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**ANNUAL REPORT OF THE
INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS
2006**

VOLUME II

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

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ORGANIZATION OF AMERICAN STATES
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FREEDOM OF EXPRESSION**

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INTRODUCTION

1. The year 2006 was an especially violent time for journalism in the region. According to information analyzed by the Office of the Special Rapporteur for Freedom of Expression (“the Office of the Special Rapporteur”) during 2006, at least 19 persons were assassinated for motives that could well be related to their work as journalists.¹ This figure is especially worrisome, considering the downward trend in killings of journalists in the region over the last three years.

2. Especially worrisome in this regard is the impunity that has resulted from the failure to properly investigate the assassinations of journalists that have taken place during this period and in earlier periods. Impunity, in turn, spurs on new assassinations. As it is known beforehand that there is unlikely to be any punishment after the crime is committed, those who kill journalists may continue to do so, or threaten to do so, without serious consequences. This, in turn, gives rise to self-censorship. Given the states’ failure to provide guarantees for journalists’ right to life, journalists are forced to stop investigating and reporting on certain issues or matters.

3. In addition, in the course of this year, the Office of the Special Rapporteur received information on more than 200 incidents involving assaults and threats against media workers in several countries. The actual number may be much higher considering that many of these situations are not reported. Impunity with respect to assaults and threats is worrisome, for often in such cases investigations have not even been opened. This not only results in self-censorship; in addition, several journalists and their family members are forced to leave their cities and even their countries.

4. In 2006 there was also a continuing increase in the use, by public officials, of criminal proceedings against journalists. The information received by the Office of the Special Rapporteur for Freedom of Expression indicates that criminal proceedings were brought against journalists in several countries of the region for *desacato* and criminal defamation.

5. In addition are the reports and complaints received in the year on issues such as the discriminatory allocation of government advertising, and the use of other indirect restrictions on the freedom of expression in several countries. The Office of the Special Rapporteur also received complaints regarding the refusal of state officials to provide information when it is requested of them.

6. During the year the Office of the Special Rapporteur received information about major legislative advances in several member states including the repeal of criminal statutes on *desacato*, the decriminalization of defamation, access to information held by the government, and confidentiality of journalists’ sources.

7. The work plan of the Office of the Special Rapporteur takes into account the priorities in relation to freedom of expression in the region. During this year, the Office of the Special Rapporteur has implemented a system for daily monitoring of the right to freedom of expression in the region. Every day the Office receives information from different sources, such as non-governmental organizations, journalists’ associations, news media, and an alert network that is activated via email. When the facts reported are especially serious, such as assassinations, press releases are issued deploring the act and demanding that the state authorities conduct a proper investigation and punish the persons responsible. Similarly, the Office of the Special Rapporteur contacts threatened journalists and informs them of the possibility of seeking precautionary

¹ The table showing the breakdown of journalists assassinated in 2006 for reasons presumably related to their work as journalists can be found in section D of Chapter II of this report.

measures from the Inter-American Commission on Human Rights ("IACHR") to protect their lives and personal integrity. All this information is compiled, and at the end of each quarter a press release is prepared outlining the events in each country and giving the Office of the Special Rapporteur's preliminary evaluation.²

8. In addition to publicly denouncing all these situations, during this year the Office of the Special Rapporteur provided assistance to the IACHR in several individual cases being processed addressing emblematic situations in which international complaints are brought against states for violations of the right to freedom of thought and expression. The Office of the Special Rapporteur considers that bringing individual cases on this subject in the inter-American human rights system is an especially important part of its mandate, which makes it possible to obtain justice in an individual case, and to continue creating case-law that helps to ensure greater observance of the right to freedom of thought and expression in the region.

9. In carrying out that priority, the Office of the Special Rapporteur substantially increased the number of draft reports submitted to the IACHR for its consideration. The Office prepared and submitted for the consideration of the IACHR six draft reports on the merits in individual cases. Cases were chosen from six different countries, brought by different non-governmental organizations, on a variety of issues: assassination of journalists, physical attacks on journalists, threats against journalists, criminal defamation proceedings against a lawyer brought by a public official for allegations on matters in the public interest, and disproportionate sanctions on a media outlet in a civil trial related to the dissemination of information on matters of public interest.

10. A study was also begun into the status of investigations into all the cases of journalists assassinated in the region in the last 10 years presumably for motives related to their work as journalists. To this end, the Office of the Special Rapporteur requested specific information from each state and from non-governmental organizations on specific aspects of the investigations. A study will be published based on the results, analyzing each case, and the general situation of impunity in the region in relation to this serious problem.

11. During 2006 the Office of the Special Rapporteur continued to keep a demanding agenda including several trips to promote the right to freedom of expression and participated in numerous conferences and seminars. It is important to emphasize, as well, that in the course of this year seminars were organized to train journalists in the use of the inter-American system for the protection of human rights.

12. In March 2006 the IACHR, through a public convocation, chose Venezuelan attorney Ignacio J. Álvarez as the new Special Rapporteur for Freedom of Expression. The new Special Rapporteur assumed the position in April 2006.

13. The new Special Rapporteur has emphasized the excellent work done by his predecessors, Messrs. Santiago A. Cantón and Eduardo A. Bertoni, and also notes that the achievements of the Office of the Special Rapporteur this year would not have been possible without the dedication of the Office's staff and the support of a group of talented interns. During this year, the Office of the Rapporteur took on board two new attorneys and one journalist. In addition, in 2006 the Office drew on the valuable support of David Rondón, María Jesús Ahumada, Ioana Luca, Roberto Giacoman, Silvia Delgado, and Wayne DeFreitas, who participated in our internship program. The Office of the Special Rapporteur highlights the hard work and important

² This practice began in the second quarter of 2006. The quarterly press releases issued by the Office of the Special Rapporteur may be found in the Annexes to this report.

contributions made by the staff of the Office and by each of the interns in promoting and protecting the freedom of expression.

14. This report maintains the same basic structure of the previous reports and carries out the mandate established by the IACHR for the work of the Office. The report begins with a general chapter on the mandate and competence of the Office of the Special Rapporteur, and continues with a description of the activities carried out during the year. As is by now customary in the reports of the Office of the Special Rapporteur, the second chapter presents an evaluation of the situation of freedom of expression. The third chapter presents a comparative study of international case-law.

15. Chapter II of this report analyzes some of the situations reported to the Office of the Special Rapporteur in the course of 2006. The methodology for preparing that chapter continues to be, in essence, the same used in previous years; and as was done in the Annual Report on 2005, the situations have been presented and grouped taking into consideration the Declaration of Principles on Freedom of Expression.

16. Since it was established, the Office of the Special Rapporteur has used some of the cases that have arisen to highlight the challenges faced by those who wish to exercise their freedom of expression: the assassinations, attacks, and threats against journalists; the non-existence of and shortcomings in laws that guarantee access to information; the existence of *desacato* laws and the criminalization of defamation in many states of the region. As indicated at the beginning of this introduction, this year, unfortunately, several such situations recurred, and, indeed, worsened in some cases. Chapter II also draws attention to other aspects of freedom of expression in the Americas, such as the discriminatory use of government advertising and other indirect restrictions on the freedom of expression.

17. Chapter III of this report goes back to the practice of the Office of the Special Rapporteur of undertaking comparative studies of case-law. This year, chapter III updates the studies published in previous annual reports of the Office of the Special Rapporteur on the case-law of the Inter-American Court of Human Rights³, the European Court of Human Rights⁴, and the Human Rights Committee of the United Nations⁵ on the freedom of expression. The publication of these decisions seeks to become a tool useful for different sectors, including the state, civil society, and academia.

18. This report is, therefore, an overview of the dedicated work, over one whole year, of the staff, interns, and partners of the Office of the Special Rapporteur. The intense work done in recent years by the Office of the Special Rapporteur has consolidated its position as a fundamental player in relation to the freedom of thought and expression. The firm support of the sectors with which the Office interacts has played a fundamental role; these include states, non-governmental organizations, journalists, media, and academic sectors.

19. This strengthened position has, in turn, increased substantially the expectations of the work and performance of the Office of the Rapporteur. To address this demand, it is necessary,

³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. Volume III. Chapter III.

⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. Volume III. Chapter III.

⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. Volume III. Chapter III.

along with the institutional and political support that the Office of the Rapporteur has received since it was established, to pay attention to its need for financial support, for without it, it cannot function or carry out the activities that its mandate requires of it.

20. Therefore, it is important to once again call on the states of the region to follow the steps of those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Action Plan approved by the Heads of State and Government at the Third Summit, held in Quebec City in April 2001, provides: "To strengthen democracy, create prosperity and realize human potential, our Governments will ... support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR."

21. This work seeks to contribute to progressively increase respect for the right to freedom of thought and expression in the region, and thereby to continue strengthening democracy and development through greater observance, in practice, of the fundamental right of each person to think freely and to express his or her thoughts by any means.

CHAPTER I

GENERAL INFORMATION

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

1. The Office of the Special Rapporteur for Freedom of Expression is a permanent office, with its own functional and budgetary independence. It was established in 1997 by the Inter-American Commission on Human Rights within the scope of its powers and authorities, and operates in the legal framework of the Commission.¹ From its establishment, the Office of the Special Rapporteur for Freedom of Expression enjoyed the support not only of the IACHR but also of the states, civil society organizations, media, journalists, and, mainly, the victims of violations of the freedom of expression. They have all seen in the Office a major source of support for establishing the guarantees required for the exercise of their rights, or to ensure the just reparations they merit. In 2006, the General Assembly of the Organization of American States ("OAS") approved Resolution 2237 (XXXVI-O/06), reaffirming the right to the freedom of expression, and recognizing contributions made in the Annual Report of the Office of the Special Rapporteur on 2005, and also urged follow-up on the issues addressed in that report.

2. The Inter-American Commission on Human Rights is an organ of the OAS whose essential function is to foster the observance and defense of human rights and serve as an advisory body on human rights. The powers of the Commission derive fundamentally from the American Convention on Human Rights ("the American Convention" or "the Convention"), the American Declaration of the Rights and Duties of Man, and the Charter of the OAS. With that purpose in mind, the Commission investigates and decides on reports of human rights violations, makes on-site visits, draws up draft treaties and declarations on human rights, and prepares reports on the situation of human rights in the countries of the region.

3. The Commission has addressed the right to the freedom of expression through its system of individual petitions and cases, in which there have been rulings on cases involving censorship, crimes against journalists, and other direct and indirect restrictions on the freedom of expression. In addition, it has issued decisions on threats to and restrictions on the media through special reports. The Commission has also analyzed the situation of the freedom of expression and information in its various on-site visits and in its general reports. Finally, the Commission has adopted precautionary measures so as to act urgently to prevent irreparable harm to persons.² These measures were adopted to make possible the full exercise of the freedom of expression and to protect journalists.

4. During its 97th regular session, held in October 1997, mindful of the great threats and problems standing in the way of the full and effective development of the right to freedom of expression, which is key for consolidating and developing democracy, the Commission decided, by unanimity of its members, to establish an Office of the Special Rapporteur for Freedom of Expression, on a permanent basis, with functional independence and its own operational structure.

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

² Article 25(1) of the Rules of Procedure of the Commission states: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

5. During its 98th special session, held in March 1998, the Commission defined more generally the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to channel economic assistance to the Office. That same year the Commission chose Argentine attorney Santiago A. Cantón as the Special Rapporteur for Freedom of Expression. When he left the post in 2002, the IACHR chose Argentine attorney Eduardo A. Bertoni as Special Rapporteur for Freedom of Expression; he served in that position until December 2005. Subsequently, on March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Álvarez as Special Rapporteur for Freedom of Expression.

6. On creating the Office of the Special Rapporteur, the Commission sought to place special emphasis on raising awareness of full respect for the freedom of expression and information, considering its fundamental role both in consolidating and developing democracy and in denouncing violations of and protecting all other human rights; and to make specific recommendations to the member states on matters related to the freedom of expression and information, so that progressive measures might be taken in its favor, and reports and specialized studies of the matter drawn up, to be able to take prompt action on those petitions and other communications that assert that this right is being violated in some OAS member state.

7. In general terms, the Commission noted that the duties and mandates of the Office of the Special Rapporteur should include, among others: 1. preparing an annual report on the situation of freedom of expression in the Americas, and submitting it to the Commission for its consideration and inclusion in the Annual Report of the IACHR to the General Assembly of the OAS; 2. preparing thematic reports; 3. compiling the information needed to prepare the reports; 4. organizing promotion activities entrusted to it by the Commission including, but not limited to, presenting papers at relevant conferences and seminars, instructing government employees, professionals, and students on the Commission's work in this regard, and preparing other promotion materials; 5. immediately informing the Commission of urgent situations that merit the Commission requesting the adoption of precautionary measures or provisional measures that the Commission may request of the Inter-American Court, to prevent grave and irreparable harm to human rights; and 6. providing information to the Commission on the processing of individual cases related to the freedom of expression.

8. The Commission's initiative to create an Office of the Special Rapporteur for Freedom of Expression as a permanent entity enjoyed full support in the OAS member states during the Second Summit of the Americas. At that Summit, the Heads of State and Government of the Americas recognized the fundamental role that the freedom of expression and information plays in relation to human rights, and in democracies, and expressed their satisfaction with the creation of the Office. Accordingly, in the Declaration of Santiago, adopted in April 1998, the Heads of State and Government expressly stated:

We agree that a free press plays a fundamental role [in the area of human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We recommend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.³

9. In addition, at this same Summit, the Heads of State and Government of the Americas expressed their commitment to support the work of the Office of the Special Rapporteur

³ Declaration of Santiago. Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in *Official Documents of the Summit Process, from Miami to Santiago*, Volume I, Summits of the Americas Department, Organization of American States.

for Freedom of Expression. On this point, the Plan of Action from that Summit recommended as follows:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.⁴

10. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Rapporteurship, and added that their governments will:

Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.⁵

B. Main activities of the Office of the Special Rapporteur

11. Since it began its work in November 1998, the Office of the Special Rapporteur has participated in several events to make known its mandate and objectives. The fact that the Office of the Special Rapporteur has become well-known has facilitated its successful performance of the tasks entrusted to it. The tasks of promotion and dissemination have been geared mainly to participation in international forums, coordinating efforts with non-government organizations, advising the states on proposed laws related to the freedom of expression, and making the Office known through the media. The main objectives of these activities were to raise awareness and better inform the different sectors of society as to the importance of the inter-American system for the protection of human rights, the international legal provisions on freedom of expression, the comparative case-law on the matter, and the importance of the freedom of expression in the context and development of a democratic society.

12. The Office of the Special Rapporteur has become a strong proponent of legislative reform on freedom of expression issues. Through the ties that have been established with the member states and various civil society organizations, this office has begun a process of cooperating to implement initiatives to reform laws that limit the right to the freedom of expression, as well as the inclusion of laws that expand the right of citizens to participate actively in the democratic process through access to information.

13. Since the creation of the Office of the Special Rapporteur, advisory studies have been carried out and recommendations were made to some member states to amend their legislation that adversely impacts the freedom of expression, so as to bring them into line with international standards for more effective protection of the exercise of this right. In preparing its thematic and annual reports, the Office of the Special Rapporteur sends requests for information to the member states.

⁴ Plan of Action. Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in *Official Documents of the Summit Process, from Miami to Santiago*, Volume I, Summits of the Americas Department, Organization of American States.

⁵ Plan of Action. Third Summit of the Americas, April 20-22, 2001, Quebec City, Canada. Available at: <http://www.summit-americas.org>.

14. Through its informal hemispheric network for the protection of the freedom of expression, the Office receives information on the status of the freedom of expression in the member states. This information is sent in by various organizations that defend this right, journalists in general, and other sources. In those cases in which it considers that there may be a serious violation of the freedom of expression, the Office issues press releases expressing its concern to the authorities and making recommendations. In other cases, the Office turns directly to the state authorities to get more information and/or to ask that reparation be made for the harm done. The Office has established a data base made up of a large number of media outlets, organizations that defend the freedom of expression and human rights, attorneys who are specialists in the matter, and universities, among others, through which its press releases and/or any other information it considers relevant are disseminated.

15. Disseminating the activities and mandate of the Office has made it possible for several sectors of civil society to turn to it to protect their right to issue, disseminate, and receive information.

1. Daily monitoring of the situation of freedom of expression in the region

16. Since April 2006 the Office of the Special Rapporteur has been drawing up a table for monitoring the situation of the freedom of expression in the region. That table is updated daily with information received from various sources. This information is then analyzed to determine the course of action to adopt, which may include sending letters to states, issuing press releases, giving impetus to requests for precautionary measures from the IACHR, and granting such requests, and including that information in the quarterly press releases of the Office of the Special Rapporteur and in its Annual Report.

2. Individual case system

17. The number and quality of draft reports on the merits prepared by the Office of the Special Rapporteur for consideration by the IACHR has increased substantially. Accordingly, during the period covered by this report, six draft reports on the merits were prepared on different important freedom of expression issues. As the draft reports have yet to be published, we mention just the issues they address:

<i>Case</i>	<i>Main Issue</i>	<i>Date the petition filed</i>
A	Criminal trial and conviction for criticizing public official	2000
B	Assassination of journalist	2000
C	Bomb attack on journalist	2003
D	Civil sanction for reproducing information on public official	2004
E	Criminal trial and conviction of human rights lawyer for statements concerning public employee	2000
F	Attacks on journalists and on headquarters of television station	2002

3. Precautionary Measures

18. The Office of the Special Rapporteur has come to play an active role in precautionary measures during this period. Through use of the daily monitoring system, from April to December 2006 the Office of the Special Rapporteur identified several situations in which it actively promoted the request for precautionary measures from the IACHR. It is important to note that through this mechanism, for example, it was possible to protect the life and personal integrity of one journalist in Colombia, five community radio workers in Mexico, 19 workers from a radio station in Guatemala, and three journalists in Honduras.

4. Quarterly press releases on the freedom of expression situation in the region

19. In 2006, the Office of the Special Rapporteur for Freedom of Expression began to publish quarterly press releases on the situation of the right to freedom of thought and expression in the region. In these quarterly press releases, the Office of the Special Rapporteur compiles the information received during the quarter and evaluates the positive and negative aspects observed, both in general and country by country. To this end, the Office of the Special Rapporteur published three press releases, corresponding to April-June⁶, July-September⁷, and October-December⁸ 2006.

5. Studies and publications

Study on trends in freedom of expression in the region

20. In May 2006, the Office of the Special Rapporteur began a study on trends in freedom of expression in the region. The study began taking as a basis the annual reports of the Office of the Special Rapporteur as of 2001. Based on the information in those reports, tables have been prepared, country by country, analyzing the trend in each country on issues such as assassinations, attacks, threats, material destruction, judicial proceedings, legislation, community radio stations, and access to information.

Study on imprisoned journalists and judicial harassment

21. In May 2006, the Office of the Special Rapporteur culminated a study on journalists in prison and judicial harassment. The results of the study have made it possible to create a data base on journalists deprived of liberty in the region. On May 3, 2006, the Office of the Special Rapporteur issued press release 139/06⁹ requesting both the release of those journalists deprived of liberty and the end of judicial harassment of journalists in the region.

⁶ Press Release No. 144/06. *Situation of Freedom of Expression in the Region (April-June 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=669&IID=2>.

⁷ Press Release No. 154/06. *Office of the Special Rapporteur for Freedom of Expression releases quarterly report on the state of freedom of expression in the region (July-September 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=680&IID=2>.

⁸ Press Release No. 162/07. *Evaluation of the Freedom of Expression on the Last Quarter of 2006: The Special Rapporteur expresses concern for vulnerability of journalists in the region (October-December 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=689&IID=1>.

⁹ Press Release No. 139/06. *Office of the Special Rapporteur for Freedom of Expression calls for release of journalists detained in Cuba and for end to judicial harassment in the region*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=661&IID=2>.

Special study on impunity

22. The Office of the Special Rapporteur for Freedom of Expression began a special study on the status of investigations into the assassinations committed from 1995 to 2005 that may be related to the exercise of journalism.¹⁰

23. As part of that study the Office of the Special Rapporteur has requested information from the states concerned and from non-governmental organizations and other institutions on the status of the investigations into those crimes. The information requested includes whether persons are currently on trial or convicted as direct perpetrators, masterminds, accomplices, or aiders and abettors with respect to those assassinations; the procedural stage of the respective proceedings; whether there are persons deprived of liberty in relation to those assassinations, and the determination as to whether the assassinations were related to the victims' work as journalists. The purpose of the study is to draw up a final table on the specific results of the investigations in each case and a general analysis of the situation of impunity in the region.

Study on the right to access to information

24. The Rapporteurship has drafted a study on the right to access to information in the power of the States that will be published soon. The principle objective of the study is to analyze the impact of the judgment of the Inter-American Court in the case of *Claude Reyes et al.* as a support and guide for the States in the achievement of advances and to deepen the theoretical framework for access to information.

6. Promotion and dissemination activities

25. Following is a description of the main promotion and dissemination activities carried out by the Office of the Special Rapporteur for Freedom of Expression in 2006.

26. On April 3, 2006, Office specialist Carlos Zelada traveled to Argentina in the context of the XXVIII Special Session of the Inter-American Court of Human Rights. On that occasion, Mr. Zelada participated as an adviser to the IACHR in the public hearing on the merits and possible reparations and costs held in the case of *Marcel Claude Reyes et al. v. Chile*.

27. On April 27, 2006, the Office of the Special Rapporteur attended the presentation of the Annual Report of the IACHR for 2005 to the Committee on Juridical and Political Affairs of the OAS. On that occasion, several delegations of the member states expressed their support for the work of the Office of the Special Rapporteur.

28. On April 28, 2006, the Special Rapporteur participated as a presenter at the "Special Meeting of the Committee on Juridical and Political Affairs to Promote, Impart, and Exchange Experiences and Knowledge with Respect to Access to Public Information, and its Relationship with Citizen Participation." This session was held pursuant to the mandate of Resolution AG/RES. 2121 (XXXV-O/05), and included the participation of experts invited by the member states, representatives of civil society, and the president of the IACHR, Mr. Evelio Fernández Arévalos.

29. From May 1 to 3, 2006, the Office of the Special Rapporteur made a visit to Panama in order to observe the situation of the right to freedom of expression there. During his visit the

¹⁰ Press Release No. 147/06. *Office of the Special Rapporteur for Freedom of Expression initiates study of the status of the investigations of 172 cases of journalists murdered in the region.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=673&IID=2>.

Rapporteur met with representatives of the state, civil society organizations, academic sectors, journalists, and media. The Office of the Special Rapporteur also participated as a presenter at a seminar to mark World Press Freedom Day organized by UNESCO and the Latin American Parliament.

30. On May 4 and 5, 2006, the Office of the Special Rapporteur participated as a presenter at the international seminar "Human Rights and Freedom of Expression in Mexico," held in the city of San Luís Potosí. The seminar was organized by the Ministry of Foreign Relations of Mexico, and the Mexico-European Commission Cooperation Program on Human Rights, with the sponsorship of major government human rights bodies, universities, and non-governmental organizations. In the context of that seminar, the Special Rapporteur met with civil society organizations, academic sectors, and journalists.

31. On May 19 and 20, 2006, the Special Rapporteur and specialist Carlos Zelada participated as moderators in the colloquium "Freedom of Expression in the 21st century in the Americas," held in Washington D.C. as part of *The Americas Project*. The colloquium, which brought together some 15 leading specialists on the issue, was organized by the *James A. Baker III University for Public Policy* in conjunction with the OAS.

32. From May 31 to June 3, 2006, the Special Rapporteur made a working visit to Ecuador where he met with representatives of the state, civil society, academics, and the media. At the end of his visit the Special Rapporteur recommended to the Ecuadorian authorities that they repeal the criminal statute on *desacato* provided for at Articles 128, 230, 231, 232, and 233 of Ecuador's Criminal Code.¹¹

33. From June 4 to 7, 2006, the Special Rapporteur traveled to the Dominican Republic to participate in the General Assembly of the OAS. As part of his activities, the Special Rapporteur met with representatives of the OAS member states, members of organizations that uphold the freedom of expression in the hemisphere, and the association of journalists of the Dominican Republic. The main issues discussed in the meetings included the need to foster legislative reforms on access to information in the Dominican Republic, as well as the recommendation that the country's *desacato* laws be repealed.

34. From July 17 to 21, 2006, the Special Rapporteur for Freedom of Information traveled to Guatemala in the context of the 125th special session of the IACHR. The Special Rapporteur participated in the public hearing on the "Situation of Community Media in Central America." In addition, the Special Rapporteur participated as a presenter in the seminar "Plural Communications Media ... Prosperous Societies," organized by the World Association of Community Radio Broadcasters (AMARC). In addition, the Special Rapporteur met with representatives of the Committee on Human Rights of the Congress of the Republic and civil society organizations.

35. From August 19 to 30, 2006, the Special Rapporteur visited several countries in Europe to promote the activities of the Office of the Special Rapporteur for Freedom of Expression and to seek financial support for those activities. On that occasion, the Special Rapporteur held meetings with governments, intergovernmental organizations, and non-governmental organizations.

36. From August 30 to September 2, 2006, Office specialist and attorney Carlos Zelada participated as a panelist at the "First Inter-American Congress of Education on Human Rights," held

¹¹ Press Release No. 141/06. *Office of the Special Rapporteur for Freedom of Expression recommends to the Ecuadorian State that it derogate its legislation defining the criminal offense of "desacato.* Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=665&IID=2>.

in the city of Brasilia, organized by the Special Secretariat for Human Rights of the Presidency of the Republic of Brazil.

37. On September 13, 2006, the Office of the Special Rapporteur participated as a panelist in the seminar "Challenges to Contemporary Journalism" organized in Guatemala by the media owners association *Instancia de Presidentes de Entidades de Prensa de Guatemala*. The Special Rapporteur participated in the panel "Freedom of Expression, Experiences in Latin America from a practical and legal perspective."

38. On September 20, 2006, the Special Rapporteur presented a paper on "The Current Situation of Freedom of Expression in the Hemisphere" in the context of the "First International Series of Lectures" organized by the Centro para la Libertad de Expresión of the Dominican Republic.

39. From September 25 to 30, 2006, the Special Rapporteur was invited by the Supreme Court of Justice of Mexico to participate in and present a paper at the "First International Seminar on Access to Judicial Information and New Technologies." The seminar included the participation of representatives of the judicial branch of the Mexican State, academics, and experts on access to information.

40. On September 30, 2006, the Special Rapporteur made a presentation on the activities of the Office of the Special Rapporteur in the context of the 62nd Annual Assembly of the Inter-American Press Association, held in Mexico City.

41. On October 26 and 27, 2006, the Special Rapporteur and specialist Carlos Zelada participated as panelists in the "Special Session on the Right to Freedom of Thought and Expression of the Committee on Juridical and Political Affairs of the OAS, pursuant to the mandate in Resolution AG/RES. 2237 (XXXVI-O/06). The Special Rapporteur presented a paper titled "Indirect restrictions on the exercise of the freedom of thought and expression," while Mr. Zelada presented a paper on "The relationship between the right to freedom of expression and the right to honor and reputation."

42. On November 15, 2006, the Special Rapporteur attended the *Hemispheric Conference on Journalism Values in the 21st Century*, organized by the Inter-American Press Association and held in San José, Costa Rica.

43. On November 18, 2006, the Special Rapporteur participated in the *Fourth Inter-American Hispanic Congress* held at Columbia University in New York. On that occasion, the Special Rapporteur participated, presenting a paper on "Freedom of Expression in the Region."

44. From November 26 to 29, 2006, the Special Rapporteur made a working visit to Costa Rica. He was accompanied by specialist Carlos Zelada and the coordinator for press and communication, María Isabel Rivero. During its visits, the delegation from the Office of the Special Rapporteur met with representatives of the State, members of the Colegio de Periodistas of Costa Rica, civil society organizations, and representatives of the local media. On concluding its visit, the Office issued a press release with observations on the situation of the freedom of expression in Costa Rica and with its recommendations.¹²

¹² Press Release No. 158/06. *Office of the Special Rapporteur for Freedom of Expression concludes working visit to Costa Rica*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=685&IID=2>.

45. From December 3 to 6, 2006, the Special Rapporteur, specialist Alejandra Gonza, and the coordinator for press and communication, María Isabel Rivero, traveled to Mexico to give training workshops for journalists on the use of the inter-American system for the promotion and protection of human rights. The first workshop was held December 3, 2006 at the Universidad de Occidente in the city of Culiacán, in the state of Sinaloa; 25 journalists from different media and press associations participated. The second workshop was held December 5 and 6, 2006, at the la Universidad Iberoamericana, in Mexico City; 40 journalists from different media attended.

46. From December 13 to 16, 2006, the Office of the Special Rapporteur on Freedom of Expression made a working visit to Uruguay. The Special Rapporteur was accompanied by specialist Daniel Cerqueira and press and communications coordinator María Isabel Rivero. During its visit, the delegation met with representatives of the State, civil society organizations, academics, media representatives, and journalists. Upon the conclusion of the visit, the Office of the Special Rapporteur issued a press release with observations on the situation of the freedom of expression in Uruguay and with its recommendations.¹³

¹³ Press Release No. 159/06. *Office of the Special Rapporteur for Freedom of Expression releases recommendations to Uruguay at the conclusion of its working visit.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=686&IID=2>.

CHAPTER II

SITUATION OF THE FREEDOM OF EXPRESSION IN THE REGION

A. Introduction and methodology

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

2. The chapter is divided into four sections: section A is the introduction and explains the methodology used; section B consists of the evaluation of the freedom of expression situation in the region in 2006; section C contains facts and episodes related to the exercise of the freedom of expression in the member states that occurred in 2006 that have been considered symbolic, paradigmatic, and/or descriptive of the situation in each country, and in the region; and section D is a table showing the assassinations of journalists and other media workers perpetrated in 2006 for reasons that may be related to their journalistic work. Although they are also included in section C, the Office of the Special Rapporteur considered it useful to include a table showing just the assassinations, which is the most brutal violation of the right to freedom of expression.

3. States are under an obligation, emanating from the American Convention, not only to respect human rights but also to guarantee their observance, which implies that they are obligated to investigate and sanction those responsible for all acts of violence, including those committed by persons who are not state agents. Accordingly, this report includes not only assassinations, threats, and attacks allegedly committed by state agents, but also those for which private persons are allegedly responsible.

4. The evaluation of the situation of freedom of expression in the region presented in section B is based on the information received by the Office of the Special Rapporteur, which is detailed in section C, and the information collected during working visits to the member states. The sources of information received appear in section C, in footnotes that include, when available, the corresponding Internet link. In the year 2006, the Office of the Special Rapporteur made working visits to Ecuador, Panama, Uruguay, and Costa Rica.

5. The facts and episodes contained in section C were classified based on the Declaration of Principles of Freedom of Expression approved by the Inter-American Commission on Human Rights, as was done in the last two annual reports.¹ The facts related to Principles 10 and 11 of the Declaration of Principles on Freedom of Expression were compiled jointly, taking into account that in most cases criminal defamation laws are invoked for the same purposes as *desacato* statutes.²

¹ The idea of drawing up a Declaration of Principles on Freedom of Expression was born of the recognition of the need to establish a legal context to regulate the effective protection of the freedom of expression in the region, incorporating the prevailing doctrines recognized in various international instruments. In the course of its 108th session, in October 2000, the Inter-American Commission on Human Rights approved the declaration prepared by the Office of the Special Rapporteur. The declaration is fundamental for interpreting Article 13 of the American Convention on Human Rights. Its adoption not only recognizes the importance of protecting the freedom of expression in the Americas, but also incorporates into the inter-American system the international standards for the more effective exercise of this right. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=25&IID=1>.

² Principle 10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had

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6. Positive developments, where they have occurred, are considered in a separate section under the heading "Progress".

7. The Office of the Special Rapporteur receives information on the freedom of expression in the members states from different sources, analyzes it directly, and takes the measures it considers appropriate, such as issuing press releases and sending letters to the states requesting information.³

8. The information received daily is used to prepare and disseminate a quarterly press release on the situation of freedom of expression in the region, a practice begun in 2006.⁴ The preparation and dissemination of the quarterly press release is aimed at expanding and deepening the public debate on violations of the right to freedom of expression in the Americas. The quarterly press releases drawn up in 2006 were used as relevant input for preparing this chapter.

9. The Office of the Special Rapporteur also includes in this chapter reports on the assassinations of journalists that may be related to their work as journalists, based on preliminary information mainly from the media and non-governmental organizations. The Office of the Special Rapporteur emphasizes that the international obligation of the state to investigate and punish those crimes includes its duty to determine the motives.

10. As in reports from earlier years, both in the evaluation of the situation of freedom of expression in the region in section B and in the description of paradigmatic facts and episodes in section C, there is a marked prevalence of information from the media, reflecting the information received. In this regard, the states, civil society organizations, academics, and individuals are invited to send information to the Office of the Special Rapporteur on the situation of freedom of thought and expression in journalism, and also in other spheres.

11. The Office of the Special Rapporteur would like to thank the states, civil society organizations, media outlets, and academic sectors for the information sent in 2006 on the situation of freedom of expression in the region.

B. Evaluation

12. The year 2006 was an especially violent time for journalism in the region. According to the information received by the Office of the Special Rapporteur, at least 19 persons were assassinated in 2006 in the Americas for reasons that could be related to their journalistic work. This figure is especially worrisome considering the downward trend that had begun to be seen in the region.

13. The vulnerability of media workers in Mexico to organized crime, especially the drug-trafficking cartels, was made clear in its most tragic dimension in 2006, when there were nine

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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.

Principle 11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information.

³ The Office of the Special Rapporteur receives information that is sent, among others, by non-governmental organizations, states, and journalists affected.

⁴ The quarterly press releases can be found at: <http://www.cidh.org/relatoria/showarticle.asp?artID=683&IID=2>.

assassinations of media workers in Mexico alone. Two were assassinated in the state of Oaxaca, two in the state of Veracruz, one in the state of Michoacán, one in the state of Tamaulipas, one in the state of Chihuahua, one in the state of Guerrero, and one in the Federal District. In addition, one journalist was disappeared in the state of Michoacán.

14. During these 12 months, homicides were also committed for reasons that may be related to the practice of journalism in Brazil, Colombia (three cases), Ecuador, Guatemala, Guyana, and Venezuela. In addition, one journalist was disappeared in Paraguay.

15. The Office of the Special Rapporteur issued press releases on the occasion of assassinations perpetrated against journalists and other media employees, and urged the state to undertake a proper investigation to determine the causes of the crimes, punish the direct perpetrators and masterminds, and make reparation to the next-of-kin of the victims when appropriate.⁵ The Office of the Special Rapporteur once again urges the states to investigate these cases speedily and to do their utmost to ensure that these crimes not remain in impunity.

16. The absence of a proper investigation into the assassinations of journalists in the region in 2006 and in previous years has been a motive of constant concern for the Office of the Special Rapporteur. These crimes frequently remain in impunity. The failure to punish the direct perpetrators and masterminds of these homicides spurs on the occurrence of new assassinations.

17. In this regard, the Office of the Special Rapporteur views as a positive step the creation, in Mexico, of the Office of the Special Prosecutor for Crimes against Journalists in the Office of the Attorney General of the Republic, in February 2006. Nonetheless, it is worrisome that according to Article 4 of Executive Order A/031/06, by which this Office of the Special Prosecutor was created, the crimes allegedly committed by organized crime must be investigated and prosecuted by the Office of the Deputy Attorney General for Specialized Investigations into Organized Crime, which could leave most or all assassinations of journalists outside of the jurisdiction of this new Office of the Special Prosecutor.

18. To the vicious circle of assassinations, impunity, and new assassinations is added the self-censorship resulting from this situation. When the states do not guarantee the right to life, journalists have to continue putting their lives and often those of their families at risk, or abandon their investigations and not report on certain issues.

19. Members of society may not find out about the existence of such self-censorship, or may not know its prevalence among the journalists and media on which they depend for information. Nonetheless, society pays a high price when such a situation is imposed, since in a democracy it is essential that the citizenry be able to exercise its right to become informed on any topic.

20. In addition, in 2006 physical attacks and threats continued to have an adverse effect on the full exercise of the freedom of expression. The Office of the Special Rapporteur received information on attacks on and threats to journalists in Argentina, Bolivia, Brazil, Colombia, Cuba, El Salvador, the United States, Guatemala, Haiti, Honduras, Mexico, Paraguay, Peru, Dominican Republic, Uruguay, and Venezuela.

21. The Office of the Special Rapporteur continues receiving information on journalists who have been forced to leave the cities where they reside and work, or even their countries, due

⁵ The press releases of the Office of the Special Rapporteur are available at: <http://cidh.org/relatoria/artListCat.asp?catID=1&IID=2>.

to the possibility that death threats might be carried out. According to the information received, this problem is especially pressing in Colombia, where, during 2006, at least two journalists felt forced to leave their cities, and a third journalist felt forced to leave the country, due to death threats.

22. Other journalists who decide to ignore the threats live in permanent fear, some with police escorts. Those who opt for this path run a high risk and sometimes end up paying with their lives, as shown by the fact that several of the journalists assassinated in 2006 had been threatened before the crimes were perpetrated.

23. Practically all cases of threats and attacks remain in impunity and frequently investigations are not even begun. As is the case with impunity in homicide cases, the lack of proper investigations and sanctions in cases of threats and attacks results in the proliferation of such acts, since the perpetrators almost never suffer consequences for them.

24. Accordingly, journalists find themselves in a situation of total vulnerability in the face of persons who threaten and attack them in order to silence them and hide information of potential interest to society. Journalists once again face a tragic choice between continuing to put themselves at risk and self-censorship.

25. The IACHR has established that the lack of a serious, impartial, and effective investigation, and punishment, of the direct perpetrators and masterminds of these crimes constitutes not only a violation of due process guarantees but also a violation of the right to publicly and freely provide information and express oneself, giving rise, therefore, to the international responsibility of the state.⁶ Moreover, principle 9 of the Declaration of Principles on Freedom of Expression provides: "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."⁷

26. The Office of the Special Rapporteur once again urges the states to make use of all the legal mechanisms available to them to carry out this duty, so as to express, without any doubt, their will to ensure the free exercise of the freedom of expression. Impunity in the case of these violations must be eradicated from the region.

27. The threats and attacks in 2006 came from the widest array of sectors, including state agents. The Office of the Special Rapporteur expresses its profound concern over this fact. Information has been received on threats and physical attacks on journalists perpetrated or ordered by police, military personnel, governors, mayors, and legislators, as well as advisers and those in charge of the security of high-level government officials. According to the information received, incidents of this sort occurred in Argentina, Bolivia, Brazil, Cuba, Guatemala, Honduras, Mexico, Peru, the Dominican Republic, and Venezuela.

28. Journalists and other persons also suffer criminal charges for *desacato* and defamation for disseminating information or opinions critical of the authorities. These judicial actions have a deterrent effect on the exercise of the freedom of expression.

⁶ IACHR, Report No. 50/99, Case 11,739 (Mexico), April 13, 1999.

⁷ Principle 9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

29. In 2006, public officials continued to make arbitrary use of such criminal proceedings in order to silence journalists and other persons, and there were convictions in Brazil, Mexico, Peru, Uruguay, and Venezuela. In the case of Uruguay, there was a worrisome step backwards with a Supreme Court judgment that ratified a conviction and imprisonment of a journalist, and in so doing undid progress reflected in the case-law of that same court dating from 1997.

30. These criminal proceedings are possible because many OAS member states have not brought their criminal legislation into line with the standards that emanate from the decisions, opinions, and reports of the organs of the inter-American system for the protection of human rights and those that emanate from the Declaration of Principles on Freedom of Expression, especially Principles 10 and 11.

31. The IACHR has noted that criminal statutes on *desacato*, which provide special protection for the honor and reputation of public officials, are incompatible with the right to freedom of expression provided for at Article 13 of the American Convention, for in a democratic society public officials, rather than receiving such special protection, should be exposed to a greater level of scrutiny so as to facilitate a wider public debate and democratic oversight of their actions.

32. Principle 11 of the Declaration of Principles on Freedom of Expression notes: "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."

33. The Office of the Special Rapporteur notes that in recent years, *desacato* statutes have been derogated in nine countries of the region. This reveals a positive trend that should be taken into account by the authorities of those states that keep such laws on the books.

34. Based on these considerations, the Office of the Special Rapporteur urges the member states that still have *desacato* statutes to repeal them. In this regard, the Office of the Special Rapporteur notes major progress in 2006 with the elimination of the *desacato* statute in Guatemala through a decision by the Constitutional Court.

35. As regards the criminal statutes on defamation, the standards of the inter-American system for the protection of human rights have established that it is not proportional, in a democratic society, to punish offenses to honor and reputation that derive from the dissemination of information on matters of public interest with criminal sanctions. Criminal proceedings arising from the dissemination of information of public interest discourage investigation and debate on issues relevant to society and inhibit criticism, which has a negative impact on democracy.

36. Principle 10 of the Declaration of Principles on Freedom of Expression indicates: "...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."

37. The Office of the Special Rapporteur recalls that journalists provide a fundamental service to democracy, and have the right to do their work without the concern of being subject to prison sentences as a result. Protecting honor and reputation in such situations should be done through the right to rectification or response, and through proportional civil sanctions, handed down

in proceedings that take into account the parameters of Principle 10 of the Declaration of Principles on Freedom of Expression.

38. Cuba is the country of the region with the largest number of journalists in prison. The Office of the Special Rapporteur expresses once again its concern over this situation, and asks the State to release them.

39. Another problem to which the Office of the Special Rapporteur continues paying attention is prior censorship. Even though it is expressly prohibited in the American Convention⁸, the Office of the Special Rapporteur received information on cases of prior censorship that occurred in 2006 in Argentina, Brazil, Canada, Cuba, El Salvador, Peru, and Venezuela.

40. This problem became especially pressing in Brazil, where the laws allow the justice system to prohibit the dissemination of information. In 2006, the Office of the Special Rapporteur received information on seven judicial decisions that prohibited the publication and dissemination of certain information there.

41. The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles provides: "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."

