Nation during a press conference in which he stated that the official had illegally intercepted and made use of his private communications. The day after this press conference, Mr. Tristán Donoso filed a criminal complaint against the official in question for the alleged crime of abuse of authority and infraction of the duties of public servants, charges of which he was in the end acquitted. Simultaneously, the Attorney General accused Mr. Tristán Donoso of defamation and slander for having accused him of taping, recording and publicizing his telephone calls. The first instance acquitted Mr. Tristán Donoso. However, that ruling was overturned on appeal and he was sentenced to pay a sum of money, with delinquency converting it into an 18 month prison sentence. Mr. Donoso's failure to pay resulted in a warrant for his arrest.⁸⁶

53. Given this situation, the Commission decided to grant precautionary measures to the benefit of Mr. Tristán Donoso. For these measures, it "asked the Panamanian State to suspend execution of the sentence (the arrest) until the Inter-American Commission could conclude its examination of the case and adopt the corresponding report on merits, in accordance with the precedent set by the Inter-

⁷⁸ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 110, 119.

⁷⁹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 133.

⁸⁰ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123.

⁸¹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 125.

⁸² I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 128.

⁸³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

⁸⁴ I/A Court H.R. *Case of Kimel v. Argentina. Monitoring Compliance with Judgment*. Order of May 18, 2010.

⁸⁵ I/A Court H.R. *Case of Kimel v. Argentina. Monitoring Compliance with Judgment*. Order of November 15, 2010.

⁸⁶ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 95 *et seq.*

American Court in the ‘La Nación’ case, in which an order was issued requiring that execution of a judicial sentence be suspended.”⁸⁷

54. In its ruling, the Inter-American Court found that the criminal punishment imposed on Mr. Tristán Donoso was manifestly unnecessary and therefore constituted a violation of the right to freedom of thought and expression set forth in Article 13 of the Convention.⁸⁸ First, the Tribunal took into account that the statements for which Tristán Donoso was found guilty were in reference to “a person who held one of the highest public offices in his country, [the Attorney General of the Nation].”⁸⁹ Likewise, it noted that the statements were in reference to a subject in the public interest: the interception of private communication, a subject which at that time was being widely debated in Panama.⁹⁰ Finally, the Inter-American Court found that, given the evidence held by the attorney at the moment of making the comments in question, “it was not possible to sustain that his expression was groundless and, consequently, that the criminal remedy was a necessary action.”⁹¹ All this occurred in spite of the fact that Tristán Donoso effectively accused the Attorney General of the Nation of the commission of a crime of which he was later acquitted in court.

55. Pursuant to all of this, the Court ordered the State of Panama to pay a sum of money for the non-pecuniary damages suffered by Mr. Tristán Donoso.⁹² In establishing this reparatory measure, the Tribunal especially took into account that “the private life of Mr. Tristán Donoso was invaded and that he was discredited as a professional, firstly before two important audiences: the authorities of the Colegio Nacional de Abogados [National Bar Association] and the Catholic Church, to which he provided legal counsel; and then before society, due to the criminal conviction entered against him.”⁹³ The Tribunal refrained from ordering payment for pecuniary damages, given that they were not proven during the proceeding.⁹⁴ Likewise, it ordered the State to nullify the criminal ruling handed down against the petitioner along with all its effects⁹⁵ and ordered the publication of several parts of the judgment in the official newspaper and in another media outlet with broad circulation.⁹⁶ Finally, the Tribunal ordered the State to pay his costs and expenses.⁹⁷

56. However, the Court declined in this case to order several of the reparatory measures requested. Thus, the Tribunal did not order adjustments to domestic laws due to the fact that the State of Panama had already implemented reforms excluding criminal punishment for crimes of slander and

⁸⁷ IACHR. 2005 Annual Report. OEA/Ser.L/V/II.124.Doc.5. February 27, 2006. Ch. III.C.1. Para. 36. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>

⁸⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 130.

⁸⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 122.

⁹⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 121.

⁹¹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 126.

⁹² I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 191.

⁹³ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 190.

⁹⁴ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 184.

⁹⁵ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 195.

⁹⁶ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 197.

⁹⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 216.

defamation when the offended parties are certain public servants⁹⁸. Likewise, it declined to order a public act of recognition be carried out or to order the training of court officials on standards for the protection of the right to honor and freedom of expression in matters in the public interest, as it found that they would be unnecessary in light of the other reparatory measures adopted.⁹⁹

57. With regard to the measures of reparation ordered, through an order dated September 1, 2010, the Inter-American Court ruled the case closed and ordered the case file closed on finding that the State had fully complied with the judgment.¹⁰⁰

9. Case of Ríos et al. v. Venezuela

58. In this case, the Court addressed the violation of the right to freedom of expression of some journalists with the television channel RCTV. They had been subjected to actions against their physical integrity and different kinds of harassment from private parties while performing their journalistic work. The actions took place in the context of extreme political polarization in which senior State officials made various statements connecting the owners and directors of that television channel with plans for political destabilization and terrorist activities.¹⁰¹

59. The Inter-American Court found, *inter alia*, that the Venezuelan State was responsible for failing to comply with its obligations as set forth in Article 1(1) and 13 of the Convention to ensure the exercise of the freedom to seek, find and distribute information. The Tribunal observed that the acts of violence and harassment committed by private individuals against the RCTV journalists limited or eliminated their abilities seek out and receive information.¹⁰² According to the Tribunal, in light of this situation, the statements of State officials with regard to the television channel were not compatible with the obligation to ensure the rights recognized in Article 13 (1) of the Convention, as they “contributed to emphasize or exacerbate situations of hostility, intolerance or animosity by sectors of the population towards the people linked to that [television channel]”¹⁰³ such that the State, instead of complying with its obligation to prevent the facts affecting journalists, placed them in a situation of greater vulnerability.¹⁰⁴

60. As a reparatory measure, the Court ordered the State to “effectively carry out the investigations and criminal proceedings in process and those opened in the future to determine the corresponding responsibilities for the facts of this case and apply the consequences established by law.”¹⁰⁵ Likewise, it ordered that several sections of the judgment be published - including the operative paragraphs - in the official newspaper and in another newspaper with broad national circulation.¹⁰⁶ It also ordered the State to adopt “the measures necessary to avoid illegal restrictions and direct or indirect

⁹⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 209.

⁹⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 211.

¹⁰⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*. Order of September 1, 2010.

¹⁰¹ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 112 *et seq.*

¹⁰² I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 333-34.

¹⁰³ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 148.

¹⁰⁴ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Paras. 149 and 332.

¹⁰⁵ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 404.

¹⁰⁶ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 405.

hindrances on the exercise of the freedom to seek, receive, and impart information of the alleged victims.”¹⁰⁷ Finally, the State was ordered to pay costs and expenses.¹⁰⁸

61. As of this report’s publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

10. Case of Perozo et al. v. Venezuela

62. In this judgment, the Court addressed a situation similar to the one found in the case of *Ríos et al. v. Venezuela*, this time with regard to journalists connected to television channel *Globovisión*. The victims in this case were also subjected to acts of violence and harassment preventing them from carrying out their journalistic work. Likewise, senior State officials issued statements about the channels owners and managers, which exacerbated the situation of vulnerability facing the journalists who were victims of the attacks.¹⁰⁹

63. For reasons identical to the one set forth in the *Case of Ríos et al. v. Venezuela*, the Inter-American Court found, *inter alia*, that the Venezuelan State was responsible for failing to comply with its obligations as set forth in Article 1(1) and 13 of the Convention to ensure the exercise of the freedom to seek, find and distribute information.¹¹⁰ Based on this, it ordered the same reparatory measures established in the prior case, this time with regard to the journalists with channel *Globovisión* who were victims in this case.¹¹¹

64. As of this report’s publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

11. Case of Usón Ramírez et al. v. Venezuela

65. In this ruling, the Court addressed the situation of Mr. Usón Ramírez, a retired soldier who was convicted for the crime of “slander against the national Armed Forces” for having given an opinion during a television program on that institution’s actions in the so-called case of “Fort Mara.” Specifically, the petitioner was sentenced to five years and six months in prison for having supported a theory according to which the serious burns suffered by a group of soldiers during the fire in Fort Mara holding cell could have been caused by the premeditated use of a flamethrower.¹¹²

66. The Inter-American Court found that the criminal provision of the Organic Code of Military Justice that was applied in this case - which punishes one who “slanders, offends, or disparages National Armed Forces or one of its entities” - did not comply with the requirements of the principle of strict legality which must be observed when restricting the freedom of expression criminally.¹¹³ Likewise, the Court found that the criminal punishment imposed on Mr. Usón Ramírez was not suitable, necessary and

¹⁰⁷ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 406.

