



FACULTY OF LEGAL SCIENCES
SCHOOL OF INTERNATIONAL STUDIES

**“Analysis of the Special Rapporteur on Freedom of
Expression and the position of Ecuador towards the
IACHR”**

*Prior work to obtain the Bachelor on International Studies with a bilingual
mention in Foreign Trade*

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*To the Freedom of Expression,
as a tool for defending democracy
and human rights in the world.*

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"Thanks to freedom of expression today it is possible to say that a leader is useless without anything to happen to us. To the leader neither. " - Jaume Perich

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Abstract

Since the devastating effects of World War II, both the Americas and the rest of the world decided to take the first step to integrate efficiently and avoid potential conflicts in the future. With the "Inter-American Conference on Problems of War and Peace" held in Mexico City in early 1945, the continent took that first step to strengthen the weak American system recognizing international law as the law that regulates the conduct between states. As a result, the Charter of the OAS was the first legal source of the inter-American system and from this, the system of protection of Human Rights would born along with the Declaration of the Rights and Duties of Man and subsequently adopt the American Convention; becoming the most effective protection mechanism to defend human rights on the continent. Since its ratification, Ecuador and other countries have been constantly watched, some had more attention than others, but none of them have gone unnoticed. For better or worse, Ecuador has been included in many reports of the IACHR, sometimes in recognition of its management for the rights of its citizens and other times for committing serious violations against them. This paper investigates the situation of Human Rights in Ecuador since the first time it was included in a report of the Commission to present times in which the government of Ecuador has proposed its reform.

Introduction

Human Rights, a concept that in theory, we have for the simple fact of our human condition. These include those freedoms, faculties, institutions or claims related to primary or basic goods that guarantee a "decent life" and there is not any distinction of sex, race, color, language, religious belief, nationality, political opinion, economic position or any other condition.

Freedom of expression, has been considered as a fundamental right as stated in Article 19 of the Universal Declaration of Human Rights (1948) in which it stated that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." This concept is also deepened in the American Convention on Human Rights where Article 13 states:

“Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - respect for the rights or reputations of others; or
 - 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.”

But who are those that ensure the full compliance of these rights? And, why there is special controversy about the functions and powers that international organizations met?

In the case of American States, they are governed by the Inter-American Human Rights System, which was formally approved by the American Declaration of the Rights and Duties of Man. This was adopted in the framework of the OAS Charter where the "fundamental rights of every person" were proclaimed and they appear in several sections of the Charter. It is in the OAS Charter where it is established that the Inter-American Commission on Human Rights as the principal organ of the OAS, has the function to promote the observance and protection of human rights and has the role of a consultative body.

The controversy comes with the way in which the Commission is structured to fulfill their observance functions. This commission has several rapporteurs that aim to pay special attention to the most vulnerable groups regarding human rights issues. In addition, they seek to strengthen and systematize the work of the Commission. The only special rapporteur is for the Freedom of Expression, which was created due to its pivotal role in the development of a democratic system and as a instrument to expose violations against other human rights.

This graduation project shows the structure of the Inter-American Human Rights System with an emphasis on the Commission and its Special Rapporteur for Freedom of Expression with the aim of presenting the position of Ecuador towards the commission, its recent criticisms to it and the proposal to reform the Commission on matters of

procedure and annual reports. In this context, the events regarding El Universo case will be included.

It is based on the case of the newspaper El Universo from when the Ecuadorian government has strongly questioned the attributions of the Commission in the framework of its Special Rapporteur for Freedom of Expression. In its report, the rapporteur presented its deep concern regarding the decision of the National Court which upheld the civil and criminal sentence against three executives of El Universo and its director of opinion Emilio Palacio and his opinion column "No a las mentiras". Subsequently, the IACHR granted precautionary measures and requested to the Ecuadorian State to suspend the effects of the judgment. However, these were not followed and President Rafael Correa decided to grant clemency not only for the case of El Universo but also for the authors of "El Grab Hermano" which denounced the contracts Fabricio Correa had with the State.