42. In 2006, journalists have also been threatened by the authorities and courts to reveal the identity of their confidential sources of information and to hand over their files and notes. Information was received indicating that such situations occurred in 2006 in Brazil, Canada, and the United States. In contrast, progress was made in this area in Mexico, where reforms were approved establishing the right to keep information confidential and to keep sources confidential for journalists, at the federal level. The Office of the Special Rapporteur recalls that Principle 8 of the declaration provides: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

43. In addition to those more direct violations, the Office of the Special Rapporteur observes a growing trend towards intolerance of criticism on the part of several governments in the region. This is reflected in the recurrent use, by the authorities, of more subtle methods for coercing the press, which if analyzed in isolation may appear relatively harmless, but which taken together indicate worrisome situations and trends in several countries.

44. The unlawful and abusive use of public power to coerce the press has occurred, according to the information received by the Office of the Special Rapporteur, through the use of discriminatory policies in the allocation of government advertising, discrimination in access to official sources, dismissals from state-owned media outlets and private media as a result of government pressure, and administrative inspections by government organs.

⁸ Article 13(2) of the American Convention on Human Rights provides: "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals." Article 13(4) establishes: "Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence."

45. The Office of the Special Rapporteur recalls that indirect restrictions on the freedom of expression are prohibited by the American Convention on Human Rights⁹ and that Principle 13 of the Declaration of Principles on Freedom of Expression establishes: "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."

46. The Office of the Special Rapporteur has also monitored the situation of the right of access to information, which continues to be problematic in most of the member states. The facts are descriptive of the prevalence of a culture of secrecy that imposes obstacles on the implementation of access-to-information policies.

47. The Office of the Special Rapporteur has received data on cases in which there are central government policies and guidelines for expanding and deepening access to information in the hands of the state, yet mid-level officials are unaware of or ignore these instructions and continue denying persons access to the information they request. In other cases, the officials in charge of providing information require that the person seeking the information show a direct interest in it, or that they reveal how they intend to use it.

48. Information has also been received on other cases in which the information is denied by a significant number of state offices, and the persons interested are forced to file a writ of *amparo* to gain access. Accordingly, a writ designed for exceptional cases ends up being used routinely because it is the only way to exercise the right of access to information.

49. Nonetheless, 2006 also saw progress in this area. The Honduran Congress adopted the Law on Transparency and Access to Public Information in November, and the Uruguayan legislature is studying a bill on the same topic.

50. The Office of the Special Rapporteur urges the states to adopt the measures necessary to ensure the widest access to information in its control in keeping with the standards of the inter-American system for the protection of human rights, including the adoption of laws on the subject, the implementation of transparency and access-to-information policies, and the training of public officials.

51. All the problems indicated above have a common denominator, namely, the increased vulnerability of journalists who work in the interior of their countries, as compared to those who work in the capital cities. The situation of journalists in the interior is generally more precarious, and a higher proportion of physical attacks and threats are recorded, as well as greater vulnerability to direct and indirect pressures from the state and local authorities and greater difficulties gaining access to information. The Office of the Special Rapporteur, which has already reported its findings of this situation in earlier years, reiterates its concern and urges the states to adopt appropriate measures.

⁹ Article 13(3): "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

52. In addition, the Office of the Special Rapporteur has previously stated its concern over the information it has received about “the possible consolidation of practices that impede the existence of diversity and pluralistic expression of opinions, given the concentration of ownership of communications media, including print media as well as radio and television.”¹⁰ In 2006, the concentration of media ownership continued to constitute a problem in several countries of the region. Accordingly, the Office of the Special Rapporteur reiterates its concern over the lack of progress towards resolving the situations of concentration of media ownership in those countries where such a situation exists.

53. On this issue, Principle 12 of the Declaration of Principles on Freedom of Expression states: “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.”

54. The Office of the Special Rapporteur has interpreted this principle indicating that the existence of monopolies or oligopolies constitutes a serious obstacle to the dissemination of one’s own thoughts, and to receiving different opinions: “In modern society, mass communications media, such as television, radio and the press, have an undeniable power in the cultural, political, religious [...], formation of society’s inhabitants. If these media are controlled by a small number of individuals, or by a single one, this in fact creates a society in which a small number of persons exercise control over information and, directly or indirectly, over the opinions received by the rest of society. This lack of pluralism in information is a serious obstacle to the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist or is weakened due to the fact that sources of information are limited, this directly contravenes the principal pillar of democratic functioning.”¹¹

55. The Office of the Special Rapporteur has said that “it is the state’s duty to guarantee equal opportunities for all for with respect to the discrimination-free receiving, seeking out, and sharing of information through any communication channel whatsoever, eliminating all measures that discriminate against the equal and full participation of individuals or groups in their countries’ political, economic, and social life,”¹² and it has indicated that “the traditional mass media are not always accessible for disseminating the needs and claims of society’s most impoverished or vulnerable sectors. Thus, community media outlets have for some time been insisting that strategies and programs that address their needs be included on national agendas.”¹³

56. In 2006 information was received on the efforts of some states to put forward solutions in this area. In Uruguay there is a bill on the issue before the legislative branch, in Chile the Executive branch announced its intent to legislate in this area, and in Colombia the Government announced its intention to organize a public bidding for community radio stations in the capitals of the 24 departments.

¹⁰ IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression. 2002, vol. III. OEA/Ser.L/V/II.117 Doc. 5 rev, March 7, 2003, chapter II, para. 20.

¹¹ IACHR, Report of the Office of the Special Rapporteur on Freedom of Expression. 2000, vol. III. OEA/Ser.L/V/II.111, Doc. 20 rev, April 16, 2001, para. 55.

¹² IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression. 2002, vol. III. OEA/Ser.L/V/II.117 Doc. 5 rev, March 7, 2003, chapter IV, para. 7.

¹³ *Id.*, para. 38.

57. Nonetheless, in some countries of the region there were also judicial and administrative orders to shut down community radio stations, and some police operations that included the seizure of equipment were carried out with unnecessary violence and arrests of persons associated with the radio stations. Community radio stations were shut down even in countries in which the legislation has not been amended so as to allow community radio stations access to government licenses, so as to be able to operate legally. One example is Guatemala, where several operations were carried out to shut down stations, seize radio equipment, and arrest persons associated with community radio stations.

58. In addition, in Mexico the reforms to the Federal Law on Radio and Television and the Federal Law on Telecommunications approved April 12, 2006, provide complex rules for the assignment of broadcasting frequencies to community radio stations. In the same vein, these reforms do not establish clear and transparent criteria regarding the granting of permits, conferring an excess degree of discretion to the state authorities that make this type of decisions.

59. In summary, in 2006 there has been little progress in the freedom of expression in the region, at the same time as the problems and obstacles to the exercise of this right continue to be serious and worrisome.

60. Forward progress in terms of respect for this right requires a greater political will on the part of the member states of the OAS so as to give impetus to reforms in their legislation and to implement policies that guarantee societies wide latitude in exercising the freedom of thought and expression. The States' expressions of good will are positive, but effective actions should also be taken.

61. The right to freedom of expression is essential to a democratic system, and at the same time its exercise deepens and enriches democracy. The Office of the Special Rapporteur urges the states to maximize their efforts so as to deepen respect for this fundamental right and guarantee its full exercise, thereby contributing to the consolidation of democracies in the region.

C. Situation of the freedom of expression in the member states

62. The information presented in the section that starts here has been sent by the states, individuals, communication media and non gubernamental organizations. It also includes the information compiled by the Office of the Special Rapporteur for Freedom of Expression.

ARGENTINA

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

63. On October 17, 2006, the Citizen Environmental Assembly (Asamblea Ambiental Ciudadana) of Gualeguaychú ordered that a group of Uruguayan journalists be removed from one of its sessions. At the meeting, the organization's strategy to keep a pulp mill from being installed in Uruguay was being debated. A spokesperson for the organization said that it would not have happened had the journalists been Argentine.¹⁴

¹⁴ APF Digital, *La presencia sin autorización de periodistas uruguayos en la sesión fue "una falta de respeto hacia la Asamblea"*, October 20, 2006, available at: http://www.apfdigital.com.ar/despachos.asp?cod_des=72925.

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

64. On May 11, 2006 unknown persons intervened in and stole email messages of journalist Daniel Santoro, of the daily *Clarín*. It is indicated that the correspondence stolen included messages that he had exchanged with a federal judge regarding a drug-trafficking investigation. In addition, on 22 May 2006 journalists Ernesto Tenenbaum and Luis Majul denounced that unknown persons had intervened in their email accounts. The reporters indicated that the correspondence intervened in included communications with political leaders, authorities, and businesspersons, which had been forwarded from their own email accounts to other contacts. The journalists indicated that the intervention may have been done by government intelligence services.¹⁵

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

65. On February 18, 2006, journalist Juan Cruz Sanz and photographer Juan Obregón, of the daily *Perfil*, were reportedly assaulted by three persons who emerged from the residence of the President of the Republic in Río Gallegos, province of Santa Cruz, when they tried to take pictures of or obtain a statement from the president. According to information received, those persons hit the photographer in the face and tried to take his camera from him. They also threatened to reveal for whom they worked and to leave the place, alleging that they were on private property.¹⁶

66. Throughout year journalist Carlos Furman, host of *Destapando la olla* on *FM 2 de Octubre* in Santa Elena, province of Entre Ríos, suffered harassment, threats, and attacks after criticizing the performance of the mayor (*intendente*). According to information received, he was beat up twice in public places. On June 10, 2006, unknown persons shot at the door of his home and in the last days of September pamphlets appeared in the street auguring his death. The pamphlet that was distributed in the city showed a swastika and read: "Jewish New Year. Death to Carlos Furman." For several months he used a bulletproof vest and since June he has had police guards. The police have not determined who is responsible for either of the incidents. Furman is currently living in a medical office because, according to him, no one wants to rent him housing for fear that the property will become the target of attacks. To celebrate year-end 2006 he went to the town where he was born, Villa Domínguez, but spent the night in the police station to protect his family.¹⁷

67. On September 27 and 28, 2006, journalists and directors of media outlets received death threats by telephone and by email. On September 27, 2006 *Editorial Perfil* received two email

¹⁵ Reporters Without Borders, *Otros dos periodistas víctimas de pirateo informático*, May 23, 2006, available at: http://www.rsf.org/article.php3?id_article=17740; Diario Clarín, *Crece el escándalo por el espionaje electrónico contra periodistas*, May 22, 2006, available at: <http://www.clarin.com/diario/2006/05/22/um/m-01200246.htm>; Instituto Prensa y Sociedad, *Continúan denuncias por espionaje en correos electrónicos de periodistas*, May 23, 24 and 31, 2006. Available at: <http://www.ipys.org/alertas/atentado.php?id=801>.

¹⁶ Reporters Without Borders, *Intimidaciones a periodistas provinciales: se degrada el clima entre la prensa y el poder*, February 24, 2006, available at: http://www.rsf.org/article.php3?id_article=16565.

¹⁷ Instituto Prensa y Sociedad, *Amenazan y agreden a periodista radial*, June 13, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=810>; Foro de Periodismo Argentino, *Periodista en Entre Ríos vive encerrado y custodiado*, October 4, 2006, available at: http://www.fopea.org/contenido/inicio/periodista_en_entre_r_os_vive_encerrado_y_custodiado. FOPEA, email sent to the Office of the Special Rapporteur on January 18, 2007.

messages addressed to the company's president, Jorge Fontevicchia, and his family. According to the information received, one of the messages said: "Stop screwing with the national government. You know the story about the father who lost a son ... may it not happen to you." ("*Dejate de joder con el gobierno nacional. Conocé la historia del padre que perdió un hijo . . . que no te pase*"). The other email said: "Recoleta, what a nice zone to live in, and what a nice zone for a bomb to explode in.... Do not screw with the President any more" ("*Qué Linda zona Recoleta para vivir, qué Linda zona también para que explote una bomba.... No jodás más al Presidente*"). *Editorial Perfil* reported that Mr. Fontevicchia also received threats by telephone that week directed against him and his children. Joaquín Morales Solá, a columnist with the daily *La Nación* and host of the weekly new program *Desde el Llano* on cable television, said he had received two threatening phone calls on September 28, 2006. He indicated that the message said: "This is the beginning: You will feel the next one in your body" ("*Éste es el comienzo: La próxima la sentís en el cuerpo*"). "Stop it if you do not want to see the seed from below" ("*Parála si no querés ver la semilla desde abajo*"), the second call indicated. These threats came one day after high-level government authorities accused Mr. Morales Solá of praising former dictator Jorge Videla in an editorial published during the military government, which the journalist refuted.¹⁸

PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (direct and indirect pressure)

68. On September 22, 2006, legal representatives of *Editorial Perfil* and *Diario Perfil* informed the Office of the Special Rapporteur that the Argentine government decided to exclude those media from the distribution of government advertising and apply a policy of hindering access to information held by the state to journalists and photographers who worked for those media. *Editorial Perfil* considers that this decision is part of an effort by the Executive branch to censure *Revista Noticias* and *Diario Perfil* for its editorial line.¹⁹

69. On October 4, 2006, the program *Recorriendo el Espinel*, on radio station *LT24* of San Nicolás, province of Buenos Aires, was taken off the air. According to the information received, a legislator from the province threatened that the radio station would not receive any more government advertising unless it suspended its broadcast of that program.²⁰

70. In October 2006 it was reported that the Government had stopped several bills seeking to regulate the allocation of government advertising.²¹

¹⁸ Committee to Protect Journalists, *Dos periodistas críticos reciben amenazas de muerte*, October 2, 2006, available at: <http://www.ifex.org/es/content/view/full/77622/>.

¹⁹ *Editorial Perfil*, documentation sent to the Office of the Special Rapporteur for Freedom of Expression.

²⁰ Reporters Without Borders, *Suprimido un programa de radio por presiones del presidente de la Cámara de Diputados de la provincia de Buenos Aires*, October 11, 2006, available at: http://www.rsf.org/article.php3?id_article=19148.

²¹ *La Nación*, *Frena el Gobierno tres proyectos de ley que regulan la publicidad oficial*, October 17, 2006, available at: http://www.lanacion.com.ar/edicionimpresa/politica/nota.asp?nota_id=850010.

BOLIVIA

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

71. On November 13, 2006, photographer Martín Alípaz, of *EFE* news agency, was assaulted while photographing a police operation to remove demonstrators from the highway running from La Paz to Oruro. He indicated that even though he had identified himself, the police beat him, took his digital camera, and returned it to him without the memory card. According to the information received, he suffered slight injuries as a result of being kicked. On November 14, 2006, after the news agency lodged a protest with the government, the police returned the material and apologized for the incident.²²

72. On December 12, 2006, several journalists were assaulted, allegedly for giving space in their radio or television programs to opinions contrary to autonomy for the department of Santa Cruz. According to the information received, journalist Efraín Montero, of *Canal 7*, was being beat up until some local residents interrupted the beating. In addition, journalist Julio Peñaloza was reportedly approached in the street by persons who questioned his statements and followed him until he took refuge in a nearby hotel and escaped through a side door on a police motorcycle. In addition, staff members of *Radio Alternativa* were threatened by another group of persons, after which the radio station cancelled its programs and began to broadcast only music.²³

73. On December 15, 2006, journalists were attacked in Santa Cruz in the context of a confrontation between a group of demonstrators and the police. According to the information received, photographer Wilson Gallardo, of the newspaper *El Nuevo Día*, was hit by a rock in the nose, and cameraman Silvio Aráoz, of *ATB*, was kicked in the back, both when they tried to photograph the confrontation. It was also indicated that journalist José Luis Ledezma, of *Megavisión*, received a fist in the face, and his cameraman, José Luis Herrera, was beaten in the back with a stick. In addition, journalist Juan Carlos Vaca, of *Full Activa TV*, was kicked and stoned in the face, and his cameraman was beat in the face with a stick.²⁴

74. On December 15, 2006, journalist Iván Canelas, of the daily *La Razón*, and a photographer from the same newspaper, Fernando Cartagena, were assaulted while covering a protest. According to the information received, the police dispersed a protest by youths who were sympathizers of the Movimiento Al Socialismo (MAS); when they realized that the journalists were present they approached them, insulted the reporter, and beat the photographer in the abdominal area.²⁵

²² Instituto Prensa y Sociedad, *Policía agrade a fotógrafo de Agencia de Noticias*, November 15, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=941>.

²³ Instituto Prensa y Sociedad, *Manifestantes agreden a periodistas críticos de intento separatista en Santa Cruz*, December 14, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=991>.

²⁴ *La Razón*, *Nueve periodistas fueron agredidos cuando trabajaban*, December 16, 2006, available at: http://www.la-razon.com/versiones/20061216%5F005757/nota_244_369005.htm.

²⁵ *La Razón*, *Nueve periodistas fueron agredidos cuando trabajaban*, December 16, 2006, available at: http://www.la-razon.com/versiones/20061216%5F005757/nota_244_369005.htm.

BRAZIL

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

75. On May 17, 2006, the Regional Electoral Court of the State of Amapá ordered that the weekly *Folha do Amapá* remove from its website the May 12, 2006 issue, because it considered that the reports published there were harmful to the reputation of the governor of Amapá. It is indicated that the weekly removed that issue from the website, but that it has appealed the decision.²⁶

76. On May 29, 2006, a Civil Court in Campo Grande, capital of Mato Grosso do Sul, ordered the daily *O Correio Do Estado* to pay 500 reais for each copy it distributes in which reference is made to former mayor Andre Pucinelli without meeting the requirements of "objectivity of information," "verification of the sources," and "impartiality and independence." The decision was appealed on April 20, 2006.²⁷

77. On July 26, 2006, a judgment of the Superior Electoral Tribunal prohibited distribution of the May issue of *Revista do Brasil*. According to the information received, the court prohibited both the distribution of printed copies and circulation of the magazine via Internet. The decision was reported to be motivated by alleged electoral propaganda against one of the candidates for president of the republic.²⁸

78. On August 19, 2006, the copies of issue number 9 of the *Revista do Observatório Social* were seized by order of a judge in Ouro Preto, state of Minas Gerais. According to the information received, that issue denounced the illegal use of child labor by multinational mining firms operating in the region.²⁹

79. On August 27, 2006, a judge from the Regional Electoral Tribunal of the Federal District prohibited all media in his jurisdiction from revealing the content or even making mention of the existence of a recording that taped an alleged conversation between two politicians. The news was made known to the public through journalist Ricardo Noblat's blog on the website of the newspaper *O Estado de São Paulo* on August 27, 2006. That night a judicial officer went to the newspaper's office in Brasília to deliver the order with the prohibition. In the considering paragraphs of the decision, the judge argued that disseminating the conversation could cause electoral harm to the politicians.³⁰

80. On August 30, 2006, the Federal Police entered the offices of the weekly *Hoje* in Belo Horizonte, state of Minas Gerais, to confiscate computers and supplies from the newsroom.

²⁶ Committee to Protect Journalists, *Tribunais garantem mandatos judiciais contra dois jornais*, June 2, 2006, available at: http://www.cpj.org/news/2006/americas/brazil02june06na_pt.html.

²⁷ Committee to Protect Journalists, *Courts grant injunctions against two newspapers*, June 2, 2006, available at: <http://www.cpj.org/news/2006/americas/brazil02june06na.html>.

²⁸ Associação Brasileira de Imprensa, *ABI protesta contra proibição da circulação da Revista do Brasil*, August 14, 2006, available at: <http://www.contag.org.br/noticianewsem.php?id=79>.

²⁹ O Jornalista, *Justiça apreende revista que denunciou trabalho infantil*, August 22, 2006, available at: <http://www.ojornalista.com.br/news1.asp?codi=1827>.

³⁰ Reporters Without Borders, *Atos de censura e apreensão de material de redação às vésperas das eleições gerais*, September 6, 2006, available at: http://www.rsf.org/imprimir.php3?id_article=18778.

The publication's director, Joseti Alves, said that the weekly was accused of violating election laws for having published articles on alleged irregularities in the office of a former minister of tourism.³¹

81. On October 25, 2006, the Regional Electoral Tribunal for the state of Paraná prohibited the press from reporting on a police operation at the request of a candidate for governor.³²

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

82. On October 31, 2006, three journalists from the magazine *Veja* were pressured to reveal their sources of information when questioned by the Federal Police in the city of São Paulo.³³

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

83. On May 18, 2006, three armed persons attacked the press of the daily newspaper *Tribuna Livre* in São Paulo. According to the information received, the individuals beat several employees and issued a warning that they should stop publishing news related to the criminal organization Primeiro Comando da Capital (PCC).³⁴

84. On July 20, 2006, news entrepreneur Manoel Paulino da Silva was assassinated; he was the founder and owner of the newspaper *Hoje Jornal* in the city of São Bernardo do Campo, state of São Paulo. According to the information received, Mr. Manoel da Silva was driving his car in the city of Guarujá when unidentified individuals approached him from another car, shooting several times in his direction. Subsequently, the car he was driving crashed into a wall and went up in flames.³⁵

85. On July 24, 2006, journalist Ajuricaba Monassa de Paula was assassinated. According to the information received, the death was caused by a blow by a council member from the city of Guapiririm, state of Rio de Janeiro. According to the information received, the incident

³¹ Reporters Without Borders, *Atos de censura e apreensão de material de redação às vésperas das eleições gerais*, September 6, 2006, available at: http://www.rsf.org/imprimir.php3?id_article=18778.

³² Instituto Prensa y Sociedad, Tribunal prohíbe a medios informar sobre operativo policial a pedido de grupo político, October 27, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=918>.

³³ Reporters Without Borders, *Três jornalistas são vítimas de pressões da Polícia Federal*, November 3, 2006, available at: http://www.rsf.org/article.php3?id_article=19570; Inter-American Press Association, *Condena la SIP intimidación contra periodistas brasileños*, November 1, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1785>.

³⁴ Committee to Protect Journalists, *Jornal atacado no rastro de onde de crimes*, May 19, 2006, available at: http://www.cpj.org/news/2006/americas/brazil19may06na_pt.html.

³⁵ State Secretariat for Public Security of São Paulo, *Gerente de jornal é assassinado em Guarujá*, July 20, 2006, available at: http://www.ssp.sp.gov.br/home/noticia.aspx?cod_noticia=8812; Terra Noticias, *Dono de jornal é assassinado no litoral de SP*, July 20, 2006, available at: http://noticias.terra.com.br/brasil/interna/O,,O11075617-E15030_00.html; Inter-American Press Association, *La SIP pide investigación por asesinato de periodista en Brasil*, July 26, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1706>. The Office of the Special Rapporteur for Freedom of Press issued a pronouncement on this assassination in its press release 146/06, *Office of the Special Rapporteur for Freedom of Expression condemns the Assassination of Two Journalists in Brazil and Requests an Adequate Investigation*, July 28, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=672&IID=2>.

occurred after an argument, in a public plaza, in front of many witnesses. The journalist had been publishing articles critical of that council member and of the conduct of the municipal government.³⁶

86. On August 29, 2006, journalist Roberto Baía, correspondent in Arapiraca of the newspaper *Tribuna de Alagoas*, reported having received threats from a deputy from the state of Alagoas after publishing an article on the alleged sale of votes in the interior of the state.³⁷

87. On September 17, 2006, journalist Karla Konda, of the newspaper *Bom Dia*, was assaulted. According to the information received, she was trying to cover a party organized by a legislator from the state of São Paulo for the purpose of collecting votes, which is illegal. When she identified herself as a reporter to one of the legislator's campaign advisers, he allegedly hit her in the face and kicked her in the legs.³⁸

88. On October 19, 2006, journalist Roberto Pazzianotto, of the daily *Dois Pontos*, received a death threat from a captain of the Military Police in São Paulo, allegedly for his reports on the police agent's involvement in a fight.³⁹

89. On October 23, 2006, some 20 soldiers from the Army Police in Campo Grande, state of Mato Grosso do Sul, assaulted photographers Adriano Hany, of the web page *Campo Grande News*, and João Carlos Castro, of the newspaper *Folha do Povo*, who were covering the death of a soldier in a military barrack.⁴⁰

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

90. On June 14, 2006, Edilberto Resende da Silva, Jairo Batista Nascimento, and Ermógenes Jacinto de Sousa were convicted and sentenced to eight months detention and a fine for the crime of defamation based on the Press Law (Lei de Imprensa). The trial was initiated in the wake of the publication of information in the newspaper *Resistencia Camponesa* regarding a commander of the Military Police in the city of Jara, state of Rondônia. Those convicted and the organizations denouncing the matter allege that this trial is part of a campaign by the police and local politicians to persecute the newspaper due to the reports published regularly by the newspaper.⁴¹

³⁶ Associação Brasileira de Imprensa, *Assassinado Ajuricaba Monassa*; July 25, 2006, available at: <http://www.abi.org.br/primeirapagina.asp?id=1568>; United Nations Educational, Scientific and Cultural Organization – Information Society Observatory, *Diretor-Geral da UNESCO condena o assassinato do jornalista brasileiro Ajuricaba Monassa de Paula*, available at: http://osi.unesco.org.br/arquivos/documentos/dg_assassinato_jornalista.html; Reporters Without Borders, *Jornalista septuagenário é espancado até a morte por vereador*, July 27, 2006, available at: http://www.rsf.org/article.php3?id_article=18393. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 146/06, *Office of the Special Rapporteur for Freedom of Expression condemns the Assassination of Two Journalists in Brazil and Requests an Adequate Investigation*, July 28, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=672&IID=2>.

³⁷ *Tribuna de Alagoas*, *Deputado José Pedro ameaça jornalista da Tribuna*, August 30, 2006, available at: <http://www.tribunadealagoas.com.br/interna.php?id=23266&pagina=Pol%C3%ADtica>.

³⁸ Instituto Prensa y Sociedad, *Asesor de diputado agrade a periodista*, September 25, 2006, available at: <http://www.ifex.org/es/content/view/full/77320/>.

³⁹ Instituto Prensa y Sociedad, *Policía amenaza de muerte a periodista*, November 8, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=931>.

⁴⁰ Instituto Prensa y Sociedad, *Militares agreden a fotógrafos en cuartel*, October 26, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=916>.

⁴¹ Associação Brasileira de Imprensa, *Liga camponesa denuncia perseguição*, August 3, 2006, available at: <http://www.abi.org.br/primeirapagina.asp?id=1583>.

CANADA

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

91. On April 22, 2006, the federal government prohibited news coverage of the ceremony involving the repatriation of a group of corpses of Canadian soldiers killed in Afghanistan, and prevented the press from entering the Trenton military base. According to the information received, the federal government had ordered that only the next-of-kin and military personnel could have access.⁴²

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

92. On November 29, 2006, PEN Canada reported that the Ontario Superior Court of Justice ordered journalist Derek Finkle to hand over the documents used to write his book *No Claim to Mercy*, which would endanger the identity of his confidential sources. As of this writing, he was still trying to get the court to revoke that order.⁴³

COLOMBIA

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

93. On January 28, 2006, the correspondent for *The New Herald* in Florencia, Olga Cecilia Vega, was threatened by unknown persons. According to the information received, she received several threats by telephone after interviewing Raúl Reyes, an alleged member of the Fuerzas Armadas Revolucionarias de Colombia (FARC).⁴⁴

94. On February 4, 2006, journalist Gustavo Rojas Gábalo, host of the program *El Show de Gaba on Radio Panzemu*, suffered an assassination attempt when unknown persons shot him in the clavicle and the head. He died on March 20, 2006, in a hospital, as a result of the attack. He had denounced government corruption and had been denounced for slander and libel. According to information received, on April 1, 2006, three of the four alleged direct perpetrators were arrested, two of whom had belonged to the Autodefensas Unidas de Colombia (AUC), and an arrest warrant was issued for the fourth alleged assassin.⁴⁵

⁴² Reporters Without Borders, *Media ban on return of dead soldiers*, April 27, 2006, available at: http://www.rsf.org/article.php3?id_article=17469.

⁴³ PEN Canada, *Court subpoena of documents of writer Derek Finkle raises concerns for protection of confidential sources*, November 29, 2006, available at: <http://www.pencanada.ca/media/media-DerekFinkle29Nov06.pdf>.

⁴⁴ Reporters Without Borders, *Amenazada de muerte y forzada al exilio una corresponsal de New Herald*, February 8, 2006, available at: http://www.rsf.org/article.php3?id_article=16387.

⁴⁵ Fundación para la Libertad de Prensa, *Murió periodista herido en atentado el pasado 4 de febrero*, March 21, 2006, available at: http://www.flip.org.co/secciones/alertas/06_03_21_alerta001.html; Reporters Without Borders, *Detenidos tres de los cuatro presuntos asesinos de Gustavo Rojas Gábalo*, April 4, 2006, available at: http://www.rsf.org/article.php3?id_article=16377.

95. On February 8, 2006, journalist Antonio Sánchez Sánchez, of the daily *El Meridiano* of Córdoba, felt forced to leave the city of Montería, department of Córdoba, after receiving death threats by phone. It is indicated that the threats began after publication of an article in which he revealed a secret incursion of the guerrillas in the municipality of Valencia. It is also indicated that he generally denounced corruption and administrative irregularities in the region.⁴⁶

96. From June 3 to 5, 2006, three journalists from the daily *El Herald* of Barranquilla were threatened by false bombs left at their respective places of residence.⁴⁷

97. On July 6, 2006, journalist Herbin Hoyos Medina, host of the program *Las voces del secuestro* and director of the program *Amanecer en América* on *Radio Caracol*, announced that he had received several death threats and that he felt forced to flee Colombia to save his life. According to information received, on July 2, 2006, he received an email message signed by the Frente de Acción y Justicia por la Libertad y la Democracia, apparently a group of demobilized paramilitaries. The message said: "It is of no use to defend criminals who have caused harm to Colombia." It also contained threats of reprisals against him and those around him, and gave him an ultimatum: "You have 72 hours to leave the country." He had reported on persons convicted of drug-trafficking and awaiting extradition to the United States. Mr. Hoyos Medina had been kidnapped from the studios of *Radio Caracol* on March 13, 1994, by the Fuerzas Armadas Revolucionarias de Colombia (FARC), and had a permanent police escort since 2002.⁴⁸

98. On August 9, 2006, journalist Milton Fabián Sánchez, of the radio station *Yumbo Estéreo*, was assassinated. According to the information received, Mr. Sánchez was shot several times when heading to his home in Yumbo, department of Valle del Cauca, and died shortly thereafter, after being taken to a local health center. He hosted institutional programs such as *Notas de Gestión* and *La Personería*, both of the city government of Yumbo, and the community program *Mesa Redonda*, where political issues were discussed.⁴⁹

99. On August 22, 2006, journalist Atilano Pérez Barrios, a commentator with *Radio Vigía* of Todelar Cartagena, was assassinated. An unknown person entered his home, where he was watching television with his wife and child, and shot him twice in the abdomen. He hosted a Sunday morning program called *El Diario de Marialabaja* in which he leveled strong criticism at government corruption and paramilitary influence in the municipality of Marialabaja. According to information received, on his last program, on August 20, Mr. Pérez Barrios asserted that right-wing paramilitary groups were financing the mayoral campaigns of five candidates in Marialabaja. His family members indicated that he had received death threats a short time before the crime.⁵⁰

⁴⁶ Reporters Without Borders, *Un periodista obligado a marcharse de su ciudad tras recibir amenazas de muerte*, February 9, 2006, available at: http://www.rsf.org/article.php3?id_article=16410.

⁴⁷ Fundación para la Libertad de Prensa, *Amenazados tres periodistas de Barranquilla con bombas falsas*, June 6, 2006, available at: http://www.flip.org.co/Alertas/Amenazas/2006/ale06_06_06.htm.

⁴⁸ Reporters Without Borders, *Un director de programa de Radio Caracol anuncia su salida del país tras recibir un ultimátum de una organización mafiosa*, June 12, 2006, available at: <http://www.ifex.org/es/content/view/full/75641>.

⁴⁹ Fundación para la Libertad de Prensa, *Asesinado periodista en Yumbo, Valle*, August 9, 2006, available at: <http://www.flip.org.co/veralerta.php?idAlerta=20>; Instituto Prensa y Sociedad, *Asesinan a periodista radial en Cali*, August 11, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=837>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 149/06, *Office of the Special Rapporteur for Freedom of Expression Condemns Assassination of Journalist in Colombia and Demands Prompt Investigation*, August 11, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=675&IID=2>.

⁵⁰ Inter-American Press Association, *Deplora la SIP asesinatos de periodistas en Venezuela y Colombia*, August 29, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srhcountrypdetail.cfm?PressReleaseID=1743>; Committee to Protect Journalists, *Comentador radial colombiano asesinado a tiros en su casa*, August 28, 2006, available at: http://www.cpj.org/news/2006/americas/colombia28augr06na_sp.html. The Office of the Special Rapporteur for Freedom of

100. On October 19, 2006, journalist Otoniel Sánchez, of the program *Tribuna Deportiva* of *Canal CNC*, left the city of Cartago, in Valle del Cauca, after receiving threats, and after unknown persons fired gunshots at his home six times.⁵¹

101. On November 9, 2006, journalist Olga Brú Polo, of the daily *El Meridiano de Sucre*, received threats for having published reports on irregularities committed in the city government of Sincelejo, capital of the department of Sucre.⁵²

102. Since late November 2006, journalists Robinsón Ruz Ruz of the radio station *Radio Piragua* and José Ponce Obispo, director of information with *Radio Galeón*, have received repeated threats. It was indicated that paramilitary groups operating in the Atlantic coast region were likely responsible.⁵³

COSTA RICA

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

103. On May 3, 2006, the Fourth Chamber of the Supreme Court of Justice of Costa Rica rejected the motion of unconstitutionality filed against Article 7 of the Press Law (Ley de Imprenta), which punishes crimes committed by the media up to 120 days of prison.⁵⁴

CUBA

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

104. On September 15, 2006, a state security officer disconnected the telephone line of the director of the news agency *Jóvenes sin Censura*, Liannis Meriño Aguilera, which was used to transmit news reports.⁵⁵

...Continuation

Expression issued a pronouncement on this assassination in its press release 151/06, *Office of the Special Rapporteur for Freedom of Expression condemns the murder of journalists in Colombia and Requests an Adequate Investigation*, August 31, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=677&IID=2>.

⁵¹ Instituto Prensa y Sociedad, *Periodista abandona su ciudad tras amenazas de muerte*, October 23, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=913>.

⁵² Instituto Prensa y Sociedad, *Amenazan a periodista por denunciar corrupción en gobierno local*, November 15, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=940>.

⁵³ Reporters Without Borders, *Dos periodistas de la costa atlántica en el punto de mira de los paramilitares*, December 4, 2006, available at: http://www.rsf.org/article.php3?id_article=19990.

⁵⁴ Reporter Without Borders, *Se mantiene el artículo 7 de la Ley de Imprenta*, 9 de mayo de 2006, disponible en: http://www.rsf.org/article.php3?id_article=17614; Visit of the Office of the Special Rapporteur for Freedom of Expression to Costa Rica, meeting with the President of the Constitutional Chamber of the Supreme Court of Justice, November 28, 2006.

⁵⁵ Payolibre, *Continúa represión contra directora de Jóvenes sin Censura*, September 26, 2006, available at: <http://www.payolibre.com/noticias/noticias2.php?id=396>.

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

105. On May 23, 2006, journalist Armando Betancourt was detained and beaten by members of the police while covering the eviction of a group of families in the city of Camagüey.⁵⁶

106. On September 17, 2006, journalist Abel Escobar Ramírez was detained by the police and held for six hours. According to information received, his personal address and telephone books were seized from him. When he inquired into the reason for his arrest, a police officer answered that it was for disobedience.⁵⁷

107. On September 21, 2006, journalist Oscar Sánchez Madan was detained by two officers of the Political Police when leaving a working meeting with the Movimiento Independiente Opción Alternativa (MIOA) and activists from the Movimiento Femenino Marta Abreu (MFMA), in the town of Pedro Betancourt. According to the information received, the agents took them in a car to the police unit at Unión de Reyes. The journalist indicated that he was threatened and physically assaulted, as he was beaten and punched. At the police unit a notebook and pencil were seized from him, and a warning was drawn up for not being employed with the government. He was fined 30 pesos for failure to appear in response to an earlier summons issued by an officer of the National Revolutionary Police.⁵⁸

108. On October 5, 2006, journalist Juan Carlos Linares Balmaceda was detained by police agents, who questioned and threatened him in the city of Havana.⁵⁹

109. On October 6, 2006, journalist Luis Felipe Rojas Rosabal was arrested in the province of Holguín and had books, office materials, and personal documents confiscated from him.⁶⁰

110. On October 26, 2006, members of the Municipal Council of the Committees for the Defense of the Revolution called into question the journalism of Virgilio Delat and threatened to have him imprisoned for his articles on the dengue epidemic that was spreading in the city of Santiago.⁶¹

111. On October 31, 2006, journalist Ahmed Rodríguez Albacia, of the press agency *Jóvenes sin Censura*, was expelled from the municipality of Antilla, province of Holguín. A Rapid Response Brigade at the service of the Cuban political police forced him to leave the place under

⁵⁶ Committee to Protect Journalists, *Periodista encarcelado en Cuba tras cubrir desalojos del gobierno*, May 20, 2006, available at: http://www.cpj.org/news/2006/americas/cuba30may06na_sp.html; Reporters Without Borders, *Un periodista independiente en detención preventiva*, June 8, 2006, available at: http://www.rsf.org/article.php3?id_article=17859.

⁵⁷ Jóvenes Sin Censura, *Arrestan a periodista independiente*, September 27, 2006, available at: <http://bitacoracubana.com/desdecuba/portada2.php?id=2996>.

⁵⁸ Bitácora Cubana, *Golpean brutalmente a un periodista independiente en Cuba*, September 26, 2006, available at: http://www.prnoticias.com/prn/hojas/noticias/detallenoticia.jsp?noticia=22218&repositorio=0&pagina=1&idapr=1_esp_1.

⁵⁹ CUBANET, *Juan Carlos Linares detenido y amenazado*, October 12, 2006, available at: <http://www.cubanet.org/CNews/y06/oct06/13a2.htm>.

⁶⁰ CUBANET, *Arrestan a periodista independiente y a un opositor en Holguín*, October 12, 2006, available at: <http://www.cubanet.org/CNews/y06/oct06/13a3.htm>.

⁶¹ CUBANET, *Funcionarios de los CDR amenazan a periodista independiente*, November 1, 2006, available at: <http://www.cubanet.org/CNews/y06/nov06/02a1.htm>.

threat of assassination. From December 4 to 12, 2006, he had been detained at the general headquarters of the State Security forces in Havana for “disseminating false news that constitutes an attack on international peace.” He was released under surveillance. Mr. Rodríguez Albacia denounced that he and his family have been harassed by the political police since early 2006.⁶²

112. On November 3, 2006, journalist Pedro Enrique Martínez Machado, of Santiago, was arrested and questioned by State Security officials. It was indicated that he was threatened with imprisonment for *desacato*.⁶³

113. On November 6, 2006, journalist Guillermo Espinosa Rodríguez, of the *Agencia de Prensa Libre Oriental* (APLO), was convicted and sentenced to two years house arrest for “social dangerousness” (“*peligrosidad social*”), and was prohibited from continuing his journalistic activities under threat of being sent to prison.⁶⁴

114. On December 5, 2006, activist Raimundo Perdigón Brito was sentenced to four years imprisonment for the crime of “pre-criminal social dangerousness” for establishing an independent news agency in the province of Sancti Spiritus. He was detained on November 29, 2006, and told that he would be released if he shut down the news agency he had established on November 17, 2006.⁶⁵

115. On December 19, 2006, journalist Carlos Serpa Maceira, of the Agencia Sindical Press and director of the press office of Puente Informativo Cuba Miami, was detained in Old Havana.⁶⁶

116. On December 29, 2006, journalist Lianis Meriño Aguilera was detained by state security agents in Obrero Banes, province of Holguín. She was held for two hours at the fire station. According to the information received, one of the agents accused her of disseminating false information and warned her to give up her activities as a journalist. It is indicated that she had published an article on the *CubaNet* website on the dismissal of two persons from a tobacco factory, allegedly because of their sexual orientation.⁶⁷

⁶² CUBANET, *Expulsado periodista independiente de su pueblo natal*, November 2, 2006, available at: <http://www.cubanet.org/CNews/y06/nov06/03a1.htm>; Reporters Without Borders, *En libertad, tras ocho días detenido, el periodista Ahmed Rodríguez Albacia*, December 14, 2006, available at: http://www.rsf.org/article.php3?id_article=20032; IFEX, *En libertad, tras ocho días detenido, el periodista Ahmed Rodríguez Albacia*, December 22, 2006, available at: <http://www.ifex.org/es/content/view/full/80069>.

⁶³ CUBANET, *Arrestan por unas horas a periodista independiente en Santiago de Cuba*, November 10, 2006, available at: <http://www.cubanet.org/CNews/y06/nov06/13a3.htm>.

⁶⁴ Reporters Without Borders, *El periodista Guillermo Espinosa Rodríguez condenado a dos años de arresto domiciliario*, November 8, 2006, available at: http://www.rsf.org/article.php3?id_article=19615.

⁶⁵ Inter-American Press Association, *Condena la SIP sentencia y arresto de periodistas independientes en Cuba*, December 7, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1817>.

⁶⁶ CUBANET, *Imponen multa a Serpa Maceira*, December 21, 2006, available at: <http://www.cubanet.org/CNews/y06/dec06/22a3.htm>.

⁶⁷ Reporters Without Borders, *La Seguridad del Estado amenaza a una joven periodista independiente*, January 3, 2006, available at: http://www.rsf.org/article.php3?id_article=16086.

ECUADOR

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

117. On February 13, 2006, the body of journalist José Luis León Desiderio was found near his residence with a gunshot wound to the head. According to the information received, Mr. León Desiderio worked with the daily *El Telégrafo* and several radio stations, including *Radio Minutera*, and generally denounced gang violence and the lack of additional police action in Guayaquil. It was indicated that he had received threats according to which if he continued reporting on the action of the gangs he would face serious consequences.⁶⁸

PROGRESS

118. On March 19, 2006, in Quito the president of Ecuador signed the Declaration of Chapultepec.⁶⁹

EL SALVADOR

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

119. On December 20, 2006, the First Justice of the Peace of Sonsonate, Astrid Yanira Pineda, reportedly prevented a team from the daily *La Prensa Gráfica* from entering the offices of the judicial center in Sonsonate, where a preliminary hearing was being held in the case of 14 persons accused of multiple homicides in the area.⁷⁰

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

120. On March 9, 2006, journalist Rosa Elvia Campos, of the daily *Co Latino*, was assaulted in the municipality of Mejicanos, department of San Salvador, allegedly by militants of the Frente Democrático Revolucionario (FDR) party. According to the information received, the assault occurred when she was trying to get statements from a politician from the FDR. He refused to answer and instructed his followers not to make statements to her, arguing that she worked for a newspaper owned by the Frente Farabundo Martí para la Liberación Nacional (FMLN). It was indicated that a group of persons surrounded her and one of them struck her with a blunt object.⁷¹

121. On July 5, 2006, several journalists were assaulted during a confrontation between anti-riot police and university students who were participating in a street protest. Journalist Ernesto

⁶⁸ Reporters Without Borders, *Asesinado en Guayaquil un periodista radiofónico: descartada a priori la hipótesis crapulosa*, February 16, 2006, available at: http://www.rsf.org/article.php3?id_article=16474.