¹⁰⁸ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 409.

¹⁰⁹ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Paras.123 *et seq.*

¹¹⁰ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 362.

¹¹¹ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Paras. 413-16, 419.

¹¹² I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 36 *et seq.*

¹¹³ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 56-58.

proportional in that the statements he made were specially protected because they made reference to State entities in the context of a subject of obvious public interest.¹¹⁴ The Inter-American Court ruled, *inter alia*, that the State violated the principle of legality and the right to freedom of thought and expression recognized in articles 9, 13(1), and 13(2) of the American Convention, with relation to articles 1(1) and 2 of the Convention¹¹⁵.

67. Based on this, the Inter-American Court ordered the State to adopt the measures necessary to nullify the military criminal proceeding carried out against the petitioner.¹¹⁶ Likewise, it ordered the State to establish within a reasonable period of time “limits to the competence of the military jurisdiction so that the provisions pertain only to active military members or those performing military functions¹¹⁷ and “to repeal all domestic legislation that is not in conformance with said Court jurisprudence.”¹¹⁸ Additionally, the Court ordered the State to reform Article 505 of the Military Code of Justice codifying defamation against the National Armed Forces, as it did not specifically lay out the conduct considered to be criminal.¹¹⁹ In addition, it ordered the publication of several parts of the judgment, including the operative paragraphs.¹²⁰ Finally, it ordered the State to pay an indemnity to the victim for pecuniary and non-pecuniary damages, as well as to pay the costs and expenses of the proceeding.¹²¹

68. As of this report’s publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

12. Case of Manuel Cepeda Vargas v. Colombia

69. In this case the Court addressed Colombian State responsibility for the politically motivated extrajudicial execution of Senator Manuel Cepeda Vargas, who was the executive editor of *Voz* weekly, a leader in the National Council of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica.¹²² The Colombian State accepted its responsibility for the violation of the right to freedom of expression of the murdered Senator, as it “failed to protect and guarantee the Senator’s exercise of freedom of expression, because he was arbitrarily prevented from expressing his thoughts by being killed.”¹²³

70. In light of the fact that the State admitted its responsibility for the violation of the right to freedom of expression in its individual dimension, the Court ruled in regard to the violation of this right in

¹¹⁴ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Paras. 68, 75, 84 and 87.

¹¹⁵ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 199.2.

¹¹⁶ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹¹⁷ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 172.

¹¹⁸ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 172.

¹¹⁹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 173.

¹²⁰ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 176.

¹²¹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Paras. 180, 187 and 193.

¹²² I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 71.

¹²³ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 13.

its social dimension, an aspect it analyzed together with the alleged violations of political rights and freedom of association. The Tribunal noted that Senator Cepeda exercised his opposition toward and was critical of different governments in the context of permanent threats and harassment, and that although he “was able to exercise his political rights, freedom of expression and freedom of association, the fact that he continued to exercise them was obviously the reason for his extrajudicial execution.”¹²⁴ According to the Court, the State “did not create either the conditions or the due guarantees for Senator Cepeda [...] to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression.”¹²⁵ It not only entailed “undue or unlawful pressure and restrictions on his political rights, freedom of expression, and freedom of association,” but also “a rupture of the rules of the democratic game.”¹²⁶

71. As measures of reparation for the multiple rights violations arising from the extrajudicial execution of Senator Cepeda Vargas, the Court ordered the following measures of satisfaction: The execution of the measures necessary to investigate, single out, and punish all those responsible for the extrajudicial execution of the Senator;¹²⁷ the publication of several parts of the ruling and its operative paragraphs in the official newspaper and in another widely circulated newspaper, and its full publication on a government website¹²⁸; the carrying out of a public act of recognition of international responsibility;¹²⁹ the preparation and distribution of the publication and a documentary on the political and journalistic career of Senator Cepeda Vargas;¹³⁰ the one-time granting of a scholarship named after Manuel Cepeda Vargas covering a professional degree in communication sciences or journalism at a public Colombian university.¹³¹ Additionally, it established that the State must offer free medical and psychological care to the Senator’s relatives, pending their consent.¹³² Finally, it ordered the State to pay an indemnity for non-pecuniary damages and to reimburse costs and expenses.¹³³

72. As of this report’s publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

13. Case of Gomes Lund v. Brazil

¹²⁴ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 176.

¹²⁵ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 176.

¹²⁶ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 177.

¹²⁷ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 216.

¹²⁸ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 220.

¹²⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Paras. 223-25.

¹³⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 228.

¹³¹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 233.

¹³² I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 235.

¹³³ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Paras. 247, 253 and 259.

73. The most important facts of the case¹³⁴ as far as the right to access to information can be summarized as follows: On February 21, 1982, the relatives of the victims forcibly disappeared during military operations carried out against the Guerrilha do Araguaia brought a civil action whose only purpose was to obtain all the information on these operations in order to be able to know the truth of what occurred.¹³⁵ On June 30, 2003, 21 years after the action was first brought, and after delays and rulings against them,¹³⁶ the first instance ruling ordered the State to turn over the information on the victims and their relatives within a period of 120 days.¹³⁷ However, the State again sought a series of remedies, the result of which was that the Court ruling was not final until October 9, 2007. Still, according to the Court, it was not until March of 2009 that the ruling's execution was actually ordered and the State began to take action towards complying with the decision. Those actions included, among other things, turning over close to 21,000 documents from the public entities involved.¹³⁸

74. The Court recognizes the important progress that the State of Brazil has made in this matter, but highlights three facts. First, it calls attention to the fact that during the processing of the public action, the State had alleged that the information did not exist and that it was therefore impossible to turn it over, while in 2009 it turned over a considerable amount of information related to the subject. Second, the Court addresses the fact that the State did not turn over the available information at the first court order issued in 2003. Finally, the Court notes that the final judgment and its later execution were unjustly delayed.¹³⁹ These three facts and the argument according to which the victims have the right to access the requested information and to turn to a remedy that would protect their rights in a reasonable period of time led the Court to declare the State internationally responsible for the violation of the right to access to information set forth in Article 13 of the American Convention.¹⁴⁰

75. In one of the ruling's most important sections, the Court indicates the following: "the State cannot seek protection in arguing the lack of existence of the requested documents; rather, to the contrary, it must establish the reason for denying the provision of said information, demonstrating that it has adopted all the measures under its power to prove that, in effect, the information sought did not exist. It is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right, particularly when it deals with the right to the truth of what occurred in cases of gross violations of human rights such as those of enforced disappearances and the extrajudicial execution in this case."¹⁴¹

76. As a consequence, the Court ordered the State to continue its initiatives toward locating, systemizing and publicizing all information on the Guerrilha do Araguaia, as well as the information on the

¹³⁴ The Inter-American Court's judgment in this case also found violations of the rights to juridical personality, to life, to humane treatment, and to personal liberty in relation to the arbitrary detention, torture and forced disappearance of 70 persons between 1972 and 1975 in the context of the Brazilian military's operations in its fight against the Araguaia Guerrilla movement.