With these events, this work will analyze the structure of the Inter-American Human Rights starting from its creation to its fundamental pillars for the promotion and protection of human rights in the American Convention. In addition, given the criticism by the Ecuadorian government, special attention will also be given to the Special Rapporteur for Freedom of Expression in order to investigate their functions, objectives and validity that it has within the framework of the Inter-American System. Finally, the position of Ecuador towards the Commission will be analyzed through the time until the recent concerns and the proposal to reform the Commission.

CHAPTER I: The IACHR and the Special Rapporteur for Freedom of Expression: It's background, functions and objectives.

1.1 HISTORY OF THE IACHR

Several historians claim that the American system is rooted in the Congress of Panama; this assembly was convened by Simon Bolivar who aimed to achieve the union of the American states. This congress was held in 1826 in Panama City and attended by Gran Colombia, Mexico, Peru and the United Provinces of Central America. Among the topics discussed were the renewal of binding treaties, the organization of a body of rules of international law and the abolition of slavery in all the Confederate States.¹

In view of the preceding background, it should be noted that it was not until 1889 that the American states began to meet regularly in order to create a common system of rules and institutions. It was on October 2, 1889 that the First International Conference of American States was held in Washington and aimed to "discuss and recommend to the respective Governments to adopt a plan of arbitration for the settlement of disagreements and issues that may hereafter arise between them; to discuss matters related to the increase of trade and means of direct communication between those countries; to encourage action by reciprocal trade relationships that are profitable for everyone and ensure wider markets for the products of each of those countries."² It was at this conference that it was agreed to establish an "International Union of American Republics" which later became the "Pan American Union" and then what would become the American system.

¹ Simon Bolivar : Chronology (1783-1830) . Call Congress of Panama . Lima, December 7 , 1824. Website of the University of the Andes , Merida, Venezuela . (Copied by Vicente Lecuna (decrees and proclamations , 136) : Francisco Javier Yanes and Cristobal Mendoza Montilla : Collection of Documents relating to the public life of the Liberator of Colombia and Peru Simon Bolivar paragraph serve the history of the independence of South America, Caracas, 1826 , T. IV , p . 175) .

² "Our history". Organization of American States . Extracted from the January 10, 2013 from <http://goo.gl/oAh0AT>

However, for decades the inter-American system worked without a Charter. In this context, the devastating effects of the Second World War, both for the Americas and the world reacted and took the first step to improve integration and thus more efficiently avoid potential conflicts. Thus, in early 1945, "Inter-American Conference on Problems of War and Peace" was held in Mexico City where the aim was to strengthen the inter-American system with better constitutional organization and work for respect for Human rights, justice and democracy. It was the Governing Board of the Pan American Union who was responsible for drafting a project to strengthen the Pan-American system and where international law was recognized as a regulatory standard of conduct between States. In this project The American States undertook to observe the rules of the "Declaration of Rights and Duties of States" and the "International Bill of Rights and Duties of Man."³

Subsequently, on March 30, 1948 the Member States of the inter-American system adopted their Charter as part of the Ninth International Conference held in Bogotá, Colombia. The Charter established that the international organization's aim is to "achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration and defend its sovereignty, territorial integrity and independence."⁴ In this context, it should be noted that the Charter of the OAS did not include a system for the protection of Human Rights, which is the first legal source of the inter-American system. However, it laid the foundation for this protection because in the preamble of the Charter of the OAS states the parties said: "Convinced that the historic mission of America is to offer to man a land of liberty and a favorable environment for the development of their personality and the realization of their legitimate aspirations."⁵ Also, in the third paragraph, it was stated that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, a system of individual freedom and social justice, founded on respect for the essential rights of man."⁶

³ Resolution IX of the Inter-American Conference on Problems of War and Peace , points 9 and 10.

⁴ "Charter of the Organization of American States." Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/kBGQN4>

⁵ Ibidem.

⁶ Ibidem.