⁶⁹ Inter-American Press Association, *Estado ecuatoriano suscribe declaración sobre libertad de prensa*, March 21, 2006, available at: <http://www.ifex.org/es/content/view/full/73054/>.

⁷⁰ Asociación de Periodistas de El Salvador, *Libertad de expresión en El Salvador, Estado de la prensa 2006*, December 28, 2006, available at: <http://www.apes.org.sv/comunicados12.asp?CatNum=2&CatName=nota>.

⁷¹ PROBIDAD, *Periodista es agredida por militantes de partido político*, March 13, 2006, available at: <http://www.ifex.org/es/content/view/full/72810/>.

Landos of Teledos was pursued by a group of demonstrators who broke one of the windows of the vehicle in which the press crew was driving. In addition, a group of demonstrators took the camera from photographer Felipe Ayala, of *El Diario de Hoy*, and returned it to him after taking the memory card, where the images were recorded.⁷²

122. On November 3, 2006, journalist Oscar Servellón, correspondent for radio stations YSKL and *Ecopavas* in the city of Cojutepeque, received a death threat. The unknown persons left an anonymous written threat directed to him and his brother Eric Servellón.⁷³

UNITED STATES

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

123. On June 15, 2006, it was reported that four journalists were expelled from the base at Guantánamo on orders of the government, without being able to culminate their investigations after the suicides of three prisoners.⁷⁴

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

124. On May 21, 2006, the attorney general of the United States, Alberto Gonzales, stated that the federal government could sue journalists who reveal information classified as secret by the Defense Department.⁷⁵

125. On September 21, 2006, two journalists from the *San Francisco Chronicle*, Lance Williams and Mark Fainaru-Wada, were given 18-month prison sentences for contempt of court for refusing to reveal the sources from which they obtained testimony that professional athletes had given before a court, in a trial regarding the use of steroids. The judge had ordered that the testimony be under sealed and ordered an investigation when the articles were published. The judgment also includes a fine, imposed on the newspaper, of US\$ 1,000 daily until the sources were revealed. The newspaper and the journalists appealed and the effects of the judgment have been suspended.⁷⁶

126. On November 27, 2006, the Supreme Court rejected a petition from *The New York Times* that sought to keep federal prosecutors from reviewing the telephone records of journalists

⁷² Asociación de Periodistas de El Salvador, *Libertad de expresión en El Salvador, Estado de la prensa 2006*, December 28, 2006, available at: <http://www.apes.org.sv/comunicados12.asp?CatNum=2&CatName=nota>.

⁷³ Asociación de Periodistas de El Salvador, *APES denuncia nuevas amenazas y agresiones a periodistas*, November 13, 2006, available at: <http://www.apes.org.sv/comunicados12.asp?CatNum=1&CatName=nota>.

⁷⁴ Inter-American Press Association, *IAPA protests expulsion of reporters from Guantánamo*, June 15, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/chronologicaldetail.cfm?PressReleaseID=1686>.

⁷⁵ Inter-American Press Association, *Preocupa a la SIP cualquier esfuerzo legislativo en Estados Unidos que busque penalizar la divulgación de información clasificada*, May 26, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/chronologicaldetail.cfm?PressReleaseID=1668>; *El Diario (United States), Gonzales y la libertad de prensa*, May 27, 2006, available at: <http://www.eldiariony.com/noticias/detail.aspx?section=25&desc=Editorial&id=1396692>.

⁷⁶ San Francisco Chronicle (United States), *Chronicle calls federal case against BALCO reporters flawed*, January 10, 2007, available at: <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/01/10/BAGFNGAS26.DTL&type=printable>.

Judith Miller and Philip Shenon related to their investigations into the alleged participation of businesses in the financing of terrorist activities.⁷⁷

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

127. On May 1, 2006, journalist Tony Valdez of *Fox News* received death threats after his coverage of the protests by immigrant groups calling for reform of U.S. immigration policies and opposing the deportation of undocumented foreigners.⁷⁸

128. As of this writing, Sudanese cameraman Sami Al-Haj, of the *Al-Jazeera* television network, continued to be held at Guantánamo without any formal indictment. According to the information received, he was arrested in December 2001 by members of the Pakistani Army along the Afghan border; then handed him over to U.S. soldiers. He was taken to the U.S. naval base at Guantánamo, Cuba, on June 13, 2002. It is indicated that he was subjected to interrogations in situations of sleep deprivation, lengthy periods of exposure to the sun, and other mistreatment, and that he has not been allowed to contact his family. His lawyer said that in April 2006 Mr. Al-Haj told him that he wanted to commit suicide.⁷⁹

PRINCIPLE 12 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Monopolies, oligopolies, and allocation of radio and television frequencies)

129. On September 18, 2006, a report by the Federal Communications Commission (FCC) was released according to which the trend towards concentration of media ownership has intensified in recent years. According to the information received, the report indicates that from March 1996 to March 2003, there was a 5.9 percent increase in the number of radio stations in the country, but a decline of 35 percent in the number of radio station owners. It is added that the largest owner of radio stations in the United States owned 62 stations in 1996 and 1,233 stations in 2003.⁸⁰

GUATEMALA

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

130. On May 18, 2006, journalist Mario René Escobedo, a correspondent with the newspaper *El Quetzalteco* in Huehuetenango, and the person in charge of the section *Mi Región*

⁷⁷ Inter-American Press Association, *La SIP lamenta decisión judicial en Estados Unidos sobre confidencialidad de las fuentes periodísticas*, December 29, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1813>.

⁷⁸ *Diario La Opinión* (United States), *Denuncian amenazas de muerte*, May 6, 2006, available at: <http://www.laopinion.com/print.html?rkey=0000000000000104130>.

⁷⁹ Reporters Without Borders, *Reporteros sin Fronteras reclama de nuevo la libertad de Sami Al-Haj, cinco años después de la llegada de los primeros detenidos en Guantánamo*, January 10, 2007, available at: http://www.rsf.org/article.php3?id_article=20343.

⁸⁰ Office of Senator Barbara Boxer, *Boxer Concerned About Report Suppression at FCC*, September 18, 2006, available at: <http://boxer.senate.gov/news/releases/record.cfm?id=263223>.

Ámbito Financiero, *FCC ordenó destrucción de informe crítico de concentración de medios*, September 15, 2006, available at: <http://legislaciones.amarc.org/06-09-15-EeuuFccOrdeno.htm>.

Huehue, was assaulted by an officer of the National Civilian Police. According to the complaint he lodged with the Office of the District Prosecutor of the Public Ministry, the police officer insulted him, pushed him, and tried to take his camera, saying that “journalists only publish lies.” The police officer said he was upset because he was sanctioned after articles were published denouncing irregularities.⁸¹

131. On June 13, 2006, cameraman Carlos Morales, of television news station *Noti7* of channel *Televisiete*, was assaulted by members of the private security service in the Tikal I neighborhood of Zone 7 in Guatemala City. According to the information received, he and journalist Dunia Rocibel Recinos were covering a story on the alleged prohibition on free movement affecting a clergyman who defends migrants’ human rights. When Mr. Morales was taking pictures of the guards, they pointed their shotguns at him, insulted him, and one of them kicked him.⁸²

132. On August 23, 2006, journalist Vinicio Aguilar, host of a political analysis program on *Radio 10*, was attacked and suffered a gunshot wound. According to the information received, two unknown persons approached him on motorcycle and shot him in the mouth. The bullet exited the cheek and he underwent surgery. According to *Radio 10*, its directors and employees had received death threats on several occasions for reporting on a trial for alleged tax evasion by a conglomerate of firms. According to the information received, on August 22, 2006, a phone threat was received directed against the radio station’s director, Óscar Rodolfo Castañeda, in which he was threatened with death if he didn’t leave the country within eight days. On August 30, 2006, the IACHR issued precautionary measures to protect the life and personal integrity of Mr. Aguilar and other persons.⁸³

133. On September 10, 2006, the corpse of radio journalist Eduardo Heriberto Maas Bol, correspondent for *Radio Punto*, was found in Cobán, department of Alta Verapaz, with five gunshot wounds. On September 12, 2006, the police arrested one of the persons allegedly responsible for the crime.⁸⁴

⁸¹ Cerigua, *Guatemala: Presentarán denuncia de agresión a la SIP*, May 20, 2006, available at: www.cerigua.org/portal/observatorio/notas_de_prensa_mayo_06.pdf.

⁸² Centro de Reportes Informativos sobre Guatemala, *Camarógrafo agredido en la capital; empleado de un periódico regional golpeado*, June 20, 2006, available at: <http://www.ifex.org/es/content/view/full/75175/?PHPSESSID>.

⁸³ El Nuevo Diario (Nicaragua), *Periodista herido de bala en Guatemala*, August 23, 2006, available at: <http://www.elnuevodiario.com.ni/2006/08/23/ultimahora/1636>; Reporters Without Borders, *La libertad de prensa en peligro de nuevo: un periodista asesinado y otros dos amenazados de muerte*, September 11, 2006, available at: http://www.rsf.org/article.php3?id_article=18814; Committee to Protect Journalists, *In Guatemala, a radio host wounded in shooting*, August 24, 2006, available at: <http://www.cpj.org/news/2006/america/guatemala24aug06na.html>; Instituto Prensa y Sociedad, *Desconocidos abalean a periodista radial*, August 24, 2006, available at: <http://canada.ifex.org/es/content/view/full/76556>.

⁸⁴ Prensa Libre, *Matan a periodista en Cobán*, September 11, 2006, available at: <http://www.prensalibre.com.gt/pl/2006/septiembre/11/151419.html>; Inter-American Press Association, *Urge la SIP investigación por asesinato de periodista en Guatemala*, September 11, 2006, available at: <http://sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1756>; Instituto Prensa y Sociedad, *Asesinan a periodista radial*, September 11, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=863>; Instituto Prensa y Sociedad, *Capturan a presunto asesino de periodista*, September 21, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=878>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 153/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Guatemala and Demands Prompt Investigation*, September 13, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=679&IID=2>.

PRINCIPLE 12 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Monopolies, oligopolies, and assignment of radio and television frequencies)

134. In March 2006, nine indigenous community radio stations were shut down in the departments of Chimaltenango and Huehuetenango. On March 2, 2006, prosecutors from the Public Ministry accompanied by police seized documentation on radio stations affiliated with the Consejo Guatemalteco de Comunicación Comunitaria (CGCC). On March 9, 2006, the radio station *Voz Latina* of Chimaltenango was shut down, and on March 15 its director, Ana Piedad Martín, was arrested; she was released after posting bond. On March 9, 2006, the radio stations *Presencia Stéreo*, *Cairo*, and *Mayense*, of the department of Chimaltenango, and the radio station *Acción*, of the department of Huehuetenango, were shut down. In addition, on March 15, 2006, Oscar Rafael López, director of the radio station *Stereo Nolber Sideral*, of the department of Huehuetenango, and staff member Esbin Martínez Palacios, were arrested. Both were released after paying a fine.⁸⁵

PROGRESS

135. On February 3, 2006, a decision of the Constitutional Court effectively did away with the criminal *desacato* provisions on nullifying Articles 411, 412, and 413, of the Criminal Code, which had codified it. The court's ruling came in response to an appeal filed in June 2005 by the president of the Cámara Guatemalteca de Periodismo, Mario Fuentes Destarac. The Constitutional Court based its ruling on the principles established in the Guatemalan Constitution, the American Convention on Human Rights, and the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights.⁸⁶

GUYANA

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

136. On January 30, 2006, Ronald Waddell, former host of a television program on *HBTV Channel 9*, was assassinated by unknown persons who shot him as he was getting in his car. Mr. Waddell was a known activist on behalf of the rights of Afrodescendant citizens, and was critical of government policies. According to the information received, he had also denounced the existence of death squads in Guyana.⁸⁷

⁸⁵ Reporters Without Borders, *Cierran nueve radios comunitarias*, March 21, 2006, available at: http://www.rsf.org/article.php3?id_article=16809.

⁸⁶ Office of the Special Rapporteur for Freedom of Expression of the OAS, *Press release 132/06: Office of the Special Rapporteur for Freedom of Expression Expresses its Approval of the Elimination of Desacato Laws in Guatemala*, February 3, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=652&IID=2>.

⁸⁷ Inter-American Press Association, *La SIP condena asesinato contra periodista en Guyana*, February 3, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/chronologicaldetail.cfm?PressReleaseID=1594>; Reporters Without Borders, *Opposition journalist gunned down in Georgetown*, February 2, 2006, available at: http://www.rsf.org/article.php3?id_article=16339.

HAITI

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

137. On October 24, 2006, journalist Ernst Cadichon, of *Radio Galaxie*, was beaten by police while covering a student protest in front of the presidential palace, which resulted in a broken arm and several contusions.⁸⁸

HONDURAS

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

138. On May 8, 2006, radio journalist Jesús Octavio Carvajal denounced that he had received death threats and had been physically assaulted. He alleges that the threats and assaults were ordered by a high-level government official in Tegucigalpa after he publicly called into question that official's role in negotiations regarding the El Tigre dam, along the border with El Salvador. It is indicated that Mr. Carvajal left Honduras temporarily for fear of the reprisals that might be carried out against him.⁸⁹

139. Journalists Robert Marín García and Dina Meetabel Meza, of the publication *Revistazo.com* and members of the Asociación por una Sociedad Más Justa (ASJ), received threats after investigating alleged breaches of labor law by private security firms. The Inter-American Commission on Human Rights granted precautionary measures on December 20, 2006, to protect the life and physical integrity of these journalists and other members of the organization after the ASJ's attorney and adviser, Dionisio Díaz García, was assassinated.⁹⁰

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

140. Journalist Julio Ernesto Alvarado, director of the news program *Mi Nación* of *Canal 13 Honduras* of Tegucigalpa, was the target of a complaint for defamation and slander. The dean of the School of Economics of the public Universidad Nacional Autónoma de Honduras (UNAH), Belinda Flores de Mendoza, filed the complaint after the journalist accused her, on July 4, 2006, of having been put in her post irregularly, and of being implicated in an alleged illegal sale of diplomas at the UNAH.⁹¹

⁸⁸ Haiti Support Group, *Port-au-Prince's InfoHaiti.net is reporting that a Radio Galaxie journalist, Ernst Cadichon, was beaten up by policemen as he covered a student demonstration outside the presidential palace in Champ de Mars on Tuesday 24 October*, October 31, 2006, available at: http://www.haitisupport.gn.apc.org/fea_news_main53.html.

⁸⁹ Diario El Heraldo, *CPH se solidariza con periodista*, May 10, 2006, available at: <http://www.elheraldo.hn/nota.php?nid=50034&sec=12&fecha=2006-05-10>.

PROBIDAD, *Honduras: Periodista denuncia ante Fiscalía agresión de funcionario*, May 10, 2006, available at: http://probidad.net/cs/index.php?option=com_content&task=view&id=167&Itemid=29.

⁹⁰ PROBIDAD, *Tras amenazas, asesinan abogado integrante del equipo de investigación periodística de organización social*, December 6, 2006, available at: <http://www.ifex.org/fr/content/view/full/79654>.

⁹¹ PROBIDAD, *Dos nuevas querellas por delitos contra el honor enfrentan periodistas*, October 13, 2006, available at: http://probidad.net/cs/index.php?option=com_content&task=view&id=421&Itemid=29 and at: <http://www.ifex.org/20fr/content/view/full/78391/>.

141. Journalist Francisco Romero, of the program *Hablemos de Noche* of *Canal 45 RCN*, was the target of a complaint for defamation and slander brought by the son of education minister Octavio Pineda after the reporter accused him of being implicated in alleged irregularities in that ministry. One month earlier Mr. Romero had been the subject of a complaint by the national coordinator of programs and projects of the Ministry of Education, Yance Juárez, after he accused her of nepotism in August 2006.⁹²

PROGRESS

142. On November 23, 2006, the Honduran Congress approved the Law on Transparency and Access to Public Information.⁹³

MEXICO

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

143. On January 14, 2006, journalist Olivier Acuña Barba, director of the publication *Sinaloa Dos Mil*, was detained by the police and accused of homicide. He said he had been tortured by the police to get him to confess. A report prepared by the National Commission on Human Rights of Sinaloa verified the presence of signs of torture. The journalist argues that the accusation was a set-up to punish him for his investigative journalism and to keep him from publishing any more, since his articles implicated police and other powerful persons in the state in illegal activity. As of this writing he was still being held.⁹⁴

144. On January 14, 2006, journalist Julio César Ortega Quiroz, editor-in-chief of the magazine *La Neta Times* and who also works with *Radio Palacio*, was beaten by members of a municipal police patrol from Caborca, in the state of Sonora. According to the information received, the police forced him to get out of his car, beat him, and took him to the police station, where they threatened him. It is indicated that Mr. Ortega Quiroz lodged frequent complaints about an alleged conflict between the office of the mayor of Caborca and some members of the Municipal Police thought to be involved in drug-trafficking.⁹⁵

145. On February 6, 2006, two unknown persons broke into the offices of the daily *El Mañana*, in the city of Nuevo Laredo, state of Tamaulipas. According to the information received, they entered shooting at the front desk of the newspaper, and went to the editorial offices, where they insulted those present and threatened to set off a grenade. Journalist Jaime Orozco Trey suffered serious gunshot wounds and lost his mobility in both legs as a result of the attack. In

⁹² PROBIDAD, *Dos nuevas querellas por delitos contra el honor enfrentan periodistas*, October 13, 2006, available at: http://probidad.net/cs/index.php?option=com_content&task=view&id=421&Itemid=29 and at: <http://www.ifex.org/20fr/content/view/full/78391/>.

⁹³ PROBIDAD, *Congreso aprueba Ley de Transparencia y Acceso a la Información Pública, que permitirá a los ciudadanos exigir cuentas a sus servidores públicos*, November 30, 2006, available at: <http://www.ifex.org/es/content/view/full/79500/>.

⁹⁴ State Human Rights Commission of Sinaloa, *EXPEDIENTE No.: CEDH/III/014/06*, March 7, 2006, available at: <http://www.cedhsinaloa.org.mx/recomendaciones/2006/REC07.doc>.

⁹⁵ Reporters Without Borders, *Violencia policial contra un periodista: Reporteros sin Fronteras hace un llamamiento al gobernador del Estado de Sonora*, January 23, 2006, available at: http://www.rsf.org/article.php3?id_article=16233.

addition, there was material damage. *El Mañana* had been providing special coverage of the wave of violence that affects that region.⁹⁶

146. On March 9, 2006, journalist Jaime Arturo Olvera Bravo was assassinated when an unknown person shot him while he was walking hand-in-hand with his child to the bus station in the municipality of La Piedad, state of Michoacán. The unknown person shot him in the head and then fled in a vehicle that was waiting with the motor running. Mr. Olvera Bravo was a correspondent for the daily *La Voz de Michoacán* until April 2002. Since then he had worked as a freelance journalist and denounced attacks against the local press in the context of his coverage of police matters.⁹⁷

147. On March 10, 2006, journalist Ramiro Téllez Contreras, of *Radio EXA 95.7 FM*, was shot down in front of his home in Nuevo Laredo, state of Tamaulipas, when heading to his place of work. It is indicated that Téllez had received threats days before he was assassinated. Shells were found at the site of the attack, with caliber 9 mm, 40 mm, and 45 mm, which, according to the information received, are frequently used by drug-traffickers in the region.⁹⁸

148. On May 4, 2006, three foreign photographers were detained by the police in San Salvador Atenco, state of México. María Sostres, from Spain, Samantha Dietmar, of Germany, and Valentina Palma, from Chile, were participating in a tribute to a 14-year-old youth assassinated the night before during a repressive operation that resulted in one killed, a dozen persons wounded, and more than 200 persons detained, including the photographers. According to the information received, the police confiscated their materials, including film, photographs, and cameras. They then suffered physical violence and some police officers touched them while making sexual insinuations. The three photographers were finally expelled from the country.⁹⁹

149. On May 10, 2006, journalist Oscar Mario Beteta, of *Radio Fórmula*, received death threats by telephone from persons who identified themselves as hired gunmen in the state of Tamaulipas. It is indicated that the threats were also directed against him, his wife, and his child, and that they were presumably related to his comments against a presidential candidate.¹⁰⁰

150. On May 24, 2006, journalist Antonio Ramos Tafolla was taken by force by unknown persons in the municipality of Apatzingán, state of Michoacán. According to the information received, the perpetrators were drug-traffickers who threatened to kill him if he continued investigating issues related to organized crime and drug-trafficking. The incident occurred after he

⁹⁶ Office of the Special Rapporteur for the Freedom of Expression, *Press Release 133/06 Office of the Special Rapporteur for Freedom of Expression Condemns Recent Attacks against Mexican Press*, February 16, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=653&IID=2>.

⁹⁷ Diario Cambio de Michoacán, *Amenazan de muerte a periodista*, May 24, 2006, available at: <http://www.cambiodemichoacan.com.mx/vernota.php?id=44529>; Reporters Without Borders, *Asesinan a disparos a dos periodistas en veinticuatro horas*, March 13, 2006, available at: http://www.rsf.org/article.php3?id_article=16728.

⁹⁸ Diario El Universal, *Matan a periodista en Nuevo Laredo*, March 10, 2006, available at: <http://www.el-universal.com.mx/notas/335472.html>; Reporters Without Borders, *Asesinan a disparos a dos periodistas en veinticuatro horas*, March 13, 2006, available at: http://www.rsf.org/article.php3?id_article=16728.

⁹⁹ Reporters Without Borders, *Detenciones abusivas, violencia y represión excesiva: Reporteros Sin Fronteras denuncia la brutalidad de la represión policial en San Salvador Atenco*, May 11, 2006, available at: http://www.rsf.org/article.php3?id_article=17662.

¹⁰⁰ Diario Crónica, *Recibe Radio Fórmula amenaza de muerte contra Óscar Mario Beteta*, May 8, 2006, available at: http://www.cronica.com.mx/nota.php?id_notas=240022.

filed a report on his radio show about a confrontation among drug-traffickers, hired gunmen, and state police.¹⁰¹

151. On June 21, 2006, reporter Manuel Acuña López, of the daily *Por Esto!*, was assaulted by unknown persons who threw explosives at his home in Mérida, state of Yucatán. It is indicated that the reporter has publicly accused the governor of the state as the mastermind behind the assassination attempt directed against him.¹⁰²

152. The newspaper *Por Esto!* was attacked repeatedly in 2006. In June unknown persons set ablaze the car belonging to *Por Esto!* reporter Manuel Acuña López. On August 22, 2006, a homemade bomb was thrown at the car of another journalist from the same newspaper, Jaime Vargas Chablé; the attack destroyed the car but no one was wounded. The two journalists had published articles on government corruption in Mérida. On August 23, 2006, two hand grenades exploded in the entrance to the newspaper's offices in Cancún, but no one was wounded. On September 1, 2006, the main offices of *Por Esto!* in the city of Mérida were attacked with grenades. According to the information received, the explosion injured two guards and caused damage to the newspaper's infrastructure. The newspaper has investigated numerous cases of government corruption and drug-trafficking, especially the activities of the Sinaloa cartel in the Yucatán peninsula.¹⁰³

153. On July 11, 2006, the family members of reporter Rafael Ortiz Martínez, of the daily *Zócalo* and radio station *XHCCG*, filed a complaint over his disappearance as of July 8, 2006, in the city of Monclovo. The previous week, Rafael Ortiz had published articles about prostitution in the downtown area of Monclovo and on a hepatitis C contagion at a center for services and reinsertion.¹⁰⁴

154. On August 9, 2006, the body of reporter Enrique Perea Quintanilla was found along a highway of the state of Chihuahua with signs of torture and two gunshot wounds. Several weeks later the channel *TV Azteca* received a video from an anonymous source in which two persons appear who identify themselves as the perpetrators of the homicide and who state that they received the order to kill him from leading drug-traffickers in the Juárez cartel.¹⁰⁵

¹⁰¹ Diario Cambio de Michoacán, *Amenazan de muerte a periodista*, May 24, 2006, available at: <http://www.cambiodemichoacan.com.mx/vernota.php?id=44529>.

¹⁰² Reporters Without Borders, *Un periodista víctima de atentado sospecha que el gobernador de Yucatán ha sido su autor intelectual*, June 29, 2006, available at: <http://www.ifex.org/es/content/view/full/75378>.

¹⁰³ Committee to Protect Journalists, *Ataque con granadas contra un diario en Cancún que investiga el tráfico de drogas; auto de periodista destruido por bomba*, August 25, 2006, available at: <http://www.ifex.org/es/content/view/full/76570/>.

Reporters Without Borders, *Tres heridos en ataque con granadas contra oficina en Mérida del diario "Por Esto!"*, September 5, 2006, available at: <http://www.ifex.org/es/content/view/full/76788/>.

¹⁰⁴ Office of the Special Rapporteur for Freedom of Expression, *Press Release 145/06: Office of the Special Rapporteur for Freedom of Expression Voices Concern over the Disappearance of a Journalist in Mexico*, July 19, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=670&IID=2>.

¹⁰⁵ El Diario de Chihuahua, *Ejecutan a periodistas*, August 10, 2006, available at: <http://www.eldiariodechihuahua.com.mx/notas.php?IDNOTA=33023&IDSECCION=Portada&IDREPORTERO=Alberto%20DeIgado>; Reporters Without Borders, *En un dudoso video confiesan su crimen los presuntos asesinos del periodista Enrique Perea Quintanilla*, October 17, 2006, available at: http://www.rsf.org/article.php3?id_article=18549. The Office of the Special Rapporteur on Freedom of Expression issued a pronouncement on this assassination in its press release 150/06, *Office of the Special Rapporteur on Freedom of Expression Condemns the Murder of Journalist in Mexico and Demands Prompt Investigation*, August 16, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=676&IID=2>.

155. On August 23, 2006, a grenade exploded near the offices of the daily newspaper *Que Quintana Roo Se Entere*, of Cancún, state of Quintana Roo. The explosion wounded one man in charge of cleaning the vehicles used by the newspaper for distribution.¹⁰⁶

156. On August 30 and September 6, 2006, workers from the community radio station *Voladora Radio* received death threats through email messages. On September 1, 2006, one of the staff members of the radio station was attacked while traveling in his car; rocks were thrown at the windows, which were shattered. On September 19, 2006, the Inter-American Commission on Human Rights issued precautionary measures to protect the life and physical integrity of the members of the community radio station.¹⁰⁷

157. On September 5, 2006, journalist Eugenia Cícero and photographer Aurelio Suárez, of the evening newspaper *PM*, and photographer Jaime Murrieta, of *El Diario*, state of Chihuahua, were assaulted by a group of persons, presumably agents of the State Investigation Agency (AEI: Agencia Estatal de Investigación). According to the information received, they were pursued and shot at by some 20 armed agents of the AEI who were shooting at them after the reporters photographed them drinking beer in public. When the agents reached them, they pulled them from their vehicles, punching them, beat them, and kicked them while they were on the ground. They also stole their cameras, cell phones, and wallets with personal documents. The three were hospitalized. Mr. Murrieta had polytraumatism, a fractured nasal septum, and open wounds on his head including his forehead. According to the information received, an agent from AEI was detained three hours later, when he was identified as one of the assailants.¹⁰⁸

158. On September 15, 2006, reporters Mario Viveros Barragán, Juan Pablo Ramos Jiménez, and Miguel Ángel Fuentes Cortina, of *Canal 6 de Julio*, were assaulted presumably by security agents. According to the information received, they filmed the police arresting youths in downtown Mexico City, after which several agents beat the reporters and destroyed some of their equipment.¹⁰⁹

159. On October 27, 2006, *Indymedia* cameraman Brad Will was assassinated while covering the intervention of the Federal Preventive Police in the conflict in the state of Oaxaca. According to the information received, the shots came from where the Municipal Police force was located. Two of his alleged assassins were released on December 1 after spending one month in preventive detention. That same day, in the context of the federal intervention in Oaxaca, Osvaldo

¹⁰⁶ Committee to Protect Journalists, *Ataque con granadas contra un diario en Cancún que investiga el tráfico de drogas; auto de periodista destruido por bomba*, August 25, 2006, available at: <http://www.ifex.org/es/content/view/full/76570/>.

Reporters Without Borders, *Tres heridos en ataque con granadas contra oficina en Mérida del diario "Por Esto!"*, September 5, 2006, available at: <http://www.ifex.org/es/content/view/full/76788/>.

¹⁰⁷ World Association of Community Radio Broadcasters, *Amenazan de muerte a periodistas de radio comunitaria La Voladora*, September 9, 2006, available at: <http://legislaciones.amarc.org/06-09-09-MexicoAmenazan.htm>.

¹⁰⁸ *El Diario*, *Atentan vs. periodistas de EL DIARIO y PM*, September 6, 2006, available at: <http://www.diario.com.mx/nota.asp?notaid=57bcd644d792f837e6ea350da10e8aa>.

El Universal, *Agreden en Juárez a 3 reporteros*, September 7, 2006, available at: http://estadis.eluniversal.com.mx/estados/vi_62438.html.

La Jornada, *Agreden a periodistas que cubrían reunión de narcos y supuestos policías en Juárez*, September 7, 2006, available at: <http://www.jornada.unam.mx/2006/09/07/038n1est.php>.

¹⁰⁹ Reporters Without Borders, *Brutalidad policial contra tres documentalistas de la sociedad Canal 6 de Julio*, September 19, 2006, available at: http://www.rsf.org/article.php3?id_article=18909.

Ramírez, photographer for the daily *Milenio*, suffered a gunshot wound. The events occurred in the city of Santa Lucía del Camino.¹¹⁰

160. On November 10, 2006, the corpse of journalist Misael Tamayo Hernández, director of the regional daily *El Despertar de la Costa*, appeared in the city of Ixtapa Zihuatanejo, state of Guerrero. According to the information received, on November 9 he had filmed an editorial on alleged embezzlement in the Water Administration Board of Zihuatanejo. It was also indicated that the daily generally published information on settlements of accounts among drug-traffickers in the area.¹¹¹

161. On November 16, 2006, the corpse of José Manuel Nava Sánchez, director of the daily *Excélsior* from 2002 to 2005, was found with wounds inflicted by a bladed weapon in his apartment in Mexico City. On November 6, 2006, he had presented his book *Excélsior, el asalto final*, in which he narrates and criticizes the sale of the newspaper, and asserts that that operation took place in conditions marked by "extreme irregularity."¹¹²

162. Since November 20, 2006, José Antonio García Apac, director of the weekly *Ecos* of the Tepalcatepec basin, state of Michoacán, has been disappeared. According to the information received, *Ecos* had been publishing investigations into drug-trafficking in Michoacán.¹¹³

163. On November 21, 2006, the reporter of the magazine *Testimonio* and correspondent for *Alarma* magazine, Roberto Marcos García, was assassinated by several gunshot wounds near the town of Matoza, state of Veracruz. He had regularly covered the robbery of imported goods and drug-trafficking in Veracruz, among other issues. Colleagues who knew him indicated that he had received death threats on his cell phone.¹¹⁴

¹¹⁰ La Jornada, *Brad Will*, October 30, 2006, available at: <http://www.jornada.unam.mx/2006/10/30/017a1pol.php>; Reporters Without Borders, *Identificados presuntos asesinos del camarógrafo Brad Will*, October 30, 2006, available at: http://www.rsf.org/article.php3?id_article=19483. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 156/06, *Office of the Special Rapporteur for Freedom of Expression Regrets Death of Journalist in Mexico and Calls for Appropriate Investigation*, October 31 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=682&IID=2>.

¹¹¹ PR Noticias, *Hallan muerto a Misael Tamayo, director de El Despertar*, November 13, 2006, available at: http://www.prnoticias.com/prn/hojas/noticias/detallenoticia.jsp?noticia=25270&repositorio=0&pagina=1&idapr=2_esp_1; Reporters Without Borders, *Aparece asesinado en un motel el director de un diario regional*, November 13, 2006, available at: http://www.rsf.org/article.php3?id_article=19695. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 157/06: *Office of the Special Rapporteur for Freedom of Expression Deplores Murders of Journalists in Mexico and Calls for Due Investigation*, November 21, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=684&IID=2>.

¹¹² Diario El Dictamen, *Hallan muerto a José Manuel Nava, ex director de Excélsior*, undated, available at: <http://www.eldictamen.com.mx/1a.asp?idn=52753>; Inter-American Press Association, *SIP solicita investigación urgente de asesinato contra periodista en México*, November 17, 2006, available at: <http://www.sipiapa.org/pressreleases/chronologicaldetail.cfm?PressReleaseID=1798>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 157/06, *Office of the Special Rapporteur for Freedom of Expression Deplores Murders of Journalists in Mexico and Calls for Due Investigation*, November 21, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=684&IID=2>.

¹¹³ IFEX, *Desaparece un periodista en el Estado de Michoacán, después de investigaciones al narcotráfico*, December 6, 2006, available at: <http://www.ifex.org/da/layout/set/print/layout/set/print/content/view/full/79652/>; Inter-American Press Association, *Alarmada la SIP por violencia contra periodistas en México*, December 6, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1819>; Instituto Prensa y Sociedad, *Desaparece Director de semanario en Michoacán*, December 5, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=974>.

¹¹⁴ El Universal, *Asesinan a reportero en carretera Veracruz-Alvarado*, November 21, 2006, available at: http://www.eluniversal.com.mx/notas/vi_389357.html; Instituto Prensa y Sociedad, *Asesinan a reportero en Veracruz*, November 22, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=961>; Inter-American Press Association, *SIP pide a futuro presidente de México prioridad sobre asesinatos contra periodistas*, November 24, 2006, available at:

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164. On November 30, 2006, the corpse of Adolfo Sánchez Guzmán, a reporter with the *Xhora Stereo* radio station and a correspondent for *Televisa*, was found. The body was found in the city of Nogales, state of Veracruz, with gunshot wounds and signs of torture. He was investigating the activity of persons who were assaulting trucks in the region. On December 4, 2006, the state police announced that three days earlier they had detained and imprisoned two individuals in the context of the investigation into this homicide.¹¹⁵

165. On December 2 and 3, 2006, journalists Saúl Contreras and Rafael Saavedra, of the daily *El Mundo* of Córdoba, in the state of Veracruz, received death threats. Contreras was traveling on his motorcycle on December 2, 2006, when four individuals forced him to stop at gunpoint, beat him, and told him he was “sentenced to die” for his publications. Saavedra was threatened once again the next day. They had published information on drug-trafficking in the region.¹¹⁶

166. On December 8, 2006, Raúl Marcial Pérez, editorial writer for the regional daily *El Gráfico*, in the indigenous locality of Juxtlahuaca, Oaxaca, was assassinated. It was indicated that armed individuals burst into the newspaper’s newsroom and opened fire, shooting at him; he died immediately. He had a column in which he regularly criticized the governor of Oaxaca.¹¹⁷

167. On December 9, 2006, photographer Haniel Morgan Chávez, of the daily *El Imparcial* of Oaxaca, was assaulted. According to the information received, he was at the offices of the Office of the Attorney General of the State for an interview when he was assaulted – beaten and kicked – by members of the Ministerial Police, who were also said to have taken his camera and cell phone.¹¹⁸

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

168. On May 2, 2006, journalist Olga Wornat and *Proceso* magazine were held liable by a Civil Court of the Federal District to pay compensation for moral injury to the former first lady, for publishing a report on her divorce. On May 16, 2006, the Superior Court of Justice of the Federal District vacated the judgment, ordering that the proceeding start anew. On October 16, 2006, a

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<http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1804>; Committee to Protect Journalists, *Periodista investigativo asesinado cerca de Veracruz*, November 23, 2006, available at: <http://www.ifex.org/es/content/view/full/79325/>.

¹¹⁵ Jornada, *Hallan asesinado a reportero en Veracruz*, November 30, 2006, available at: <http://www.jornada.unam.mx/2006/12/01/index.php?section=estados&article=043n2est>; Inter-American Press Association, *Consternación de la SIP por nuevo asesinato de periodista en México*, December 1, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1807>; Instituto Prensa y Sociedad, *Asesinan a reportero en Veracruz, policía detiene a presuntos homicidas*, December 4, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=970>; Reporters Without Borders, *Detenidos dos sospechosos del asesinato del periodista Adolfo Sánchez Guzmán*, December 5, 2006, available at: http://www.rsf.org/article.php3?id_article=19958.

¹¹⁶ Inter-American Press Association, *Alarmada la SIP por violencia contra periodistas en México*, December 6, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1819>. La Jornada, *Amagan de muerte a reporteros de El Mundo de Córdoba*, December 5, 2006, available at: <http://www.jornada.unam.mx/2006/12/06/index.php?section=estados&article=040n3est>.

¹¹⁷ El Universal, *Condenan el asesinato de periodista en Oaxaca*, December 14, 2006, available at: http://www.eluniversal.com.mx/estados/vi_63274.html; Reporters Without Borders, *Asesinado en Oaxaca un periodista y líder indígena; curiosamente se ha descartado la hipótesis profesional*, December 12, 2006, available at: http://www.rsf.org/article.php3?id_article=20116.

¹¹⁸ Reporters Without Borders, received by email.

court of appeals affirmed the judgment. On January 23, 2006, the Superior Court of Justice of the Federal District absolved *Proceso* but ordered journalist Olga Wornat to pay compensation of 500,000 Mexican pesos (about US\$ 45,000), an amount less than that established by previous judgments.¹¹⁹

169. From December 11 to 19, 2006, journalist Angel Mario Ksheratto, of the daily *Cuarto Poder*, was once again in prison in the context of a trial for defamation brought by an official of the state of Chiapas. In August 2002, he published a report that a chief of the Department of Schools of the government of Chiapas had used public funds to purchase a house, after which she lodged a complaint against him for defamation. Mr. Ksheratto had already been in prison in the context of this trial from February 4 to 22, 2006, and other times in previous years. The prison sentences provided for by the legislation of Chiapas for this type of offense are two to three years as a minimum and five to nine years as a maximum.¹²⁰

170. On December 22, 2006, charges were dropped against journalist Lydia Cacho, author of the book *Los demonios del Edén*, published in December 2005, in the criminal proceeding that had been brought against her for defamation. In the book, she denounced a network of pederasts in which politicians and businessmen were allegedly involved. The complaint had been brought by a businessman who is mentioned in the book as being involved with a pederast. The dismissal was based on the fact that the criminal defamation statute had been derogated. In addition, the investigation by the Supreme Court of the Nation into the governor of Puebla, accused by her of conspiracy with the above-mentioned businessman for her to be raped in prison. The plan had allegedly been discussed in some phone conversations that were recorded and made public in February 2006 by the Mexican press. She lodged the complaint with the Office of the Attorney General of the Republic, against the governor, for the crimes of bribery, improper exercise of public office, influence-peddling, collusion of public employees, torture, and attempted rape, among others.¹²¹

PRINCIPLE 12 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (Monopolies, oligopolies, and assignment of radio and television frequencies)

171. On April 12, 2006, reforms to the Federal Law on Radio and Television and to the Federal Law on Telecommunications were enacted, generating an intense debate. It was criticized that these legislative reforms establish that the concessions of radio and TV would be determined through a bidding process based exclusively in an economic criterium; that the new concessions would last 20 years; and that they would not include limits to the quantity of communication media that can be owned by a sole proprietor.

¹¹⁹ Instituto Prensa y Sociedad, *Juez ordena a periodista y a semanario pagar indemnización por daño moral contra Primera Dama*, May 5, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=791>; Pueblo en línea, *México: Anulan sentencia contra periodista que escribió sobre Sahagún*, May 17, 2006, available at: <http://spanish.peopledaily.com.cn/31617/4379605.html>; Proceso, *La demanda: Proceso absuelto*, January 23, 2007, available at: <http://www.proceso.com.mx/noticia.html?sec=0&nta=47654>.

Reporters Without Borders, *La periodista Olga Wornat y el semanario Proceso condenados a pagar 144.000 euros a la primera dama*, October 18, 2006, available at: http://www.rsf.org/article.php3?id_article=19328.

¹²⁰ Reporters Without Borders, *De nuevo en libertad con fianza el periodista chiapaneco Angel Mario Ksheratto*, December 20, 2006, available at: http://www.rsf.org/article.php3?id_article=16418; Committee to Protect Journalists, *MEXICO: Journalist accused of criminal defamation released on parole*, December 20, 2006, available at: http://cpj.org/cases06/americas_cases_06/mexico19dec06ca.html.

¹²¹ La Jornada, *Pierde Kamel Nacif demanda contra Lydia Cacho*, January 3, 2007, available at: <http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n2pol>; La Jornada, *Cacho, dispuesta a demostrar la confabulación en su contra*, January 10, 2007, available at: <http://www.jornada.unam.mx/2007/01/10/index.php?section=politica&article=010n2pol>.