¹³⁵ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 219.

¹³⁶ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 222.

¹³⁷ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

¹³⁸ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 222 and 292.

¹³⁹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 210.

¹⁴⁰ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 211 and 212.

¹⁴¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

human rights violations that took place during the military regime.¹⁴² It also exhorted the State to take all legislative, administrative or other kinds of measures necessary to strengthen the legal framework on access to information, in keeping with inter-American standards.¹⁴³

77. As of this report's publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

D. Examination of the components for reparation of freedom of expression in inter-American case law

78. Inter-American case law has developed an extensive catalog of measures of reparation, some of which have been granted in cases related to violations of the right to freedom of expression. In the 13 cases on which the Inter-American Court has ruled on to date, the Tribunal has ordered measures related to all five of the components of reparation described in the first section of this report. Given the nature of the cases that are brought before inter-American bodies, some components have been more developed than others. However, there is a significant amount of doctrine and case law on each of the ways in which the States can comply with their international obligation to provide reparations, as demonstrated in the following analysis on the right to freedom of expression.

1. Measures of restitution

79. Given the nature of the right to freedom of expression, some violations or improper restrictions of this right can be redressed through measures of restitution. This is demonstrated in inter-American case law, which in a number of cases has ordered states to adopt different measures whose direct purpose is to restore the exercise of the right to freedom of expression and thereby end the violation or undue restriction.

80. With the exception of the case of *Cepeda Vargas v. Colombia*, in all the cases litigated before the Inter-American Court on freedom of expression, the IACHR has requested measures of reparation that include components of restitution derived from the violation of Article 13 of the American Convention. In the vast majority of cases, the Court has ordered measures of this kind; in others it referenced the issue but did not directly order the measures given that in some cases the States involved had already taken measures to satisfy this requirement; and in still others, it has not directly mentioned the requested measures of restitution, as in the cases of *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*.

81. In inter-American case law, measures of restitution have been granted to order: i) the direct restitution of the right to freedom of expression; ii) the restitution of other rights in the Convention violated through the exercise of an indirect restriction on freedom of expression, as is the case with the rights to property, citizenship and work; and iii) access to public information. Following, each of these scenarios is presented in more detail.

82. First, in the cases brought before them, the inter-American bodies have found that actions that represent undue restrictions to freedom of expression must be lifted, revoked or discontinued in order to guarantee the restitution of full exercise of the right. This can be done by reversing measures taken by government authorities including legislative, administrative or judicial measures that block freedom of expression, or by removing obstacles that have been put in place by private parties. Also, restitution can require material measures such as the return of confiscated material or access to information requested.

¹⁴² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁴³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 293.

83. There is one important conceptual clarification that should be made on this point. On different occasions, the Inter-American Court has ordered the reform of constitutional and legal frameworks as a form of reparation.¹⁴⁴ Even in the text itself of the Tribunal's rulings, legal reforms have generally been considered to be a manner of preventing violations from being repeated, and they are therefore usually categorized as guarantees of non-repetition. It is true that the modification of legal frameworks is a measure that goes beyond the specific violation and that it is set up as a prospective measure for preventing the repetition of the same conduct in other possible cases. However, it is also true that the modification of the laws that led to the specific violation of the right, whether carried out directly or through precedent, is a measure that is necessary for lifting the restrictions that led to the violation and that prevent the specific victims of the case from the free exercise of the right. Thus, modification of laws is an unavoidable step toward restoring the right that was infringed upon, and therefore its restorative nature is evident. For example, an administrative or judicial sanction that is the result of legislation improperly limiting freedom of expression cannot be lifted or nullified as long as the legislation itself that led to the order is not modified. Therefore, it will not be enough in the majority of cases to restore the right, and a structural legal reform will also be necessary.

84. An example of an order that included an administrative measure intended to provide restitution of the exercise of freedom of expression can be found in the *Case of the Last Temptation of Christ v. Chile*, in which the Court found that the showing of the movie had been blocked through an administrative measure issued by the "Film Ratings Council" of Chile, violating the prohibition on prior censorship. The IACHR requested the "authorization of the cinematographic exhibition and publicity of the film" be granted as a measure of reparations. In that case, the Court ordered the State to "modify its legal system in order to eliminate prior censorship and allow the cinematographic exhibition and publicity of the film 'The Last Temptation of Christ.'"¹⁴⁵ Thus, the order for restitution combined a measure of legal reform - constitutional in this case - with the reversal of administrative acts that specifically prevented the movie's distribution.

85. Other administrative measures can refer not to the revocation of actions but rather to the material execution of certain measures that restore the rights violated. Thus in concert with the obligation to ensure the right - established by Article 1(1) of the American Convention - States have been ordered to take positive measures to allow for the exercise of freedom of expression. An emblematic case in this regard is the *Case of Palamara Iribarne v. Chile*, in which, as a measure of restitution, the IACHR asked the Court to order the State to take measures to "return all seized copies of the book as well as its master copy" and to "allow immediate publication of the book."¹⁴⁶

86. In this case, the Court found that the initial administrative investigation of Mr. Palamara, the decision to suspend his authorization to publish in a newspaper, and the decision to terminate in advance the contract between Mr. Palamara and a State entity constituted indirect measures of restricting freedom of thought and expression.¹⁴⁷ As a consequence, the Court ruled that the State had to allow the publication of his book. In addition, it ordered that the State must "within a period of six months, deliver back to him all materials seized" from Mr. Palamara, including the copies of the book and related material

¹⁴⁴ See: I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 97; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 254; *Case of Kimel v. Argentina. Merits, Reparations, and Costs.* Judgment of May 2, 2008. Series C No. 177. Para. 128; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Paras. 172 and 173.

¹⁴⁵ I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 97.

¹⁴⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs.* Judgment dated November 22, 2005. Series C No. 135. Para. 229.

¹⁴⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 94.

that was confiscated by the State.¹⁴⁸ Third, the Court ruled that given the importance of the electronic version of the text to the author's ability to update and change it, it was necessary for the State - should it not have the electronic version of the book - to take the necessary measures to rescue all the information from the print version and digitalize it in an electronic version, all within a time period of six months.¹⁴⁹

87. The Court has had more opportunities to address measures of restitution of the exercise of freedom of expression as a result of judicial rulings have been used to restrict the right protected by Article 13 of the American Convention.¹⁵⁰ This was the case in the cases *Herrera Ulloa v. Costa Rica*,¹⁵¹ *Ricardo Canese v. Paraguay*,¹⁵² *Palamara Iribarne v. Chile*,¹⁵³ *Kimel v. Argentina*,¹⁵⁴ and *Usón Ramírez v. Venezuela*.¹⁵⁵ It is important to clarify that even though in some of these cases the Court did not order specific measures of restitution - given that some States had already adopted measures to partially correct the violations - the Court did make reference to the existence and scope of those measures.¹⁵⁶

88. The first case in which the Court established doctrine on the significance and scope of measures of reparation of restrictions to freedom of expression resulting from court rulings was in the *Case of Herrera Ulloa v. Costa Rica*. In this case, the IACHR argued that the criminal conviction of Mr. Herrera Ulloa was an indirect restriction on his exercise of freedom of expression. In order to remedy this restriction, the IACHR asked the Court to "nullify" the court ruling, this including five parts: i) nullifying the criminal conviction of Mr. Herrera; ii) nullifying the order to publish the judgment "under the same conditions as the articles that were the subject of the criminal complaint;" iii) removing the hyperlink to the news item published in "La Nación Digital;" iv) nullifying the award for civil damages; and, v) nullifying the order to reimburse costs.¹⁵⁷

¹⁴⁸ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 250.