In this context, it should be emphasized that in Article 5 of the Charter of 1948, which is still currently in force, in Article 3, paragraph 1), it states that "The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex."⁷ In addition, Article 17 states that "every state has the right to develop freely and spontaneously its cultural, political and economic life. In this free development, the State shall respect the rights of the individual and the principles of universal morality."⁸ In other words, it is expected that the principles of the Member States of the OAS human rights issues while at the Ninth Conference the American Declaration of the Rights and Duties of Man is adopted, this, by means of Resolution XXX.⁹

It should be realized that the American Declaration of the Rights and Duties of Man already had begun to take shape in 1945 as part of the Conference of Mexico City where its writing was commissioned to the Inter-American Jurisdictional Committee under Resolution XL.¹⁰ It was in the Bogota Conference that the plenary unanimously approved the draft and subsequently listened to several debates for the adoption of the Declaration to the end that the States adopt an international convention. However, the incipient development of international law on human rights issues prevented the States from adopting a convention and it was mentioned only in a statement that was no more than a non-binding document that the states signed.

Given that the two instruments adopted, namely, the OAS Charter and the Declaration of the Rights and Duties of Man, did not represent a real protection system on Human Rights, they proceed to create the Inter-American Commission on Human Rights. This took place in Santiago de Chile in 1959 under the Fifth Meeting of Consultation of Ministers of Foreign Affairs, through Resolution VIII.¹¹ It was

⁷ Article 3 , letter 1) of the Charter of the Organization of American States. Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/wlCRVS>

⁸ Article 17 of the Charter of the Organization of American States. Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/3o38Hh>

⁹ "American Declaration on the Rights and Duties of Man." Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/pyUAbW>

¹⁰ Mexico City Conference , 1945. Resolution XL on "International Protection Essential Rights of Man".

¹¹ "Santiago Declaration adopted on the occasion of the Fifth Meeting of Consultation of Ministers of Foreign Affairs" , Santiago de Chile, 12 to 18 August 1959. Retrieved January 10, 2013 from <http://goo.gl/kBQUAk>

established that the Commission would be composed of "seven members elected in a personal capacity, from lists submitted by governments, by the Council of the OAS" and that would be made to promote respect for human rights as well as having certain powers which the Counsel would point out.¹²

Among the functions and powers that the Board granted the Inter-American Commission on Human Rights, are:

- To develop an awareness of human rights among the peoples of America.
- Make recommendations to the governments of the states, when appropriate, to adopt progressive measures in favor of human rights within the framework of its domestic laws and constitutional provisions, as well as appropriate measures to further due respect those rights.
- Prepare studies or reports as it deems advisable in the performance of their duties.
- Request the governments of the states to supply reports on the measures they take on human rights.
- Serving the Organization of American States as an advisory body as respects human rights.

However, the Commission was devoted exclusively to developing a mechanism for effectively acting in several countries where there was no rule of law. This is because Article 2 of the Statute of the Commission stated that "for the purpose of this Statute, human rights means those enshrined in the American Declaration of the Rights and Duties of Man."

It wasn't until 10 years later that the next step to establish a system of human rights protection was put into effect. Indeed, in 1969, the American Convention on Human Rights where rights and obligations for the States and its two supervisory bodies--The Commission and the Inter-American Court of Human Rights--was established.

¹² "Santiago Declaration adopted on the occasion of the Fifth Meeting of Consultation of Ministers of Foreign Affairs" , Santiago de Chile, 12 to 18 August 1959. Retrieved January 10, 2013 from <http://goo.gl/kBQUAk>

1.2 THE AMERICAN CONVENTION ON HUMAN RIGHTS

The American Convention on Human Rights is the result of developments that occurred in the region for developing a protection system and also it established two bodies responsible for monitoring compliance with the rights and obligations of the State's citizens.¹³ In this sense, the Convention would be composed of a substantive part as well as an organic. The substantive would set a list of fundamental rights and freedoms and the organic portion establish the bodies responsible for the protection and promotion of the rights and freedoms.