172. In the same vein, it was said that these reforms establish new norms for the radio and television stations of cultural, educational and community nature. It was pointed out that these stations have to apply for permits before the government but the norms do not establish clear and transparent criteria for their granting, which confers an excess degree of discretion to the authorities in charge of making such decision. Neither do they establish a percentage of the radioelectrical spectrum to be used by this type of stations, or timeframes for the consideration of the applications, or a number of permits that have to be approved. The Office of the Special Rapporteur considers that these norms may negatively impact the access of minorities to community radio permits.¹²²

PROGRESS

173. On February 15, 2006, the Office of the Special Prosecutor for Crimes against Journalists was established in the Office of the Attorney General of the Republic, with jurisdiction to direct, coordinate, and supervise the investigations and, as appropriate, the prosecution of crimes committed against Mexico or foreign journalists in Mexican territory motivated by their work as journalists.¹²³

174. On April 28, 2006, the Legislative Assembly of the Federal District approved two measures, one to decriminalize defamation and slander, the other to recognize journalists' right to protect the identity of their confidential sources. The "Law on Civil Responsibility for the Defense of Honor, Privacy, and Reputation," published in the Official Gazette on May 19, 2006, eliminates "crimes of honor" such as defamation and slander from the criminal code of the Federal District, steering such complaints to the civil courts. The right to keep sources confidential was codified through adoption of the Law on Journalists' Privilege (Ley del Secreto Profesional del Periodista), published in the Official Gazette on June 7, 2006.¹²⁴

175. On June 6, 2006, amendments to the Federal Code of Criminal Procedure and the Federal Criminal Code entered into force that protect the right of journalists to keep their sources and materials confidential. The reforms were approved by the federal Congress on April 18, 2006, and entered into force when published in the Diario Oficial de la Federación on June 6, 2006. With these reforms, which stemmed from an initiative introduced by Senator Sadot Sánchez Carreño on November 25, 2003, the right to keep information and sources confidential was established for journalists, attorneys, physicians, and clergy.¹²⁵

¹²² Government of Mexico, *Ley Federal de Radio y Televisión y Ley Federal de Telecomunicaciones*, Letter from the Government of Mexico to the Inter-American Commission on Human Rights, April 10, 2006; United Nations, *Palabras del señor Amerigo Incalcaterra, Representante en México de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, con motivo de la celebración del Día Mundial de la Libertad de Prensa*, May 2, 2006, available at: <http://hchr.org.mx/documentos/conferencias/1conferencia.pdf>.

¹²³ Diario Oficial, *Acuerdo A/031/06 del Procurador General de la República, por el que se crea la Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas*, February 15, 2006. Office of the Attorney General of the Republic, *Discurso de David Manuel Vega Vega en su toma de potestad como Fiscal Especial para la Atención de Delitos Cometidos en Contra de Periodistas*, February 22, 2006, available at: <http://www.pgr.gob.mx/cmsocial/coms06/220206.htm>.

¹²⁴ Committee to Protect Journalists, *Dos medidas aprobadas en Ciudad de México protegen a periodistas*, April 28, 2006, available at: http://www.cpj.org/news/2006/americas/mexico28apr06na_sp.html.

¹²⁵ Office of the Special Rapporteur for Freedom of Expression, *Press Release 136/06: Office of the Special Rapporteur for Freedom of Expression Expresses Satisfaction with Legislative Processes in Mexico*, April 20, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=658&IID=2>; Senate of the Republic, *Gaceta Parlamentaria XL Legislatura*, August 9, 2006, available at: <http://www.senado.gob.mx/sen60/sgsp/gaceta/?sesion=2006/08/09/1&documento=46>; Reporters Without Borders, *Protección del secreto de fuentes y despenalización de los delitos de prensa: Reporteros Sin Fronteras aplaude los progresos legislativos*, April 20, 2006, available at: http://www.rsf.org/article.php3?id_article=17257.

176. On December 8, 2006, it was reported that the plenary of the Supreme Court of Justice of the Nation found prior censorship of political party publicity during election campaigns to be unconstitutional. It was established that sanctions may only be applied after the political parties disseminate their messages, if they break the law.¹²⁶

NICARAGUA

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

177. On February 23, 2006, supporters of the mayor of the city of Granada went to Managua, where, for one hour, they blocked the gate at the offices of the newspaper *La Prensa*, demanding a meeting with the directors and that the newspaper stop publishing information on alleged irregularities in the municipal government. The newspaper also reported that in addition its correspondents in Granada, Arlen Cerda, and in Siuna, José Garth, were harassed after reporting on alleged acts of corruption by municipal and judicial authorities.¹²⁷

PARAGUAY

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

178. On February 4, 2006, Enrique Galeano, a journalist with *Radio Azotey* and publisher of the magazine *Aló Vecino*, of the department of Concepción, was last seen in the city of Horqueta. Since the date he disappeared, several Paraguayan and international organizations have urged the government to take the measures necessary to locate him. Galeano generally denounced the activities of drug-traffickers and their alleged relations with local politicians.¹²⁸

179. On February 27, 2006, two individuals on a motorcycle opened fire on the vehicle that was taking them to the correspondent of the daily *ABC Color*, Juan Augusto Roa, in Itapúa, department of Encarnación, but they missed their target. According to the information received, the region is one of the centers of trafficking in illegal drugs and stolen cars. He has investigated cases of local corruption, among others.¹²⁹

180. On June 19, 2006, police personnel seized equipment from the community radio station *Manantial FM*, in Carayaó, department of Caaguazú, beating the personnel who tried to stop

¹²⁶ La Jornada, *Declaran ilegal la censura previa a los promocionales de partidos*, December 8, 2006, available at: <http://www.periodistasenlinea.org/modules.php?op=modload&name=News&file=article&sid=2166&mode=thread&order=0&thold=0>.

¹²⁷ Inter-American Press Association, *Hostigamiento contra el diario "La Prensa" y sus periodistas por sus reportajes sobre presunta corrupción*, February 28, 2006, available at: <http://www.ifex.org/fr/content/view/full/72549/>.

¹²⁸ Office of the Special Rapporteur for Freedom of Expression, *Press Release 135/06 Office of the Special Rapporteur Voices its Concern over the Disappearance of Journalist in Paraguay*, April 12, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=657&IID=2>; Reporters Without Borders, *Desaparición de Enrique Galeano: el Sindicato de Periodistas hace un llamamiento al Presidente Nicanor Duarte Frutos*, October 12, 2006, available at: http://www.rsf.org/article.php3?id_article=16437.

¹²⁹ Reporters Without Borders, *Atentado a un corresponsal del diario ABC Color*, March 1, 2006, available at: http://www.rsf.org/article.php3?id_article=16611.

the operation. It is indicated that on that same date the National Telecommunications Commission seized broadcast equipment from radio station *Tenondé FM* in Coronel Oviedo, department of Caaguazú.¹³⁰

181. On July 17, 2006, journalist Luis Alcides Ruiz Díaz, of the weekly *Hechos*, denounced that he had received death threats. He generally reports on drug-trafficking in the city of Pedro Juan Caballero, by the border with Brazil.¹³¹

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

182. On December 5, 2006, the Supreme Court of Justice convicted journalist Luis Verón, of the daily *ABC Color*, and sentenced him to 10 months of community service for the crimes of defamation, for having published an article in which he criticized an architectural restoration project.¹³²

PERU

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

183. On May 25, 2006, reporter Henry Vásquez Limo was detained by technical Air Force personnel in Chiclayo while recording images at an Air Force base. It is indicated that they seized his recording equipment.¹³³

184. On October 30, 2006, a criminal court of Lima ordered the director of the daily *Expreso*, Luis García Miró, to refrain from publishing any news or report related to a former minister of justice. The order accompanied a judicial decision to open an investigation into a complaint lodged for the crime of libel and aggravated defamation, after a series of accusations published by *Expreso* against the former minister.¹³⁴

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

185. On May 26, 2006, journalists Walter Rocha Chocos and Gudelia Galvez Tafur received death threats by phone. It is indicated that previously both had reported on acts of corruption in the provincial government of Huaraz.¹³⁵

¹³⁰ World Association of Community Radio Broadcasters, <http://legislaciones.amarc.org>

¹³¹ Committee to Protect Journalists, *Amenazan de muerte a periodista tras informe sobre narcotráfico*, July 19, 2006, available at: <http://www.ifex.org/alerts/content/view/full/75775/>.

¹³² Instituto Prensa y Sociedad, *Corte Suprema condena a periodista a diez meses de trabajo social*, December 6, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=976>.

¹³³ Asociación Nacional de Periodistas del Perú, *Detienen a periodista y le requisan equipos de grabación*, June 11, 2006, available at: <http://www.anp.org.pe/nota.php?id=1584>.

¹³⁴ Instituto Prensa y Sociedad, *Jueza viola Constitución Política al imponer censura previa a Director de Diario*, November 15, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=943>.

¹³⁵ Asociación Nacional de Periodistas del Perú, *Periodista denuncia que funcionario municipal lo amenazó de muerte*, June 11, 2006, available at: <http://www.anp.org.pe/nota.php?id=1580>; Instituto Prensa y Sociedad, *Amenazan a periodistas, posiblemente por difundir caso de corrupción*, May 30, 2006, available at: <http://www.ifex.org/es/content/view/full/74753>.

186. On July 28, 2006, reporter Armando Ávalos, of the television station *Frecuencia Latina*, and *América Televisión* journalist Maribel Toledo, were reportedly assaulted by members of the security detachment accompanying former president Alejandro Toledo while covering the presidential inauguration. According to the images broadcast by the television station, Ávalos was beaten in the face with his own microphone by the lieutenant providing security to the former president.¹³⁶

187. From July to September 2006, journalists from several media in the city of Casma, region of Ancash, were intimidated and threatened by telephone after publishing reports on administrative irregularities committed by the police in that city. Journalist Ronald Márquez Rosales, director of the news program *Casma al Día* on *Sideral TV Canal 7* said he had received threats and that unknown persons were maintaining surveillance at his house after he published a report in July concerning the alleged irregular purchase of a motorcycle by police from Casma. In addition, four other journalists who denounced they had been threatened accuse the chief of police of Casma, Major Marino Jiménez Carrera, of being responsible. One of them is journalist Gustavo Samame León, of *Radio Estudio 99*, who indicated he had been intimidated by the commissioner after disseminating, on August 14, 2006, the complaints of several citizens who alleged they had been mistreated by the same police agent. According to the journalist, the chief of police refused to give him his version of the facts and threatened to discredit him in other media. In addition, journalist Aldo Meza Torres, of *Radio Estudio 99*, says that he was threatened by the chief of police in late August 2006 at the offices of the radio station after revealing alleged illegal collections by a police officer in the city. On September 7, 2006, Pablo Carrión Hurtado, a correspondent with *Radio Programas del Perú*, received two threats by telephone and said he had recognized the voice. Journalist Elio Cock Aguilar, of *Radio Calor*, also reported having received threats after having disseminated reports by citizens alleging mistreatment and illegal collections at the police station.¹³⁷

188. On November 24, 2006, photographers Walter Upiú and Eitam Abramovich were reportedly assaulted by members of the National Police when covering a march at the Plaza de Armas of Lima marking the International Day for the Elimination of Violence against Women.¹³⁸

189. On December 2, 2006, journalist Miguel Ángel Palomino, of the daily *Chimbote*, was threatened with a revolver by a captain from the Police Emergency Squad. Ángel Palomino had photographed him consuming alcoholic beverages with other police during working hours, after which they threatened him, pursued him in a patrol car, and took his briefcase.¹³⁹

190. In April 2006 journalist Marilú Gambini went underground after being assaulted and receiving death threats. She had published investigations into drug-trafficking in the city of Chimbote and continued publishing, while hiding, in the weekly *Investigando*, of Chimbote. On December 14, 2006, she once again received a death threat. The authors of the threat told her that

¹³⁶ Instituto Prensa y Sociedad, *Periodista de televisión agredido por integrante de la seguridad presidencial*, July 28, 2006, available at: <http://www.ifex.org/fr/content/view/full/76586/>.

¹³⁷ Instituto Prensa y Sociedad, *Intimidan a director de programa de televisión*, August 9, 2006, available at: <http://www.ifex.org/es/content/view/full/76237/>; Instituto Prensa y Sociedad, *Cuatro periodistas amenazados, acusan al comisario de ser el responsable*, September 12, 2006, available at: <http://www.ifex.org/es/content/view/full/76990/>; Coordinadora Nacional de Radio, *Periodistas denuncian amenazas de la Policía*, September 5 2006, available at: <http://www.cnr.org.pe/noticia.php?id=15272>.

¹³⁸ IFEX, *Policía agrade a reporteros gráficos cuando cubrían una marcha de mujeres en Lima*, November 27, 2006, available at: <http://www.ifex.org/es/content/view/full/79387/>.

¹³⁹ Instituto Prensa y Sociedad, *Policía intimida a periodista en Chimbote*, December 6, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=978>

they knew her whereabouts and would kill her. According to Gambini, this new threat could result from the fact that on November 27, 2006, the Transitory Criminal Chamber of the Supreme Court of Justice ordered that the drug-trafficking case against the owners of the fishing company Hayduk, who were denounced in her articles, had been reopened.¹⁴⁰

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

191. On November 10, 2006, the director of the daily *El Comercio del Cusco*, Julio Jara Ladrón de Guevara, and journalist Carolina Zamalloa, of the same newspaper, were convicted and sentenced to one year in prison, to be suspended, and ordered to pay a fine as civil reparation for the criminal offense of defamation. The complaint was brought by a professor at the Escuela de Bellas Artes (School of Fine Arts) of Cuzco for having published, in September 2005, an accusation by female students against the professor for sexual harassment.¹⁴¹

192. On December 13, 2006, journalists Pedro Salazar Angulo, director of the daily *El Oriente*, and Óscar Olavarría Saldaña, chief of information for the daily *La Región de Iquitos*, were convicted and sentenced to prison (suspended) and to pay compensation for defamation and slander. The case began in 1990, when they published the complaint of a woman who accused Mr. Muñoz, who was then the Superior Prosecutor of Loreto, of rape. Mr. Muñoz was removed from the post as a result of this complaint, but was reinstated in 2004 thanks to a writ of *amparo*. The daily published the complaint once again, and the prosecutor filed the complaint against the newspaper.¹⁴²

DOMINICAN REPUBLIC

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

193. On March 8, 2006, unknown persons kidnapped journalist Roberto Sandoval in front of his house in Santo Domingo and threatened to kill him. According to the information received, he jumped from the kidnappers' vehicle when the driver ordered his accomplice to shoot him. The assailants looked for Sandoval but he hid in a wooded area until they fled, the local press reported. He hosts the programs *Tribuna de la Noche* on *Radio Comercial* and *Justo a Tiempo* on local cable television. Sandoval generally reports on crime and is critical of authorities in the Dominican Republic.¹⁴³

194. On August 16, 2006, Orlando Ramos, photographer with the newspaper *Clave Digital*, was beaten and detained for several hours after he attempted to photograph the first lady.

¹⁴⁰ Instituto Prensa y Sociedad, *Continúan amenazas de muerte contra periodista, a pesar de estar en la clandestinidad*, December 15, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=995>.

¹⁴¹ Instituto Prensa y Sociedad, *Sentencian a Director y a periodista de Diario por difamación*, November 10, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=936>.

¹⁴² Instituto Prensa y Sociedad, *Sentencian a periodistas por difamación y calumnia*, December 14, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=992>.

¹⁴³ Committee to Protect Journalists, *Periodista que cubre temas policiales secuestrado, amenazado de muerte; huye con heridas menores*, March 10, 2006, available at: <http://www.ifex.org/es/content/view/full/72780/>.

The person responsible for the attack was said to have been the chief of the bodyguards assigned to the first lady.¹⁴⁴

195. On August 29, 2006, the publisher of the newspaper *Por un nuevo periodismo*, Miguel Aponte Vigueira, reported that members of the presidential guard beat him and arrested him as he was preparing to distribute his newspaper in the National Palace.¹⁴⁵

URUGUAY

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

196. On September 13, 2006, journalists were attacked while trying to interview the former president, Gregorio Álvarez, who governed during the military dictatorship. The reporters tried to approach the former president to question him about accusations against him regarding human rights violations during his government, but were beaten by persons who were surrounding Mr. Álvarez. The journalists attacked were Pablo Meléndrez, of the daily *La República*, Leonardo Pérez, of the radio station CX 26 *Sodre*, María José Pino, of television station *VTV*, and Soledad Acuña, of *Radio Sarandí*.¹⁴⁶

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

197. On August 30, 2006, the Supreme Court of Justice of Uruguay handed down the final judgment in which it reinstated the sentence of five months in prison, suspended, against journalist Carlos Dogliani Staricco, for the crime of defamation. He was accused of defamation due to articles in which he denounced a case of fraud and corruption committed by a mayor. The court affirmed that the right to honor imposes a limit on the right to inform, and that the facts on which the coverage is based do not constitute a relevant defense. This decision represented backsliding from the progress made by the same Supreme Court of Justice in earlier decisions.¹⁴⁷

PROGRESS

198. On May 30, 2006, a group of non-governmental organizations submitted a bill on Access to Public Information and Informational Amparo to the legislature. The legislature is also considering a bill called Use of the Radioelectric Spectrum and Community Radiobroadcast Media that incorporates international standards in this area. On December 16, 2006, the Office of the

¹⁴⁴ Inter-American Press Association, *Fotógrafo golpeado mientras intentaba hacerle una foto a la primera dama, detenido varias horas*, August 18, 2006, available at: <http://www.ifex.org/es/content/view/full/76414/>.

¹⁴⁵ El Caribe CDN, *Periodista denuncia agresión*, August 30, 2006, available at: http://www.elcaribecdn.com/articulo_multimedios.aspx?id=97603&guid=3D145B3AA7D9498FB7C44C72425C3FC6&Seccion=63.

¹⁴⁶ Instituto Prensa y Sociedad, *Agreden a periodistas cuando preguntaron a general sobre violaciones de derechos humanos durante dictadura militar*, September 18, 2006, available at: <http://www.ifex.org/da/layout/set/print/layout/set/print/content/view/full/77141/>.

¹⁴⁷ Committee to Protect Journalists, *Corte Suprema de Uruguay restituye veredicto de injuria: En un golpe para la libertad de prensa, Corte determina un curso contrario al de la región*, September 26, 2006, available at: http://www.cpj.org/news/2006/americas/uruguay26sept06na_sp.html.

Special Rapporteur for Freedom of Expression urged the legislature to consider these initiatives promptly.¹⁴⁸

VENEZUELA

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

199. On October 12, 2006, the National Electoral Council (CNE) ruled in favor of opening the first case against a journalist for the alleged violation of rules on campaign publicity, approved July 31, 2006, by the CNE in the face of the presidential election of December 2006. Journalist Miguel Ángel Rodríguez, host of the program *La Entrevista de RCTV*, is being investigated for supposedly promoting the “Mi Negra” card, proposed by an opposition presidential candidate.¹⁴⁹

200. On November 9, 2006, the mayor of Maturín prohibited the local media from covering an official act, presumably in retaliation for press reports of corruption in his government. The media affected were the daily newspapers *La Prensa* and *El Periódico* of Monagas, and radio stations *Órbita* and *93.5 La Gran FM*. On November 12, 2006, the mayor prohibited journalists from those media from entering the municipal government buildings, and announced that it will take official advertising away from them.¹⁵⁰

201. On November 10, 2006, officials of the Venezuelan Army kept several media from covering the ceremony of the anniversary of Venezuelan aviation in the municipality of Palavecino, state of Lara, allowing only government media to enter. The impacted media were the daily newspapers *El Impulso* and *El Universal*, and the private channels *Globovisión*, *Televen*, and *RCTV*.¹⁵¹

202. On December 3, 2006, officials identified as employees of the National Telecommunications Commission (CONATEL) ordered the network *Telemundo* to suspend its broadcasts of the presidential elections, which were coming from a hotel in Caracas.¹⁵²

¹⁴⁸ Asociación de Prensa Uruguaya, *Prensa Uruguaya critica restricciones a la justicia*, July 5, 2006, available at: <http://www.terra.com/noticias/articulo/html/act439797.htm>; Office of the Special Rapporteur for Freedom of Expression, *Comunicado de Prensa 159/06: Relatoría Especial para la Libertad de Expresión emite recomendaciones a Uruguay al finalizar su visita de trabajo*, December 16, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=686&IID=2>. Visit of the Office of the Special Rapporteur for Freedom of Expression to Uruguay, meetings with legislators, Legislative Palace, Montevideo; December 14, 2006.

¹⁴⁹ Venevisión, *CNE investigará nueve casos más por presunta violación a norma de publicidad y propaganda*, October 11, 2006, available at: http://www.democracia2006.com/notas_prensa/documentos/2006/111006_1.htm.

¹⁵⁰ Instituto Prensa y Sociedad, *Venezuela: Alcalde impide cobertura a medios*, November 20, 2006, available at: http://www.ipys.org.ve/alertas_coberturamonagas.htm; Reporters Without Borders, *Un alcalde censura a cuatro medios de comunicación que le critican*, November 15, 2006, available at: http://www.rsf.org/article.php3?id_article=19753

¹⁵¹ Instituto Prensa y Sociedad, *Venezuela: impiden acceso a medios durante Acto Oficial*, November 20, 2006, available at: http://www.ipys.org.ve/alertas_coberturalara.htm.

¹⁵² Instituto Prensa y Sociedad, *Impidieron transmisión de elecciones a cadena Telemundo*, December 6, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=975>.

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

203. On March 7, 2006, a court of the state of Táchira ordered the imprisonment of Gustavo Azócar Alcalá, host of the program “Café con Azúcar” on the channel *Televisora del Táchira* and correspondent of the daily *El Universal*. Mr. Azócar was transferred that same day to the penitentiary of Santa Ana, situated on the outskirts of San Cristóbal. His detention was requested by the Public Ministry, which asserted that he had not appeared at hearings in proceedings on “diversion of public funds” and “fraud.” Gustavo Azócar Alcalá is known for his positions critical of the Venezuelan government.¹⁵³

204. On April 5, 2006, photographer Jorge Aguirre of the daily *El Mundo* was assassinated while covering a protest in Caracas. The assassination was committed by a person on a scooter, who shot him in public while he was inside a car. Before dying, Mr. Aguirre was able to photograph the person who shot him. According to the information received, on April 13, 2006, the attorney general of Venezuela announced the arrest of a former police officer as the alleged assassin, and days later a prosecutor for the Caracas metropolitan area said that an active-duty police officer was believed to be the driver of the scooter.¹⁵⁴

205. On August 23, 2006, journalist Jesús Rafael Flores Rojas, of the daily *Región*, was assassinated in the state of Anzoátegui. An individual shot him eight times in the locality of El Tigre and fled in a car awaiting him at a distance of a few meters. He was writing about issues including reports of corruption in the local public administration. The authorities reported that the alleged direct perpetrators of his assassination were killed in a shoot-out with police.¹⁵⁵

206. On September 22, 2006, the offices of radio station *La Maripeña*, in Maripa, state of Bolívar, was attacked. According to the information received, the assailant was the head of security of the municipality of Sucre, in the state of Bolívar, and one of the mayor’s bodyguards. The

¹⁵³ Reporters Without Borders, *Controvertida detención de un periodista televisivo*, March 8, 2006, available at: http://www.rsf.org/article.php3?id_article=16695.

¹⁵⁴ Unión Radio, *Fiscalía informa que sospechoso de asesinato de periodista Jorge Aguirre es un ex polichacao*, April 13, 2006, available at: <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=165240>; Reporters Without Borders, *Un policía en funciones inculpado en el asesinato de Jorge Aguirre*, April 26, 2006, available at: http://www.rsf.org/imprimir.php3?id_article=16943; Inter-American Press Association, *Condena la SIP asesinato de periodista venezolano y reclama por otros casos todavía impunes*, April 7, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1643>; Ministry of People’s Power for Communication and Information of the Bolivarian Government of Venezuela, *Esclarecido 70% del asesinato del reportero gráfico Jorge Aguirre*, April 14, 2006, available at: http://www.minci.gov.ve/noticias-nacionales/1/4578/esclarecido_70del_asesinato.html. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 134/06, *Office of the Special Rapporteur for Freedom of Expression Deplores Assassination in Venezuela*, April 6, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=656&IID=2>.

¹⁵⁵ Sindicato Nacional de Trabajadores de la Prensa, *Sicario asesina a periodista en oriente de Venezuela*, August 28, 2006, available at: <http://www.ifj.org/default.asp?index=4157&Language=ES>; El Tiempo, *Fueron abatidos presuntos homicidas de comunicador social*, August 30, 2006, available at: <http://www.eltiempo.com.ve/noticias/default.asp?id=84640>; Committee to Protect Journalists, *Columnista venezolano tiroteado frente a su casa*, August 29, 2006, available at: http://www.cpj.org/news/2006/americas/ven29aug06na_sp.html. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 152/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Venezuela and Demands Prompt Investigation*, August 31, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=678&IID=2>.

assailants broke down the gate protecting the radio station and stole a transmitter of electricity, making it impossible for the station to broadcast until two days later.¹⁵⁶

207. On October 4, 2006, photographer Frank Pereira, of the weekly *San Diego Al Día*, was attacked while covering a protest near the city hall of San Diego. It was indicated that the attack, perpetrated by four persons – including one uniformed police officer – was ordered by a mayor.¹⁵⁷

208. On November 21, 2006, the editor of the daily *El Impulso*, José Ángel Ocanto, received threats after denouncing arms trafficking in the state of Lara.¹⁵⁸

209. On November 22, 2006, journalist Marianne Martín, correspondent for the state television station *Venezolana de Televisión* (VTV), was assaulted by seven persons who reportedly pushed and molested her while calling her “*chapista*,” while she was covering a march called by the opposition in the state of Lara.¹⁵⁹

210. On November 24, 2006, journalists Beatriz Adrián, Edwin Moreno, and José Luis Ochoa, of the television station *Globovisión*, were attacked while covering a protest in front of the Casa Militar de Gobierno. The assailants were said to be three soldiers who demanded that the material they were filming be handed over.¹⁶⁰

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

211. On April 11, 2006, journalist Mireya Zurita, director of the daily *El Siglo*, was convicted and sentenced to 18 months in prison for authorizing, in 2003, the publication of a communiqué blaming the loss of one lot of drugs on the chief of investigations of the Scientific, Criminal, and Criminology Corps (CICPC: Cuerpo de Investigaciones Científicas, Penales y Criminalísticas) of the state of Aragua. The Second Trial Court of the State of Aragua argued that she committed aggravated defamation, and, during the trial, refusal to reveal the source behind the accusation against the police officer.¹⁶¹

212. On July 10, 2006, a court of appeals ruled favorably on a request by the prosecutor to set aside the dismissal of the case against journalist Napoleón Bravo, which means that a new criminal proceeding will go forward against the journalist for the crime of insult (*vilipendio*). The case was begun on September 7, 2004, after Mr. Bravo said on his television program *24 horas*, broadcast on the channel *Venevisión*: “What’s the use of the Supreme Court of Justice? What are

¹⁵⁶ Instituto Prensa y Sociedad, *Venezuela: personal de seguridad de municipio ataca sede de Radio*, September 29, 2006, available at: http://www.ipys.org.ve/alertas_sucres.htm.

¹⁵⁷ Aporrea, *Alcalde opositor Enzo Scarano agrede salvajemente a reportero gráfico de Periodistas por la Verdad*, October 6, 2006, available at: <http://www.aporrea.org/ddhh/n84709.html>.

¹⁵⁸ IFEX, *Individuo, enojado por foto publicado en diario, amenaza a periodista*, November 28, 2006, available at: <http://www.ifex.org/es/content/view/full/79394/>.

¹⁵⁹ Instituto Prensa y Sociedad, disseminated by IFEX, *Manifestantes empujan, manosean a periodista de canal de televisión estatal*, December 11, 2006, available at: <http://www.ifex.org/es/content/view/full/79870/>.

¹⁶⁰ IFEX, *Militares golpean a camarógrafo del canal de televisión Globovisión, evitan que el equipo cubre una protesta, acoso contra ese medio es reiterado*, November 27, 2006, available at: <http://www.ifex.org/es/content/view/full/79389/>.

¹⁶¹ Instituto Prensa y Sociedad, *Condenan a 18 meses de prisión a directora de diario*, April 19, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=780>.

they useful for? Why that hefty tome? Why don't they put a brothel or something like that there?"¹⁶²

213. On October 16, 2006, the daily newspaper *El Impulso* was sued for defamation and libel by a director of the Institute of Welfare and Social Assistance (Instituto de Previsión y Asistencia Social) of the Ministry of Education (IPASME), in the city of Barquisimeto, state of Lara. The complaint revolves around the publication of a letter in the "readers' corner" section in July 2005 in which a beneficiary of the IPASME criticized the administration of the institute. In September 2005, the alleged signer of the letter denied having been its author, and stated that they used her name to discredit the institution.¹⁶³

PRINCIPLE 13 OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION (direct and indirect pressure)

214. On May 19, 2006, the regional legislature of the state of Bolívar recommended to the city hall of Caroní that the offices of the daily newspaper *El Correo del Caroní* be vacated and demolished to "recover public spaces in recreation areas." It is indicated that the measure is to retaliate for the newspaper's position critical of the governor's performance.¹⁶⁴

215. On various dates throughout 2006, the President and other high-level authorities of Venezuela indicated that the concessions granted to television stations would be reviewed.¹⁶⁵ On December 28, 2006, the President announced: "There will be no new concession for that coup-mongering channel that was called Radio Caracas Televisión. The measure is already being drafted, so you can start ... turning off the sets, for no media outlet at the service of coup-mongering, against the people, against the nation, against the dignity of the Republic, is going to be tolerated here. Venezuela is self-respecting."¹⁶⁶ A pro-government legislator, in response to the question, "some say that Venevisión also acted like a coup-monger in 2002, why is it that only RCTV is being punished," stated that: "this revolution, and I say this with the greatest depth and seriousness, is a

¹⁶² Análítica Venezuela, *¡Insolito! Napoleón Bravo a juicio por comparar al TSJ con un burdel*, July 19, 2006, available at: <http://www.analitica.com/va/sociedad/articulos/8145690.asp>.

¹⁶³ Instituto Prensa y Sociedad, *Venezuela: demandan a Diario por difamación e injuria*, October 26, 2006, available at: http://www.ipys.org.ve/alertas_elimpulso.htm.

¹⁶⁴ Noticiero Unión Radio, *Director del Correo de Caroní afirma que se quiere "demoler" la libertad de expresión*, May 22, 2006, available at: <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=168873>; Instituto Prensa y Sociedad, *Parlamento Regional pide desalojo y demolición de sede de Diario*, May 23, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=800>; Inter-American Press Association, *Legislatura del Estado de Bolívar inicia procedimiento para desalojar diario, demoler su sede*, May 23, 2006, available at: <http://www.ifex.org/es/content/view/full/74551>; Committee to Protect Journalists, *Editor considera que el exhorto estatal del desalojo de su periódico es un intento de acallar al Diario por sus críticas*, May 22, 2006, available at: <http://www.ifex.org/es/content/view/full/74674>.

¹⁶⁵ Office of the Special Rapporteur for Freedom of Expression, Note to Ministry of Foreign Relations of July 6, 2006, described in: Diario El Universal, Caracas, *Relatoría de la OEA Advirtió sobre Amenaza de Revocar Concesiones*, July 7, 2006, available at: http://buscador.eluniversal.com/2006/07/08/pol_ava_08A741085.shtml and at Ministry of Foreign Relations, *Comunicado del Ministerio de Relaciones Exteriores de la República Bolivariana de Venezuela sobre la Nota Emanada el 06 de Julio de 2006 de la Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos*, Caracas, July 8, 2006, available at http://buscador.eluniversal.com/2006/07/07/pol_art_07105B.shtml; Office of the Special Rapporteur for Freedom of Expression, Press Release 144/06, *The State of Freedom of Expression in the Region (April - June 2006)*, July 7, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=669&IID=2>

¹⁶⁶ El Universal, *No habrá nueva concesión para ese canal golpista RCTV*, December 29, 2006, available at: http://www.eluniversal.com/2006/12/29/pol_art_128531.shtml. Office of the Special Rapporteur for Freedom of Expression, *Special Rapporteur Expresses Concern over the Situation of Radio Caracas Television in Venezuela*, December 31, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=688&IID=2>.

revolution of love, for some it is a revolution very much bound up with the lessons of Christ. There is belief in pardon to the extent that there is contrition.”¹⁶⁷

D. Assassinations possibly related to the exercise of journalism

Victims	Place and date	Information received
Manoel Paulino Da Silva, owner and journalist, <i>Hoje Jornal</i>	Brazil São Bernardo do Campo, state of São Paulo July 20, 2006	He was shot from a vehicle while driving. According to executives of the newspaper, he had not received threats nor had he published information that could be a motive for the assassination. The police have not discarded any hypothesis. ¹⁶⁸
Ajuricaba Monassa de Paula, freelance journalist	Brazil Guapiririm, state of Rio de Janeiro July 24, 2006	Died after being beaten by a council member from the city of Guapiririm. He generally published stories critical of that council member and the local government. ¹⁶⁹
Milton Fabián Sánchez, journalist with the radio station <i>Yumbo Estéreo</i> .	Colombia Yumbo, department of Valle de Cauca August 9, 2006	Was shot when heading home. He ran institutional programs of the mayor's office, and a community political forum. ¹⁷⁰

¹⁶⁷ El Universal, *Entrevista a Carlos Escarrá, diputado: "Por mí iríamos al comunismo"*, January 22, 2007, http://noticias.eluniversal.com/2007/01/22/pol_art_149006.shtml. The former minister of communications and current president of *Telesur* stated: "The President has been talking about seven strategic lines and identifies as a priority the line of socialist ethics; we think that we have to move towards a new strategic plan, especially when there are two major measures at that level: non-renewal of the RCTV concession and the purchase of CMT by Telesur.... The new strategic outlook proposed, the struggle in the ideological camp has to do with a battle of ideas for hearts and minds. A new plan needs to be drawn up, and what we propose is that it be towards the communicational and informational hegemony of the State. Constructing hegemony in the Gramscian sense.... And hegemony in the Gramscian sense is that, that one cultural group convinces another group of its values, principles, and ideas. We propose that there be a series of measures in several areas to construct the communicational and informational hegemony that makes possible the ideological and cultural battle to foster socialism." *Diario El Nacional, Entrevista con Andrés Izarra*, January 8, 2007, p. A4.

¹⁶⁸ State Secretariat for Public Security of São Paulo, *Gerente de jornal é assassinado em Guarujá*, July 20, 2006, available at: http://www.ssp.sp.gov.br/home/noticia.aspx?cod_noticia=8812; Terra Noticias, *Dono de jornal é assassinado no litoral de SP*, July 20, 2006, available at: <http://noticias.terra.com.br/brasil/interna/0,,OI1075617-EI5030,00.html>; Inter-American Press Association, *La SIP pide investigación por asesinato de periodista en Brasil*, July 26, 2006, available at: <http://www.sipiapa.org/espanol/presreleases/srchcountrydetail.cfm?PressReleaseID=1706>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 146/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Assassination of Two Journalists in Brazil and Requests an Adequate Investigation*, July 28, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=672&IID=2>.

¹⁶⁹ Associação Brasileira de Imprensa, *Assassinado Ajuricaba Monassa*; July 25, 2006, available at: <http://www.abi.org.br/primeirapagina.asp?id=1568>; United Nations Educational, Scientific and Cultural Organization – Information Society Observatory, *Diretor-Geral da UNESCO condena o assassinato do jornalista brasileiro Ajuricaba Monassa de Paula*, available at: http://osi.unesco.org.br/arquivos/documentos/dg_assassinato_jornalista.html; Reporters Without Borders, *Jornalista septuagenário é espancado até a morte por vereador*, July 27, 2006, available at: http://www.rsf.org/article.php3?id_article=18393. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 146/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Assassination of Two Journalists in Brazil and Requests an Adequate Investigation*, July 28, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=672&IID=2>.

¹⁷⁰ Fundación para la Libertad de Prensa, *Asesinado periodista en Yumbo, Valle*, August 9, 2006, available at: <http://www.flip.org.co/veralerta.php?idAlerta=20>; Instituto Prensa y Sociedad, *Asesinan a periodista radial en Cali*, August 11, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=837>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 149/06, *Relatoria Especial para la Libertad de Expresión Condemns Assassination of Journalist in Colombia and Demands Prompt Investigation*, August 11, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=675&IID=2>.

Atilano Pérez Barrios, host and commentator on <i>Radio Vigía de Todelar</i>	Colombia Marialabaja, Cartagena August 22, 2006	Unknown persons entered his home and shot him twice in the abdomen. He criticized government corruption and the involvement of paramilitaries in politics and in the government agencies of Marialabaja. He had received death threats. ¹⁷¹
José Luis León Desiderio, journalist with <i>Radio Minutera</i>	Ecuador Guayaquil February 13, 2006	He was found near his home with a gunshot wound to the head. He denounced gang violence and the lack of police action in Guayaquil. He had been threatened. ¹⁷²
Eduardo Heriberto Maas Bol Radio journalist, correspondent with <i>Radio Punto</i>	Guatemala Cobán, department of Alta Verapaz September 10, 2006	He was found in his car with five gunshot wounds. Two days later the police arrested one of the alleged direct perpetrators of the assassination. ¹⁷³
Ronald Waddell, former anchorman <i>HBTV Canal 9</i>	Guyana January 30, 2006	Unknown persons shot him as he was getting in his car. He was recognized for his defense of the rights of Afrodescendants, and had denounced the existence of death squads. ¹⁷⁴
Jaime Arturo Olvera Bravo, freelance journalist	Mexico Municipality of La Piedad, state of Michoacán March 9, 2006	Assassinated by an unknown person. He had denounced attacks against the local press. ¹⁷⁵

¹⁷¹ Inter-American Press Association, *Deplora la SIP asesinatos de periodistas en Venezuela y Colombia*, August 29, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1743>; Committee to Protect Journalists, *Comentador radial colombiano asesinado a tiros en su casa*, August 28, 2006, available at: http://www.cpj.org/news/2006/americas/colombia28augr06na_sp.html. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 146/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Assassination of Two Journalists in Brazil and Requests an Adequate Investigation*, July 28, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=677&IID=2>.

¹⁷² Reporters Without Borders, *Asesinado en Guayaquil un periodista radiofónico: descartada a priori la hipótesis crapulosa*, February 16, 2006, available at: http://www.rsf.org/article.php3?id_article=16474; Federación Latinoamericana de Trabajadores de la Comunicación Social, *Repudian asesinato de dos periodistas en Ecuador*, February 27, 2006, available at: <http://www.periodismoenlinea.com/noticias/noticia28022006.html>.

¹⁷³ Prensa Libre, *Matan a periodista en Cobán*, September 11, 2006, available at: <http://www.prensalibre.com.gt/pl/2006/septiembre/11/151419.html>; Inter-American Press Association, *Urge la SIP investigación por asesinato de periodista en Guatemala*, September 11, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1756>; Instituto Prensa y Sociedad, *Asesinan a periodista radial*, September 11, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=863>; Instituto Prensa y Sociedad, *Capturan a presunto asesino de periodista*, September 21, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=878>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 153/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Guatemala and Demands Prompt Investigation*, September 13, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=679&IID=2>.

¹⁷⁴ Inter-American Press Association, *La SIP condena asesinato contra periodista en Guyana*, February 3, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/chronologicaldetail.cfm?PressReleaseID=1594>; Reporters Without Borders, *Opposition journalist gunned down in Georgetown*, February 2, 2006, available at: http://www.rsf.org/article.php3?id_article=16339.

¹⁷⁵ Diario Cambio de Michoacán, *Amenazan de muerte a periodista*, May 24, 2006, available at: <http://www.cambiodemichoacan.com.mx/vernota.php?id=44529>; Reporters Without Borders, *Asesinan a disparos a dos periodistas en veinticuatro horas*, March 13, 2006, available at: http://www.rsf.org/article.php3?id_article=16728.

Ramiro Téllez Contreras, journalist, radio <i>Exa 95.7 FM</i>	Mexico Nuevo Laredo, state of Tamaulipas March 10, 2006	He was shot down outside his home. Shells of calibers frequently used by drug-traffickers in the region were found. He had received threats days before being assassinated. ¹⁷⁶
Enrique Perea Quintanilla, journalist	Mexico state of Chihuahua August 9, 2006	Was found along a highway with signs of torture and two gunshot wounds. ¹⁷⁷
Brad Will, cameraman with <i>Indymedia</i>	Mexico State of Oaxaca October 27, 2006	He was shot from the place where the Municipal Police were situated, while covering the intervention of the Federal Preventive Police in the conflict in the state of Oaxaca. Two of his alleged assassins were released on December 1, 2006, after one month of preventive prison. ¹⁷⁸
Misael Tamayo Hernández, director of the regional daily <i>El Despertar de la Costa</i>	Mexico Ixtapa Zihuatanejo, state of Guerrero November 10, 2006	His corpse appeared the day after publication of an editorial signed by him regarding alleged embezzlement in the Water Administration Board of Zihuatanejo. The daily generally published information on settling of accounts among drug-traffickers in the area. ¹⁷⁹

¹⁷⁶ Diario El Universal, *Matan a periodista en Nuevo Laredo*, March 10, 2006, available at: <http://www.el-universal.com.mx/notas/335472.html>; Reporters Without Borders, *Asesinan a disparos a dos periodistas en veinticuatro horas*, March 13, 2006, available at: http://www.rsf.org/article.php3?id_article=16728.

¹⁷⁷ El Diario de Chihuahua, *Ejecutan a periodistas*, August 10, 2006, available at: <http://www.eldiariodechihuahua.com.mx/notas.php?IDNOTA=33023&IDSECCION=Portada&IDREPORTERO=Alberto%20De%20lgado>; Reporters Without Borders, *En un dudoso video confiesan su crimen los presuntos asesinos del periodista Enrique Perea Quintanilla*, October 17, 2006, available at: http://www.rsf.org/article.php3?id_article=18549. The Office of the Special Rapporteur on Freedom of Expression issued a pronouncement on this assassination in its press release 150/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Mexico and Demands Prompt Investigation*, August 16, 2006, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=676&IID=2>.

¹⁷⁸ La Jornada, *Brad Will*, October 30, 2006, available at: <http://www.jornada.unam.mx/2006/10/30/017a1pol.php>; Reporters Without Borders, *Identificados presuntos asesinos del camarógrafo Brad Will*, October 30, 2006, available at: http://www.rsf.org/article.php3?id_article=19483. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 156/06, *Office of the Special Rapporteur for Freedom of Expression Regrets Death of Journalist in Mexico and Calls for Appropriate Investigation*, October 31, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=682&IID=2>.