¹⁴⁹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 251.

¹⁵⁰ In these cases, measures with restorative potential can also have the potential to recognize the dignity the victims, meaning they can be classified - as the Court itself has done in some cases - as measures of satisfaction. As described in the first section of this report, international tribunals have found that investigation of and punishment for violations, along with the judicial resolution of what happened, can have a reparatory effect in the sense that it satisfies the need for recognition and rectification of the good name of the victims and their families. For this reason, judicial measures are usually considered to be measures of satisfaction. However, in the cases addressed by inter-American case law on freedom of expression, it should be highlighted that in addition to their significance as a provider of dignity, the purpose of the orders of the Inter-American Court is to restore the exercise of the right by eliminating the validity of a judicial measure directly blocking free expression.

¹⁵¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 188 and 195.

¹⁵² I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

¹⁵³ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 253.

¹⁵⁴ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123.

¹⁵⁵ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁵⁶ So it as in the cases of *Ivcher Bronstein v. Peru* and *Ricardo Canese v. Paraguay*, in which the Court refrained from ordering the measures of restitution requested on taking into consideration that the State had already taken measures to resolve the IACHR's request. Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180; *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

¹⁵⁷ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

89. Based on the facts of the case and the damages proved by the Inter-American Court, with this case this Tribunal began to establish a doctrine that it would repeat in subsequent cases with some variations. First of all, the Court has found that in cases such as these, the measure of restitution *par excellence* is “to nullify” the ruling - or rulings - in all its effects. Depending on the case, this could include actions such as: i) nullifying the finding of criminal liability of the individual being charged;¹⁵⁸ ii) nullifying the punishment, whether prison, crimes or the barring of exercise of public functions;¹⁵⁹ iii) nullifying the civil recovery awards that could result from the violation of the criminal law;¹⁶⁰ iv) nullifying of orders to publish the rulings in media outlets;¹⁶¹ v) nullifying the orders to suppress informative material in the electronic media or to “remove hyperlinks;”¹⁶² vi) nullifying orders to the media to place hyperlinks to the rulings to convict on their webpages or websites;¹⁶³ vii) nullifying orders to pay procedural costs;¹⁶⁴ viii) nullifying orders to register those being charged in criminal registries or judicial criminal registries;¹⁶⁵ ix) and guaranteeing that the victim “can enjoy his [or her] personal liberty without the conditions that were imposed on him.”¹⁶⁶

90. Additionally, as can be deduced from the measures previously cited, the Court has found that the cessation of the effects of the rulings should include their scope with regard to third parties, as is the case with the media. Finally, it is important to highlight that the Court has typically ordered that its decisions be complied with through “all the judicial and administrative measures and any other necessary measures,”¹⁶⁷ measures that should be adopted within a time period that varies between six months and one year.

91. Second, the measures of reparation ordered by the Court that are restorative in nature and whose objective is the restoration of a right under the Convention that has been violated as a mechanism of indirect restriction on freedom of expression should be mentioned. In this regard, we find Inter-American case law includes cases in which measures of reparation have been ordered that cover

¹⁵⁸ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 253; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁵⁹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

¹⁶⁰ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

¹⁶¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶² I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶³ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶⁴ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶⁵ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 253; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

¹⁶⁶ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁶⁷ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

rights such as nationality (Art. 20 of the American Convention on Human Rights), property (Art. 21), personal freedom (Art. 7) and the right to movement and residency (Art. 22).

92. The *Case of Ivcher Bronstein v. Peru* clearly exemplifies the scope of these measures of reparation. In that case, the IACHR requested three measures of an eminently restorative nature: i) to order the reestablishment of Peruvian nationality and its full and unconditional recognition, with all corresponding rights and attributes; ii) to order the reestablishment of the enjoyment and exercise of the right to property with regard to his shares in the company, and to order the recovery of all his attributes as its shareholder and manager; iii) to guarantee Mr. Ivcher the enjoyment and exercise of his right to freedom of expression and, in particular, to cease the acts of harassment and persecution against him and against his family and company. In addition to freedom of expression, three other rights are intrinsically related with these measures: the rights to nationality, property and humane treatment.¹⁶⁸

93. The Court ruled on all three issues, even though it did not order all the measures requested. With regard to restitution of nationality, the Court found it to be an appropriate measure of reparation, but did not order it given that the State had already done so while the case was being processed before the Court.¹⁶⁹ With regard to restitution of property, the Court ordered the State to “facilitate the conditions” for Mr. Bronstein to be able to take the necessary steps to recover the use and enjoyment of his rights as majority shareholder of the firm and obtain compensation for the dividends and other payments that would have corresponded to him as majority shareholder and director of that firm. Toward doing so, the Court ordered the application of domestic law and ordered that the disputes must be submitted before the national authorities with jurisdiction.¹⁷⁰ Finally, with regard to the threats and other indirect measures to limit the right, the Court was less specific and indicated generally that the State must “guarantee Mr. Ivcher the right to seek, investigate and distribute information and ideas.”¹⁷¹

94. Another case involving these kinds of measures is the *Case of Ricardo Canese v. Paraguay*, in which the nullification of restrictions on authorizations for Mr. Canese to leave the country was sought. However, the measure was not granted because as of the date of the issuing of the judgment of the Inter-American Court, the State had already taken measures to nullify these restrictions.¹⁷² Similarly, in the above-mentioned *Case of Usón Ramírez v. Venezuela*, as a result of the order to nullify the court ruling, the Court ordered that the release of Mr. Usón Ramírez be guaranteed.¹⁷³ Finally, in the *Case of Palamara Iribarne v. Chile*, in addition to the restitution of property, a reparation was sought over the loss of work opportunities affecting Mr. Palamara, as he was a contractor with a State agency and had his contract terminated over his book. However, on this issue, instead of ordering a measure of restitution of work - as it has done in other cases not related to freedom of expression - the Court opted to order a measure of compensation, pursuant to the requests of the IACHR and the representatives of the victim.¹⁷⁴

¹⁶⁸ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 171.

¹⁶⁹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180.

¹⁷⁰ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 181.

¹⁷¹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 182.

¹⁷² I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

¹⁷³ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁷⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Paras. 239 *et seq.*

95. Third, the subject of restorative measures includes measures ordered not as a result of restrictions on the distribution of information available to society, but rather to correct those situations in which access to information held by the State is sought. In cases such as these, when access to information is improperly refused, freedom of expression is restricted, and therefore the obvious measure for exercising the right is none other than guaranteeing access to the requested information.

96. Inter-American case law includes at least four cases in which this measure of reparation has been mentioned: *Claude Reyes v. Chile*,¹⁷⁵ *Ríos et al. v. Venezuela*,¹⁷⁶ *Perozo et al. v. Venezuela*,¹⁷⁷ and *Gomes Lund v. Brazil*.¹⁷⁸ In *Claude Reyes v. Chile*, the Inter-American Court was clear in granting this measure, even though it placed it in the section on “Other measures of satisfaction and guarantees of non-repetition.” The Court was explicit on ordering that the State must, through the corresponding agency, “provide the information requested by the victims, if appropriate, or adopt a justified decision in this regard.”¹⁷⁹ Also, the Court found that should the State argue that it is not the responsibility of the Foreign Investment Committee to provide part of the information requested, it had the responsibility to provide justification for why it would not provide that information.¹⁸⁰

97. The IACHR requested a similar measure in the recent case of *Gomes Lund v. Brazil*.¹⁸¹ Specifically, the Commission asked the Court to order the State to take all the legal actions and make all the modifications necessary to systemize and make public all the documents related to military operations against the *Guerrilha do Araguaia*.¹⁸² Although the Court found that access to information was the pertinent measure for correcting the lack of a guarantee of this right, in this specific case it declined to accede to the Commission's request. The Court took into account certain State actions toward systemizing and publicizing documents on the military regime period, including those related with the *Guerrilha do Araguaia*, and as a consequence found that it was not necessary “to rule on an additional measure of reparation in this regard, notwithstanding that the State must continue to develop the initiatives for the systematization and publication of all the information on the *Guerrilha do Araguaia*, as well as the information related to the human rights violations which occurred during the military regime, guaranteeing access to this information.”¹⁸³

98. For its part, in the cases of *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, the IACHR asked the Court to order the State “to grant the victims, employees of RCTV, access to official sources of information and allow them to cover news stories, that is, the exercise of the right to freedom of expression” as a measure of restitution of freedom of expression.¹⁸⁴ In the case of *Perozo et al. v.*

¹⁷⁵ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para 158.