1.2.1 HOLDERS OF HUMAN RIGHTS

It is the duty of the States to respect and ensure the rights and freedoms of "all persons subject to its jurisdiction" as stated in Article 1.1 of the American Convention. Furthermore, in the second paragraph of the same article it states that "person" means "every human being" and the principle of universality of human rights is reaffirmed. Thus discrimination is prohibited and that the only condition for the granting of these rights is to have the quality of "human being".¹⁴

In this context it is important to emphasize that the Convention excluding legal entities. However, there have been cases in which the Inter-American Commission on Human Rights has welcomed handling cases where victims are legal entities. This was the case that the Commission pursued against the Paraguayan State where it was determined that it violated the freedom of expression of Ñandutí Radio.

1.2.1 OBLIGATIONS OF STATES

- The obligation to respect and ensure that:

States parties are obliged to respect the human rights of individuals subject to its jurisdiction and to ensure the exercise and enjoyment of them as was contained in Article 1 of the American Convention.¹⁵ In this context, the obligation to respect human

¹³ P. Nikken, "Human Rights in the American Regional System," Interdisciplinary Course Human Rights, Inter-American Institute of Human Rights, 1990, p. 98.

¹⁴ "American Convention on Human Rights (Pact of San José)". Department of International Law (Organization of American States, Washington DC). Retrieved January 10, 2013 from <http://goo.gl/9DFggI>

¹⁵ Ibidem.

rights means that the State and its agents will not violate them. On the other hand, it assumes the obligation to ensure that the state will create conditions for people within its jurisdiction so they may enjoy and exercise these rights.¹⁶

- The obligation to take steps to put into effect the rights recognized in the Convention:

Article 2 of the Convention provides that States parties are obliged to take all necessary measures in the field of legislative or other measures so that the rights stated in the Convention can be made effective.

- The obligation to cooperate with international monitoring bodies:

Besides the two obligations which States parties have, a third is the obligation to cooperate with the international bodies that control them. Thus, in Article 4.1 of the American Convention is conferred upon the Inter-American Commission the power to request States parties to provide reports on the measures taken within its jurisdiction for the protection of human rights.¹⁷ In this context, the foregoing article of the principle of international law that obliges states to enforce treaties in "good faith" is reaffirmed.

Furthermore, Article 48 of the Convention provides that States shall send the Commission the information requests within a reasonable time and that if it decides to conduct an investigation, States will be those who provide all the tools and facilities necessary.¹⁸ In this context, it is noteworthy that the new rules of Inter-American Court of Human Rights further provides that "States have the duty to cooperate" so that all the steps in this order are met.¹⁹

The obligation to cooperate implies that States provide, in a timely manner, all information required by the supervisory body. Therefore, the position of the supervisory bodies is based on those states that can provide them with information needed to be

¹⁶ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/9DFggI>

¹⁷ *Ibíd.*

¹⁸ *Ibíd.*

¹⁹ "Regulations of the Inter-American Court of Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/s3ZdLJ>

assessed and thus establish whether they are complying with international standards or not. Thus, the Commission adopted a rule in Article 39 of the regulation which states that "the facts alleged in the petition and its pertinent parts have been transmitted to the State in question and it is presumed that if it does not provide relevant information during the stipulated period to the Commission pursuant to Article 38 of this Regulation the other evidence will not lead to a different conclusion."²⁰

1.2.1 RIGHTS PROTECTED

In the American Convention the civil and political rights of all people are dedicated and listed in Articles 3-25:

- Art.3.- The right to acknowledgement of juridical personality.
- Art 4. The right to life.
- Art.5.- The right to personal integrity.
- Art.6.- The prohibition of slavery and servitude.
- Art.7.- The right to personal liberty.
- Art.8.- The right to a fair trial.
- Art.9.- The principle of legality and retroactivity.
- Art.10.- The right to compensation.
- Art.11.- The protection of honor and dignity.
- Art.12.- The freedom of conscience and religion.
- Art.13.- The freedom of thought and expression.
- Art.14.- The right of reply.
- Art.15.- The right of assembly.
- Art.16.- Freedom of Association.
- Art.17.- Family protection.
- Art.18.- The right to a name.
- Art.19.- The rights of children.
- Art.20.- The right to nationality.
- Art.21.- The right to private property.
- Art.22.- Freedom of movement and residence.