¹⁷⁹ PR Noticias, *Hallan muerto a Misael Tamayo, director de El Despertar*, November 13, 2006, available at: http://www.prnoticias.com/prn/hojas/noticias/detallenoticia.jsp?noticia=25270&repositorio=0&pagina=1&idapr=2_esp_1; Reporters Without Borders, *Aparece asesinado en un motel el director de un diario regional*, November 13, 2006, available at: http://www.rsf.org/article.php3?id_article=19695. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 157/06: *Office of the Special Rapporteur for Freedom of Expression Deplores Murders of Journalists in Mexico and Calls for Due Investigation*, November 21, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=684&IID=2>.

José Manuel Nava Sánchez, former director of the daily <i>Excélsior</i>	Mexico Mexico City, Federal District November 16, 2006	His body was found in his apartment with 30 stab wounds. One week before his death he had presented his book <i>El Asalto Final</i> , in which he criticized the sale of <i>Excélsior</i> . ¹⁸⁰
Roberto Marcos García, journalist with the magazine <i>Testimonio y Alarma</i>	Mexico Matoza, state of Veracruz November 21, 2006	Was struck by a car and then received four gunshot wounds. Had denounced cases involving theft of imported goods and drug trafficking in Veracruz. ¹⁸¹
Adolfo Sánchez Guzmán, journalist with radio station <i>Xhora Stereo</i> and correspondent for <i>Televisa</i>	Mexico Nogales, state of Veracruz November 30, 2006	Was found with gunshot wounds and signs of torture. Had investigated persons assaulting trucks in Veracruz. On December 3, 2006 two persons were detained as the alleged assassins. ¹⁸²
Raúl Marcial Pérez, editorial writer for the regional daily <i>El Gráfico</i>	Mexico Juxtlahuaca, state of Oaxaca December 8, 2006	Armed individuals broke into the newspaper's offices and opened fire on him. He generally criticized the governor of Oaxaca in his opinion column. ¹⁸³

¹⁸⁰ Diario El Dictamen, *Hallan muerto a José Manuel Nava, ex director de Excélsior*, undated, available at: <http://www.eldictamen.com.mx/1a.asp?idn=52753>; Inter-American Press Association, *SIP solicita investigación urgente de asesinato contra periodista en México*, November 17, 2006, available at: <http://www.sipiapa.org/pressreleases/chronologicaldetail.cfm?PressReleaseID=1798>. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 157/06, *Office of the Special Rapporteur for Freedom of Expression Deplores Murders of Journalists in Mexico and Calls for Due Investigation*, November 21, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=684&IID=2>.

¹⁸¹ El Universal, *Asesinan a reportero en carretera Veracruz-Alvarado*, November 21, 2006, available at: http://www.eluniversal.com.mx/notas/vi_389357.html; Instituto Prensa y Sociedad, *Asesinan a reportero en Veracruz*, November 22, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=961>; Inter-American Press Association, *SIP pide a futuro presidente de México prioridad sobre asesinatos contra periodistas*, November 24, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1804>; Committee to Protect Journalists, *Periodista investigativo asesinado cerca de Veracruz*, November 23, 2006, available at: <http://www.ifex.org/es/content/view/full/79325/>.

¹⁸² Jornada, *Hallan asesinado a reportero en Veracruz*, November 30, 2006, available at: <http://www.jornada.unam.mx/2006/12/01/index.php?section=estados&article=043n2est>; Inter-American Press Association, *Consternación de la SIP por nuevo asesinato de periodista en México*, December 1, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1807>; Instituto Prensa y Sociedad, *Asesinan a reportero en Veracruz, policía detiene a presuntos homicidas*, December 4, 2006, available at: <http://www.ipys.org/alertas/atentado.php?id=970>; Reporters Without Borders, *Detenidos dos sospechosos del asesinato del periodista Adolfo Sánchez Guzmán*, December 5, 2006, available at: http://www.rsf.org/article.php3?id_article=19958.

¹⁸³ El Universal, *Condenan el asesinato de periodista en Oaxaca*, December 14, 2006, available at: http://www.eluniversal.com.mx/estados/vi_63274.html; Reporters Without Borders, *Asesinado en Oaxaca un periodista y líder indígena; curiosamente se ha descartado la hipótesis profesional*, December 12, 2006, available at: http://www.rsf.org/article.php3?id_article=20116.

Jorge Aguirre, photographer with the daily <i>El Mundo</i>	Venezuela Caracas April 5, 2006	A person on a scooter shot him, in public, when he was inside a car. Before dying he was able to photograph the person who shot him. The authorities reported that a former police officer was arrested as the alleged assassin, and an active-duty police officer was allegedly involved. ¹⁸⁴
Jesús Rafael Flores Rojas, journalist with the daily <i>Región</i>	Venezuela El Tigre, state of Anzoátegui August 23, 2006	An individual shot him eight times and fled in a car that was waiting for him a few meters away. He wrote about issues including reports of corruption in the local public administration. According to the authorities, the alleged direct perpetrators of the assassination were killed in a shoot-out with police. ¹⁸⁵

¹⁸⁴ Unión Radio, *Fiscalía informa que sospechoso de asesinato de periodista Jorge Aguirre es un ex polichacao*, April 13, 2006, available at: <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=165240>; Reporters Without Borders, *Un policía en funciones inculpado en el asesinato de Jorge Aguirre*, April 26, 2006, available at: http://www.rsf.org/imprimir.php3?id_article=16943; Inter-American Press Association, *Condena la SIP asesinato de periodista venezolano y reclama por otros casos todavía impunes*, April 7, 2006, available at: <http://www.sipiapa.org/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1643>; Ministry of People's Power for Communication and Information of the Bolivarian Government of Venezuela, *Esclarecido 70% del asesinato del reportero gráfico Jorge Aguirre*, April 14, 2006, available at: http://www.minci.gov.ve/noticias-nacionales/1/4578/esclarecido_70del_asesinato.html. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 134/06, *Office of the Special Rapporteur for Freedom of Expression Deplores Assassination in Venezuela*, April 6, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=656&IID=2>.

¹⁸⁵ Sindicato Nacional de Trabajadores de la Prensa, *Sicario asesina a periodista en oriente de Venezuela*, August 28, 2006, available at: <http://www.ifj.org/default.asp?index=4157&Language=ES>; El Tiempo, *Fueron abatidos presuntos homicidas de comunicador social*, August 30, 2006, available at: <http://www.eltiempo.com.ve/noticias/default.asp?id=84640>; Committee to Protect Journalists, *Columnista venezolano tiroteado frente a su casa*, Augusts 29, 2006, available at: http://www.cpj.org/news/americas/ven29aug06na_sp.html. The Office of the Special Rapporteur for Freedom of Expression issued a pronouncement on this assassination in its press release 152/06, *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Venezuela and Demands Prompt Investigation*, August 31, 2006, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=678&IID=2>.

CHAPTER III

CASE-LAW¹

A. Introduction

1. In this chapter, the Office of the Special Rapporteur for Freedom of Expression updates the studies previously published in its annual reports concerning the case-law of the Inter-American Court of Human Rights², the European Court of Human Rights³, and the Human Rights Committee of the United Nations⁴ regarding the freedom of expression.

2. Through these chapters the Office of the Special Rapporteur for Freedom of Expression seeks to encourage study of the comparative case-law on compliance with the mandate of the Heads of State and Government issued conferred at the Third Summit of the Americas, held in Quebec City, Canada, in April 2001.⁵

B. Case-law of the Inter-American Court of Human Rights

3. Article 13 of the American Convention recognizes that each individual has the right to freedom of thought and expression noting that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others, or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions..

¹ Some sections of this chapter were prepared through the research done by Mr. Wayne DeFreitas, a second-year student at the George Washington University Law School who served as an intern with the Office of the Special Rapporteur for Freedom of Expression from August to November 2006.

² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. Volume III. Chapter III.

³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. Volume III. Chapter III.

⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. Volume III. Chapter III.

⁵ In the course of that summit meeting, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression, noting that the States will continue "to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence...."

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

4. In its Annual Report on 2002, the Office of the Special Rapporteur for Freedom of Expression outlined the case-law of the Inter-American Court of Human Rights on the freedom of expression. Until then, the case-law of the Inter-American Court on freedom of expression included Advisory Opinion OC-5/85 on Compulsory Members in an Association Prescribed by Law for the Practice of Journalism⁶ and the judgments in the cases of *The Last Temptation of Christ (Olmedo Bustos et al.)*⁷ and *Ivcher Bronstein*.⁸ Since then, the Inter-American Court has produced four new decisions specifically related to violations of Article 13 of the American Convention, which have made it possible to continue going forward creating important case-law on freedom of expression in the inter-American human rights system.

5. The issues addressed in this section have been sorted under the broad headings of defamation and access to information. The cases that appear under the heading of defamation refer to situations in which legal actions were taken for *desacato* or criminal defamation presumably for causing harm to persons through the exercise of the right to freedom of expression. The case examined under the heading of right of access to information has to do with the refusal of a government official to provide information without having a valid justification for doing so.

1. Defamation

*Case of Mauricio Herrera Ulloa ("La Nación") v. Costa Rica (July 2, 2004)*⁹

6. In 1995, journalist Mauricio Herrera Ulloa, of the daily newspaper *La Nación* of San José, published several articles in which he reproduced in part information that had appeared in the Belgian press raising questions about Félix Przedborski Chawa, an honorary diplomat of Costa Rica before the International Atomic Energy Agency in Austria. He brought a criminal suit against Herrera Ulloa for defamation, and publication of offenses, and a civil suit against the journalist and *La Nación*, arguing that they were jointly and severally liable for civil damages.

7. On May 29, 1998, the Criminal Court of the First Judicial Circuit of San José acquitted Herrera Ulloa for the crimes of defamation, slander, and publication of offenses. This first judgment was appealed on a motion for cassation, and vacated by resolution of May 7, 1999, which ordered a new trial. The trial was held again, and on November 12, 1999, the Criminal Court of the First Judicial Circuit of San José issued a judgment in which it found evidence of truth

⁶ I/A Court H.R. *The Compulsory Member of Journalists in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5. Available at: http://www.corteidh.or.cr/docs/opiniones/seriea_05_esp.pdf.

⁷ I/A Court H.R. *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73. Available at: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_73_esp.pdf.

⁸ I/A Court H.R. *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74. Available at: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_74_esp.pdf.

⁹ I/A Court H.R. *Herrera Ulloa ("La Nación") Case*. Judgment of July 2, 2004. Series C No. 107. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_esp.pdf.

(*exceptio veritatis*) inadmissible, and convicted Herrera Ulloa as the author responsible for four criminal charges of defamation by publishing offenses. In addition, the journalist and the daily newspaper were held to be jointly and severally liable for civil damages, and ordered to pay compensation for the alleged moral harm caused. The judgment also ordered publication of the operative part of the judgment in the newspaper *La Nación*. The newspaper *La Nación* was ordered to remove the link on its website between the last name "Przedborski" and the articles that were the basis for the suit, and to establish a link between those articles and the operative part of the judgment. In addition, as a result of the judgment, the journalist's name had to be included in the judicial registry of criminals. The judgment was appealed on a motion of cassation, and upheld by the Third Chamber of the Supreme Court of Justice in a resolution of January 24, 2001.

8. On March 1, 2001, Herrera Ulloa and the representatives of *La Nación* filed a petition with the Inter-American Commission on Human Rights. On January 28, 2003, the Commission submitted an application against the Costa Rican State before the Inter-American Court, for it to decide, among other things, whether the State had violated Article 13 of the American Convention on Human Rights, vacate the conviction, and make reparation to the victims. On July 2, 2004, the Inter-American Court handed down a judgment in which it found that the State had violated the right to freedom of expression of Mauricio Herrera Ulloa, and ordered, *inter alia*, that it vacate in its entirety the judgment of liability of November 12, 1999, against the journalist.

9. In its considerations, and taking as its point of departure its case-law in the area, the Inter-American Court reiterated the essential role of the freedom of expression in a democratic society. In the words of the Court:

Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.¹⁰

10. The Court also argued that those who are engaged in activities and influence situations of public interest must be more exposed to public scrutiny and to debate than all others, for that exposure is essential to the functioning of democracy:

Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate.¹¹

11. The Court clarified that this did not mean that the honor of public officials must not enjoy any legal protection, but that such protection must be in keeping with the principles of democratic pluralism. The distinction in question, in the view of the Court, is based not on the nature, of the subject, but on the public interest in his or her activities or actions.

12. The Court also considered that in the criminal proceeding against Herrera Ulloa he was convicted for not having proven the truthfulness of the facts attributed by the Belgian media to the former Costa Rican diplomat. The Court determined that such a demand constituted an excessive limitation on the freedom of expression, since it produced a "deterrent, intimidating, and

¹⁰ *Id.*, para. 116.

¹¹ *Id.*, para. 129.

chilling" effect on journalists, and, accordingly, stood in the way of debate on matters of public interest.¹²

13. The Court's judgment includes the concurring vote of its president. In that vote, Judge García Ramírez asks whether in situations such as those raised in this case "the criminal law avenue is the one best suited to getting at the crux of the problem ... or whether some other avenue, such as administrative or civil law, for example, might be the better juridical response...." Next, he argues that "it is worth recalling that as a rule, save for some digressions into authoritarianism – all too many and unfortunately not yet on the decline, the current thinking favors the so-called minimalist approach to criminal law. In other words, moderate, restricted, marginal use of the criminal-law apparatus, reserving it instead for only those cases when less extreme solutions are either out of the question or frankly inadequate. The power to punish is the most awesome weapon that the State – and society, for that matter – has in its arsenal, deploying its monopoly over the use of force to thwart behaviors that seriously – very seriously—threaten the life of the community and the fundamental rights of its members."¹³

*Case of Ricardo Canese v. Paraguay (August 31, 2004)*¹⁴

14. In August 1992, in the context of the political campaign for the 1993 presidential elections, candidate Ricardo Canese made statements to the Paraguayan media that called into question the suitability of candidate Juan Carlos Wasmosy, who he accused of involvement in irregularities related to the construction of the binational hydroelectric plant of Itaipú and a relationship with the family of Alfredo Stroessner. Wasmosy had been chairman of the Board of Directors of CONEMPA, a company that had been in charge, in part, of construction of the hydroelectric plant.

15. On October 23, 1992, the directors of CONEMPA sued Canese for criminal defamation. In a judgment of March 22, 1994, the Judge of First Instance for Criminal Matters of the First Circuit convicted Canese of both offenses and imposed a penalty of four months in prison and a fine and costs. The court also found him civilly liable. The decision was appealed and on November 4, 1997, the Third Chamber of the Court of Appeals for Criminal Matters ruled that it would re-characterize the offenses attributed to Canese, reducing the prison term imposed to two months, and also reducing the fine. This decision was also appealed by the parties. On May 2, 2001, the Criminal Chamber of the Supreme Court of Justice ruled to dismiss a motion to vacate, to find inadmissible a motion for review, and with respect to a writ of appeal, it affirmed the decision of November 4, 1997. In the course of the proceeding, Ricardo Canese had been denied authorization to travel outside the country on several occasions.

16. On July 2, 1998, the Inter-American Commission on Human Rights received the complaint in this case. On June 12, 2002, the Commission submitted the application against the Paraguayan State to the Court, so that it might decide whether the State had violated, *inter alia*, Article 13 of the American Convention on Human Rights.

17. In the meantime, on August 12, 2002, Ricardo Canese and his attorneys filed a motion for review with the Criminal Chamber of the Supreme Court of Justice of Paraguay. On December 11, 2002, the Criminal Chamber found the motion for reconsideration admissible,

¹² *Id.*, para. 133.

¹³ *Id.*, concurring vote of Sergio García Ramírez, paras. 14-5.

¹⁴ I/A Court H.R. *Ricardo Canese Case*. Judgment of August 31, 2004. Series C No. 111. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_esp.pdf.

vacated the judgments of March 22, 1994, and November 4, 1997, acquitted Mr. Canese of guilt and lifted the penalty imposed, and ordered that all records related to the case be expunged. As part of its reasoning, the judicial body noted that the new Criminal Code— in force since February 1999—contained grounds for exemption from criminal liability in cases of public interest.

18. On August 31, 2004, the Inter-American Court of Human Rights handed down a judgment attributing responsibility to the Paraguayan State, among other things, for violating the right to freedom of thought and expression to the detriment of Ricardo Canese.

19. The Court's judgment reiterated the concept that in the case of assertions and value judgments voiced in the course of political debates or matters of public interest, there should be a greater margin of tolerance.

20. In its considerations on Article 13 of the American Convention, the Inter-American Court highlighted the importance of the freedom of expression in the framework of an election campaign, insofar as it constitutes:

... an essential instrument for the formation of public opinion among the electorate, strengthen the political contest between the different candidates and parties taking part in the elections, and are an authentic mechanism for analyzing the political platforms proposed by the different candidates. This leads to greater transparency, and better control over the future authorities and their administration.¹⁵

21. The Court noted the need to protect the freedom of expression in the context of an electoral contest, for everyone must be able to inquire into and question the capacity and suitability of the candidates, and to take issue with and contrast their proposals so that the voting public might make a judgment with a view to exercising the right to vote.

22. In the opinion of the Court, when Canese made his statements to the media regarding a matter of public interest, and the media conveyed them to the voters, they helped the electorate have more information and "additional elements for forming an opinion and taking decisions."¹⁶

23. In this case, the Court decided that not only the guilty verdict imposed on Canese for eight years, but also the restrictions on leaving the country, and the criminal proceeding itself constituted an "unnecessary and excessive punishment for the statements that the alleged victim made in the context of the electoral campaign...; and also limited the open debate on topics of public interest or concern and restricted Mr. Canese's exercise of freedom of thought and expression to emit his opinions for the remainder of the electoral campaign."¹⁷

24. Additionally, the Court considered that the criminal sanction, trial, and prohibition on leaving the country constituted indirect means of restricting Mr. Canese's freedom of expression; after the conviction, he was dismissed from the media outlet where he had worked.¹⁸

¹⁵ *Id.*, para. 88.

¹⁶ *Id.*, para. 94.

¹⁷ *Id.*, para. 106.

¹⁸ *Id.*, para. 107.

*Case of Humberto Palamara Iribarne v. Chile (November 22, 2005)*¹⁹

25. In March 1993, Humberto Palamara Iribarne, a retired officer of the Chilean Navy, worked as a civilian employee of the Office of the Commander-in-Chief (Comandancia en Jefe) of the 3rd Naval Zone in Punta Arenas. Before his retirement on January 1, 1993, Palamara Iribarne had written a book with the title "Ética y Servicios de Inteligencia" (Ethics and Intelligence Services), which addressed "aspects related to the need for intelligence personnel, in order to prevent human rights violations, to be governed by ethical conduct." In January and February 1993 Palamara Iribarne tried to publish and sell the book, to which end he contracted with a local press to publish 1,000 copies.

26. Palamara Iribarne had not sought any authorization from the naval authorities to publish his book. On March 1, 1993, the military authorities notified Palamara Iribarne that the publication of his book had been prohibited, considering that its content "constituted an attack on the national security and defense" ("*atentaba contra la seguridad y defensa nacionales*"). That same day the Naval Judge of Magallanes ordered Palamara Iribarne to halt the publication and to "accompany the Chief of the Department to remove all antecedents of the book that might exist at the press." Palamara Iribarne did not go to the press that day. As a result, criminal proceedings were instituted at the Naval Court of Magallanes against Palamara Iribarne for the crimes of "disobedience" and "breach of military duties." On March 1, 1993, in the context of that criminal proceeding, all the copies of "Ética y Servicios de Inteligencia" at the press and at Palamara Iribarne's home were seized, along with the galley proofs of the book. In addition, Palamara Iribarne was required to erase the full text of the book from the hard drive of his computer.

27. On June 10, 1996, the Naval Judge of Magallanes handed down a judgment against Palamara Iribarne for the crimes of disobedience and breach of military duties, sentencing him, *inter alia*, to "61 days of lesser military prison in its minimal degree for breach of military duties," to "540 days of military imprisonment for military disobedience," to "the penalty ... of the loss of military status" and "to the seizure of [several] copies of the book." The resolution was appealed and on January 2, 1997, the Military Court reduced the penalty for the crime of military disobedience to 61 days, and Palamara Iribarne was absolved with respect to the other crimes.

28. On March 26, 1993, Palamara Iribarne had been ordered to maintain the confidentiality of the judicial case against him, and to refrain from making "public or private, written or spoken criticisms that would run to the detriment of or harm the image of the Institution, the naval authority, or those who are carrying out the judicial case and administrative investigation against him." Despite this prohibition, Palamara Iribarne called a press conference criticizing the action of the Naval Prosecutor's Office in the cases against him. As a result, Palamara Iribarne was indicted and placed on trial for the crime of *desacato*. On September 7, 1994, the Naval Court of Magallanes acquitted Palamara Iribarne of the *desacato* charges. Even though that ruling was not appealed, in November 1994 the Naval Judge of Magallanes authorized the Naval Judge of Valparaíso to forward the record for "consultation" with the Military Court, which, in January 1995, overturned the judgment of the trial court, and imposed a penalty, against Palamara Iribarne, of 61 days of prison, as well as a fine of 11 times the minimum monthly wage.

29. On January 16, 1996, the Inter-American Commission on Human Rights received the complaint in this case. On April 13, 2004, the Commission submitted the application to the Inter-American Court to decide whether the State had violated, among others, Article 13 of the American Convention on Human Rights. On November 22, 2005, the Inter-American Court of

¹⁹ I/A Court H.R., *Humberto Palamara Iribarne Case*. Judgment of November 22, 2005. Series C No. 135. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_esp.pdf.

Human Rights handed down a judgment in which it held the Chilean State responsible for violations, *inter alia*, of the right to the freedom of thought and expression to the detriment of Humberto Palamara Iribarne.

30. Among its initial considerations, the Court noted that it must determine, first, “whether the State engaged in acts of prior censorship incompatible with the American Convention on prohibiting Mr. Humberto Antonio Palamara Iribarne from publishing his book ..., and upon seizing the published copies of it, [subjecting him] to a proceeding for the crimes of disobedience and breach of military duties.” Second, the Court indicated that it had to establish “whether the imputation of the crime of *desacato* through the military criminal proceeding brought against him ... for his stations, as well as the criminal and military sanctions imposed as a result of that proceeding, and the administrative investigation that was begun and later archived unduly restricted his right to freedom of thought and expression.”²⁰

31. The Court noted that the dissemination and expression of thought are indivisible. In this regard, the Court held that:

In the instant case, for the State to effectively guarantee Mr. Palamara Iribarne’s right to freedom of thought and expression it did not suffice for it to allow him to write his ideas and opinions, rather, that protection included the duty not to restrict their dissemination, so that he could distribute the book using whatever appropriate means to convey those ideas and opinions to the largest number of persons, and for them to be able to receive that information.²¹

32. In this case, the Court decided not to address the issue of the supposed duty of confidentiality that Palamara Iribarne has with respect to certain information included in his book. The Court indicated that “it was logical that Mr. Palamara Iribarne’s professional and military training and experience would help him write the book, without this implying *per se* an abuse of the exercise of his freedom of thought and expression.”²² The Court added that the duty of confidentiality does not cover information regarding the institution or the functions it performs when they would have been that information would have been made public anyway.²³ Accordingly, the Court concluded:

... the control measures adopted by the State to impede the dissemination of the book “*Ética y Servicios de Inteligencia*” by Mr. Palamara Iribarne constituted acts of prior censorship incompatible with the standards set forth in the Convention, given that there was no element which, in light of that treaty, made it possible to negatively affect that right to openly disseminate his work, protected at Article 13 of the Convention.²⁴

33. It should be emphasized that the Court held that “it may so happen that the employees or officers of an institution must maintain the confidentiality of certain information to which they have access in the performance of their functions, when the content of that information is covered by that duty. The duty of confidentiality does not reach information regarding the institution or the functions it performs if it has already been made public. Nonetheless, in certain

²⁰ *Id.*, para. 70.

²¹ *Id.*, para. 73.

²² *Id.*, para. 76.

²³ *Id.*, para. 77.

²⁴ *Id.*, para. 78.

cases, the breach of the duty of confidentiality may give rise to administrative, civil, or disciplinary liability."²⁵

34. The Court reiterated that the right to freedom of expression was not an absolute right, and that Article 13(2) provides for the possibility of establishing restrictions by way of subsequent liability. In addition, the Court reaffirmed that "the criminal law is the most restrictive and severe means of establishing responsibilities with respect to illicit conduct."²⁶

35. The Court considered that the opinions put out by Palamara Iribarne in relation to the actions taken by the Naval Prosecutor of Magallanes in the context of the military criminal process against him "enjoy greater protection that [allows for] a margin of openness for a wide-ranging debate, which is essential to the functioning of a truly democratic system."²⁷ The Court indicated that this different threshold of protection "is not based on the quality of the subject, but on the nature of the public interest in the activities of a given person, in this case ... the actions of the prosecution in the military criminal proceeding."²⁸

36. As for the crime of *desacato*, the Court was of the view that in this case use had been made of "criminal prosecution in a manner disproportionate and unnecessary in a democratic society, by which Mr. Palamara Iribarne was deprived of the exercise of his right to freedom of thought and expression, in relation to the critical opinions he held regarding matters that directly affected him and were directly related to the way in which the military justice authorities performed their public functions in the proceedings to which he was subjected." The Court continued explaining that "the legislation on *desacato* applied to Mr. Palamara Iribarne established disproportionate sanctions for criticizing the operation of government institutions and their members, suppressing the debate essential for the operation of a truly democratic system, and unnecessarily restricting the freedom of thought and expression."²⁹

37. The Court recognized the forward movement represented by repeal of the *desacato* statutes from the Criminal Code in Chile. Nonetheless, it observed that the domestic order in Chile still retained provisions on *desacato* in the Code of Military Justice. Accordingly, it concluded: "On having included in its domestic law *desacato* provisions at odds with Article 13 of the Convention, some still in force, Chile has breached the general obligation to adopt provisions of domestic law that emanates from Article 2 of the Convention."³⁰

2. Right to Access to Information

*Case of Marcel Claude Reyes et al. v. Chile (September 19, 2006)*³¹

38. On December 24, 1991 the company *Forestal Trillium Ltda.* obtained approval from the Foreign Investment Committee of Chile to undertake a deforestation project in the zone known as "Río Córdor." On May 6, 1998 Marcel Claude Reyes, director of the *Fundación Terram*, sent a

²⁵ *Id.*, para. 77.

²⁶ *Id.*, para. 79.

²⁷ *Id.*, para. 82

²⁸ *Id.*, para. 84

²⁹ *Id.*, para. 88.

³⁰ *Id.*, para. 95.

³¹ I/A Court H.R. *Claude Reyes et al. Case*. Judgment of September 19, 2006. Series C No. 151. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_esp.pdf.

letter to the executive vice president of the Foreign Investment Committee of Chile, requesting information so as to evaluate “the commercial, economic, and social factors of the Río Cónдор project, to gauge its impact on the environment ... and to activate social oversight over the government agencies that have or have had involvement in carrying out the project.”³²

39. The executive vice president of the Committee invited Marcel Claude Reyes and Arturo Longton to a meeting on May 19, 1998, to discuss the details of the request for information and to exchange information. In a fax sent later on the same date, part of the information requested was provided. Fundación Terram sent letters on June 3 and July 2, 1998, reiterating its request for information. The information was never provided, nor was a formal refusal to submit it, stating the reasons, ever given.

40. On July 27, 1998, Marcel Claude, Arturo Longton, and Sebastián Cox filed a *recurso de protección* before the Court of Appeals of Santiago asking that the Foreign Investment Committee be ordered to answer the request for information, and make the information available in a reasonable time. On July 29, 1998, the action was found inadmissible due to lack of legal foundation. Subsequently, on July 31, 1998, they filed a motion for reconsideration to get the court’s decision overturned; it was denied on August 6, 1998. Finally, on July 31, 1998, they filed a complaint appeal (*recurso de queja*) before the Supreme Court. On August 18, 1998, this request was considered inadmissible.

41. On December 17, 1998, the Inter-American Commission on Human Rights received the complaint in this case. On July 8, 2005, the Commission submitted the application to the Inter-American Court to decide whether the failure to produce the information as well as the lack of an effective judicial remedy to challenge it gave rise to the international responsibility of the State for violating the rights to freedom of thought and expression, and to judicial protection, established in Articles 13 and 25 of the Convention, in relation to Articles 1(1) and 2 of that treaty. On September 19, 2006, the Inter-American Court of Human Rights issued a judgment in which it held that the Chilean State is responsible, *inter alia*, for violating the right to freedom of thought and expression to the detriment of Marcel Claude Reyes and Arturo Longton.

³² The letter from the *Fundación Terram* requested the following information from the Committee:

1. The contracts entered into by the Chilean State and the foreign investor with respect to the Río Cónдор project, indicating the date and notarial office in which these were entered into, and a copy of those documents, since they were instruments.
2. The identities of the investors in the project, foreigners and/or nationals.
3. The information that the Foreign Investment Committee considered, in Chile and abroad, to ensure the seriousness and appropriateness of the investors and the agreements of that Committee in which this record was accepted as sufficient.
4. The total amount of the investment authorized for the Río Cónдор project, the means and dates of the capital transfers, and the existence of loans associated with the project.
5. The capital that actually entered the country to date, both real and in related loans.
6. Information in the hands of the Committee and/or that has been required by other public or private entities and that refers to the control of the obligations entailed in the securities of the foreign investment or the companies that participate in it, and whether the committee has taken note of any infraction or offense.
7. Information on whether the executive vice-president of this Committee has exercised the authority granted him by Article 15 of Decree-Law 600 to request, of all the public and private services or enterprises the reports and information required for attaining the Committee’s objectives. If so, that such information be made available to this entity.

42. In its decision, the Inter-American Court held that Article 13 of the Convention, on stipulating expressly the rights to “seek” and “receive” “information,” protects the right of every person to seek access to information controlled by the state, with the conditions allowed under the regime of restrictions in the Convention. In so deciding, the Inter-American Court became the first international court to emphasize that access to information is a human rights. In the words of the Court:

[Article 13] protects the right of persons to receive that information and the positive obligation of the state to provide it, such that the person can have access to that information or receive a well-founded response when, on some grounds permitted by the Convention, the state can limit access to it in a specific case. That information must be provided, without any need to show a direct interest in obtaining it, or that it somehow affects one personally, except in those cases in which a legitimate restriction applies. The fact of it being provided to one person makes it possible, in turn, for it to circulate in society, so that it may be known, accessed, and weighed. In this way, the right to freedom of thought and expression provides for protection of the right of access to information in the control of the state, which also clearly contains the two dimensions, individual and social, of the right to freedom of thought and expression, which must be guaranteed by the state simultaneously.³³

43. In addition, in the context of the right to information, the Court established that it is governed by “the principle of maximum dissemination, which establishes the presumption that all information is accessible, subject to a limited regime of exceptions.”³⁴

44. The Court recognized that this right may be subject to restrictions; however, they “must be those previously set by law to ensure that they not be left up to the authorities.” Those laws must be issued “for reasons of general interest and with the purpose for which they have been established.”³⁵ In addition, it clarified that “the restriction established by law must answer to an objective permitted by Article 13(2) of the American Convention”. In addition, the Court established that “the restrictions imposed must be necessary in a democratic society, which depends on their being aimed at satisfying an imperative public interest,”³⁶ placing the burden of proof of the need for possible restrictions of this right on the State.³⁷

45. In this case, the Court considered that establishing restrictions on access to information in the control of the State through the practice of its authorities, without observing the limits set by the Convention, “creates fertile ground for the discretionary and arbitrary action of the state in classifying the information as secret, under seal, or confidential,” giving rise to juridical insecurity with respect to the exercise of this right and the powers of the state to restrict it. The Court considered that for this reason, on “not receiving the information requested, or a well-founded answer on the restrictions on their right of access to information in the control of the State, Messrs. Claude Reyes and Longton Guerrero were adversely affected as regards the possibility of exercising social oversight of the conduct of public affairs.”³⁸

46. Finally, the Court viewed in a positive light that “Chile [has] made important strides forward in the terms of incorporating into its law the right of access to information in the control of

³³ I/A Court H.R., *Claude Reyes et al. Case v. Chile*, para. 77.

³⁴ *Id.*, para. 92.

³⁵ *Id.*, para. 89.

³⁶ *Id.*, paras. 90-1.

³⁷ *Id.*, para. 92.

³⁸ *Id.*, para. 99.

the state, that include, among others, a constitutional reform, and that a law on that right is currently before the Chilean legislature.” Nonetheless, it understood that Chile, in keeping with Article 2 of the Convention, had to “adopt the measures necessary to ensure protection of the right of access to information in the control of the State, within which it must guarantee the effectiveness of an adequate administrative procedure for processing and resolving requests for information, set deadlines for resolving and delivering the information, and that it be under the responsibility of duly trained officials.”³⁹ On this point, the Court ordered the State to carry out “the training of the public organs, authorities, and agents in charge of requests for access to information in the control of the State on the provisions that govern this right, so as to incorporate the conventional standards that must be respected as regards restrictions on the access to that information.”⁴⁰

C. Case-law of the European Court of Human Rights

47. The European Convention for the Protection of Human Rights and Fundamental Freedoms contains a specific provision on the right to freedom of expression, Article 10, which reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

48. The Inter-American Court of Human Rights has compared Article 13 of the American Convention to Article 10 of the European Convention and Article 19 of the International Covenant on Civil and Political Rights, reaching the conclusion that the guarantees of freedom of expression contained in the American Convention were designed to be the most generous and to reduce to a minimum restrictions on the free circulation of ideas.⁴¹

49. In its Annual Report on 2003, the Office of the Special Rapporteur considered part of the extensive case-law of the European Court of Human Rights on the freedom of expression, noting its usefulness as “a valuable source that can shed light on the interpretation of this right in the Inter-American system, and serve as a useful tool for legal practitioners and interested people.”⁴²

50. The following sections refer to cases that led to decisions of the European Court of Human Rights on issues related to the right to the freedom of expression as of 2004. The decisions

³⁹ *Id.*, para. 163.

⁴⁰ *Id.*, para. 165.

⁴¹ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC-5/85, para. 50.

⁴² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. Volume III. Chapter III, para. 2.

of the European Court may be used as an important reference to the comparative case-law when analyzing and interpreting provisions of the American Convention and the American Declaration similar to those of the European Convention.

51. The issues addressed in this section are divided into the following categories: defamation, public order, and prior censorship. The cases under the heading of defamation refer to situations in which legal defamation actions were brought for allegedly harming the reputation of persons through the exercise of the freedom of expression. The cases examined from the standpoint of public order have to do with situations in which restrictions were imposed on the basis that they were necessary to protect public order. The third section describes situations in which there was a prior restriction on publication.

52. It should be noted, as in the previous annual reports, that the cases related here are a selection of the case-law of the European Court since 2004 related to the right to the freedom of expression. The complete text of these cases can be examined at the website of the European Court of Human Rights.⁴³

1. Defamation

*Amihalachioaie v. Moldova (April 20, 2004)*⁴⁴

53. In 2000, a group of legislators and the Ombudsman filed an application to the Constitutional Court of Moldova to have it declare the unconstitutionality of Law No. 395-XIV, which ordered that all lawyers in Moldova must join the Union of Lawyers, a national organization that brought together the local bar associations in Moldova. On February 15, 2000, the Constitutional Court of Moldova decided that Law No. 395-XIV was unconstitutional. Gheorghe Amihalachioaie, president of the Union of Lawyers de Moldova, criticized the decision of the Constitutional Court in a local magazine. Subsequently, in an article published in that magazine, reference was made to what Amihalachioaie had said in that telephone conversation. On February 18, 2000, the president of the Constitutional Court informed Amihalachioaie that his comments were considered as showing “lack of regard of the Court” according to the Code of Constitutional Procedures in force. On March 6, 2000, Amihalachioaie was held liable by the Constitutional Court of Moldova and ordered to pay a fine.

54. In its judgment the European Court found that the restriction imposed by the Constitutional Court was provided for by law and that it had a legitimate end: to uphold the authority and impartiality of the judiciary. Nonetheless, it considered that the restriction on Amihalachioaie’s freedom of expression was not “necessary in a democratic society” for his comments were made in a context of profound debate around a matter of general interest: the decision of the Constitutional Court of Moldova around the requirement to belong to an organization in order to practice law in Moldova. The Court added that there was no “pressing social need” to justify the measure, and that while the fine was not significant, as it was near the statutory maximum penalty, it had a symbolic value on showing the State’s intention to inflict severe punishment on Amihalachioaie for his comments.

⁴³ Available at: <http://www.echr.coe.int>.

⁴⁴ *Amihalachioaie v. Moldova*, No. 60115/00, ECHR 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Amihalachioaie&sessionid=9803166&skin=hudoc-en>.

*Chauvy et al. v. France (June 29, 2004)*⁴⁵

55. On February 10, 1999, Gérard Chauvy, Francis Esmenard and the publishing house *Albin Michel* were ordered to pay a fine as civil reparation for damages to the detriment of Mr. and Mrs. Aubrac, members of the movement known in France as "*La Résistance*". The proceeding was brought in the French courts upon publication of the book "*Aubrac, Lyon 1943*," which described the chronology of events around "*La Résistance*" and several of its leaders in 1943. That text stated, *inter alia*, that Raymond Aubrac had betrayed Jean Moulin, a member of "*La Résistance*," resulting in his subsequent arrest, torture, and death by members of the Gestapo during the Second World War. The French courts ordered the publication of a notice warning of the contents of the book in five daily newspapers and that it be included in each of the copies of the book published from that date on.

56. In its decision, the European Court affirmed that the search for the historical truth is protected in the context of the right to the freedom of expression. Nonetheless, it noted that it did not have jurisdiction to determine the occurrence or determination of historical matters, indicating that such an endeavor is part of a continuing debate around certain events and their interpretation by historians.

57. The Court also considered that though there is a public interest in making known the circumstance of Jean Moulin's detention, it was necessary to balance that need to protect the reputation of Mr. and Mrs. Aubrac. The Court upheld the proportionality of the pecuniary sanctions and the publication of the warnings, noting that it found convincing the evidence presented by the State, indicating that Chauvy had not applied the fundamental rules of the historical method on writing "*Aubrac, Lyon 1943*." It also indicated that the measures were proportional to the interest protected (the reputation of Mr. and Mrs. Aubrac) because the French courts did not order (as they had asked them to) the destruction of the copies of the book nor did they prohibit its circulation.

*Karhuvaara and Iltalehti v. Finland (November 16, 2004)*⁴⁶

58. On October 31, 1996, the daily newspaper *Iltalehti* published an article related to the criminal proceeding against Mr. A, an attorney from the city of Seinäjoki. The article was titled: "The wife [is] the Chairman of the Parliamentary Committee for Education and Culture – Lawyer from Seinäjoki hit policeman in restaurant." This publication also reported that he was the husband of Mrs. A, a member of the Finnish legislature and chairperson of the Committee for Education and Culture. On November 21 and December 10, 1996, *Iltalehti* published new articles related to the criminal proceeding and sentence imposed on Mr. A. The criminal proceeding against Mr. A was widely publicized and debated in the local press. Mrs. A was not tied to the criminal acts described therein in any way. Nonetheless, Mrs. A was subject to political satire on a local television program.

59. Subsequently, in April 1997, Mrs. A brought a criminal proceeding against Pekka Karhuvaara, the director of *Iltalehti*, and two of its reporters, alleging infringement of privacy. On December 3, 1998, the director and the two reporters were found liable and ordered to pay a fine and reparation for damages for invading Mrs. A's privacy. On November 20, 1999, Karhuvaara and

⁴⁵ *Chauvy et al. v. France*, No. 58148/00, ECHR 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=chauvy&sessionid=9803209&skin=hudoc-en>.

⁴⁶ *Karhuvaara and Iltalehti v. Finland*, No. 53678/00, ECHR 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Karhuvaara&sessionid=10184705&skin=hudoc-en>.

the company turned to the European Court alleging a violation of Article 10 of the European Convention by Finland.

60. In its judgment the European Court found that none of the articles published contained allegations of Mrs. A's participation in the criminal offenses committed by Mr. A. In addition, it indicated that the articles did not mention any aspect of the political participation or private life of Mrs. A, except the fact that she is married to Mr. A, both of which were generally known prior to the publication of the articles in the newspaper. Accordingly, the Court concluded that the articles did not refer to a matter of public interest in which Mrs. A was involved.

61. It is interesting to note that even though the European Court recognized that the articles in the newspaper placed special emphasis on the fact that Mr. and Mrs. A were married in order to increase the newspaper's sales, it found that this did not justify the penalty imposed. It recalled, to this end, its standard developed in previous cases to the effect that in a democratic society even information and ideas that may be offensive, shocking, or disturbing are protected by Article 10 of the European Convention. The Court also noted that the permissible limits of criticism are more lax for politicians than for private persons. To this end, it found that the sanctions imposed were not "necessary in a democratic society," and that therefore they were unlawful restrictions on the right to freedom of expression.

*Selistö v. Finland (November 16, 2004)*⁴⁷

62. In January and February 1996 Seija Selistö, a journalist with the daily newspaper *Pohjalainen*, published two articles describing the alleged negligence of a surgeon (X) which was said to have caused the death of a patient in the operating room of a local hospital in December 1992. The articles were published under the titles "*If only I could get a grip on life again— How to survive all of this?*" and "*The case of Eeva did teach us something – We were concerned for the patients – post-operative complications.*" The patient's husband, Mr. Haapalainen, had filed a complaint against X and one other surgeon who had assisted during the operation. On examining the complaint, the National Medico-Legal Board of Finland found that the surgeons were not liable for the patient's death. As a result, in April 1994, the Vaasa county prosecutor decided not to press formal charges against X. Subsequently, as a result of the publications, the Vaasa county prosecutor and X filed a complaint alleging defamation against Selistö and Mr. Elenius, the editor of *Pohjalainen*. On May 26, 1999, Selistö was found liable and ordered to pay a fine for the crime of continuing defamation and Elenius was ordered to pay a fine for negligent exercise of freedom of the press.