¹⁷⁶ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para 406.

¹⁷⁷ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para 416.

¹⁷⁸ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁷⁹ See I/A Court H.R. *Case of Claude Reyes et al.v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

¹⁸⁰ Cf. I/A Court H.R. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 159.

¹⁸¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁸² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 288.

¹⁸³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁸⁴ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para 399. For its part, in the *Case of Perozo et al.*, the IACHR asked the Court to order the

Venezuela, the Court found it pertinent to “order, as a guarantee of non-repetition,” that the journalists’ access to information and official sources be reestablished, ordering the State to take “the necessary measures to prevent undue restrictions on and direct or indirect obstacles to the exercise of their freedom of to seek, receive and distribute information.”¹⁸⁵

2. Measures of compensation

99. Measures of economic compensation or indemnity have been common in cases related to violations of freedom of expression, even though they have not been ordered in every case. In fact, the Court did not order measures of this kind in four cases: *The Last Temptation of Christ v. Chile*, *Claude Reyes v. Chile*, *Ríos et al. v. Venezuela*, and *Perozo et al. v. Venezuela*. In the remaining cases, the Inter-American Court ordered monetary indemnities for non-pecuniary damages and, in some of those cases, for pecuniary damages as well.

100. An indemnity for pecuniary damages seeks to compensate for the violations’ impact on personal assets. Towards doing this, the Court takes into account the circumstances of the case, the evidence provided, its own case law and the relevant pleadings presented by the parties. The Court is particularly strict when evaluating the evidence provided in support of this measure of reparation. Although in certain cases, based on the evidence provided the Court has turned to establishing specific amounts in equity, if the party has not sufficiently proven specific damage the Court dismisses the claim. The cases of *Ricardo Canese v. Paraguay*¹⁸⁶ and *Tristán Donoso v. Panama*¹⁸⁷ are examples of this situation.

101. In the former, the damaged party requested indemnity both for the income no longer received from working due to the criminal proceeding and for the expenses incurred in that proceeding. On this first claim, the Court ruled not to award any indemnity because “there are insufficient elements in the body of evidence to allow it to establish an approximate amount for the earnings Mr. Canese failed to receive, or the activities he failed to receive earnings for abroad.”¹⁸⁸ With regard to the aforementioned indirect damages, the Court did not find it pertinent to establish any indemnity because the representatives did not indicate which were the expenses incurred that “had a causal link to the facts of the case, and that differed from those he assumed in relation to the procedures before the domestic judicial bodies... [and] nor did they establish clearly the other losses of a pecuniary nature suffered by the victim, over and above the alleged loss of earnings.”¹⁸⁹

102. The Court made a similar ruling in the case of *Tristán Donoso v. Panama*. Therein, the Court ruled not to grant an indemnity on failing to find evidence of income no longer received for professional activities. As a consequence, the Court did not have evidence allowing it to effectively

...continuation

State to “guarantee the victims free access to sources of information without interference or arbitrary conditions of any nature.” I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 408.

¹⁸⁵ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 416.

¹⁸⁶ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 206.

¹⁸⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 184.

¹⁸⁸ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 202.

¹⁸⁹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 203.

confirm that those losses took place, whether they were the result of the facts of the case, and - eventually - what those amounts would be.¹⁹⁰

103. In cases in which the Court has found pecuniary damages to be proven, it has generally addressed two issues: loss of future earnings and indirect damages. With regard to the subject of loss of future earnings - that is, income not received by the victims as a direct consequence of the violation - three cases can be highlighted: *Palamara Iribarne v. Chile*, *Kimel v. Argentina*, and *Usón Ramírez v. Venezuela*. In the *Palamara* case, the Court took into account that the victim had signed a contract to provide services to a State agency, and that contract was terminated early. In the measure, the Court based the value of the indemnity on what Mr. Palamara would have earned had the contract not been canceled.¹⁹¹ In the same case, the Court set an indemnity in equity to cover the victim's income lost as a result of the deprivation of his use and enjoyment of his copyright as author of the book. In contrast, in the *Kimel* case, the Court did not have any similar source of reference. Nevertheless, the Court ordered the payment of an indemnity for pecuniary damages in equity, taking into account "Mr. Kimel's impossibility to move forward with new work proposals and projects and the alleged impairment of his professional career."¹⁹² Similarly, in the case of Usón Ramírez, the Court took into account that the victim was a retired general who had served in various public offices, including Finance Minister. Under this measurement, even though the total income no longer received had not been proven, the Court found that the trajectory of Mr. Usón Ramírez' career allow for it to be established with "sufficient certainty" that during the more than three years that he was in prison, he would have been able to perform some kind of remunerated activity or profession.¹⁹³

104. Monetary indemnities for indirect damages have also been ordered in three cases: *Palamara Iribarne v. Chile*, *Cepeda Vargas v. Colombia* and *Gomes Lund v. Brasil*. In the *Palamara* case, the Court ordered an indemnity to cover the expenses incurred as a consequence of military criminal proceedings being brought against Mr. Palamara Iribarne and of the order to leave the government housing where he was living along with his three children within the period of one week.¹⁹⁴ In the *Cepeda Vargas* and *Gomez Lund* cases, the Court ordered indemnities for expenses incurred by relatives of the murder victim and those forcibly disappeared, respectively. Regarding the former, the Court found that in murder cases, it can be assumed that direct relatives incur "various expenses" due to the crime. Also, in this case the Court took into account that some relatives had to leave the country, meaning they incurred various expenses to maintain themselves abroad and reinstall themselves in Colombia.¹⁹⁵ In the second case, the Court also assumed that the relatives incurred "expenses related to medical services and care and those related to the search for information and the bodily remains of the disappeared victims to the present date."¹⁹⁶

105. On the other hand, the Court has ruled that non-pecuniary damage "may include distress and suffering caused directly to the victim or the victim's relatives, the impairment of an individual's core

¹⁹⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 184.

¹⁹¹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 239.

¹⁹² I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 110.

¹⁹³ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 180.

¹⁹⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 243.

¹⁹⁵ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 247.

¹⁹⁶ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 304.

values, and changes of a non-pecuniary nature in the everyday life of the victim or the victim's family."¹⁹⁷ In accordance with the case law of the Court, an indemnity of this kind can be established in equity and based on a prudent valuation, given that it cannot be calculated with precision.¹⁹⁸ It usually includes the suffering, afflictions, fear and anguish experienced by the victims.¹⁹⁹ In order to determine their significance, the Court has taken into account factors such as the violations committed, the suffering caused, the treatment received by the victims, the time that has passed, the denial of justice and information, and changes in living conditions.²⁰⁰

106. The Court has taken into account certain situations related with the violation of the right to freedom of expression as causing fear, anguish and suffering, including: acts of persecution,²⁰¹ the bringing of criminal proceedings,²⁰² imposition of criminal sentences,²⁰³ restrictions on leaving the country,²⁰⁴ registration in criminal registries,²⁰⁵ preventative detention,²⁰⁶ and restrictions on freedom of expression derived from the conditions of conditional liberty,²⁰⁷ among others.