²⁰ "Regulations of the Inter-American Court of Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/s3ZdLJ>

- Art.23.- Political rights.
- Art.24.- Equality before the law.
- Art.25.- Judicial protection.

On the other hand, with respect to economic, social and cultural rights, the Convention mentions them in Article 26 referring to them as "rights implicit in the economic, social, educational, scientific and cultural norms" which are within the OAS Charter as amended by the Protocol of Buenos Aires.²¹ It should be noted that the Commission, in order to give greater prominence to these rights, adopted an Additional Protocol to the Convention on Economic, Social and Cultural Rights (Protocol of San Salvador) which came into force in November 1999.²²

This paper will analyze in the following chapters the tools the Commission uses to ensure the right to freedom of expression and protection of honor and dignity linked to recent events that occurred in the Ecuadorian State regarding the Special Rapporteur for Freedom of Expression.

1.3 THE PILARS OF THE SYSTEM FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Article 33 of the American Convention states that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights will be bodies that "have jurisdiction in matters relating to compliance with the commitments made by the States Parties to this Convention".²³

1.3.1 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Through Resolution No. 253, the Permanent Council of the OAS established procedures of the Commission which were created as a result of the new Convention

²¹ "Charter of the Organization of American States." Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/HVd5N5>

²² "Additional Protocol to the American Convention on Human Rights in the Area of Economic , Social and Cultural Rights (Protocol of San Salvador) ." Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/sVXcFO>

²³ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/YgUGFZ>

and how they would coexist.²⁴ Thus, with this resolution the American system was divided into two. That is, one hand would be composed of the mechanisms developed in the framework of the OAS Charter and the other would be composed of mechanisms derived from the Convention. In this context, if we analyze the Statute of the Commission in Article 18, it provides that certain mechanisms will be applied by the Commission to all Member States of the OAS, whether or not parties to the Convention²⁵ and others only to Member States that are not part of the Convention.²⁶ Furthermore, derivatives of the Convention shall be applied by the Commission and the Court "if it has been given jurisdiction" and only to States who are parties to that treaty.²⁷ Thus as to the Statute of the Commission and its rules, the division between mechanisms for Member States of the OAS and mechanisms for States Parties to the American Convention is almost minimal. As a result, in the practice of the Commission, these differences are reduced further and when it began to implement the Convention one could not differentiate the quality of the state who was being controlled by it.²⁸

The Commission is composed of seven members as specified in Article 34 of the Convention. They must be "persons of high moral character and recognized competence in the field of human rights".²⁹ In this context, the seven members are elected by the General Assembly of the OAS and its candidates are part of a proposal by all the governments of the Member States list. Every government has the possibility to propose up to 3 people who may be nationals of any Member State of the OAS.³⁰ On that short list at least one candidate must be a national of a State other than the nominating one. Also, there cannot be members on the Commission two people of the same nationality

²⁴ CP / RES.253 (343/78), "Transition from the present Inter-American Commission on Human Rights and the Commission under the American Convention on Human Rights "adopted by the Permanent Council of the Organization on September 20, 1978 .

²⁵ "Statutes of the Inter-American Commission on Human Rights" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/wvxsGJ>

²⁶ *Ibíd.*

²⁷ *Ibíd.*

²⁸ C. Medina , *The American Convention: theory and jurisprudence. Life, Personal Integrity, Personal Freedom, Due Process and Judicial Resources*, Centre for Human Rights, Faculty of Law -University of Chile, 2003 .