63. In its decision, the European Court of Human Rights evaluated whether the restriction imposed was necessary in a democratic society, that is, whether the reasons given by the State for establishing liability were "relevant and sufficient" for limiting Selistö's freedom of expression. In its review the Court observed that the publications made reference to the personal experiences of Mr. Haapalainen and to issues of public interest (security in the treatment of patients in hospitals). The Court attributed a positive value to the fact that in none of the articles published in mention made of the name, age, or gender of X. It considered, moreover, that X had the opportunity to submit X's version of the facts after the publications, but that it decided not to do so to keep X's identity from being publicly revealed. It concluded for that reason that no aspect of journalistic ethics had been violated, nor had Selistö acted in bad faith. To the contrary, it held that the purpose of the notes was to discuss matters regarding patient security in hospitals, and that

⁴⁷ *Selistö v. Finland*, No. 56767/00, ECHR 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Selist%F6&sessionid=10184835&skin=hudoc-en>.

Mrs. Haapalainen's case was related merely as a representative sample of that issue. Accordingly, the Court found that the reasons expressed to establish the restriction and to protect the professional reputation of X were insufficient given that Selistö was informed of those matters of legitimate general interest.

*Steel and Morris v. United Kingdom (February 15, 2005)*⁴⁸

64. On September 20, 1990, the transnational company *McDonald's* brought a civil defamation action against Helen Steel and David Morris, two members of the organization *London Greenpeace*, asking that they pay reparation for harm after publication of a six-page pamphlet entitled "*What's wrong with McDonald's?*" The pamphlets were part of an environmental campaign that *London Greenpeace* had waging in the United Kingdom. On March 31, 1999, Steel and Morris were held liable and ordered to pay civil reparations to *McDonald's* for having participated in the production and distribution of those pamphlets.

65. In its ruling the European Court of Human Rights concluded that the amount that Steel and Morris should pay was an improper restriction on the right to freedom of expression. On examining the issue, the Court held that the amount was not proportional to the end pursued (protecting the company's reputation) if one took into account the decisive role played by the groups in the campaign to promote the discussion of matters of public interest. The Court indicated that although the statements made in the pamphlets were not true, they contained allegations on matters of general concern that sought to encourage debate in British society on issues such as health and the environment. The Court also indicated that the amount of compensation, while it might be considered moderate compared to similar cases in the United Kingdom, was very substantial taking into account the limited incomes and resources of Steel and Morris.

66. The Court also found that the lack of proper legal assistance in the trial for defamation before the domestic courts (which is why the Court found a violation of Article 6(1) of the European Convention) created serious difficulties for the defense of Steel and Morris, also having a negative impact on their right to freedom of expression.

*Ukrainian Media Group v. Ukraine (March 29, 2005)*⁴⁹

67. On August 21, 1997, the newspaper *The Day* published an article by Tetyana E. Koroba entitled: "*Is this a second Yurik for poor Yoriks, or a Ukrainian version of Lebed?*" On September 14, 1999, the newspaper published another article by Koroba entitled: "*On the Sacred Crow and the Little Sparrow: Leader of the CPU as Kuchma's Last Hope.*" Both articles made a series of critical assertions regarding Natalia Vitrenko and Petro Symonenko, leaders of the socialist and communist parties, respectively, and presidential candidates in the 1999 elections. Vitrenko and Symonenko filed actions before the judicial authorities of Ukraine alleging that the information published was false and that it had an adverse impact on their honor and reputation. On March 3, 2000, the District Court of Kiev ordered *The Day* to pay 369 euros to Natalia Vitrenko, and on June 8, 2000, to pay 184 euros to Petro Symonenko. The District Court of Kiev also ordered the publication in the daily paper of part of the judgments as well as a rectification with respect to the information published that in the view of the court was false.

⁴⁸ *Steel and Morris v. the United Kingdom*, No. 68416/01, ECHR 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Steel%20%7C%20y%20%7C%20Morris&sessionid=10184835&skin=hudoc-en>.

⁴⁹ *Ukrainian Media Group v. Ukraine*, No. 72713/01, ECHR, 2005. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=72713/01&sessionid=9985862&skin=hudoc-en>.

68. In its decision the European Court indicated that the freedom of press allows for the use of a certain degree of exaggeration and even provocation. In addition, the European Court reaffirmed its position in terms of the distinction between assertions of fact and value judgments, noting that while the existence of facts may be shown, the same cannot be said in terms of value judgments. Requiring that one prove the truth of value judgments, the European Court held, is violative of Article 10 of the European Convention.

69. Specifically, the Court emphasized that the defamation statute and case-law in the Ukraine did not distinguish between value judgments and assertion of facts, which could result in decisions incompatible with Article 10 of the European Convention. In addition, it considered that the criticisms in both articles were made with sarcastic language and polemical statements that constitute value judgments in the context of political rhetoric, which is not susceptible to proof. For this reason, the Court found that the interference imposed by the Ukrainian courts did not answer to any pressing need, hence giving rise to a violation of Article 10 of the European Convention. The Court also noted that in cases such as this the public interest in political debate in the context of an election campaign should prevail.

*I.A. v. Turkey (September 13, 2005)*⁵⁰

70. In November 1993 the Berlin Press, owned by Mr. I.A., published a novel titled "*Yasak Tumceler*" ("Forgotten Phrases"), which included a literary approach to some theological matters. On December 2, 1997 Mr. I.A. was convicted of the crime of blasphemy of "God, religion, the prophet, and the holy book" for publication of that work, and was subjected to a two-year prison sentence and ordered to pay a fine. Subsequently, the prison sentence was commuted to the payment of an additional fine.

71. In its decision, the European Court held that in the context of religious beliefs there is a duty to avoid "gratuitously offensive" expressions. It further noted that those who manifest their beliefs in a given religion must tolerate criticisms of it and the dissemination of other creeds. In this case, the Court considered, however, that certain aspects of the novel could be offensive to Muslims.

72. The Court concluded that the measures adopted by the Turkish court protected certain values considered sacred to practitioners of Islam and considered that in this case the restriction was based on pressing social need. Finally, the Court indicated that to the extent that circulation of the book was not prohibited, and given the small amount of the fine imposed, the sanction imposed was proportional to the ends sought to be protected.

*Albert-Engelmann-Gesellschaft mbH v. Austria (January 19, 2006)*⁵¹

73. On November 13, 1996, the magazine "*Der 13. –Zeitung der Katholiken für Glaube und Kirche*," owned by the company *Albert-Engelmann-Gesellschaft mbH*, published several letters to the editor on a "Church Referendum Movement" organized by progressive Catholics in Austria. One of the letters made reference to Mr. Paarhammer, Vicar General of the Archdiocese of Salzburg,

⁵⁰ *I.A. v. Turkey*, No. 42571/98, ECHR, 2005. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=turkey%20%7C%2010&sessionid=9787499&skin=hudoc-en>.

⁵¹ *Albert-Engelmann-Gesellschaft mbH v. Austria*, No. 46389/99, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Caso%20%7C%20Albert-Engelmann-Gesellschaft%20%7C%20mbH&sessionid=10185010&skin=hudoc-en>.

describing him as a “rebel” and “critic of the church who should be removed.” The letter made reference to the press release of December 30, 1988, and to a radio interview of January 10, 1989, in which Mr. Paarhammer had expressed his discontent with the way in which the Holy See had chosen the ecclesiastic authorities in the area. Mr. Paarhammer brought a criminal defamation action against the company. The Austrian courts found that the assertions lacked any factual basis – the “Church Referendum Movement” was nonexistent – and that they constituted a direct attack on the priest’s reputation. As a result, the company was found liable and ordered to pay economic compensation to Paarhammer, in particular because he did not have an opportunity to exercise his right to reply in response to that letter.

74. In its decision the European Court held that the reasons given by the State, though “relevant,” were not “sufficient” to justify the restriction imposed on the newspaper’s freedom of expression. The Court began by noting that the publication was made in the context of an open debate with the editor of the magazine around the need for priests considered “critical” to be removed from any position of trust in the Church.

75. The Court attributed positive value to what was decided in the domestic courts in terms of the potential of the letter to endanger Paarhammer’s reputation as a priest loyal to the Archdiocese of Salzburg, especially before the magazine’s readership, most of whom belonged to the most conservative sector of the Catholic church in Austria. In this regard, it agreed with the Austrian courts that the magazine did not abide by the ethics of journalism on not having given Paarhammer the opportunity to reply. Nonetheless, it did not find those considerations to be “sufficient” to justify the measure, for the comments made in the letter were opinions and not assertions of fact, in the context of a debate on ecclesiastic matters. Moreover, the Court held that requiring the press to distance itself formally and systematically from a third party may cause insult to or provoke in others a harm to their reputation that cannot be reconciled with its role of providing information on events, opinions, and ideas of public interest.

*Giniewski v. France (January 31, 2006)*⁵²

76. On January 4, 1994, Mr. Paul Giniewski published an article in the newspaper *Le quotidien de Paris* criticizing the content of the papal encyclical “Veritatis Splendor.” After receiving a complaint from the *Alliance générale contre le racisme et pour le respect de l’identité française et chrétienne (AGRIF)*, the Criminal Court of Paris found that the article defamed the members of the Christian community and on March 8, 1995, ordered Mr. Giniewski and the newspaper’s director to pay a fine. In addition, the Court ordered that the persons on trial pay the costs of publishing the judgment in a national newspaper.

77. In its decision the European Court considered that in the context of religious beliefs there is an obligation to avoid to the greatest extent possible “those gratuitously offensive expressions that do not contribute to a constructive public debate.” As for the article published by Giniewski, the Court noted that although it criticized the content of the encyclical and the position of the papal authorities, it did not contain any attack on religious beliefs, but rather a journalistic and historical perspective on issues such as the persecution and extermination of the Jews in Europe. In this regard, the Court considered that the content of the article contributed to a public debate on the matter.

⁵² *Giniewski v. France*, No. 30007/96, ECHR, 2005. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=giniewski%20%7C%20france&sessionid=9787377&skin=hudoc-en>.

78. Finally, the Court indicated that although Mr. Giniewski was acquitted in the criminal proceeding, the civil sanction imposed was disproportionate in view of the public debate it sought to generate and the public interest in the publication.

*Malisiewicz-Gąsior v. Poland (April 6, 2006)*⁵³

79. On September 16, 1992, Izabela Malisiewicz-Gąsior was released after having been held in pretrial detention – along with her son and husband – accused of having participated in the kidnapping of M.K., the daughter of Mr. Kern, a government official. On August 22, 1993, Malisiewicz-Gąsior, an independent candidate in Poland’s legislative elections, published an article in the daily *Angora*. In the article reference was made, *inter alia*, to her political proposal as an independent candidate and the nature of her family’s ties with Mr. Kern’s family. At that time M.K. and Malisiewicz-Gąsior’s son had become engaged. On September 5, 1993, Malisiewicz-Gąsior published a new article on the same subject. In this second publication, however, she made reference to the fact that Mr. Kern, abusing his power as a government official, pressured the authorities to have her indicted and placed on trial for the kidnapping of M.K., indicating that on his orders she was held in a cell for the mentally ill. These same statements were reiterated on radio and television. On September 27, 1993, Mr. Kern filed a criminal complaint against Malisiewicz-Gąsior for defamation. On November 18, 1997, Malisiewicz-Gąsior was convicted of the crime of defamation and sentenced to serve one year in prison, to publish that judicial order, and to apologize to Mr. Kern in *Angora*.

80. In its decision the European Court found that the Polish authorities, on holding Malisiewicz-Gąsior criminally liable, improperly restricted her right to freedom of expression. The Court considered that the allegations made in the articles and the statements by Malisiewicz-Gąsior occurred as part of a political debate in the context of an election, with respect to the action of a government official and based on her own experience in the courts of the criminal proceeding brought against her by Mr. Kern for his daughter’s kidnapping. The Court held that although the end pursued (the protection of Mr. Kern’s reputation) was legitimate, the criminal sanction imposed in that case was not “necessary in a democratic society.”

*Raichinov v. Bulgaria (April 20, 2006)*⁵⁴

81. On December 15, 1993, a meeting was held of the Supreme Judicial Council of Bulgaria attended, *inter alia*, by Hristo Peshev Raichinov – then director of the financial and logistical support division of the Ministry of Justice – and Mr. S – the deputy Prosecutor-General. At that meeting Raichinov indicated, in the context of a discussion on the State Budget Act, that in his opinion Mr. S “is not a clean person.” The Prosecutor-General asked Raichinov to leave the meeting and to clarify the meaning of his assertion. Raichinov retracted his remarks. On February 16, 1994, a criminal proceeding was begun against Raichinov alleging that Mr. S’s dignity had been harmed. On July 8, 1998, the Bulgarian courts ordered Raichinov to pay a fine and receive a public reprimand.

82. In its decision the European Court considered that the restriction imposed on Raichinov’s freedom of expression was not necessary in a democratic society. In its discussion the

⁵³ *Malisiewicz-Gąsior v. Poland*, No. 43797/98, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Malisiewicz-G%u0105sior&sessionId=10185010&skin=hudoc-en>.

⁵⁴ *Raichinov v. Bulgaria*, No. 47579/99, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Raichinov&sessionId=10185010&skin=hudoc-en>.

Court reaffirmed that the limits on the criticism of government officials are more lax than for private persons. It also indicated that the debate at the meeting had to do with a matter of general interest, and that as the meeting had been held behind closed doors, the negative impact of the Raichinov's assertion on Mr. S's reputation –if any – was quite limited. The Court also valued, in its analysis, the fact that the debate had transpired only in an oral exchange, and that the Prosecutor-General could have turned to means other than the criminal jurisdiction to respond to the criticisms.

2. Public Order

*Baran v. Turkey (November 10, 2004)*⁵⁵

83. On June 3, 1997, a local court in Istanbul ordered the confiscation of 200 copies of a pamphlet prepared by Zeynep Baran, president of a foundation devoted to the question of Kurdish women in Turkey. Subsequently, on June 6, 1997, the prosecutor of the Republic brought criminal proceedings against Baran alleging that the pamphlet constituted an incitement to violence, hatred, and resentment, and that, moreover, it discriminated based on membership in a given social group. It was specifically noted that the pamphlet had as its objective making separatist propaganda. On August 7, 1998, Baran was convicted, sentenced to a two-year prison term, and ordered to pay a fine.

84. On examining the matter the European Court gave special attention to the terms used in the pamphlet and the context of its publication. It thus considered that while the pamphlet described a sensitive issue – the status of Kurdish women in Turkey – at no point did it urge the use of violence, armed resistance, or insurrection, nor did it incite hate speech. In that sense, the Court considered that the conviction of Baran was disproportionate to the aim pursued (guaranteeing territorial integrity), that is, it was not necessary in a democracy society.

*Kyprianou v. Cyprus (December 15, 2005)*⁵⁶

85. On February 14, 2001, attorney Michalakis Kyprianou was participated in a hearing regarding one of his clients in the Court of Assize of Limassol. While he was questioning one of the witnesses proposed by the prosecution, Kyprianou was interrupted by the judges, who questioned the manner in which he was conducting the examination. Kyprianou considered the interruption an offense and immediately asked to be removed from the case. Kyprianou and the judges then began a discussion that culminated in the interruption of the hearing and the subsequent order finding Kyprianou in "contempt of court" and sentencing him to five days in prison and a fine of 130 euros.

86. In its decision the European Court affirmed that attorneys play a central role in the administration of justice as intermediaries between the public and the courts. It noted, however, that the freedom of expression of an attorney in the courts is not unlimited, and may be restricted, in keeping with Article 10 of the European Convention, to protect certain interests with respect to the authority of the judiciary. The Court continued its analysis indicating that in the defense of a client before a court, the attorneys may experience delicate situations in which they must decide whether to object or question the conduct of the judges, mindful of the interests of their clients.

⁵⁵ *Baran v. Turkey*, No. 48988/99, ECHR, 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=baran&sessionid=9803209&skin=hudoc-en>.

⁵⁶ *Kyprianou v. Cyprus*, [GC] No. 73797/01, ECHR, 2005. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Kyprianou&sessionid=9787377&skin=hudoc-en>.

The European Court thus stated that in the case at hand, on imposing a criminal sanction on Kyprianou, there was a failure to properly balance the protection of the authority of the judiciary with the protection of the right to freedom of expression. The Court made this consideration taking into account that the law allowed for the imposition of less restrictive sanctions. It concluded, therefore, that the penalty applied was disproportionately severe and that it could have a chilling effect on the work of an attorney as defense counsel in a case.

87. Along the same lines, the European Court indicated that in the case, imposing a prison sentence also had an adverse impact on the right to due process, accordingly, it also found a violation of Article 6(1) of the European Convention.

*Koç and Tambaş v. Turkey (March 21, 2006)*⁵⁷

88. On August 24, 1998, the Istanbul State Security Court convicted Tayfun Koç and Musa Tambaş of the crime of “disseminating propaganda against the ‘indivisible unity of the State.’” Tayfun Koç and Musa Tambaş, owner and editor of the monthly magazine “Revolution for Equality, Liberty, and Peace,” were found liable and ordered to pay a fine, the magazine was temporarily shut down, and several copies were confiscated, after publishing three articles related to the authorities of the Turkish State. Specifically, in one of the articles it was alleged that there were serious prison problems in Turkey, and the Minister of Justice was blamed for the death of two prisoners who had staged a hunger strike. On June 6, 2003, the judgments of liability were vacated.

89. In its decision, the European Court found that the restriction imposed was provided for by law and that it pursued legitimate interests: protection of the territorial integrity of the State, national unity, and protection of the state authorities so that they not be identified as targets of terrorist attacks. Nonetheless, when examining the restriction imposed in light of the standard of “necessity in a democratic society,” the Court considered that it was not proportional to the ends pursued, for even though the articles had a certain tone of hostility towards the state authorities, taken in their entirety they did not incite violence, armed resistance, or insurrection, nor did they constitute hate speech. The Court indicated that despite the suspension and eventual overturning of the convictions, the very threat of the imposition of a conviction has a chilling effect on the exercise of journalism, which leads to self-censorship.

3. Prior Censorship

*Editions Plon v. France (May 18, 2004)*⁵⁸

90. On January 18, 1996, the president of the Tribunal de Grande Instance of Paris issued an injunction temporarily prohibiting the circulation of the book *Le Grand Secret* published by *Editions Plon*. That book, co-authored by one of President Mitterrand’s private physicians, revealed details of the cancer treatment that the former president had received since 1981, when he was diagnosed with cancer. Mitterrand died on January 8, 1996, days before the publication of *Le Grand Secret* on January 17, 1996. The request was presented by the family members of the former president, arguing that in the book the physician was violating the duty of confidentiality and

⁵⁷ *Koç and Tambaş v. Turkey*, No. 50934/99, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=Ko%E7&sessionid=10185225&skin=hudoc-en>.

⁵⁸ *Editions Plon v. France*, No. 58148/00, ECHR, 2004. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Editorial%20%7C%20Plon&sessionid=10185225&skin=hudoc-en>.

allegedly violating the privacy of the former president and his family members. Subsequently, on October 23, 1996, the same court decided on the merits, ordering the director of *Editions Plon* and the physician to pay compensation to Mitterrand's family members. The court also noted that the prohibition on circulation of the book should remain. Both judicial rulings were called into question by *Editions Plon* before the European Court of Human Rights, which proceeded to examine them separately.

91. On analyzing the temporary prohibition on the circulation of *Le Grand Secret*, the European Court considered that the book was published in a context of wide-ranging debate in France around the right of the public to be informed as to Mitterrand's health, as well as his capacity to conduct the affairs of state in that condition.

92. The European Court considered that the injunction met the requirement of "necessity in a democratic society" because it considered that there had been a violation of French statutes in force on medical confidentiality. The Court made this consideration mindful that the injunction was issued one day after the book's publication and 10 days after Mitterrand's death. It found that in that context, the "temporary" restriction of the publisher's freedom of expression was proportional to the end of protecting the rights of Mitterrand and his family members.

93. As for the measure ordered as part of the decision on the merits, the European Court found that the context was different. In the opinion of the European Court, given the permanent nature of the second measure and the debate in French society on that issue, there was no longer a pressing social need to justify it. The European Court indicated that on October 23, 1996, nearly 40,000 copies of the book had already been distributed, apart from the circulation of the text on the Internet, which meant that the information was, in fact, not confidential. Accordingly, the Court found that as of October 23, 1996, the judicial prohibition on the circulation of *Le Grand Secret* was a violation of Article 10 of the European Convention. The European Court also indicated that the measure was disproportionate, considering that *Editions Plon* had to pay reparations for damages to the former president's family.

*Goussev and Marenk v. Finland (January 17, 2006)*⁵⁹

94. In November 1995, a demonstration took place right outside *Oyj Stockmann Abp*, a department store in Helsinki, to protest its sales policy on fur coats and its alleged participation in acts of cruelty to animals. At the same time, various pamphlets and posters were distributed in Helsinki criticizing the sale of fur coats and *Stockmann's* sales policy. In March 1996, *Stockmann* asked the police to investigate the distribution of the pamphlets and posters. The police carried out searches on May 31, 1996, at the home of Ms. Goussev, and on July 23, 1996, at the home of Mr. Marenk. The reason given for the measure was Goussev and Marenk's participation in a different kind of protest in May 1996. During the police action, however, 122 pamphlets related to *Stockmann* were seized. Goussev and Marenk brought judicial proceedings to have the order to seize the material lifted. Goussev and Marenk were subsequently indicted for public defamation. On May 15, 1997, the material seized was returned, and on June 18, 1997, Goussev and Marenk were acquitted by the local courts.

95. In its decision, the European Court focused on determining whether the seizure measure was "prescribed by law." It considered that Finland's legislative provisions on the matter were "problematic" for they were "not clear as to the circumstances in which the police could seize

⁵⁹ *Goussev and Marenk v. Finland*, No. 35083/97, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Goussev&sessionid=10185276&skin=hudoc-en>.

material which was potentially defamatory during a search which was being carried out for the purposes of finding evidence of another suspected crime.” The Court concluded that the seizure was “not prescribed by law” given that the relevant provisions were not formulated with sufficient precision so as to guarantee individuals the foreseeability required by Article 10 of the European Convention.

*Christian Democratic People’s Party (CDPP) v. Moldova (February 14, 2006)*⁶⁰

96. In late 2001, the government of Moldova made public its intent to make studying Russian a requirement for certain levels of primary education. That initiative was harshly criticized by groups opposed to the government, sparking a public debate in the country. On December 26, 2001, a group of CDPP legislators informed the Chişinău Municipal Council of their intent to hold a meeting on June 9, 2002, with their followers on this issue at the public plaza situated in front of the Government headquarters. According to the members of the CDPP, the applicable rules did not require the legislators to seek any authorization whatsoever to hold such meetings. On January 3, 2002, however, the Municipal Council characterized the meeting as a “demonstration,” and authorized the CDPP to hold it at a different public plaza. Subsequently, on January 23, 2002, the Municipal Council informed the Ministry of Justice of the discrepancies in the domestic legislation related to the case, and consequently decided on January 26, 2002, to suspend the meeting of the CDPP until the Parliament gave an official interpretation of the applicable legislation.

97. The CDPP held the meeting on January 9, 2002, in the original location. It also held meetings in the next few days; in every case it informed the Municipal Council, without seeking its authorization. On January 14, 2002, the Ministry of Justice issued a communication warning the CDPP that the meetings were held without the necessary authorization. The president of the CDPP answered noting that the meeting was not organized by the CDPP but by a group of its legislators, which meant that no such authorization was required. On January 18, 2002, the Minister of Justice decided to impose a one-month ban on the activities of the CDPP. Even though the prohibition was later nullified, on February 22, 2002, the Supreme Court of Justice of Moldova ruled that the protests were held illegally. Finally, on May 17, 2002, the Supreme Court found that given that the meetings were illegal, the sanction imposed on the CDPP was not disproportionate.

98. In its decision the European Court examined the allegations around the right to freedom of expression in the context of Article 11 (freedoms of assembly and association) of the European Convention. The Court indicated that protecting opinions and the freedom of expression is one of the objectives of the freedom of assembly and association provided for in Article 11. In addition, it indicated that while freedom of expression is important for everyone, it is especially important for one who is elected as a representative of the people. Accordingly, interference with the freedom of expression of an opposition legislator calls for the closest scrutiny of the restriction imposed. The Court also noted that only threats to political pluralism and democratic principles justify a prohibition on the activities of a political party. Considering that the meetings held publicly were peaceful in nature, the Court concluded that the temporary prohibition on the activities of the CDPP was at odds with Articles 10 and 11 of the European Convention. Moreover, it indicated that even a temporary prohibition can reasonably be expected to have a chilling effect on the exercise of freedom of expression by a political party.

⁶⁰ *Christian Democratic People’s Party v. Moldova*, No. 28793/02, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=28793/02&sessionid=10185276&skin=hudoc-en>.

*Dammann v. Switzerland (April 25, 2006)*⁶¹

99. On September 1, 1997, a building in Zurich was robbed in an incident widely reported in the Swiss media. On September 10, 1997, Victor Ferdinand Dammann, a journalist with the daily newspaper *Blick*, informed the administrative assistant to the Public Prosecutor's Office of the Canton of Zurich that he had a list with the names of persons detained because of the robbery. In addition, he asked her for information about the criminal records of those persons. Mr. Dammann received the information from the Public Ministry official and gave it to a police officer, without publishing it. The police officer informed the authorities of this, resulting in a criminal proceeding being brought against Mr. Dammann. On September 7, 1999, Mr. Dammann was found guilty of "instigating a violation of the duty of confidentiality associated with one's function" under Swiss criminal law, requiring that a 325 euro fine be paid.

100. In its decision, the European Court noted that the case did not have to do with a prohibition on a publication or the sanctions imposed subsequent to a publication, but rather to preparatory acts related to the journalist's investigation and search for information. The Court held that the restrictions on the freedom of press imposed in that phase were fully within its jurisdiction, and required of it the closest scrutiny.

101. The Court emphasized that while judicial records of persons are *a priori* worthy of protection, the information obtained by the victim was available in other media, such as the records of judicial decisions and press articles. The Court considered that the information request was of public interest and found that the finding of liability against Mr. Dammann was disproportionate and unnecessary in a democratic society. In this connection, it noted that the sanction imposed discouraged journalists from contributing to the discussion of matters of interest to society and therefore that it violated Article 10 of the European Convention.

D. Case-law of the Human Rights Committee of the United Nations

102. The International Covenant on Civil and Political Rights contains, at Articles 19 and 20, specific provisions related to the right to freedom of expression. They state as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

[...]

⁶¹ *Dammann v. Switzerland*, No 77551/01, ECHR, 2006. Available at: <http://cmiskp.echr.coe.int/portal.asp?sessionSimilar=9985862&skin=hudoc-en&action=similar&portal=hbkm&Item=1&similar=frenchjudgement>.

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

103. The Inter-American Court of Human Rights has compared Article 13 of the American Convention to Article 10 of the European Convention and Article 19 of the International Covenant on Civil and Political Rights, and has concluded that the guarantees of freedom of expression contained in the American Convention were designed to be the most generous and to reduce to the minimum restrictions on the free circulation of ideas.⁶²

104. In its Annual Report on 2004, the Office of the Special Rapporteur considered some of the communications resolved by the Human Rights Committee on freedom of expression, noting their usefulness as “a valuable source that can shed light on the interpretation of this right in the Inter-American system, and serve as a useful tool for legal practitioners and interested people.”⁶³

105. The following sections refer to cases that gave rise to decisions of the Human Rights Committee of the United Nations on issues related to the right to the freedom of expression from 2005.

106. The issues addressed in this section are discussed under the headings of defamation and public order. Those cases under “defamation” refer to situations in which legal actions were brought for *desacato* or defamation for allegedly harming the reputation of other persons through the exercise of the freedom of expression. The cases examined under the heading “public order” refer to situations in which the restrictions questioned have been imposed based on necessity for protecting public order.

1. Defamation

Communication No. 1128/2002: Angola (April 18, 2005)
*Rafael Marques de Morais*⁶⁴

107. On July 3, August 28, and October 13, 1999, Rafael Marques de Morais published several articles in the daily newspaper the *Ágora* in which he noted that the president of Angola was responsible “for the destruction of the country and the calamitous situation of State institutions” and “for the promotion of incompetence, embezzlement and corruption as political and social values.” On October 13, 1999, Marques de Morais, in a radio interview, reiterated the terms of the publications. On October 16, 1999, Marques de Morais was arrested at his home and taken to a police unit. Subsequently, on October 29, 1999, he was taken to the Viana prison in Luanda. On November 25, 1999, he was released on bail and was informed that he had been charged with “materially and continuously commit[ting] the crimes characteristic of defamation and slander against His Excellency the President of the Republic and the Attorney General of the Republic.” On March 31, 2000, Marques de Morais was found guilty of aggravated defamation and abuse of the

⁶² I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, Series A No. 5, Judgment of November 13, 1985, para. 50.

⁶³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. Volume III, Chapter III, para. 2.

⁶⁴ Communication No. 1128/2002: Angola. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.83.D.1128.2002.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.83.D.1128.2002.Sp?Opendocument).

press to cause injury, and sentenced to six months in prison, a fine to “discourage” similar behavior, and the payment of compensation to the president of Angola. On October 26, 2000, the verdict in respect of the crime of defamation was vacated, but the verdict in respect of abusive use of the press on the basis of injury was upheld; and the penalty of six months in prison was upheld, but its execution was suspended. Subsequently, on February 2, 2001, Marques de Morais was amnestied.

108. In the pertinent part of its decision, the Human Rights Committee examined whether the arrest, detention, and conviction of Marques de Morais “unlawfully restricted his right to freedom of expression, in violation of article 19 of the Covenant.” The Committee began its analysis reiterating that “the right to freedom of expression ... includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.” The Committee then considered that “even if it were assumed that his arrest and detention, or the restrictions on his travel, had a basis in Angolan law, and that these measures, as well as his conviction, pursued a legitimate aim, such as protecting the President’s rights and reputation or public order, it cannot be said that the restrictions were necessary to achieve one of these aims.... the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.” The Committee thus indicated that Article 19 of the Covenant was violated as “the severity of the sanctions imposed on the author cannot be considered as a proportionate measure to protect public order or the honour and the reputation of the President, a public figure who, as such, is subject to criticism and opposition.”

Communication No. 1180/2003: Serbia and Montenegro (January 23, 2006)
Zeljo Bodrožić⁶⁵

109. On January 11, 2002, Zeljo Bodrožić published a magazine article entitled “*Born for Reforms*” in which he criticized the political ties of several persons, among them Mr. Segrt, manager of a factory, member of the Socialist Party of Serbia, and leader, in 2001, of the party’s parliamentary group in the federal Yugoslav Parliament. On January 21, 2002, Segrt filed a criminal complaint for libel and insult against Bodrožić because of the text that was published. On May 14, 2002, Bodrožić was held liable and ordered to pay a fine and costs as perpetrator of criminal insult to the extent that the words used in the text were “not the expressions that would be used in serious criticism; on the contrary, these are generally accepted words that cause derision and belittling by the social environment,” rather than being a “literary language that would be appropriate for such a criticism.”

110. In its decision, the Human Rights Committee observed that it had to determine “whether the author’s conviction for criminal insult for the article published by him ... amounts to a breach of the right to freedom of expression.” The Committee observed that Serbia had not presented any justification showing that the prosecution and conviction of the author were “necessary for the protection of the rights and reputation of Mr. Segrt.” In this regard, the Committee concluded that the conviction and sentence imposed amounted to a violation of Article 19(2) of the Covenant, to the extent that “in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.” The Committee considered that Serbia was under an obligation to “to provide the author with an effective remedy, including quashing of the conviction, restitution of the fine ... as well as restitution of court expenses ..., and compensation.”

⁶⁵ Communication No. 1180/2003: Serbia. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.85.D.1180.2003.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.85.D.1180.2003.Sp?Opendocument).

2. Public Order

Communication No. 1022/2001: Belarus (November 23, 2005)
*Vladimir Velichkin*⁶⁶

111. On November 23, 2000, Vladimir Velichkin requested authorization from the Executive Committee of the City of Brest to organize a gathering outside a public library to celebrate, on December 10, 2000, the anniversary of the signing of the Universal Declaration of Human Rights. On December 4, 2000, its request to hold the gathering in downtown Brest was rejected, but it was authorized to be held at a stadium, which in an earlier decision of the Executive Committee had been declared the "permanent place" for organizing gatherings and assemblies. On December 10, 2000, Velichkin began to distribute flyers with the text of the Universal Declaration of Human Rights in downtown Brest. That same day a police agent approached Velichkin and asked that he stop distributing the flyers and go away. Velichkin refused. Subsequently, Velichkin was taken to the offices of the local police and detained there temporarily. On January 15, 2001, the Leninsky District Court of Brest imposed a fine on Velichkin for "conduct of a meeting [at] a place [not] authorized by the Brest City Executive Council" in violation of the provisions of the Law on Assemblies, Meetings, Street Processions, Demonstrations and Pickets.

112. In its decision, the Human Rights Committee held that the "action of the authorities, irrespective of its legal qualification, amounts to a de facto limitation of the author's rights under article 19, paragraph 2, of the Covenant." It considered that the State had not invoked any specific ground "to justify the restrictions imposed on the author's activity (whether or not it took place within the context of a meeting), that it is uncontested it did not pose a threat to public order, which would be necessary within the meaning of article 19, paragraph 3, of the Covenant."

Communication No. 1009/2001: Belarus (August 8, 2006)
*Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko*⁶⁷

113. On October 27, 2000, Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko were held liable and ordered to pay a fine for having distributed in public, on October 12, 2000, some pamphlets calling for a boycott of the legislative elections planned for October 15, 2000.

114. In its decision, the Committee considered that in order to carry out its analysis it should distinguish, on a preliminary basis, as follows: "Any situation in which voters are subject to intimidation and coercion must, however, be distinguished from a situation in which voters are encouraged to boycott an election without any form of intimidation."

115. The Committee noted that in the case, the State had argued only "that the restrictions of the authors' rights were provided by the law, without presenting any justification whatsoever for these restrictions." The Committee took into account that the law under which Messrs. Shchetko were convicted had subsequently been amended to bring it into line with the provisions of the Electoral Code, which only prohibited campaigning on election day. This, in the opinion of the Committee, "tends to underline the lack of reasonable justification for the restrictions set out in the above law."

⁶⁶ Communication No. 1022/2001: Belarus. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.85.D.1022.2001.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.85.D.1022.2001.Sp?Opendocument).

⁶⁷ Communication No. 1009/2001: Belarus. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.87.D.1009.2001.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.87.D.1009.2001.Sp?Opendocument).

116. Finally, the Committee considered that from the information provided one could not deduce "that the authors' acts in any way affected the possibility of voters freely to decide whether or not to participate in the general election in question." Accordingly, it concluded that the fine imposed was not justified by any of the criteria of Article 19(3).

Communication No. 968/2001: Republic of Korea (August 23, 2005)

*Kim Jong-Cheol*⁶⁸

117. On December 11, 1997, Kim Jong-Cheol published an article in a weekly that included information on opinion surveys done from July 31 to December 11, 1997, in the context of the presidential elections to be held December 18, 1997 in Korea. On July 16, 1998, Jong-Cheol was found liable and ordered to pay a fine for having violated the provisions of the Election Act that provided for criminal sanctions for anyone who disseminated the results of opinion polls during the 23 days prior to the elections, including the day of the vote.

118. In its analysis, the Committee affirmed that through his articles Jong-Cheol "was exercising his right to impart information and ideas within the meaning of article 19, paragraph 2, of the Covenant." Nonetheless, on examining the restriction imposed, it considered that "the underlying reasoning for such a restriction is based on the wish to provide the electorate with a limited period of reflection, during which they are insulated from considerations extraneous to the issues under contest in the elections, and that similar restrictions can be found in many jurisdictions. The Committee also notes the recent historical specificities of the democratic political processes of the State party, including those invoked by the State party. Under such circumstances, a law restricting the publication of opinion polls for a limited period in advance of an election does not seem *ipso facto* to fall outside the aims contemplated in article 19, paragraph 3."

119. As for the question as to the proportionality of the measure, the Committee considered that "while a cut-off date of 23 days prior to the election is unusually long, it need not pronounce itself on the compatibility per se of the cut-off date with article 19, paragraph 3, since the author's initial act of publishing previously unreported opinion polls took place within seven days of the election." In that sense, the Committee concluded that holding the author liable for that publication – even with a criminal sanction – could not be considered excessive and "cannot be considered excessive in the context of the conditions obtaining in the State party," and that therefore, there was no violation of Article 19 of the Covenant.

Communication No. 1157/2003: Australia (August 10, 2006)

*Patrick Coleman*⁶⁹

120. On December 20, 1998, Patrick Coleman gave a speech at a mall in Townsville, Queensland, without authorization from the City Council of Townsville. As a result, on March 3, 1999, Coleman was found guilty by a Court of Townsville and ordered to pay a fine plus 10 days in prison for delivery of an unlawful address. On August 29, 1999, after failing to pay the fine, Coleman was detained by the police and held for five days at the local police station.

121. On November 21, 2000, the Queensland Court of Appeal dismissed Coleman's appeal, indicating that "the bylaw served the legitimate end of preserving users of the small area of the pedestrian mall from being harangued by public addresses. The bylaw was also reasonably

⁶⁸ Communication No. 968/2001: Republic of Korea. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.84.D.968.2001.Sp?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.84.D.968.2001.Sp?Opendocument).

⁶⁹ Communication No. 1157/2003: Australia. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.87.D.1157.2003.Sp?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.87.D.1157.2003.Sp?Opendocument).

appropriate and adapted to serve that end as it covered "a very limited area, leaving plenty of opportunity for making such addresses in other suitable places."

122. The Committee began its analysis on the merits examining "whether the restriction was necessary for one of the purposes set out in article 19, paragraph 3, of the Covenant, including respect of the rights and reputations of others or public order (*ordre public*)." The Committee considered that Coleman had made a speech in public "on issues of public interest." It continued its reasoning indicating that "there was no suggestion that the author's address was either threatening, unduly disruptive or otherwise likely to jeopardise public order in the mall; indeed, police officers present, rather than seeking to curtail the author's address, allowed him to proceed while videotaping him. The author delivered his speech without a permit. For this, he was fined and, when he failed to pay the fine, he was held in custody for five days." The Committee concluded by noting that the State's response to the conduct was disproportionate and tantamount to a restriction on Coleman's freedom of expression incompatible with Article 19(3) of the Covenant.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. This Annual Report reveals a situation of considerable concern with respect to the state of freedom of expression in the Americas.

2. The assassination of 19 journalists throughout the region in 2006 and the dozens of threats and acts of physical aggression against journalists related to the exercise of their profession have become even more serious because of impunity. Furthermore, the continuous use of criminal trial proceedings against journalists for *desacato* (contempt) and defamation demonstrate, in the great majority of the cases, both State intolerance of criticism and the use of these to frustrate investigations of acts of corruption.

3. In addition to the more direct forms of violations mentioned above, there exists an increasing trend among the States to resort to more subtle methods to coerce the press, that include discriminatory allocation of official publicity, discrimination in the access to public information, removal of public and private media outlets as a result of governmental pressure and administrative inspections lead by governmental bodies with the objective of punishing media because of the opinions they express.

4. The latter situations, moreover, are given within a general context characterized by factors of a more structural nature. An example of this is the concentration of ownership of media outlets in various countries in the region, which frequently implicates that the public receives only one perspective of matters that concern them. This does not contribute to the effective vigilance of the freedom of expression and democracy, which entails pluralism and diversity. The Office of the Special Rapporteur stresses that the concentration and monopoly of ownership and control of media outlets, whether public or private, negatively affects pluralism which is a fundamental component of the freedom of expression.

5. Another factor that affects freedom of expression is the lack of appropriate legislation on community broadcasting in many countries in the region. The Office of the Special Rapporteur has indicated that community broadcasting "serve as outlets for expression that generally offer the poor better opportunities for access and participation".¹ In effect, the lack of adequate legislation regarding community radio broadcasting contributes to the present existence of radios that act on the margin of law, which cause, among others, interferences in the spectrum, judicial insecurity, and repressive, violent acts throughout the region.

6. Likewise, lack of access to information also constitutes a structural situation that affects the right to freedom of expression which creates a culture of secrecy and lack of transparency in a number of States in the region.

B. Recommendations to the Member States of the OAS

7. Taking into account the existing situation in reference to the freedom of thought and expression in the region, the Office of the Special Rapporteur for Freedom of Expression

¹ IACHR, *Annual Report 2002*, Volume II, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, Freedom of Expression and Poverty, para. 39.

recommends to the Member States of the OAS the following actions so as to keep moving forward with this cause:

1. Grant full attention to the situation of violence against journalists in the region and the impunity that has been shown in these cases. The states should take effective measures sanctioning the direct perpetrators and the masterminds of these crimes.
2. Eliminate the crime of *desacato* (contempt) and modify other connected norms from Criminal Codes and related laws, in order to prevent the application of criminal trial proceedings to protect honor and reputation when information of public interest is published.
3. Abstain from using state power to punish or reward media outlets and journalists with respect to their political opinions, with methods such as the discriminatory allocation of official advertising, administrative proceedings, pressure or any other indirect means tending to impede the communication and circulation of ideas and opinions.
4. Abstain from adopting actions affecting pluralism, and adopt legislative and other measures to guarantee its effectiveness.
5. Enact laws regarding community radio so that part of the spectrum is designated for community radio stations and the assignment of these frequencies takes into account democratic criteria that guarantee equality of opportunities for all individuals to access them, in conformity with Principle 12 of the Declaration of Principles on Freedom of Expression.
6. In reference to access to information, to continue enacting laws in line with international standards and implementing practices as part of transparency and anti corruption policies.
7. Bring their domestic laws into line with the standards established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression.
8. The Office of the Special Rapporteur thanks all the states that have worked with it this year, as well as the IACHR, its Executive Secretariat and the Secretary General of the OAS for their constant support.

ANNEXES

- 1. Complete text of Article 13 of the American Convention on Human Rights**
- 2. Declaration of Principles on Freedom of Expression**
- 3. Declaration of Chapultepec**
- 4. Resolution adopted by the General Assembly XXXV: Right to Freedom of Thought and Expression and the Importance of the Media**
- 5. Resolution adopted by the General Assembly XXXV: Access to Public Information: Strengthening Democracy**
- 6. International Mechanisms for Promoting Freedom of Expression: Joint Declaration**
- 7. Press Releases**

ARTICLE 13 OF THE AMERICAN CONVENTION ON HUMAN RIGHTSFreedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Declaration of Principles on Freedom of Expression

Approved by the Inter-American Commission on Human Rights
during its 108th regular session

PREAMBLE

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.
3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.
5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.
6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.
7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.
8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.
11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato* laws," restrict freedom of expression and the right to information.
12. Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.
13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

Declaration of Chapultepec

Adopted by the Hemisphere Conference on Free Speech
Mexico City March 11, 1994

Preamble

On the threshold of a new millennium, the Americas envision a future rooted in democracy. A political opening has taken hold. Citizens have a heightened awareness of their rights. More than at any time in our history regular elections, governments, parliaments, political parties, labor unions, associations and social groups of every kind reflect the hopes of our people.