107. For its part, the Court has reiterated in different cases related with violations of freedom of expression that these acts have direct consequences on the professional, personal and family lives of the victims.²⁰⁸ Even when each of these effects depends on the specific violation and the circumstances of each case, the Court has pointed to particular situations in which each one of these dimensions has been affected. Thus the Court has ruled on effects on family life on three occasions. In the *Case of Kimel v. Argentina*, the Court ruled that the criminal proceeding affected family life and financial stability.²⁰⁹ In

¹⁹⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 244.

¹⁹⁸ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 183.

¹⁹⁹ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁰ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 310.

²⁰¹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 184.

²⁰² See: I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118; *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 200.

²⁰³ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 245; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118; *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190; *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁴ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205.

²⁰⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²⁰⁶ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁷ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁸ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205.

²⁰⁹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

the cases of *Palamara* and *Usón Ramírez*, the Court was clearer on the effect on family life. In the first of these cases, the Court ruled that the violations of the right to freedom of thought and expression, the lack of procedural guarantees to which he was subjected on being judged by military tribunals in military criminal proceedings brought against him, the various arbitrary deprivations of his liberty, and the lack of effective judicial protection “hindered family relationships since the facts of this case forced the victim’s family to separate.”²¹⁰ Finally, in the case of *Usón*, the Court found that having been sentenced to a several-year prison term, the victim was unjustifiably separated from his family, producing damage for which compensation must be provided.²¹¹

108. The Court ruled specifically with regard to the effects on professional life in the *Kimel*, *Palamara* and *Tristán Donoso* cases. In the first case, when establishing the value of the indemnity for non-pecuniary damages, the Court took into account the fact that Mr. Kimel had been “discredited in his work as a journalist,” to the “detriment of his professional life.”²¹² Similarly, the Court weighed the fact that Mr. Palamara had had “difficulties in finding work related to his profession.”²¹³ With regard to Mr. Tristán Donoso, the Court also found that he was “discredited as a professional, firstly before two important audiences: the authorities of the Colegio Nacional de Abogados [National Bar Association] and the Catholic Church, to which he provided legal counsel; and before society, due to the criminal conviction handed down against him,”²¹⁴ with his discrediting being deserving of reparations.

109. Finally, with regard to effects on personal life, the Court has taken into account consequences including the feeling of “defenselessness and powerlessness before the actions of military authorities”²¹⁵ suffered by Mr. Palamara, the “anxiety, anguish and depression”²¹⁶ faced by Mr. Kimel, and the violation of privacy of Mr. Tristán Donoso,²¹⁷ among other effects.

3. Measures of satisfaction

110. Measures of satisfaction have been regularly adopted in cases on the violation of Article 13 of the Convention. The Inter-American Court has used this method of reparation in 11 of the 13 cases in which States were declared responsible for the violation of freedom of expression. Even in the remaining two cases - *The Last Temptation of Christ v. Chile* and *Herrera Ulloa v. Costa Rica* - the Court made reference to these kinds of measures on indicating that the judgment in itself constituted “a form of reparation and moral satisfaction of significance and importance for the victims.”²¹⁸

²¹⁰ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246.

²¹¹ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²¹² I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²¹³ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246.

²¹⁴ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190.

²¹⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 247.

²¹⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²¹⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190.

²¹⁸ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 99; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 200.

111. In the same sense, with the exception of the cases of *The Last Temptation of Christ v. Chile* and *Usón Ramírez v. Venezuela*, in all the cases of freedom of expression litigated before the Inter-American Court, the IACHR has requested measures of satisfaction. It should be clarified, however, that in the case of *Palamara Iribarne v. Chile*, the IACHR requested that the copies of the book written by the petitioner that had been confiscated be returned and that its publication be allowed immediately, as measures of both restitution and satisfaction.²¹⁹ This type of measure fits more appropriately in the category of restitution.

112. There are three measures of satisfaction that are usually adopted by the Court in response to violations of the right to freedom of expression. The most frequent measure has been the publication of certain sections of the judgment and the operative paragraphs, something that has been ordered by the Court in 10 of the 13 cases on freedom of expression ruled on to date.²²⁰ In fact, this measure was not ordered only in the three cases ruled on first in the subject, those being *The Last Temptation of Christ v. Chile*, *Ivcher Bronstein v. Peru* and *Herrera Ulloa v. Costa Rica*. Subsequent to these cases, the Court has ordered the measure without fail. The other two measures that have been ordered in several cases, although less than the previous measure, are the carrying out of public acts of recognition of responsibility,²²¹ and the investigation of the facts leading to the violations, as well as bringing to trial and eventually punishing those responsible.²²² Additionally, in several cases the Court has highlighted that the judgment constitutes in itself a measure of satisfaction.²²³

113. The partial publication of the judgment in which the State is declared internationally responsible has been adopted in a variety of different kinds of cases. The measure has been considered in response to cases of criminalization,²²⁴ acts of violence that prevent or annulled freedom of

²¹⁹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 229.

²²⁰ See: I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 209; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 252; *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 160; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 125; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 197; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 405; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 415; *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 176; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²²¹ See: I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126. Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 223; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²²² See: I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 187; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 404; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 414; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 216.

²²³ See: I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 99; *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 183; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 245; *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 156; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 403; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 413; *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 165.

²²⁴ See: I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 209; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 252; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C

expression,²²⁵ prior censorship,²²⁶ and access to information.²²⁷ In all these cases, the Court has ordered the State to publish once in the official newspaper and in another newspaper with national circulation the operative paragraphs of the judgment, as well as certain other parts, usually including the chapter on the facts. A time period of six months is granted to comply with this measure. It should be highlighted that in some cases, the Court has considered additional ways of distributing the ruling as a measure of satisfaction. In the last three cases on freedom of expression ruled on by the Court- *Usón Ramírez v. Venezuela*,²²⁸ *Manuel Cepeda Vargas v. Colombia*²²⁹ and *Gomes Lund et al. v. Brazil*²³⁰ - as well as in *Palmará Iribarne v. Chile*,²³¹ the Court ordered the State to publish the sentence in full on a government website. Additionally, in the most recent case (*Gomes Lund et al. v. Brazil*), in response to a petition from the representatives of the victims, the Court ordered the publication of the judgment in the form of an electronic book.²³²

114. The carrying out a public act of recognition of international State responsibility has been considered to be an adequate measure of satisfaction when the violation of Article 13 of the Convention takes place as a consequence of other serious human rights violations, especially attacks on life and personal integrity. Effectively, two of the three cases in which the Court has ordered a measure of this kind - to wit, *Manuel Cepeda Vargas v. Colombia*²³³ and *Gomes Lund et al. v. Brazil*²³⁴ - address multiple violations of rights involving attacks on life and personal integrity in the context of the grave situation of political violence. In this sense, a public act of recognition works as a measure of satisfaction to address a complex situation of human rights violations that includes violations of the right to freedom of expression.

115. In contrast with this, this type of measure of satisfaction has been unusual in cases in which the violation of freedom of expression does not take place in connection with violations of the rights to life or humane treatment. The only case in which the Court ordered that a public act of recognition be carried out was *Kimel v. Argentina*.²³⁵ In other similar cases like *Herrera Ulloa v. Costa Rica*, *Ricardo Canese v. Paraguay*, *Palmará Iribarne v. Chile*, *Tristán Donoso v. Panama* and *Usón Ramírez et al. v.*

...continuation

No. 177. Para. 125; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 197.

²²⁵ See: I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 405; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 415; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220.

²²⁶ I/A Court H.R. *Case of Palmará Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 252.

²²⁷ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 160.

²²⁸ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 176.

²²⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220.

²³⁰ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²³¹ I/A Court H.R. *Case of Palmará Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 252.