²⁹ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/vMbmCw>

³⁰ *Ibíd.*

in the same command.³¹ Finally, the period of the elected members is four years and they may be reappointed once.³²

It is noteworthy that the Statute of the Commission has stated that, the office of a member of the Commission may not mix with other activities that could affect their "independence or impartiality, dignity or the prestige of his post on the Commission".³³ To define the incompatibility of office of a member, the Commission itself decides by the affirmative vote of at least five members. Once you've made the decision, the case is to be treated in the General Assembly for final resolution of the case and that "disability", once decided upon, proceeds with the removal from office of such a member.³⁴ Also, the Commission may request of the General Assembly that one member be removed from office for having committed a serious violation of its obligations contained in Article 9 of the Statute.³⁵

On the subject of discussions and votes at meetings of the Commission, the rules in Article 17 prevents the participation in the discussion, investigation, deliberation or decision of a case members of the "state under consideration, general or specific "or that" those who have been accredited for carrying out a special mission as diplomatic agents on behalf of that State "; or "that have previously participated in any capacity in a decision concerning the same facts on which the matter is based" or that have acted as advisors or representatives of any interested parties in the decision."³⁶

³¹ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/3bxOIs>

³² "Statutes of the Inter-American Commission on Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/uimwgi>

³³ Ibidem.

³⁴ Ibidem.

³⁵ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 10, 2013 from <http://goo.gl/JEVps4>

³⁶ "Statutes of the Inter-American Commission on Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/uimwgi>

The Commission has about two sessions during the year and special meetings as may be necessary under Article 14 of the Regulations of the Commission.³⁷ In this context, the meetings of the Committee shall be confidential unless otherwise decided.³⁸ The quorum for meetings shall have the absolute majority of the members and the decisions taken must be approved by a majority of those present.³⁹ Members who disagree with a decision have the right to submit an explanation of their vote in writing to be incorporated into the project report that was addressed.⁴⁰

It is in the year 2000 that the Commission integrates a working mechanism that would form the rapporteurs and working groups. Under the Regulation, the Rapporteurs can be created to better fulfill the functions of the Commission and where the owners may be designated by an absolute majority of the members of the Commission and may also be members of the organization or outsiders of same. It is the Commission which establishes the characteristics of the mandate and who are the reporters who regularly submit work plans to the Commission.⁴¹ On the other hand, the working groups are created by the Commission in order to prepare their sessions or for special projects.⁴²

The mandates of the Commission were changed in the year 2006 where rules for the appointment of special rapporteurs were introduced. In the new rules a public contest an open call is established with the goal of having the highest number of applications and the ability to take into account the criteria of Member States of the OAS and other organizations of civil society included in the performance of their duties. Also, the same criteria are taken into account that, among the finalists, there must be persons representing equally men and women and racial criteria of diversity and geographic distribution of the continent are included.⁴³

In summary, the Commission has several tools to monitor the behavior of states on Human Rights established either in the American Declaration of the Rights and

³⁷ "Regulations of the Inter-American Commission on Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/AnUYk5>

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ *Ibidem*.

⁴¹ *Ibidem*.

⁴² *Ibidem*.

⁴³ IHR Commission. Press Release No. 41/06 . Retrieved January 10, 2013 from <http://goo.gl/m3Wznm>

Duties of Man and the American Convention on Human Rights. The American Declaration, meanwhile, allows the Commission to examine in general the situation of Human Rights in a State and it can prepare a report on the situation. On the other hand, the Convention allows the Commission to be informed of specific cases of human rights.

1.3.1 AMERICAN COURT OF HUMAN RIGHTS

The Court is composed of seven judges who must be nationals of any of the Member States of the OAS and not necessarily of States signatories of the American Convention.⁴⁴ The judges that comprise this court are selected by States member to the Convention and the list of candidates is composed of persons chosen by the same States parties. The people who make that list must be lawyers "of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for appointment to the highest judicial functions under the law of the country of which they are nationals or the State that proposes them as candidates."⁴⁵ The term of office is six years and they may be reelected only once.⁴⁶

To solve cases, Article 55 of the American Convention provides that "[t]he judge be a national of any of the States Parties and that the case submitted to the Court shall retain the right to know the same" and that "[i]f one of the judges called to hear a case should be a national of one of the States Parties, another State member to the case may appoint a person of their choice to serve on the Court as an ad hoc judge".⁴⁷ This standard is intended for cases in which there are two states contending with each other and as a principle of "legal equality of states". Also, in Article 18 of the Rules of Court this standard is specified and the details in such terms.