In this environment of democratization, several developments engender optimism but also suggest prudence. Institutional crises, inequalities, backwardness, unresolvable frustrations, the search for easy solutions, failure to grasp the nature of democracy and special interest groups constantly threaten the advancements made. They also represent potential hurdles to further progress.

That is why we who share this hemisphere, from Alaska to Tierra del Fuego, must consolidate the prevailing public freedoms and human rights.

Democratic rule must be embodied in modern institutions that represent and respect the citizenry; it must also guide daily life. Democracy and freedom, inseparably paired, will flourish with strength and stability only if they take root in the men and women of our continent.

Without democracy and freedom, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

Freedom must not be restricted in the quest for any other goal. It stands alone, yet has multiple expressions; it belongs to citizens, not to government.

Because we share this conviction, because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: Freedom of expression and of the press, whatever the medium of communication. The exercise of democracy can neither exist nor be reproduced without these.

We, the signatories of this declaration, represent different backgrounds and dreams. We take pride in the plurality and diversity of our cultures, considering ourselves fortunate that they merge into the one element that nurtures their growth and creativity: Freedom of expression, the driving force and basis of mankind's fundamental rights.

A free society can thrive only through free expression and the exchange of ideas, the search for and the dissemination of information, the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast. Only by exercising these principles will it be possible to guarantee individuals and groups their right to receive impartial and timely information. Only through open discussion and unfettered information will it be possible to find answers to the great collective problems, to reach consensus, to have development benefit all sectors, to practice social justice and to advance the quest for equality. We therefore vehemently reject assertions which would define freedom and progress, freedom and order, freedom and stability, freedom and justice, freedom and the ability to govern as mutually exclusive values.

Without freedom there can be no true order, stability and justice. And without freedom of expression there can be no freedom. Freedom of expression and the seeking, dissemination and collection of information can be exercised only if freedom of the press exists.

We know that not every statement and item of information can find its way into the media. We know that the existence of press freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favors an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

Without an independent media, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

Wherever the media can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.

After a period when attempts were made to legitimize government control over news outlets, it is gratifying to be able to work together to defend freedom. Many men and women worldwide join us in this task. But opposition remains widespread. Our continents are no exception. There are still counties whose despotic governments abjure every freedom, particularly those freedoms related to expression. Criminals, terrorists and drug traffickers still threaten, attack and murder journalists.

But that is not the only way to harm a free press and free expression. The temptation to control and regulate has led to decisions that limit the independent action of the media, of journalists and of citizens who wish to seek and disseminate information and opinions.

Politicians who avow their faith in democracy are often intolerant of public criticism. Various social sectors assign to the press nonexistent flaws. Judges with limited vision order journalists to reveal sources that should remain in confidence. Overzealous officials deny citizens access to public information. Even the constitutions of some democratic countries contain elements of press restriction.

While defending a free press and rejecting outside interference, we also champion a press that is responsible and involved, a press aware of the obligations that the practice of freedom entails.

Principles

A free press enables societies to resolve their conflicts, promote their well-being and protect their liberty. No law or act of government may limit freedom of expression or of the press, whatever the medium.

Because we are fully conscious of this reality and accept it with the deepest conviction, and because of our firm commitment to freedom, we sign this declaration, whose principles follow.

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.

3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.
7. Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.
9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.
10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

The struggle for freedom of expression and of the press is not a one-day task; it is an ongoing commitment. It is fundamental to the survival of democracy and civilization in our hemisphere. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honoring our history and controlling our destiny. To these principles we are committed.

AG/RES. 2237 (XXXVI-O/06)**RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION
AND THE IMPORTANCE OF THE MEDIA**

(Approved at the fourth plenary session, held on June 6, 2006)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4548/06 add. 6 corr. 1);

TAKING INTO ACCOUNT resolution AG/RES. 2149 (XXXV-O/05), "Right to Freedom of Thought and Expression and the Importance of the Media";

RECALLING that the right to freedom of thought and expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, is recognized in Article IV of the American Declaration of the Rights and Duties of Man, Article 13 of the American Convention on Human Rights, the Inter-American Democratic Charter (including Article 4), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments and national constitutions, as well as United Nations General Assembly resolution 59 (I) and resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

RECALLING ALSO that Article IV of the American Declaration of the Rights and Duties of Man states that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever";

RECALLING FURTHER that Article 13 of the American Convention on Human Rights states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice;

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law;

RECALLING AS WELL the relevant volumes of the Annual Reports of the Inter-American Commission on Human Rights for 2004 and 2005, on freedom of expression;

TAKING INTO ACCOUNT resolutions 2004/42 and 2005/38, "The Right to Freedom of Opinion and Expression," of the United Nations Commission on Human Rights; and

RECALLING the usefulness of the studies and contributions approved by UNESCO regarding the contribution of the media to strengthening peace, tolerance, and international understanding, to the promotion of human rights, and to countering racism and incitement to war,

RESOLVES:

1. To reaffirm the right to freedom of expression and to call upon member states to respect and ensure respect for this right, in accordance with the international human rights instruments to which they are party, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights, *inter alia*.

2. To reaffirm that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy.

3. To urge member states to safeguard, within the framework of the international instruments to which they are party, respect for freedom of expression in the media, including radio and television, and, in particular, respect for the editorial independence and freedom-of the media.

4. To urge those member states that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the American Convention on Human Rights.

5. To reaffirm that the media are fundamental for democracy and for the promotion of pluralism, tolerance, and freedom of thought and expression, and to facilitate dialogue and debate, free and open to all segments of society, without discrimination of any kind.

6. To urge member states to promote a pluralistic approach to information and multiple points of view by fostering full exercise of freedom of expression and thought, access to media, and diversity in the ownership of media outlets and sources of information, through, *inter alia*, transparent licensing systems and, as appropriate, effective regulations to prevent the undue concentration of media ownership.

7. To urge member states to consider the importance of including, in their domestic legal systems, rules about the establishment of alternative or community media and safeguards to ensure that they are able to operate independently, so as to broaden the dissemination of information and opinions, thereby strengthening freedom of expression.

8. To call upon member states to adopt all necessary measures to prevent violations of the right to freedom of thought and expression and to create the necessary conditions for that purpose, including ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

9. To urge member states to review their procedures, practices, and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health or morals.

10. To recognize the valuable contribution of information and communication technologies, such as the Internet, to the exercise of the right to freedom of expression and to the ability of persons to seek, receive, and impart information, as well the contributions they can make to the fight against racism, racial discrimination, xenophobia, and related and contemporary forms of intolerance, and to the prevention of human rights abuses.

11. To request the Inter-American Commission on Human Rights once again to follow up on and deepen its study of the issues addressed in the relevant volumes of its 2004 and 2005 Annual Reports on freedom of expression, on the basis, *inter alia*, of the inputs on the subject that it receives from member states.

12. To reiterate to the Permanent Council that, through its Committee on Juridical and Political Affairs, it is to hold a special two-day meeting to delve further into the existing international jurisprudence on the subject covered in Article 13 of the American Convention on Human Rights and include the following items on the agenda of that meeting:

- i. Public demonstrations as exercise of the right to freedom of expression; and
- ii. The subject of Article 11 of the American Convention on Human Rights.

Invitees to the aforementioned meeting will include members of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, including the Special Rapporteur on Freedom of Expression, and experts from the member states, all for the purpose of sharing their experiences with these issues.

13. To request the Permanent Council to report to the General Assembly at its thirty-seventh regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.

AG/RES. 2252 (XXXVI-O/06)**ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY**

(Adopted at the fourth plenary session, held on June 6, 2006)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4548/06 add. 6 corr. 1), on the status of implementation of resolution AG/RES. 2121 (XXXV-O/05), "Access to Public Information: Strengthening Democracy";

CONSIDERING that Article 13 of the American Convention on Human Rights provides that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice";

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the right "to seek, receive and impart information and ideas through any media and regardless of frontiers";

RECALLING that the Plan of Action of the Third Summit of the Americas, held in Quebec City in 2001, indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information of all citizens;

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights, and, in that connection, that they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

BEARING IN MIND the adoption of the "Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas" [AG/DEC. 31 (XXXIII-O/03)], as well as resolution AG/RES. 1960 (XXXIII-O/03), "Program for Democratic Governance in the Americas";

CONSIDERING that the Inter-American Agency for Cooperation and Development (IACD) has been identifying and facilitating access by member states to e-government practices that facilitate information and communication technology applications in governmental processes;

CONSIDERING ALSO that the Office for the Promotion of Democracy (OPD) has been providing support to member states in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee (CJI) on this issue, in particular the document "Right to Information: Access to and Protection of Information and Personal Data in Electronic Format" (CJI/doc.25/00 rev. 1);

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING ALSO that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights; and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, and the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, adopted in 2005;

TAKING NOTE ALSO of the reports of the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights on the situation of access to information in the Hemisphere for 2003, 2004, and 2005;

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well as the Regional Forum on Access to Public Information: Challenges to Freedom of Information in the Hemisphere, held in Lima, Peru, on January 20 and 21, 2004;

RECALLING ALSO that the media, the private sector, and political parties can likewise play an important role in facilitating access by citizens to information held by the states; and

TAKING INTO CONSIDERATION the report of the Chair of the Permanent Council on the implementation of resolution AG/RES. 2121 (XXXV-O/05), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

1. To reaffirm that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.

2. To urge member states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.

3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.

4. Also to encourage member states, when preparing and/or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society with the opportunity to

participate in that process; and to urge them, when drafting and/or adapting their national legislation, to take into account clear and transparent exception criteria.

5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to facilitate access to such information through electronic or any other means that will allow ready access to public information.

6. To instruct the Special Rapporteurship on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) and the Department for the Promotion of Good Governance:

- a. To support the efforts of member states that so request in drafting legislation and developing mechanisms in the area of access to public information and citizen participation; and
- b. To assist the Permanent Council in the work of the Committee on Juridical and Political Affairs (CAJP) mentioned in operative paragraph 13.a below.

7. To instruct the Department of International Legal Affairs:

- a. To prepare a study with recommendations on the subject of access to information and protection of personal data, on the basis of the inputs from the organs of the inter-American system and from civil society, as well as the preparatory work conducted during the special meeting of the CAJP on the subject; and
- b. To assist the Permanent Council in the work of the CAJP mentioned in operative paragraph 13.a below.

8. To request the Inter-American Juridical Committee to continue to carry out comparative law studies on the protection of personal data, and to update the study "Right to Information: Access to and Protection of Information and Personal Data in Electronic Format," of 2000, taking into account the diverse viewpoints on the subject, in connection with which it will draw up and distribute to the member states, with due support from the Secretariat, a new questionnaire on the topic.

9. To instruct the Special Rapporteur for Freedom of Expression to continue to include in the Annual Report of the IACHR a report on the situation regarding access to public information in the region.

10. To instruct the IACHR to conduct a study on how the state can guarantee all citizens the freedom to seek, receive, and impart public information on the basis of the principle of freedom of expression.

11. To instruct the Inter-American Agency for Cooperation and Development (IACD) to identify new resources to support member states' efforts to facilitate access to public information.

12. To take note of the report of the special meeting of the CAJP, with the participation of experts from the states and civil society representatives, to promote, impart, and exchange experiences and knowledge with respect to access to public information and its relationship with citizen participation, held on April 28, 2006 (CP/CAJP-2320/05 add. 2).

13. To recommend to the Permanent Council that it:
 - a. Request the CAJP to prepare a basic document on best practices and the development of common approaches or guidelines for increasing access to public information, on the basis of the report of the aforementioned special meeting and taking into account the report of the Chair of the Permanent Council on the implementation of resolution AG/RES. 2121 (XXXV-O/05), as well as inputs from the member state delegations, the Special Rapporteurship on Freedom of Expression of the IACHR, the Inter-American Juridical Committee, the Department of International Legal Affairs, and the interested organs, agencies, and entities of the Organization, as well as from civil society representatives; and
 - b. Request the General Secretariat to promote seminars, workshops, or other events designed to promote access to public information by citizens and government administrations.

14. To request the Permanent Council to report to the General Assembly at its thirty-seventh regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.

International Mechanisms for Promoting Freedom of Expression

JOINT DECLARATION

by

the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression

Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression;

Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004 and 21 December 2005;

Stressing the importance of respecting the right of journalists to publish information provided to them on a confidential basis;

Emphasising the importance of the recent ruling of the Inter-American Court of Human Rights in the case of Marcel Claude Reyes and others v. Chile, which confirmed the existence of a right to access information held by States;

Aware of the adoption by the Global Transparency Initiative, a civil society movement, of the Transparency Charter for International Financial Institutions: Claiming Our Right to Know, calling for greater openness by multilateral development banks and other international financial bodies;

Welcoming the progressive amendments that a number of international financial institutions have made to their information disclosure policies in recent years;

Noting that international public bodies and inter-governmental organisations, like their national counterparts, have an obligation to be transparent and to provide access to the information they hold;

Cognisant of greater public awareness of the tensions that may result from certain types of expression due to different cultural and religious values, in particular prompted by the Danish cartoons incident;

Concerned about calls from certain quarters to resolve the tensions noted above by reversing hitherto well established standards of respect for freedom of expression;

Reaffirming that freedom of expression and a free media can play an important positive role in addressing social tensions and in promoting a culture of tolerance;

Recalling that attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and the lack of such a mechanism in the Asia-Pacific region;

Adopt, on 19 December 2006, the following Declaration:

On Publishing Confidential Information

- Journalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.

Openness of National and International Public Bodies

- Public bodies, whether national or international, hold information not for themselves but on behalf of the public and they should, subject only to limited exceptions, provide access to that information.
- International public bodies and inter-governmental organisations should adopt binding policies recognising the public's right to access the information they hold. Such policies should provide for the proactive disclosure of key information, as well as the right to receive information upon request.
- Exceptions to the right of access should be set out clearly in these policies and access should be granted unless (a) disclosure would cause serious harm to a protected interest and (b) this harm outweighs the public interest in accessing the information.
- Individuals should have the right to submit a complaint to an independent body alleging a failure properly to apply an information disclosure policy, and that body should have the power to consider such complaints and to provide redress where warranted.

Freedom of Expression and Cultural/Religious Tensions

- The exercise of freedom of expression and a free and diverse media play a very important role in promoting tolerance, diffusing tensions and providing a forum for the peaceful resolution of differences. High profile instances of the media and others exacerbating social tensions tend to obscure this fact.
- Governments should refrain from introducing legislation which makes it an offence simply to exacerbate social tensions. Although it is legitimate to sanction advocacy that constitutes incitement to hatred, it is not legitimate to prohibit merely offensive speech. Most countries already have excessive or at least sufficient 'hate speech' legislation. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance.
- Professional and self-regulatory bodies have played an important role in fostering greater awareness about how to report on diversity and to address difficult and sometimes controversial subjects, including intercultural dialogue and contentious issues of a moral, artistic, religious or other nature. An enabling environment should be provided to facilitate the voluntary development of self-regulatory mechanisms such as press councils, professional ethical associations and media ombudspersons.
- The mandates of public service broadcasters should explicitly require them to treat matters of controversy in a sensitive and balanced fashion, and to carry programming which is aimed at promoting tolerance and understanding of difference.

Impunity in Cases of Attacks Against Journalists

- Intimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.
- States should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.

Ambeyi Ligabo
UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti
OSCE Representative on Freedom of the Media

Ignacio J. Alvarez
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula
ACHPR Special Rapporteur on Freedom of Expression

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES ITS
APPROVAL OF THE ELIMINATION OF DESACATO LAWS IN GUATEMALA**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) would like to express its satisfaction as to the decision of the Constitutional Court of Guatemala to definitively eliminate the crime of "desacato" (contempt). The Rapporteur's Office considers this measure a decisive step towards the strengthening of freedom of expression in the hemisphere.

On February 1, 2006, the Constitutional Court of Guatemala decided to declare the unconstitutionality of the crime of "desacato" regulated by articles 411, 412, and 413 of the Guatemalan Penal Code. These articles established prison sentences of six months to three years for the crime. In its decision, the highest court in Guatemala adopted the recommendations of the Rapporteur's Office and the IACHR, which insisted in the elimination of "desacato" laws as contradictory to democratic principles due to their bestowal of a higher level of protection upon public officials, as they inhibit criticism and restrict public debate.

"Desacato" or contempt, laws, found in various penal codes throughout the hemisphere, criminalize offensive expression directed at public officials. Since its inception, the Rapporteur's Office has warned that "desacato" laws can become a tool to silence democratic debate over public policy. In accordance with Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR, "public officials are subject to greater scrutiny by society" and these laws "restrict freedom of expression and the right to information".

The Rapporteur's Office thus expresses its approval of the decision adopted by Guatemala, as it represents a strong step forward for the protection of freedom of expression. The Office exhorts Guatemalan authorities to take the necessary steps towards implementing the decision of the Constitutional Court.

Washington, D.C., February 3, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS RECENT
ATTACKS AGAINST MEXICAN PRESS**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the recent attacks and acts of intimidation against the exercise of the right to freedom of expression in Mexico.

Based on information received by the Rapporteurship, on February 6, 2006 two masked individuals entered the editing room of the newspaper *El Mañana*, and proceeded to shoot and throw a grenade, thereby seriously wounding the journalist Jaime Orozco Trey. The Office of the Special Rapporteur is concerned by this latest attack in Mexico, the latest in a series of aggressions and threats against journalists and mass means of communication outlets, that have been reported to the Rapporteurship in the past few months.

The Office of the Special Rapporteur condemns these attacks which constitute serious violations to the right of freedom of expression. Their objective is to silence the press by challenging the right of citizens to receive information. As stated in Principle 9 of the Declaration of Principles on Freedom of Expression, "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression". The Office of the Special Rapporteur reiterates that freedom of expression is essential for the consolidation of a democratic system and is indispensable for the development of public opinion. These are two crucial components to the achievement of a context where social communicators can completely fulfill their duty of informing society.

The Rapporteurship views positively the fact that these types of acts have been condemned by the highest governmental offices announcing efforts for their full investigation, such as the creation of the *Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas* ("Special Prosecutor's Office for the Attention of Crimes Against Journalists"), on February 14, 2006. The Office encourages the continuation of these initiatives and recommends that local authorities implement measures to prevent the occurrence of similar acts in the future.

Washington, D.C., February 16, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES
ASSASSINATION IN VENEZUELA**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS deplores the assassination of Mr. Jorge Aguirre, photographer for the daily newspaper *El Mundo*, and urges the Venezuelan authorities to investigate this incident swiftly and effectively, and to ensure that the persons responsible be duly punished.

According to the information received, Mr. Aguirre was assassinated yesterday afternoon in a central area of Caracas, while covering protests sparked by the killings of Mr. Miguel Rivas and the brothers Bryan, Kevin, and Jason Faddoul, whose corpses recently appeared several weeks after they had been kidnapped. The assassination of Mr. Aguirre was committed by a person riding on a motorcycle who shot at him in public, while he was inside a car. Before dying, Mr. Aguirre was able to photograph the person who shot him.

Under the American Convention on Human Rights, the states have the duty to prevent, investigate, and punish all violations of rights recognized therein. A meticulous, effective, and swift investigation into the crimes against journalists and others who work with the media is essential to send a firm message that the State does not tolerate such grave violations of the freedom of expression, and to ensure journalists that they can continue to do their work safely.

Principle 9 of the Declaration of Principles on Freedom of Expression notes 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."

Mr. Ignacio J. Alvarez, recently chosen as Special Rapporteur for Freedom of Expression, stated, "our Hemisphere is one the most dangerous regions in the world for the exercise of journalism." He added: "the assassination of journalists is certainly the most brutal form of curtailing the freedom of expression. Impunity with respect to such cases, which is a trend in our region, is an aggravating factor that facilitates the continuation of killings of journalists."

In coming months the Office of the Special Rapporteur will publish a detailed study on the assassinations of journalists in recent years in the region.

Washington, D.C., April 6, 2006.

**OFFICE OF THE RAPPORTEUR FOR FREEDOM OF EXPRESSION VOICES ITS CONCERN OVER THE
DISAPPEARANCE OF JOURNALIST IN PARAGUAY**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States expresses serious concern over the disappearance of Mr. Enrique Galeano, a journalist with Radio Azotey and editor of the magazine *Aló Vecino*, in the department of Concepción, and urges the Paraguayan authorities to swiftly and effectively investigate to determine his whereabouts.

According to the information received by the Office of the Special Rapporteur today, Mr. Galeano, who had received death threats because of his work as a journalist, went on February 4, 2006 to Horqueta, a locality near his residence, where he was last seen. The Office of the Rapporteur has also been informed that the highest-level government authorities have condemned this occurrence, and that the investigation is going forward.

Under the American Convention on Human Rights, the states have the duty to prevent, investigate, and prosecute and punish any violation of the rights recognized in the Convention. A meticulous, effective, and swift investigation into crimes against journalists and other media workers is essential to send a firm message to the effect that the State does not tolerate such grave violations of the right to freedom of expression and to ensure that journalists can continue to do their work safely.

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

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "it is especially important that in crimes against journalists, investigations look not only into the direct perpetrators, but also the masterminds, and any other persons whose collaboration and tolerance made it possible for such crimes to be committed."

Washington, D.C., April 12, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES
SATISFACTION WITH LEGISLATIVE PROCESSES IN MEXICO**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its satisfaction with legislative advances under way in the federal government of Mexico aimed at ensuring that journalists can preserve the confidentiality of their sources and at removing the crimes of defamation, slander, and libel, from the Federal Criminal Code.

According to the information received, on April 18, 2006, the Mexican Senate approved a series of amendments to the Federal Criminal Code and to the Federal Code of Criminal Procedure which have the effect of recognizing the right of journalists to keep confidential "the names or the recordings, telephone records, notes, documentary and digital files, and anything that directly or indirectly may lead to the identification of those persons who, because of their journalistic work, may provide confidential information, on which they base any publication or communication." Such a reform, approved in the Senate, is awaiting presidential enactment in order to enter into force.

These provisions are compatible with inter-American standards on freedom of expression. In this respect, Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR states: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

Furthermore, the Office learned that on April 18, 2006, the Chamber of Deputies of the Federal Congress approved a series of amendments to the Federal Criminal Code and to the Federal Civil Code repealing the criminal law provisions governing defamation, slander, and libel, in the federal legislation, and adopting, instead, civil sanctions to protect the right to honor and reputation. It was reported that the project approved is to be forwarded to the Senate, where legislative debate will continue.

Those provisions are also compatibles with international developments in this area. Principle 10 of the Declaration of Principles on Freedom of Expression provides in part: "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."

Ignacio Álvarez, the Special Rapporteur for Freedom of Expression, stated that he values these legislative steps, noting that "they will represent a substantive gain for protection of the freedom of expression in Mexico, and an example for the hemisphere." He emphasized that "both the right to protect journalistic sources and elimination of criminal sanctions with respect to offenses to honor and reputation are very important gains for proper observance of the right to freedom of expression. The right to honor and reputation must be protected through civil sanctions and by means of the right to rectification."

Washington, D.C., April 20, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES HIS
CONCERN OVER THE SITUATION OF PERUVIAN JOURNALIST**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses concern over the situation of journalist Marilú Gambini, of the Confidential program on the television network Canal 31 ("Channel 31"), who had to leave Peru with her family due to death threats against her. The Rapporteurship urges the Peruvian authorities to investigate the facts swiftly and effectively, to ensure that the persons responsible are duly punished, and to guarantee the conditions necessary for Ms. Gambini to be able to return to Peru and continuing practicing her profession as a journalist.

According to the information received by the Office, journalist Marilú Gambini was investigating drug-trafficking in the city of Chimbote, as a result of which she was constantly receiving death threats directed against her and her family. It was indicated that she had reported these facts to the Office of the Prosecutor in Chimbote, where she also sought protection. On March 28, 2006, Ms. Gambini received a new death threat, by phone, which triggered her decision to leave Peru with her children on April 10, 2006.

The Office of the Rapporteur emphasizes that threats aimed at silencing journalists constitute a serious form of coercion aimed at clamping down on their right to freedom of expression, and also violate the right of the community at large to receive information. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR points out: "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."

Ignacio Álvarez, Special Rapporteur for Freedom of Expression, stated: "the States are under an international obligation to duly investigate the threats received by journalists, so as to prevent violations of their rights to life and personal integrity, and to ensure that they can do their work, as journalists, without any public or private interference."

Washington, D.C., April 20, 2006.

**ANNUAL REPORT: OFFICE OF THE SPECIAL RAPPORTEUR CALLS ATTENTION TO THE INCREASE
IN THREATS AND JUDICIAL HARASSMENT OF JOURNALISTS AND OTHER MEDIA WORKERS IN
2005**

In its evaluation of the situation of freedom of expression for 2005, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) called attention to an increase in acts of intimidation and threats, as well as judicial harassment, of journalists and other media workers in the hemisphere. On April 27, 2006, the IACHR submitted its Annual Report to the Committee on Juridical and Political Affairs of the Organization of American States (OAS); the second volume includes the Report of the Office of the Special Rapporteur for Freedom of Expression.

This is the eighth report prepared by the Office of the Rapporteur since it was established in the IACHR in 1998. It covers the activities carried out from January to December 2005, during which time the Office was under the responsibility and direction of then-Special Rapporteur for Freedom of Expression Eduardo Bertoni.

In addition to an evaluation of the situation of freedom of expression in the hemisphere (Chapter II), the report of the Office of the Rapporteur includes a summary of the case-law on freedom of expression of the African Commission on Human and People's Rights (Chapter III). The report also includes important doctrinal contributions in its chapters on the exercise of freedom of expression and its relationship to public demonstrations (Chapter V), and opinion polls and exit polls (Chapter VI). In addition, and as is its custom every other year, the Office of the Rapporteur presented its report on access to public information in the hemisphere. (Chapter IV).

Washington, D.C., April 28, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CALLS FOR RELEASE OF JOURNALISTS DETAINED AND FOR END TO JUDICIAL HARASSMENT

On the occasion of the celebration of World Press Freedom Day, May 3rd, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) calls on Cuba to release the 22 journalists it is holding prisoner, and also calls for an end to judicial harassment of journalists in several countries of the region.

According to information compiled by the Office of the Special Rapporteur, at this time 22 journalists are being held prisoner in Cuba. In addition, in 2005 and the first four months of 2006 proceedings were initiated against at least 50 journalists in 15 countries of the region, for defamation, libel, or slander; for "contempt" (desacato) of public officials (under laws that grant special protection to the honor and reputation of public officials); and for not revealing sources. In addition, in some countries journalists are subject to administrative or judicial proceedings for tax matters, injunctive judicial measures (such as embargos on goods or prohibitions on leaving the country), and disproportionate civil penalties.

As regards criminal proceedings against journalists, whether for defamation, libel, or slander, or for desacato, the Office of the Special Rapporteur notes that protection of the honor and reputation of public officials should be guaranteed through the enforcement of civil penalties and the right of rectification. Ignacio J. Álvarez, Special Rapporteur for Freedom of Expression, indicated that in such cases "a sanction involving the deprivation of liberty is disproportionate insofar as in a democratic society public officials and persons who voluntarily interject themselves in matters of public interest are exposed to a greater level of criticism that makes possible a broader public debate with respect to their performance."

According to Principle 10 of the Declaration of Principles on Freedom of Expression: "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." At the same time, Principle 11 notes: "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".

The Office of the Special Rapporteur observes that although in most criminal proceedings against journalists they may not, in practice, end up being deprived of liberty, the common purpose of such proceedings is to intimidate them, both by the mere existence of the proceeding and the threat of imprisonment. In addition, such criminal proceedings are often intended to intimidate other journalists, in an effort to have them engage in self-censorship.

Mindful of the situation in the region, the Office of the Special Rapporteur for Freedom of Expression recommends to the Member States of the OAS that: (1) desacato laws be repealed in those countries in which they remain in force; (2) criminal sanctions for slander, defamation, and libel be eliminated, at least with respect to public officials and persons who voluntarily become involved in matters of public interest; and (3) that the right to honor and reputation be protected through the right of rectification and by means of proportionate civil sanctions issued in proceedings

that take into account the standards set forth in Principle 10 of the Declaration of Principles on Freedom of Expression.

The Special Rapporteur, Ignacio J. Álvarez, added that “journalists provide a service fundamental to democracy, and have the right to perform their work without having to be concerned that they may be subject to imprisonment because of it.”

The Office of the Special Rapporteur for Freedom of Expression offers its cooperation and technical assistance to the States to go forward in this area.

Panama City, May 3, 2006.

JOINT DECLARATION: WORLD PRESS FREEDOM DAY

On this occasion of the World Press Freedom Day, the Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo; the Special Rapporteur for freedom of expression of the Organization of American States, Mr. Ignacio Alvarez; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, Mr. Miklos Haraszti; and the Special Rapporteur on Freedom of Expression of the African Commission on Human and People's Rights, Ms. Faith Pansy Tlakula, wish to commend the vital role the Press has been playing for the progression of democracy and human rights.

Journalists are indispensable for disseminating information, promoting debate and facilitating dialogue, activities that constitute the foundation of a democratic society based on pluralistic approach, where individuals and groups are encouraged to exchange information and express opinion freely. In this context, maintaining and nourishing media diversity, based on mutual respect and tolerance amongst different groups, are essential.

This year's World Press Freedom Day also sheds light on the link between freedom of the Press and poverty eradication. Free and independent media is a key to combat poverty, as they serve as a medium to ensure unhindered circulation of ideas, to promote education and awareness thus upgrading opportunities. A special effort needs to be made to bring these benefits to the less developed countries and the poor in general, as they should be the prime beneficiaries of unprecedented opportunities the global information society offers.

It is, however, a grave sorrow to remind ourselves that in the year 2005 the world recorded the highest number of journalists and other media professionals, killed or injured on the line of duty. Attacks, intimidation and harassment against journalists and media professionals regrettably became every-day events in some parts of the world. It is noted with grave concern that violence against the media and journalists often occur with impunity. Criminal sanctions against persons and media who express critical opinions continue, including in the forms of criminal defamation or libel suits. Media ownership concentration, censorship, harassment through judicial or administrative measures, such as discriminatory application of media accreditation procedure or entry permit to a country, continue to be reported. With a rapid development in technology, Internet has become one of the main means of disseminating information and exchanging opinions, but at the same time, more and more the freedom of the Internet is targeted.

The four special rapporteurs would like to take this opportunity to call upon all governments to combat impunity with regard to violence against journalists and media personnel, by bringing to justice those responsible for attacks against them, and by taking measures that enables journalists and media personnel to continue providing information freely and independently. All journalists detained because of their media-related activities should be released immediately.

In this context, it is parallel obligation of all to avoid the use of discriminatory forms of expression, such as hate speech. True freedom of expression and the press is firmly based on the culture of pluralism, diversity, tolerance and mutual understanding.

Ambeyi Ligabo

Special Rapporteur of the UN on the Promotion and Protection of the Right to Freedom of Opinion and Expression

Miklos Haraszi
Representative on Freedom of the Media of the OSCE

Faith Pansy Tlakula
Special Rapporteur on Freedom of Expression of the ACHPR

Ignacio Alvarez
Special Rapporteur for Freedom of Expression of the OAS

Washington, D.C., May 3, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION RECOMMENDS TO THE ECUADORIAN STATE THAT IT DEROGATE ITS LEGISLATION DEFINING THE CRIMINAL OFFENSE OF DESACATO

On finalizing a working visit to the Republic of Ecuador, carried out from May 31 to June 2, 2006, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Ignacio J. Álvarez, recommended to the appropriate authorities that they repeal legislation that provides for the crimes of desacato, found in Articles 128, 230, 231, 232, and 233 of the Criminal Code of Ecuador.

“Desacato” statutes accord special protection to the honor and reputation of public officials. The IACHR has noted that such laws are incompatible with the right to freedom of expression provided for in Article 13 of the American Convention on Human Rights, because in a democratic society, public officials should be exposed to a greater level of criticism, so as to facilitate broader public debate with respect to their performance in the conduct of public affairs.

Principle 11 of the Declaration of Principles on Freedom of Expression notes 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.”

The Office of the Special Rapporteur noted that in the past years, nine countries of the region have derogated their desacato laws, which reveals a tendency that should be taken into account by the authorities of those states that still have such laws on the books. The Office also emphasized that protecting the honor and reputation of public officials should be guaranteed through proportionate civil sanctions and the right to rectification.

During this visit the Special Rapporteur met with high-level authorities of the Ministry of Foreign Affairs, the National Congress, the Judicial branch, and the Office of the Human Rights Ombudsman. He also held meetings with journalists, representatives of the media, and civil society. The Special Rapporteur thanked the authorities of the Ecuadorian State for the wide-ranging collaboration provided during this visit, and reiterated that the Office of the Special Rapporteur for Freedom of Expression is ready and willing to cooperate with and provide technical assistance to the states in initiatives related to legislative advances related to the freedom of expression.

Quito, June 2, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION RECOMMENDS TO THE
REPUBLIC OF CUBA THE ELIMINATION OF RESTRICTIONS ON INTERNET ACCESS**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS has been informed of the critical state of health of the director of the Cubanacán Press news agency, Mr. Guillermo Fariñas, who has been on hunger strike since January 31, 2006, in protest against the lack of free access to the Internet in Cuba.

As emphasized by the Office of the Special Rapporteur, access to the Internet can strengthen democratic systems, contribute to economic development in the countries of the region, and uphold the full exercise of freedom of expression.

The Office of the Special Rapporteur observes with concern that the Cuban legal system severely restricts the population's access to the Internet. The source of said legal restrictions lies in the Decree No. 209/96, "Access to the World Computer Network from Cuba", which establishes a number of limitations to the capacity of receiving and imparting information through the Internet, which are incompatible with the right to freedom of expression.

It is important to note that Principle 2 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that "[a]ll people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition".

In this same vein, in December of 2005, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression affirmed in a Joint Declaration that "the right to freedom of expression imposes an obligation on all States to devote adequate resources to promote universal access to the Internet" and that "restrictions on Internet content, whether they apply to the dissemination or to the receipt of information, should only be imposed in strict conformity with the guarantee of freedom of expression".

The Office of the Special Rapporteur for Freedom of Expression recommends to the Republic of Cuba the elimination of restrictions on Internet access from its legislation.

Washington, D.C., June 19, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
ASSASSINATION OF JOURNALIST IN VENEZUELA**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the assassination of Mr. José Joaquín Tovar, director of the weekly *Ahora*. The Rapporteurship urges Venezuelan authorities to investigate this incident swiftly and effectively and to ensure that the persons responsible are duly punished.

According to the information received by the Rapporteurship, Mr. Tovar's body was found with 11 gunshot wounds on June 16, 2006 at the entrance of the parking lot of the building where the weekly *Ahora* operates in the city of Caracas. As director of the weekly *Ahora*, Mr. Tovar wrote editorial columns where he denounced acts of corruption.

Principle 9 of the Declaration of Principles on Freedom of Expression notes 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".

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. A meticulous, effective, and swift investigation into the crimes against journalists and others who work with the media is essential to send a firm message that the State does not tolerate such grave violations of the right to freedom of expression, and to assure journalists that they can continue to do their work safely.

Washington, D.C., June 19, 2006.

**THE STATE OF FREEDOM OF EXPRESSION IN THE REGION
(APRIL- JUNE 2006)**

As the April - June 2006 trimester has concluded, the Office of the Special Rapporteur for Freedom of Expression expresses its concern about the murders of three journalists, the more than 50 episodes of physical aggression against social communicators, the criminal proceedings taking place against journalists and the regressive legislative initiatives in the area of freedom of expression. Additionally, the Rapporteurship expresses concern about the occurrence of a number of other acts that are also aimed at silencing journalists and communications media that are critical of public officials and governments. These restrictions include: discriminatory allocation of official publicity, prior censorship, warnings by high-ranking officials, terminating journalists' employment, acts of espionage against journalists, and discrimination in granting access to official acts.

In terms of positive developments, the Office of the Special Rapporteur notes the legislative advances taking place in Mexico in relation to the decriminalization of crimes against honor, and in Uruguay, with the Draft Law on Access to Public Information and Constitutional Review (Ley de Acceso a la Información Pública y Amparo Informativo), presented before Congress. The Rapporteurship also considers positive some advances made in criminal trials related to murders of journalists.

This trimestral report, which is based on the Office of the Special Rapporteur's daily monitoring of the state of freedom of expression in the region, has the objective of highlighting in a timely manner the problems and the advances with respect to freedom of expression in the region and trying to encourage the adoption of corrective measures that could bring about fuller respect for the right to freedom of thought and expression. Based on the information received during the past trimester, which is detailed in the annex to this press release, the Rapporteurship observes the following:

Argentina

The Office of the Special Rapporteur notes that during this trimester there have been numerous acts of aggression and threats against journalists, mostly perpetrated by public officials. Moreover, the Rapporteurship is concerned by the information received on different means of indirectly restricting freedom of expression, which include: discriminatory allocation of official publicity, warnings by high-ranking officials against journalists and communications media, charges of spying on journalists' e-mails, terminations of employment and restrictions on some media and journalists for the coverage of acts of high-ranking government officials.

Bolivia

The information received by the Rapporteurship includes various declarations by high-ranking government officials relating to the work of the press, which include naming the owners of a television network "government enemies."

Brazil

The Rapporteurship notes that there were two episodes of censorship, ordered by the Judiciary through precautionary measures.

Canada

The Office of the Special Rapporteur highlights that the federal government prohibited coverage of the repatriation ceremony for the bodies of Canadian soldiers killed in Afghanistan. According to the government, this measure is meant to protect the interests of the victims' families.

Chile

The information corresponding to the time period in question includes the confirmation of four journalists' prison sentences and episodes of police aggression directed at journalists working on the streets. The Office of the Special Rapporteur deplores these acts of aggression and considers positive the government's immediate order to investigate and punish those responsible.

Colombia

The information received indicates various episodes of aggression against journalists, including the violent apprehension and detention of various journalists who were covering an indigenous demonstration, and the confiscation and destruction of their equipment. On the other hand, the Rapporteurship deems as positive the advances made in the trials for the murders of two journalists, José Emeterio Rivas and Santiago Rodríguez Villalba.

Costa Rica

The Office of the Special Rapporteur considers that the Supreme Court's upholding of Article 7 of the Law of the Press is incompatible with recent developments regarding the right to freedom of expression. Said article contemplates prison sentences for journalists found guilty of defamation crimes. Moreover, the Rapporteurship has sent a letter to the State suggesting that international standards on this matter should be taken into account with respect to a draft law presented in Congress on the requirement of truthful information.

Cuba

During the time period in question, the Office of the Special Rapporteur issued a press release requesting that Cuba release its more than 20 imprisoned journalists, and another press release recommending that the State repeal its restrictions on Internet access. The acts of aggression against journalists noted in the annexed table fit within the context of the only State in the region where freedom of expression does not exist.

Dominican Republic

The Rapporteurship received information regarding an attack against journalists perpetrated by members of a political party, in the country's interior. Apparently, this episode was due to the latter being filmed by the victims while receiving checks as if they were public officials.

Guatemala

The Rapporteurship is following closely the situation of the community radio stations that were shut down.

Honduras

The Rapporteurship considers it worrisome that journalist Jesús Octavio Carvajal felt obligated to leave the country temporarily due to the attacks and threats directed against him. On a separate note, the Office of the Special Rapporteur restates that requiring membership in a professional association in order to practice journalism is incompatible with the right to freedom of expression.

Mexico

The Office of the Special Rapporteur calls attention to the numerous acts of aggression and threats committed during this trimester. On the other hand, the Rapporteurship notes the legislative advances occurring in the Federal District, which annul the crime of defamation and uphold the right of journalists to protect sources. The latter is also bolstered by recent modifications to the Federal Penal Code and the Federal Code of Penal Procedure. Moreover, the draft federal bill on the annulment of defamation as a crime was approved by the House of Representatives and is awaiting deliberation in the Senate.

Panama

The draft Penal Code presented by the Codifying Commission contains clauses that are incompatible with the right to freedom of expression. The Office of the Special Rapporteur has sent a letter to the Government of Panama regarding this issue.

Paraguay

The Rapporteurship expresses concern that journalist Enrique Galeano has been missing since February of 2006 and that some community radios have been shut down.

Peru

The Rapporteurship expresses grave concern relating to the number of acts of aggression recorded during this trimester against journalists and media outlets. Furthermore, the information received points to acts of prior censorship, job terminations and restrictions through administrative proceedings.

United States

The Rapporteurship considers as an act of prior censorship the decision of the Miami- Dade School Board to remove the book "Vamos a Cuba" from school libraries, and hopes that the legal actions taken in order to redress the situation will be successful.

Uruguay

It is of concern to the Rapporteurship that journalist Gustavo Escanlar was found guilty of criminal defamation. On the other hand, the Rapporteurship considers very positive the Draft Law on Access to Public Information and Constitutional Review (Anteproyecto de Ley de Acceso a la Información Pública y Amparo Informativo) presented to Congress. It was elaborated by renowned national and international experts.

Venezuela

The Office of the Special Rapporteur expresses its concern for the murder of two journalists, Jorge Aguirre and Jose Joaquín Tovar, and the high number of criminal proceedings against journalists. In addition, the Rapporteurship is worried about the prison sentences against reporter Mireya Zurita and journalist Henry Crespo, the order to demolish the headquarters of the newspaper Correo del Caroní, and the statements of high-level public officials on June 14, 2006, according to which the revision of concessions for television stations may have been ordered for reasons such as the editorial line of these channels. On the other hand, the Rapporteurship notes the dismissal of the claim against journalist Napoleón Bravo, although it has been appealed by the Public Prosecutor's

Office. Furthermore, the Rapporteurship deems as positive the message of the Vice President given on June 26, 2006, which announces that there will be no violation of freedom of expression in the country, no jailed reporters, no martial law utilized to try journalists, nor any newspaper shut-downs.