²³² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²³³ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 223.

²³⁴ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²³⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

Venezuela, the Court refrained from ordering a measure of this kind even though, identical to the *Kimel* case, they address the criminalization of the exercise of freedom of expression in matters of obvious public interest. In fact, in some of these cases the Court did not establish the measure satisfaction even though it was requested by the IACHR. Effectively, in the cases *Ricardo Canese v. Paraguay* and *Herrera Ulloa v. Costa Rica*, the IACHR asked that the Court order the delivery of a public apology for the violations committed by the States. Similarly, in the case of *Tristán Donoso v. Panama*, the IACHR sought public recognition of international responsibility from the State. In the first two cases, the Court declined to order the measure by arguing that the judgment in itself constituted a form of reparation.²³⁶ In the case of *Tristán Donoso*, the Court, referencing the *Kimel* case, indicated the following: “Although in a recent case involving the right to freedom of expression it was considered pertinent to hold a ceremony of public recognition due to the particular circumstances thereof, such measure is often, although not exclusively, ordered as reparation for violations of the rights to life, to humane treatment and to personal liberty. The Tribunal does not believe such measures to be necessary in order to redress the violations verified in the instant case. Along such lines, the measure ordering that the criminal conviction and its consequences be set aside, the instant Judgment, and its publication constitute important reparation measures.”²³⁷

116. In the case of *Kimel v. Argentina*, in which for the first time, a public act of recognition was ordered as a measure of reparation on the subject of freedom of expression, the Court limited itself to ordering it that the act be carried out.²³⁸ In subsequent judgments in the cases of *Manuel Cepeda Vargas v. Colombia* and *Gomes Lund et al. v. Brazil*, the Court set more specific conditions on the way in which that recognition must be carried out. Thus in the case of *Manuel Cepeda Vargas v. Colombia*, the Court specified the minimum content to which the act must make reference and also ruled that the “public ceremony must be decided with the agreement and participation of the victims, if they so wish. To create awareness about the consequences of the facts of the instant case, this acknowledgment act or event should be held in the Congress of the Republic of Colombia, or in a prominent public place, in the presence of members of the two chambers, as well as the highest-ranking State authorities.”²³⁹ Likewise, the Tribunal highlighted the value of the public act in this case for “the recovery of the victims’ memory, the recognition of their dignity, and the consolation of their heirs.”²⁴⁰ In a similar sense, in the case of *Gomes Lund et al. v. Brazil*, the Court established that “The act should be carried out during a public ceremony, in the presence of high-ranking national authorities and of the victims in the present case,”²⁴¹ and that “The State should agree on the terms of compliance of the public act of acknowledgment with the victims or their representatives, as well as the particularities required, such as location and date for it to be carried out.”²⁴² Additionally, it ordered that the “act should be disseminated via the media.”²⁴³

117. Investigating and bringing to trial those responsible constitute measures of satisfaction (as well as guarantees of non-repetition) that are adequate in cases involving indirect restrictions on

²³⁶ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 211; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 200.

²³⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 200.

²³⁸ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

²³⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 224.

²⁴⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 223.

²⁴¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²⁴² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²⁴³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

freedom of expression that result from infractions or crimes committed by public officials or private individuals. In the four cases in which the Court has ordered the measure, Article 13 of the Convention was violated as a consequence of arbitrary actions on the part of public officials - *Case of Ivcher Bronstein v. Peru* - acts of violence and harassment committed by private individuals - *Case of Perozo et al. v. Venezuela* and *Case of Ríos et al. v. Venezuela* - and one attack against life - *Case of Manuel Cepeda Vargas v. Colombia*. According to inter-American case law, as a measure of reparation in these types of cases, States must investigate the facts leading to the violations in order to identify and punish those responsible for them.²⁴⁴

118. In cases in which the violation of Article 13 of the Convention has affected the right to seek and receive information, the Court has ordered that the information requested be turned over to the victims or, should it not be turned over, that justification be provided for the denial, all as a measure of satisfaction. The Court ruled thusly in the case of *Claude Reyes et al. v. Chile*,²⁴⁵ although it should be noted that the IACHR had requested this measure as restitution. In the case of *Gomes Lund v. Brazil*, the Court found that the State must take “all the measures necessary to locate and identify the remains of the disappeared victims and then return them to their family members.”²⁴⁶

119. Other measures of satisfaction in response to violations of freedom of expression include acts of highly symbolic content that have the capacity to revalue and dignify the victims’ position in society. Examples of this include the measures of reparation adopted by the Court in the case of *Manuel Cepeda Vargas v. Colombia*, one of them consisting of granting a scholarship in the name of the murdered senator for university-level studies in communication sciences or journalism at a public university in Colombia.²⁴⁷ The other measure was the preparation and publication of a documentary on the victim’s life as a journalist and politician.²⁴⁸

4. Measures of rehabilitation

120. These measures of reparation have been the least common in Inter-American cases related to violations of freedom of expression. The Court has only adopted them in the cases of *Manuel Cepeda Vargas v. Colombia* and *Gomes Lund et al. v. Brazil*. In the former case, the Court indicated that it “must order a measure of reparation that provides appropriate care for the mental and moral sufferings that the victims endured owing to the violations declared in this judgment.”²⁴⁹ In a similar sense, the Court noted in the case of *Gomes Lund* that “a measure of reparation that provides appropriate care for the physical and psychological effects suffered by the victims”²⁵⁰ was necessary. Based on this, in both cases

²⁴⁴ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 187; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 413; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 404; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 216.

²⁴⁵ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

²⁴⁶ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 263.

²⁴⁷ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 233.

²⁴⁸ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 228.

²⁴⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 235.

²⁵⁰ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 267.

the Court found that the State had the obligation to provide free and immediate medical and psychological treatment for the victims, for as long as necessary and including the provision of medication.²⁵¹

121. As noted, the cases of *Gomes Lund* and *Manuel Cepeda Vargas* share the fact that the violation of freedom of expression took place in the context of a much broader situation of the violation of rights, including attacks on life and personal integrity. In this sense, the measures of rehabilitation have been considered to provide adequate reparation for victims who have been subjected to complex situations of rights violations. In contrast, in cases of the violation of freedom of expression that do not follow this pattern - the reparation of the psychological and emotional suffering caused, for example, by bringing a criminal proceeding and imposing a sentence - have functioned fundamentally through the adoption of measures of compensation for non-pecuniary damages. The Court has ruled this way even in cases in which there is evidence of the existence of effects on mental health. For example, in the case of *Kimel v. Argentina*, one of the pieces of evidence taken into account for setting the size of the non-pecuniary damages was the testimony of a psychiatric doctor who stated that Mr. Kimel was suffering from a "extended psychic trauma" consisting of "posttraumatic stress syndrome with clinical manifestations of general anxiety, depressive symptoms and somatization disorders."²⁵² Despite this evidence, the Court opted to establish a measure of compensation instead of rehabilitation.

5. Guarantees of non-repetition

122. Measures oriented toward establishing guarantees of non-repetition have been requested by the IACHR and adopted by the Court in the vast majority of the cases of violations of the right to freedom of expression.

123. The guarantees of non-repetition usually ordered in inter-American case law can be placed into three categories: a) adjustment of the domestic legal system to Inter-American standards on the subject of freedom of expression; b) training of public officials on the right to freedom of expression; and c) adoption of measures oriented toward guaranteeing effective protection of the right violated.