The Special Rapporteur considers that the acts which occurred this trimester in the region reveal a diverse set of problems surrounding the right to freedom of expression which deserves a diligent search for the necessary corrections, through the active participation of all the involved sectors of society.

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, stated that the analysis of the incidents which occurred this trimester reveals that alongside direct violations to the right to freedom of expression in the region “persist more subtle uses of public power with the same objective of silencing the press.”

In the months to come, the Rapporteurship will publish a manual on utilizing the inter-American human rights system for the promotion and defense of the right to freedom of thought and expression. The Rapporteurship will also organize seminars on the subject in various countries of the region.

The sources taken into account for the development of this press release can be found at the end of the annexed table. The States, along with NGOs, journalists, media and other individuals and organizations can send information to the Office of the Special Rapporteur for Freedom of Expression at the following email address cidh-expresion@oas.org. The next trimestral press release will cover the period of July - September 2006.

Washington, D.C., July 7, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION VOICES CONCERN OVER
THE DISAPPEARANCE OF A JOURNALIST IN MEXICO**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS expresses its concern over the disappearance of Mr. Rafael Ortiz Martínez, journalist with the newspaper Zócalo and host of the morning news program Radio Zócalo on the local station XHCCG 104.1 FM, in the city of Monclova, state of Coahuila, and urges the Mexican authorities to investigate in a prompt and effective manner regarding his whereabouts.

According to the information received by the Office of the Special Rapporteur, Mr. Ortiz Martínez was last seen early in the morning on July 8, 2006, as he was leaving the installations of the Zócalo newspaper, after having edited journalistic material for that day's issue. The information also indicated that Mr. Ortiz Martínez had recently published investigations on subjects including activities of organized crime in the city of Monclova.

In this respect, it should be recalled that according to the American Convention on Human Rights, the States have the duty to prevent, investigate and sanction all violations of the rights recognized in the Convention. A prompt, thorough and effective investigation of crimes against social communicators is essential to send a firm message that the State will not tolerate such grave violations of the right to freedom of expression and to assure journalists that they can continue to do their jobs safely.

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

The Special Rapporteur for Freedom of Expression, Ignacio J. Alvarez, stated that "it is especially important that in crimes against journalists the investigations include not only the actual perpetrators, but also the intellectual authors and other individuals whose collaboration and tolerance made the commission of such crimes possible."

Washington, D.C., July 19, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
ASSASSINATION OF TWO JOURNALISTS IN BRAZIL AND REQUEST AN ADEQUATE
INVESTIGATION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the assassination of Mr. Manoel Paulino da Silva, director of the daily *Hoje Jornal*. According to the received information, Manoel Paulino da Silva was driving his car in the city of Guarujá, State of São Paulo on the morning of July 20, 2006, when individuals approached and shot in his direction. Afterwards, his vehicle crashed into a wall and ignited.

Furthermore, the Special Rapporteurship condemns the assassination of Mr. Ajuricaba Monassa de Paula, independent journalist and member of the Brazilian Press Association. The Rapporteurship was informed that Mr. Ajuricaba de Paula died on July 24, 2006, after he was brutally beaten by a councilman of the city of Guapirimim, State of Rio de Janeiro. It has been indicated that the journalist would occasionally publish news criticizing the performance of the aforementioned councilman and of the city's administration.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Accordingly, the Special Rapporteurship urges the Brazilian authorities to investigate both murders swiftly and effectively in order to ensure that the responsible persons be duly punished and that it be determined if the murders were related to the exercise of the journalistic activity.

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

The Special Rapporteur for Freedom of Expression, Ignacio Álvarez, indicated that "it is especially important that in crimes against journalists the State investigate not only the direct perpetrators, but also the masterminds and the persons whose collaboration and toleration made these crimes possible."

Washington, D.C., July 28, 2006.

RELATORÍA ESPECIAL PARA LIBERTAD DE EXPRESIÓN INICIA ESTUDIO SOBRE SITUACIÓN DE LAS INVESTIGACIONES DE 172 CASOS DE PERIODISTAS ASESINADOS EN LA REGIÓN

La Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos (CIDH) de la OEA ha iniciado un estudio especial sobre el estado de las investigaciones de los asesinatos cometidos en la región durante el período 1995-2005 por motivos que pudieran estar relacionados con el ejercicio de la actividad periodística.

Al respecto, la recopilación inicial efectuada por la Relatoría, que incluye nombres, fechas y circunstancias de los asesinatos, indica preliminarmente que en el período del estudio se habrían producido 172 asesinatos de periodistas en la región, de acuerdo al siguiente detalle: Argentina (2), Bolivia (1), Brasil (24), Canadá (2) Colombia (83), Costa Rica (2), Ecuador (1), El Salvador (1), Estados Unidos (1), Guatemala (9), Haití (6), Honduras (1), México (24), Nicaragua (4), Paraguay (2), Perú (4), República Dominicana (2), Uruguay (1) y Venezuela (2).

Con base en dicha recopilación preliminar la Relatoría Especial ha solicitado información a los respectivos Estados, así como a organizaciones no gubernamentales y a otras instituciones, sobre la situación de las investigaciones de dichos crímenes. El propósito del estudio es elaborar un cuadro final sobre los resultados concretos de las investigaciones en cada asesinato y un análisis general de tal situación en la región.

La información concreta solicitada incluye la relativa a si existen actualmente personas procesadas o condenadas como autores materiales, intelectuales, cómplices o encubridores respecto de tales asesinatos; la etapa procesal en que se encuentran los respectivos procesos; la existencia de personas privadas de libertad en relación con tales asesinatos y la determinación de si los asesinatos tuvieron relación con el ejercicio de la actividad periodística de las víctimas.

El Relator Especial para la Libertad de Expresión, Ignacio J. Álvarez, señaló que la Relatoría ha decidido llevar a cabo dicho estudio tomando en cuenta que "el asesinato de periodistas constituye la forma más brutal de coartar la libertad de expresión, y la falta de una debida investigación y sanción puede propiciar la ocurrencia de nuevos asesinatos".

Washington, D.C., 1 de agosto de 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS ATTACK AGAINST NEWSPAPER IN GUYANA AND DEMANDS PROMPT INVESTIGATION

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the attack perpetrated on August 8, 2006, against the Kaieteur News printing plant in Georgetown, Guyana, where four employees were killed and two were gravely injured. The Rapporteurship urges Guyanese authorities to investigate these crimes swiftly and effectively and to ensure that the persons responsible are duly punished.

According to the information received by the Rapporteurship, during the night of August 8, 2006, a group of masked gunmen entered the Kaieteur News printing plant and opened fire against the local security guard. It is indicated that afterwards, the assailants forced the printing staff employees: Mark Mikoo, Chitram Persaud, Eion Wegman, Richard Stewart and Shazeem Mohamed, to lie face down on the floor, where they were shot in the back of the head. It has been stated that the security guard is in stable condition, while Shazeem Mohamed is in critical condition.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. To this end, the Rapporteurship urges Guyanese authorities to leave no stone unturned in ensuring that the persons responsible for this crime are brought to justice and that it be determined if the murders were related to the exercise of the journalistic activity of the Kaieteur News.

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

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "when investigating these crimes it is especially important to charge not only the direct perpetrators, but also the masterminds and the additional individuals whose collaboration and tacit acceptance made these crimes possible."

Washington, D.C., August 11, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS
ASSASSINATION OF JOURNALIST IN COLOMBIA AND DEMANDS PROMPT INVESTIGATION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the assassination of Mr. Milton Fabián Sánchez, a radio journalist with Yumbo Stéreo, in Colombia. The Rapporteurship urges the Colombian authorities to investigate this incident swiftly and effectively in order to ensure that the persons responsible are duly punished and to determine whether the crime is connected to the exercise of the journalistic profession.

According to the information received by the Rapporteurship, during the night of August 9, 2006, Mr. Sánchez was shot three times by unknown assailants in Yumbo, district of Valle del Cauca. It was indicated that Mr. Sánchez died shortly after being transported to a local health center. Mr. Sánchez conducted the community program Mesa Redonda where political topics were debated.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Furthermore, Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive adequate compensation."

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "when investigating crimes against journalists it is especially important to charge not only the direct perpetrators, but also the masterminds and the additional individuals whose collaboration and tacit acceptance made these crimes possible."

Washington, D.C., August 11, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
MURDER OF JOURNALIST IN MEXICO AND DEMANDS PROMPT INVESTIGATION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the murder of journalist Enrique Perea Quintanilla, director of the monthly magazine *Dos Caras, Una Verdad*, in the state of Chihuahua, México. The Special Rapporteur urges the Mexican authorities to investigate this incident swiftly and effectively in order to ensure that the persons responsible are duly punished and to determine whether the crime is connected to the exercise of journalism.

According to the information received by the Rapporteurship, the body of Perea Quintanilla was found abandoned on a highway in the state of Chihuahua on August 9, 2006, exhibiting signs of torture and two bullet wounds. His relatives reported the disappearance of the journalist to the authorities on August 8, 2006. It was indicated that the journalist covered subjects tied to police investigations about murders and drug trafficking as well as the increase of violence in the state of Chihuahua.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Furthermore, Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive adequate compensation."

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "it is especially important that in crimes against journalists the investigations include not only the actual perpetrators, but also the intellectual authors and other individuals whose collaboration and tolerance made the commission of such crimes possible." He added that "the international obligation of the States to investigate and sanction those responsible for acts of violence against journalists includes the determination of whether these incidents were related to the exercise of journalism."

Washington, D.C., August 16, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE MURDER OF JOURNALIST IN COLOMBIA AND DEMANDS PROMPT INVESTIGATION

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the murder of the journalist Atilano Segundo Pérez Barrios in Colombia. The Rapporteurship urges the Colombian authorities to investigate this incident swiftly and effectively in order to ensure that the persons responsible are duly punished and to determine whether the crime is connected to the exercise of journalism.

According to the information received by the Office of the Special Rapporteur, on the night of August 22, 2006, individuals riding on a motorcycle shot the journalist several times in front of his house in the city of Cartagena, department of Bolívar. It was also indicated that two days before the assassination, Mr. Pérez Barrios denounced on a radio program the alleged financing of electoral campaigns in the region by demobilized paramilitaries.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Furthermore, Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive adequate compensation."

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "when investigating crimes against journalists it is especially important to investigate not only the direct perpetrators, but also the masterminds and the additional individuals whose collaboration and tacit acceptance made these crimes possible.

Washington, D.C., August 31, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
MURDER OF JOURNALIST IN VENEZUELA AND DEMANDS PROMPT INVESTIGATION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the murder of Mr. Jesús Rafael Flores Rojas, a journalist of the daily *Región*, in the state of Anzoátegui, Venezuela. The Rapporteurship urges the Venezuelan authorities to investigate this incident swiftly and effectively in order to ensure that the persons responsible are duly punished and to determine whether the crime is connected to the exercise of journalism.

According to the information received by the Office of the Special Rapporteur, on the night of August 23, 2006, Mr. Flores Rojas arrived at his house in the locality of El Tigre, when an individual shot him eight times before fleeing in an automobile that was waiting a few meters away. The information received indicates that Mr. Flores Rojas used to write on subjects that included denunciations of corruption in the local public administration.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Furthermore, Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive adequate compensation."

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted that "when investigating crimes against journalists it is especially important to investigate not only the direct perpetrators, but also the masterminds and the additional individuals whose collaboration and tacit acceptance made these crimes possible." He added that "the international obligation of the States to investigate and sanction those responsible for acts of violence against journalists includes the determination of whether these incidents were related to the exercise of journalism."

Washington, D.C., August 31, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
MURDER OF JOURNALIST IN GUATEMALA AND DEMANDS PROMPT INVESTIGATION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS condemns the murder of radio journalist Eduardo Heriberto Maas Bol in Guatemala. The Special Rapporteurship urges the Guatemalan authorities to investigate this incident swiftly and effectively in order to ensure that the persons responsible are duly punished and to determine whether the crime is related to the exercise of the journalistic profession.

According to the information received by the Office of the Special Rapporteur, on September 10, 2006, the corpse of Mr. Eduardo Maas Bol, correspondent of Radio Punto, was found in his automobile in Cobán, department of Alta Verapaz, with five bullet wounds.

The Office of the Special Rapporteur for Freedom of Expression emphasizes that according to the American Convention on Human Rights, States have the duty to prevent, investigate, and punish all violations of rights recognized therein. Furthermore, Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive adequate compensation".

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, noted from Guatemala that "the political will of the States to promptly investigate the crimes against journalists as well as the immediate and serious launching of the investigations are basic factors to the effectiveness of the domestic trials. The lack of an effective investigation can imply the international responsibility of the State determined by the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights".

Guatemala City, September 13, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN
OVER THE DETERIORATION OF FREEDOM OF EXPRESSION IN THE REGION**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses concern over the deterioration of freedom of expression in the region during the last quarter, covering the period July 1 to September 30, 2006. There has been an increase in physical violence against journalists, which has been manifest most brutally in at least seven murders and one disappearance apparently related to the exercise of journalism. Additionally, the delays on police investigations and judicial processes with respect to the murders of journalists perpetrated in the region in the last few years leads to impunity for these crimes and encourages their probable repetition. The Rapporteurship has also registered in the period covered by this report dozens of episodes of physical aggression against journalists, several attacks against mass media, several kidnappings and dozens of threats in practically all of Latin America, as well as several acts of prior censorship. In addition, many journalists face criminal processes for crimes like "desacato" (contempt) or defamation, and some courts, including a Supreme Court, have condemned journalists to jail in these cases, restricting freedom of expression and disregarding the doctrine and jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights on this subject. In addition to these criminal processes against journalists, there are administrative processes against mass media.

In addition to the direct violations, the Special Rapporteurship observes an increasing tendency towards intolerance for criticism by several governments of the region. This is reflected in the recurrent use by authorities of subtler methods of restricting the press, that if analyzed in isolated form can seem relatively innocuous, but when observed as a whole indicate worrisome situations and tendencies in various countries. Such illegitimate and misdirected use of the public power includes the application of discriminatory policies in the allocation of official publicity, discrimination in providing access to official sources, dismissals from state and private media as a result of governmental pressure and administrative inspections by government bodies.

The Special Rapporteur for Freedom of Expression, Ignacio J. Alvarez, indicated that "freedom of expression not only implies the possibility to disseminate inconvenient or critical information about authorities, but also includes freedom from facing illegitimate consequences imposed by the State as a result."

The Special Rapporteurship for Freedom of Expression also emphasizes positive developments in this period. Among them it emphasizes the confirmation of a conviction of two persons in Peru for the murder of a journalist and the definitive dismissal of the penal process against a journalist in the same country who had been charged with defamation; the stay of proceedings for defamation against a journalist in Costa Rica; and the modification made in Panama to the first draft of a bill to reform the Penal Code, by instructions of the President of the Republic and at the request of diverse sectors of civil society, to decriminalize crimes against honor of government officials or people involved in matters of public interest. In addition, the Special Rapporteurship emphasizes the approval in the State of Querétaro, México, of a norm that protects the confidentiality of the sources of information of journalists. Also, it positively emphasizes the veto of the president of Brazil of a law intended to limit the exercise of journalistic roles solely to people with university diplomas and the commitment of the President of Chile to legislate in favor of community radios.

This quarterly report, based on the daily monitoring of the Office of the Special Rapporteur of the situation of the right to the freedom of expression in the region, looks to emphasize the concerns and advances in the matter of freedom of expression, and to try to contribute to the adoption of the corrective measures that could be pertinent for a greater exercise of the right to the freedom of

thought and expression. On the basis of the information received in the last quarter, which is detailed in the annex to the present communiqué, the Special Rapporteurship shows the following:

Argentina

The Special Rapporteurship expresses its concern over the repeatedly denounces of press and mass media organizations in the matter of freedom of expression in the country. The information received refers to the use of different forms of coercion by the government on the press that maintains a stance that is critical of it, the existence of a discriminatory policy in the allocation of official publicity, the numerous hostile declarations made by high authorities of the state against the press, and the threats and acts of aggression against communicators and their families. It was noted, for example, that the day after a speech by the President in which he made accusations against a journalist, the journalist received telephone threats. Also, the decision to take a program of the state television channel off the air was interpreted as retaliation against its conductor, who is critical of the government.

Bolivia

The Special Rapporteurship received information on several acts of physical aggression against journalists. In addition, a television channel was attacked on September 8 with an incendiary bomb.

Brazil

The Special Rapporteurship reiterates that it deplores the murders of the journalists Manoel Paulino da Silva and Ajuricaba Monassa de Paula. The Special Rapporteurship laments the kidnapping of the reporter Guilherme Portanova and the technical assistant Alexandre Coelho Calado, of TV Globo, on the part of members of a criminal group. In addition, it expresses its concern over the aggressions, attacks and threats against communicators, the confiscation by the Federal Police of the writing equipment of the newspaper Hoje and the decision to close two community radio stations. Also, it expresses its concern over the high number of cases of prior censorship on the part of the judicial branch and the 8-month jail sentences for the journalists Edilberto Resende da Silva, Jairo Batista Nascimento and Ermógenes Jacinto de Sousa for the crime of defamation. Regarding positive facts, the Special Rapporteurship emphasizes the decision of the President of Brazil to veto a law that demanded a university diploma for the exercise of several journalistic roles.

Chile

The Special Rapporteurship for Freedom of Expression emphasizes the commitment expressed by the President of Chile on July 11 to legislate in favor of community radios.

Colombia

The Office of the Special Rapporteur for Freedom of Expression reiterates that it deplores the murders of the journalists Milton Fabian Sanchez and Atilano Perez Barrios and expresses concern over the cases of physical aggressions. Also, it worries the Special Rapporteurship that a police major and an army colonel exercised prior censorship, the first when he obligated photojournalists to show their films of a confrontation between police and traveling salespeople and the second when he prevented the exhibition of a documentary on a massacre. Also, it is worrisome that two indigenous communicators were detained a day before the beginning of the First Encounter of Indigenous Communication of Colombia.

Costa Rica

The Office of the Special Rapporteur for Freedom of Expression considers positive the definitive stay of proceedings against the journalist Ana Maria Navarro, denounced for defamation by a mayor.

Cuba

The Office of the Special Rapporteur reiterates its concern over the situation of the imprisoned journalists and over that of the independent journalists who try to work in Cuba, who live under constant harassment on the part of the dictatorship. According to information received, independent journalists were arbitrarily and repeatedly imprisoned, and were physically attacked and threatened by agents of the State. In addition, materials like notebooks and pencils were confiscated, and in one the telephone from which press reports were emitted was disconnected arguing that it was being used for counterrevolutionary purposes. The Special Rapporteurship emphasizes that after the transfer of governmental power on July 31 it has not perceived any change in the situation of total lack of respect for freedom of thought and expression in Cuba. The Special Rapporteurship is once again urging the Cuban State to release imprisoned journalists and to respect the right of all Cubans to freedom of thought and expression.

El Salvador

The Special Rapporteurship expresses its concern over the aggressions suffered by fourteen journalists when they tried to cover a protest, and over the threats that, according to information received, were made by the office of the mayor of Guazapa saying that it would dismantle the closed circuit radio station "Voces Juveniles."

United States

The Office of the Special Rapporteur for Freedom of Expression expresses its concern over the sentence of a federal court on September 21, which condemned the journalists Lance Williams and Mark Fainaru-Wada of the San Francisco Chronicle to jail for refusing to reveal the sources from which they obtained grand jury testimony from a case relating to presumed steroid use by professional athletes. Unlike the state laws in 31 states and the District of Columbia, the federal law does not protect journalists when they try to maintain the confidentiality of the identity of their sources. Principle 8 of the Declaration of Principles on Freedom of Expression approved by the Inter-American Commission on Human Rights establishes: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." The Office of the Special Rapporteur highlights as positive a federal bill on this issue that is currently under the consideration of the Senate Judiciary Committee in the Federal Congress, and hopes that this bill will receive prompt consideration.

Guatemala

The Office of the Special Rapporteur for Freedom of Expression reiterates that it deplores the murder of the journalist Eduardo Heriberto Maas Bol. In addition, it expresses its concern over the physical attacks and threats against journalists and over the closing of the community radio station Ixchel.

Guyana

The Office of the Special Rapporteur for Freedom of Expression reiterates that it deplores the murder by gunshots of five workers of the newspaper Kaieteur News during the assault on its headquarters last August.

Honduras

The Office of the Special Rapporteur for Freedom of Expression expresses its concern over the cases of physical attacks against journalists and over the judicial proceedings initiated against the journalist Francisco Romero on the part of government officials for defamation.

Mexico

The Office of the Special Rapporteur for Freedom of Expression reiterates that it deplores the murder of the journalist Enrique Perea Quintanilla. Also, it reiterates its concern over the disappearance of the journalist Rafael Ortiz Martinez on July 8 in Coahuila, and over the numerous attacks, aggressions and threats against journalists and mass media that happened in this last quarter. Several of them took place in the State of Oaxaca, where the Popular Assembly of the People of Oaxaca (Asamblea Popular del Pueblo Oaxaqueño, APPO) occupied several radio stations. The Special Rapporteur follows with attention the case of the journalist Lydia Cacho, author of an investigation on pedophilia involving businessmen and politicians, who denounced being the victim of threats and ongoing harassment. On the positive side, the Special Rapporteurship emphasizes the approval in the Commission on Constitutional Issues of the Congress of the State of Querétaro of a norm that protects the professional secrecy of journalists.

Nicaragua

The Office of the Special Rapporteur for Freedom of Expression expresses its concern over public expressions attributed to the President of the Republic, according to which he publicly urged the newspaper El Nuevo Diario to dismiss the journalist Oliver Bodán, who had investigated presumed irregularities in the management of the Ministry of Transport and Infrastructure.

Panama

The Office of the Special Rapporteur for Freedom of Expression highlights the modification in Panama to the bill to reform the Penal Code, by instruction of the President of the Republic and at the urging of various sectors of civil society, that would decriminalize crimes against honor when the allegedly offended person is a public official or a person involved in issues of public interest.

Paraguay

The Office of the Special Rapporteur for Freedom of Expression reiterates its concern over the disappearance of journalist Enrique Galeano, missing since February 2006. According to the accusation by the Union of Journalists of Paraguay the investigations have not advanced. Additionally, the Office expresses concern over the threats against and harassment of journalists, and over the detention by the police of journalist Soledad Viera, who was interrogated about her news reporting

Peru

The Office of the Special Rapporteur expresses its concern over the attacks, aggressions and death threats against journalists, the judicial processes against journalists, the dismissal of Karina Borrero of the state TV channel for declaring that she would not work in that media if it became a "government flatterer," and the negative atmosphere for the exercise of freedom of expression generated by the investigation announced by the Intelligence Commission of the National Congress against nongovernmental organizations. On the positive side, the Special Rapporteur emphasizes the definitive termination of the penal proceedings that a congressman begun for defamation against the journalist Cecilia Valenzuela and the confirmation of the 30-year prison sentence for two persons for the homicide of the radio journalist Alberto Rivera Fernandez.

Dominican Republic

The Office of the Special Rapporteur for Freedom of Expression shows its concern over the prison sentence of three journalists accused of defamation and over the various cases of attacks, aggressions and threats suffered by communicators.

Uruguay

The Special Rapporteurship expresses its deep concern over a sentence of the Uruguay Supreme Court of Justice that reversed its own jurisprudence established in 1997, by condemning the journalist Carlos Dogliani Staricco to prison for defamation for the publication of an investigation on alleged fraud on the part of a mayor. Such decision is contrary to the standards of the inter-American system of human rights, according to which it is not proportionate in a democratic society to apply criminal sanctions in cases of offenses against the honor of public officials, who are subject to a greater degree of scrutiny by society. The public officials' right to reputation and honor should be protected using proportionate civil sanctions and the right to rectification or reply. The above-mentioned judgment by the Supreme Court of Justice is regressive and tends to create an environment that is unfavorable for the exercise of freedom of expression. On the other hand, the Office of the Special Rapporteur shows its concern over the confiscation of equipment of a community radio station in Castillos, Rocha.

Venezuela

The Office of the Special Rapporteur for Freedom of Expression reiterates that it deplores the murder of the journalist and political leader Jesus Flores Rojas. Also, the Special Rapporteurship expresses its concern over the physical aggressions and threats to journalists registered during the quarter and over the reopening of the criminal process against journalist Napoleón Bravo for the crime of contempt, for declarations that offended the Supreme Court of Justice. The Office of the Special Rapporteur also observes that the threat to demolish the headquarters of the newspaper Correo del Caroní subsists. On the positive side, the Special Rapporteur highlights the partial cancellation on the part of the Judicial Branch of the censorship imposed on the publication of information related to the case of the homicide of prosecutor Danilo Anderson in 2004.

Sources and denunciations

The sources taken into account for the elaboration of the present communiqué are mentioned at the end of the annexed chart. The States, as well as nongovernmental organizations, journalists, media and other people and institutions can send information to the Special Rapporteurship via electronic mail at: cidh-expresion@oas.org.

Please direct questions or interview requests to the press and communication coordinator of the Office of the Special Rapporteur, Maria Isabel Rivero, (202)458-3796, mrivero@oas.org

The Office of the Special Rapporteur for Freedom of Expression was created in 1997 by the Inter-American Commission on Human Rights. For more information on the Office: <http://www.cidh.org/relatoria>

Washington, D.C., October 12, 2006.

THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION MANIFESTS ITS SATISFACTION FOR THE EXPRESS RECOGNITION OF THE INTER-AMERICAN COURT OF THE FUNDAMENTAL NATURE OF THE RIGHT TO ACCESS INFORMATION

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its satisfaction with the recognition of the fundamental nature of the right to access information under the control of the state, made by the Inter-American Court of Human Rights in the Judgment issued on September 19, 2006 in the case of Claude Reyes et al, that was recently published. The Judgment of the Inter-American Court constitutes an important landmark in international jurisprudence, given that it explicitly recognizes that right to access information forms a part of the right to freedom of thought and expression.

Ignacio Álvarez, the Special Rapporteur for Freedom of Expression, highlighted the importance that the Court, in interpreting Article 13 of the Convention, protects the right of individuals to seek access to information under the control of the State and to receive such information and stated that “this decision represents a substantive contribution to the development of a culture of transparency and the eradication of secrecy in the hemisphere, and to improve, through the publicity of the actions of the States, the quality of democracy in our region.”

The decision of the Court responds to a complaint that the IACHR presented on July 8, 2005 against the State of Chile for the refusal of a State institution to provide the victims with all the information they requested about a deforestation project with an environmental impact. The Commission’s complaint was based on the argument that the refusal, as well as the lack of judicial remedy to challenge it, generated the international responsibility of the State for violating the right to freedom of thought and expression and the right to judicial protection.

The Office of the Special Rapporteur emphasizes that the considerations of the Court contain important advances in the area of access to information, such as: a) the application to State authorities of the principle of maximum disclosure, “which establishes the presumption that all information is accessible, subject to a limited set of exceptions;” b) the obligation of the States to govern themselves by the principles of openness and transparency in public administration so that the people can exercise democratic control; c) the existence of a positive obligation of the States to provide information that is requested from them; d) the duty of the State to refrain from requiring those who request information to demonstrate a direct interest in it; e) the obligation of the State to give a reasoned response when, for a reason permitted by the Convention, it can limit the access to the requested information; and f) the need for the existence of a simple, rapid, and effective remedy to determine if the rights of the requestor of the information are violated and, in such a case, order the corresponding body to provide the information.

The Rapporteurship further emphasizes that the reparations ordered in this judgment will have positive effects for strengthening the right to access information, given that the Court resolved that the State should guarantee the effectiveness of an administrative procedure adequate for the processing and resolution of requests for information by setting deadlines to resolve them and providing information. To this end, the State must train the organs, authorities, and public agents responsible for handling requests.

Since its creation in 1997, in compliance with the mandates of the OAS Charter, the American Convention Human Rights, and various resolutions of the OAS General Assembly, the Office of the Special Rapporteur for Freedom of Expression of the IAHR has carried out a series of activities related to the right to access information, including the presentation of reports before various OAS organs, the preparation of three special studies on the state of this right in the hemisphere (2001,

2003, and 2005) and the participation in seminars and workshops with various inter-governmental organizations in the hemisphere, as well as technical assistance to the OAS Member States on this issue. The judgment of the Court is an invaluable instrument that the Office of the Special Rapporteur will use to continue its promotion and protection activities related to the right to access information in the power of the State.

Washington, D.C., October 31, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION REGRETS DEATH OF JOURNALIST IN MEXICO AND CALLS FOR APPROPRIATE INVESTIGATION

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS regrets the death of U.S. cameraman Brad Will in Oaxaca, Mexico. The Office of the Special Rapporteur urges the Mexican authorities to investigate this occurrence promptly and effectively in order to determine the circumstances of the death and duly sanction those responsible.

According to the information received by the Office of the Special Rapporteur, on October 27, 2006, Mr. Brad Will was injured by gunshots while he was filming a confrontation between sympathizers of the Popular Assembly of the People of Oaxaca (Asamblea Popular de los Pueblos de Oaxaca, APPO) and the local police. The documentarian and photojournalist, who was covering the conflict in Oaxaca for the independent media organization Indymedia, died when he was transferred to a hospital. According to the information received, the shots allegedly came from municipal police dressed in civilian clothing and personnel of the mayor's office, who opened fire against an APPO barricade near Mr. Brad Will.

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, stated that "this act once again shows the vulnerability of the situation of journalists in carrying out their work, vital for the existence and development of an informed society. It is lamentable and deplorable that a cameraman who was attempting to gather images of a news story of national and international interest died during the shooting. We urge the local and national authorities to investigate this crime adequately, to determine whether the murder of Mr. Brad Will was a consequence of his work as a journalist, and to bring those responsible for this act before the courts. The lack of an effective investigation may cause the States to incur international responsibility determined by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights."

The Office of the Special Rapporteur for Freedom of Expression recalls that according to the American Convention on Human Rights, the States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles of the IACHR states that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

Washington, D.C., October 31, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDERS OF JOURNALISTS IN MEXICO AND CALLS FOR DUE INVESTIGATION

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS deplores the murders of two journalists in Mexico in the last few weeks. The Office of the Special Rapporteur urges the Mexican authorities to investigate these killings promptly and effectively in order to duly sanction those responsible and to determine whether these crimes are related to their journalistic activities.

The body of Misael Tamayo Hernández, director of the newspaper *Despertar de la Costa*, was found on November 10 in a motel in the city of Zihuatanejo, State of Guerrero, with the hands tied behind the back and with injuries on the forearm and the hand. The journalist had received death threats after he published news about drug trafficking, organized crime, and corruption in the local government.

The body of José Manuel Nava Sánchez, former director of the newspaper *Excélsior*, was found on November 16 at his home in Mexico City. He had been stabbed several times. The journalist was a columnist for the newspaper *El Sol de Mexico* and on November 6 he had presented his book *Excélsior, El Asalto Final*, where he criticized presumed irregularities in the sale of the newspaper.

Previously this year the following journalists were murdered in Mexico: Jaime Arturo Olvera Bravo (March 9 in Michoacán); Ramiro Téllez Contreras (March 10 in Tamaulipas); Enrique Perea Quintanilla (August 9 in Chihuahua); and Bradley Ronald Hill (October 27 in Oaxaca). Additionally, Rafael Ortiz Martínez disappeared on July 8 in Coahuila.

The Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, said that "the political will of the States to promptly investigate the crimes against journalists as well as the immediate and serious launching of the investigations are basic factors to the effectiveness of the domestic trials. The lack of an effective investigation can imply the international responsibility of the State determined by the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights".

The Office of the Special Rapporteur for Freedom of Expression recalls that in accordance with the American Convention on Human Rights, the States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

Washington, D.C., November 21, 2006.

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCLUDES VISIT TO COSTA RICA

In concluding its working visit to Costa Rica, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS highlights the fundamental role that freedom of expression has played in the long democratic tradition of the country and recommends that the competent authorities continue to advance in this matter. In this respect, the Office of the Special Rapporteur considers it important to give priority to the following issues: investigating the murders of two journalists that occurred in the country in recent years and punishing those responsible; continuing the process of bringing the legislation into conformity with international standards on freedom of expression; and expanding the citizenry's access to information in the hands of the State.

During its visit to Costa Rica, carried out between November 27 and 29, 2006, the Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, attorney Carlos Zelada, and journalist María Isabel Rivero met with representatives of the State, civil society, and communications media. At the state level, they were received by the First Vice-President of the Republic and Minister of Justice, Laura Chinchilla; by the Director General of Foreign Affairs of the Chancellery, José Joaquín Chaverri; by the Attorney General of the Nation, Francisco Dall'Anese Ruiz; by the President of the Legislative Assembly, Francisco Antonio Pacheco; by the President of the Constitutional Chamber of the Supreme Court, Luis Fernando Solano; and by the Human Rights Ombudsperson (Defensora de los Habitantes), Lisbeth Quesada. Additionally, the delegation of the Office of the Special Rapporteur met with recognized civil society organizations, including the College of Journalists of Costa Rica (Colegio de Periodistas de Costa Rica), the Institute of the Press and Freedom of Expression (Instituto de Prensa y Libertad de Expresión, IPLEX), the Center for Justice and International Law (Centro para la Justicia y el Derecho Internacional, CEJIL), and the Inter-American Institute of Human Rights (Instituto Interamericano de Derechos Humanos), as well as representatives of communications media in the country. These meetings permitted the Office of the Special Rapporteur to complement and update information on the situation of the right to freedom of expression in Costa Rica. Accompanying this press release is an annex with the observations of the Office of the Special Rapporteur with respect to some issues related to freedom of expression in Costa Rica.

The Office of the Special Rapporteur thanks the different state organs, civil society organizations, and the media and journalists for their extensive collaboration during this visit. The Office of the Special Rapporteur, as part of its mandate, reiterates its disposition to collaborate and provide technical assistance to the initiatives in the matter of freedom of expression that are being presented in the country.

San José, November 29, 2006.

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION RELEASES
RECOMMENDATIONS TO URUGUAY AT THE CONCLUSION OF ITS WORKING VISIT**

At the conclusion of its working visit to the Oriental Republic of Uruguay, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS observes the high value placed on freedom of thought and expression in the country and formulates the following recommendations to the State in order to continue to advance in this matter: 1) Move forward with the investigations related to the disappearance of the teacher and journalist Julio Castro, which occurred in 1977, during the military dictatorship; 2) Make its legislation compatible with the American Convention on Human Rights in the matter of freedom of expression, which includes the repeal of the crime of *desacato* (disrespect), which is contemplated in Article 173 of the Penal Code, as well as the modification of Articles 333 to 336 of the Penal Code, and the related laws, with the aim of eliminating criminal sanctions with respect to crimes against honor or reputation derived from the dissemination of information about issues of public interest; and 3) Give prompt consideration to two bills related to freedom of expression that are currently under consideration in the Legislative Branch, one on access to information and the other on broadcasting and community media.

During the visit to Uruguay, carried out from December 13 to 16, 2006, the Special Rapporteur for Freedom of Expression, Ignacio J. Álvarez, attorney Daniel Cerqueira, and journalist María Isabel Rivero, specialists in the Office of the Special Rapporteur, met with representatives of the State, communications media, civil society, journalists, and academics. At the state level, they held meetings with the Vice President of the Republic and President of the Senate, Rodolfo Nin Novoa; the Secretary of the Presidency, Gonzalo Fernández; the Undersecretary of Foreign Affairs, Belela Herrera; the Undersecretary of Education and Culture, Felipe Michelini; the Commission on Education and Culture of the Senate; the president of the Commission on Population and Development of the Chamber of Deputies, Horacio Yanes, and one of its members, Pablo Álvarez López; and the president of the Supreme Court of Justice, Hipólito Rodríguez Caorsi, among others. At the level of communications media, the Office of the Special Rapporteur held meetings with Newspaper Association of Uruguay (Asociación de Diarios del Uruguay); the Press Organization of the Interior (Organización de Prensa del Interior, OPI); the International Association of Broadcasting (IAB); and the National Association of Uruguayan Broadcasters (Asociación Nacional de Broadcasters Uruguayos, ANDEBU). Additionally, the delegation met with recognized civil society organizations, including the Uruguayan Press Association (Asociación de la Prensa Uruguaya, APU); the World Association of Community Radio Broadcasters (AMARC, by its Spanish acronym); the Institute of Legal and Social Studies of Uruguay (Instituto de Estudios Legales y Sociales del Uruguay, IELSUR); and the Group Archives and Access to Public Information (Grupo Archivos y Acceso a la Información Pública, GAIP). The delegation also held meetings with journalists and an academic meeting with representatives of the Departments of Communications Sciences of the University of the Republic (Universidad de la República) and the Catholic University of Uruguay Dámaso Antonio Larrañaga (Universidad Católica del Uruguay Dámaso Antonio Larrañaga, UCUDAL), of the School of Social Communication of the Technical College of Uruguay (Universidad del Trabajo del Uruguay, UTU), and of the Human Rights Institute of the Law School of the University of the Republic.

These meetings permitted the Office of the Special Rapporteur to complement and update the information in its possession on the situation of freedom of expression in Uruguay. The Office of Special Rapporteur presents its specific observations in an annex to this press release.

The Office of the Special Rapporteur thanks the organs of the State, the communications media, the civil society organizations, the journalists, and the academic community for their extensive

collaboration. The Office of the Special Rapporteur reiterates, as part of its mandate, its disposition to collaborate and provide technical assistance to the initiatives related to freedom of expression that are being presented in the country.

Montevideo, December 16, 2006.

International Mechanisms for Promoting Freedom of Expression

JOINT DECLARATION

by

the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression

Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression;

Recalling and reaffirming their Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004 and 21 December 2005;

Stressing the importance of respecting the right of journalists to publish information provided to them on a confidential basis;

Emphasising the importance of the recent ruling of the Inter-American Court of Human Rights in the case of Marcel Claude Reyes and others v. Chile, which confirmed the existence of a right to access information held by States;

Aware of the adoption by the Global Transparency Initiative, a civil society movement, of the Transparency Charter for International Financial Institutions: Claiming Our Right to Know, calling for greater openness by multilateral development banks and other international financial bodies;

Welcoming the progressive amendments that a number of international financial institutions have made to their information disclosure policies in recent years;

Noting that international public bodies and inter-governmental organisations, like their national counterparts, have an obligation to be transparent and to provide access to the information they hold;

Cognisant of greater public awareness of the tensions that may result from certain types of expression due to different cultural and religious values, in particular prompted by the Danish cartoons incident;

Concerned about calls from certain quarters to resolve the tensions noted above by reversing hitherto well established standards of respect for freedom of expression;

Reaffirming that freedom of expression and a free media can play an important positive role in addressing social tensions and in promoting a culture of tolerance;

Recalling that attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public;

Noting the need for specialised mechanisms to promote freedom of expression in every region of the world and the lack of such a mechanism in the Asia-Pacific region;

Adopt, on 19 December 2006, the following Declaration:

On Publishing Confidential Information

- Journalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.

Openness of National and International Public Bodies

- Public bodies, whether national or international, hold information not for themselves but on behalf of the public and they should, subject only to limited exceptions, provide access to that information.
- International public bodies and inter-governmental organisations should adopt binding policies recognising the public's right to access the information they hold. Such policies should provide for the proactive disclosure of key information, as well as the right to receive information upon request.
- Exceptions to the right of access should be set out clearly in these policies and access should be granted unless (a) disclosure would cause serious harm to a protected interest and (b) this harm outweighs the public interest in accessing the information.
- Individuals should have the right to submit a complaint to an independent body alleging a failure properly to apply an information disclosure policy, and that body should have the power to consider such complaints and to provide redress where warranted.

Freedom of Expression and Cultural/Religious Tensions

- The exercise of freedom of expression and a free and diverse media play a very important role in promoting tolerance, diffusing tensions and providing a forum for the peaceful resolution of differences. High profile instances of the media and others exacerbating social tensions tend to obscure this fact.
- Governments should refrain from introducing legislation which makes it an offence simply to exacerbate social tensions. Although it is legitimate to sanction advocacy that constitutes incitement to hatred, it is not legitimate to prohibit merely offensive speech. Most countries already have excessive or at least sufficient 'hate speech' legislation. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance.
- Professional and self-regulatory bodies have played an important role in fostering greater awareness about how to report on diversity and to address difficult and sometimes controversial subjects, including intercultural dialogue and contentious issues of a moral, artistic, religious or other nature. An enabling environment should be provided to facilitate the voluntary development of self-regulatory mechanisms such as press councils, professional ethical associations and media ombudspersons.

- The mandates of public service broadcasters should explicitly require them to treat matters of controversy in a sensitive and balanced fashion, and to carry programming which is aimed at promoting tolerance and understanding of difference.

Impunity in Cases of Attacks Against Journalists

- Intimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.
- States should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.

Ambeyi Ligabo
UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszi
OSCE Representative on Freedom of the Media

Ignacio J. Alvarez
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula
ACHPR Special Rapporteur on Freedom of Expression

**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN
OVER THE SITUATION OF RADIO CARACAS TELEVISION (RCTV) IN VENEZUELA**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS has learned with concern about recent statements made by the President of the Bolivarian Republic of Venezuela to the effect that the Government has apparently decided not to renew RCTV's license for use of the television frequency.

RCTV is a television station that began operating more than 50 years ago whose editorial position has been predominantly critical of the current government. In May 1987, the Government of Venezuela renewed RCTV's broadcasting licence for a period of 20 years. The current government therefore claims that the licence will expire in May 2007. RCTV argues that the license was renewed in 2001 and will be in effect until 2012.

Beyond any legal considerations, the Office of the Special Rapporteur for Freedom of Expression believes that, if the government's decision were implemented, Venezuelans would be deprived of possible access to a medium with editorial views critical of the government.

The Special Rapporteur for Freedom of Expression, Ignacio J. Alvarez, said that "it is of the utmost importance to freedom of expression in Venezuela that the government's actions guarantee the continued existence of media with diverse editorial positions, in order to ensure a climate of democratic pluralism where people are exposed on a daily basis to different views on matters that concern them."

The Office of the Special Rapporteur for Freedom of Expression urges the Government of the Bolivarian Republic of Venezuela to preserve the plurality of the mass media, and offers its advice and assistance in this regard, within its sphere of competence.

Washington, D.C. December 31, 2006.