124. Adjustment of the domestic legal system is a measure that is particularly appropriate in cases in which the violation of the right to freedom of expression has taken place because of or under the protection of legal provisions. In inter-American case law, a measure of this kind was used in the case of *The Last Temptation of Christ v. Chile*, in which the Court ruled that the State must "modify its legal system in order to abolish prior censorship."²⁵³ Additionally, this guarantee of non-repetition has been used in the majority of cases of criminalization with the purpose being for States to modify their criminal codes. In the cases of *Ricardo Canese v. Paraguay* and *Tristán Donoso v. Panamá*, the Court did not adopt a measure of this nature on finding that the State in question had already reformed their criminal law systems in order to adjust them to inter-American standards on freedom of expression.²⁵⁴

125. In the cases of *Palamara Iribarne v. Chile*, *Kimel v. Argentina* and *Usón Ramírez v. Venezuela*, the Court ordered some variety of adjustment of the laws under which the victims were subjected to criminal proceeding and punished. The Court gave specific instructions in each case on the scope of the reforms to be implemented. In *Palamara Iribarne v. Chile*, it found with regard to the legislation on *desacato* that the State must adopt "such measures as may be required to repeal and

²⁵¹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 235; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 267.

²⁵² I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 115.

²⁵³ I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 97.

²⁵⁴ Cf. I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 210; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 209.

modify whatever legal provisions may be incompatible with the international standards on freedom of thought and expression, in a manner such that all persons are allowed to exercise democratic control over all state institutions and officials through the free expression of their ideas and opinions on their performance in office without fearing future retaliation;²⁵⁵ in *Kimel v. Argentina* it ordered that the “lack of accuracy [in criminal proceedings with regard to slander and defamation]” must be adjusted “so that, consequently, they do not affect the exercise of the right to freedom of thought and expression,”²⁵⁶ and in *Usón Ramírez v. Venezuela*, after noting that the article of the Organic Code of Military Justice under which the victim was brought to trial and found guilty “[did] not strictly define the criminal behavior... resulting in a broad, vague and ambiguous legal definition,”²⁵⁷ found that the State must modify the law to adjust it to articles 2, 7, 8, 9 and 13 of the Convention. It also ordered that the State must repeal the domestic law that allows civilians to be tried by military courts.²⁵⁸

126. The second guarantee of non-repetition, which consists of the training of public officials, constitutes an adequate measure for addressing institutional failings leading to a specific case of the violation of the right to freedom of expression. An example of this type of measure can be found in the case of *Claude Reyes v. Chile* in which, upon confirming the failings of the State on the issue of the guarantee to access to information, the Court ordered that it must “within a reasonable time... provide training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right; this should incorporate the parameters established in the Convention concerning restrictions to access to this information that must be respected.”²⁵⁹

127. In other cases, however, the Court has not considered it necessary to order this type of measure. Thus, in the case of *Tristán Donoso v. Panama*, the Court did not accept the petition of the representatives of the victims to order training for judicial officials on standards of protection of the right to honor and freedom of expression in matters of public interest. According to the Court, it was “sufficient that the State ensure that this Judgment be widely disseminated through its publication.”²⁶⁰

128. The third category of non-repetition guarantee corresponds to the adoption of the measures necessary to guarantee the effective protection of the right. This is a generic measure that, depending on the circumstances of the case, can be manifested in more specific orders, but that in other cases maintains a high degree of generality, such that it allows States a significant margin for interpretation. For example, in the cases *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, both related to acts of violence and harassment of journalists by private parties, the Court limited itself to ordering the State to adopt “the measures necessary to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive and impart information of the alleged victims.”²⁶¹ As can be noted, the Court only established the objective that must be reached with the measure, leaving the State with the authority to define whatever measures it may find pertinent to achieve it.

²⁵⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 254.

²⁵⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 128.

²⁵⁷ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 173.

²⁵⁸ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 172.

²⁵⁹ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 165.

²⁶⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 211.

²⁶¹ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 406; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 416.

129. One case in which the Court adopted a more specific measure was in that of *Claude Reyes v. Chile*. In it, the Tribunal ordered the Chilean State to “adopt the necessary measures to guarantee the protection of the right of access to State-held information, and these should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”²⁶² The Court handed down a generic order, but in addition to that indicated at least one specific a measure that must be implemented toward effectively guaranteeing the protection of the right in question.

130. The Court has not always found it necessary to establish measures of this nature. One example is the case of *Ivcher Bronstein v. Peru* in which the IACHR asked that the Court order the adoption of legislative and administrative measures to prevent the repetition of similar facts and the future, but the Court declined to do so, arguing that the State had already “taken steps to this end.”²⁶³ Specifically, the measure made reference to the passage by the Congress of Peru of a resolution fully reestablishing the contentious jurisdiction of the Inter-American Court in Peru.

²⁶² I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 163.

²⁶³ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 185.

CHAPTER V CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its Annual Report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence against journalists and media outlets

2. At least 28 media workers were murdered in the region in 2011, while several others disappeared or had to flee from the areas in which they worked, under circumstances in which a link to the practice of their profession could not be ruled out. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. It is important to highlight that during 2011 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

4. On this point, as in previous years, the Office of the Special Rapporteur recommends that member States:

- a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right of freedom of expression.
- b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals.
- c. Carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, and provide adequate reparations to the victims and their family members.
- e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

B. Criminalization of expression and promoting proportionality in the application of subsequent liability

5. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. However, in others the judges issues criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression, and that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

6. Likewise, the Office of the Special Rapporteur observes that it is necessary for States to design regulatory frameworks that respect the exercise of social protest. States must not fail to take into account that, when facing institutional frameworks that do not favor participation or that present serious barriers to accessing more traditional methods of mass communication, public protest can become the only method that truly permits sectors that are discriminated against or marginalized from the public discourse to make their points of view heard and considered.

7. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

- a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention on Human Rights and restrict public debate, an essential element of the practice of democracy.
- b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.
- c. Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.
- d. Promote the modification of ambiguous or imprecise criminal laws that disproportionately limit the right to freedom of expression, such as those aimed at protecting the honor of ideas or institutions, with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues of public interest.
- e. Establish clear regulations that guarantee the legitimate exercise of social protest and that impede the application of disproportionate restrictions that can be used to inhibit or suppress expressions that are critical or dissenting.

C. Statements of high-level State authorities

8. In 2011, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting the journalistic work of some communicators, media outlets and non-governmental organizations, accusing them of illicit acts based on the editorial slant of the media outlet or journalist or the watchdog activities of the organization. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of administrative procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

9. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

- a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.
- b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

D. Prior censorship

10. The Office of the Special Rapporteur received information about judicial decisions that prohibited the circulation of information of public interest this year. Member States must take into account that Article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

11. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

E. Discriminatory distribution of government advertising

12. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising.

13. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions. States should also regulate these matters in accordance with the inter-American standards laid out in this and other reports of the Office of the Special Rapporteur.

F. Progress on access to information

14. During this period, the Office of the Special Rapporteur was encouraged by the incorporation of the inter-American system's standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

15. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

- a. Continue promulgating laws that permit effective access to information and complementary norms that regulate the exercise of this right, in conformity with the international standards in this area.
- b. Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all citizens, this being an essential element of freedom of expression and the democratic system.
- c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

G. Allocation of radio frequencies

16. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review. Finally, the Office of the Special Rapporteur observed this year that in some cases, State regulatory frameworks still have not established processes of allocating licenses or frequencies that are open, public, and transparent, subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable.

17. On this point, the Office of the Special Rapporteur recommends that Member States:

- a. Adopt legislation to ensure transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. This legislation must take into account the current situation of concentration of the ownership of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.
- b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including antitrust laws.
- c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the "Joint Declaration on Diversity in Broadcasting" (2007).

- d. Launch regional efforts to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

18. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2011, and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur especially recognizes those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of journalists who lost their lives defending the right of every person to freedom of expression and information. This text and all the efforts of the Office of the Special Rapporteur for Freedom of Expression are dedicated, with admiration and respect, to all of those who were murdered or harmed for exercising their right to freedom of expression.