Furthermore, the Statute of the Court does not allow judges to participate in cases in which they or their family have an interest or have taken part as agent, counsel or advocates, "or as members of a national or international tribunal, or an investigative

⁴⁴ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 15, 2013 from <http://goo.gl/i4QMeo>

⁴⁵ Ibidem.

⁴⁶ Ibidem.

⁴⁷ Ibidem.

committee, or in any other capacity, in the opinion of the Court.”⁴⁸ In addition, the judges of the Court are subject to the "disciplinary authority" of the General Assembly of the OAS.⁴⁹

Needless to say the Court judges are also subject to incompatibilities of their office. It is in Article 18 of the Statute of the Court where it specifies that there are three cases in which the exercise of office is incompatible: a) the member or senior executive branch officials; except for those positions that are not part of ordinary hierarchical subordination, as well as those of diplomatic agents who are not Chiefs of Missions to the OAS or to any of its Member States; b) officials of international organizations; c) Any others that might prevent the judges from discharging their duties, or affecting their independence, impartiality, dignity or prestige of his office.⁵⁰

The Court has several official languages which are Spanish, English, Portuguese and French among which is chosen each year a specific language to address cases.⁵¹ As for periods of regular sessions, these are to be celebrated as many times as necessary during the year and which dates are determined in previous sessions and which may be amended by the President in exceptional cases.⁵² Court hearings are public but the discussions are held in private.⁵³ The quorum is five judges and the voting is done point by point and a decision by the majority of judges present is taken. In the event of a tie in the votes of the judges, the deciding vote is that of the President of the Court.⁵⁴

Finally, it should be mentioned that the Court has two functions: the first focuses on resolving contentious cases concerning alleged violations of the Convention by a State party and the second focuses on issuing "advisory opinions" in the cases mentioned in Article 64 of the American Convention. The cases in which the Court may give an advisory opinion are:

⁴⁸ "Statutes of the Inter-American Court of Human Rights" . Organization of American States. Retrieved January 15, 2013 from <http://goo.gl/aLnxZR>

⁴⁹ Ibidem.

⁵⁰ Ibidem.

⁵¹ "Regulations of the Inter-American Court of Human Rights " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 16, 2013 from <http://goo.gl/wSr81q>

⁵² Ibidem.

⁵³ "Statutes of the Inter-American Court of Human Rights" . Organization of American States. Retrieved January 15, 2013 from <http://goo.gl/aLnxZR>

⁵⁴ Ibidem.

- The Member States of the Organization may consult the Court regarding the interpretation of this Convention or other treaties concerning the protection of human rights in the American States. They may also consult in their spheres of competence, the organs listed in Chapter X of the OAS Charter amended by the Protocol of Buenos Aires.
- The Court, at the request of a Member State of the Organization, may give opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

1.4 THE SPECIAL REPORTEUR FOR FREEDOM OF EXPRESSION

Article 13 of the American Convention establishes 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 borders, either orally, in writing or in print or art, or through any other media of their choice. (2) The exercise of the rights provided in the preceding paragraph shall not be subject to prior censorship but to subsequent liability, which shall be expressly established by law and are necessary to ensure: (a) the respect of the rights or reputations of others, or (b) the protection of national security, public order, health or morals. (3) You cannot restrict the right of expression by indirect means such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information or any other means which tends to impede the communication and circulation of ideas and opinions. (4) public entertainment may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of children and adolescents, notwithstanding the provisions of subsection 2 (5) It shall be prohibited by law any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to violence or any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin. "⁵⁵

⁵⁵ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 15, 2013 from <http://goo.gl/rgbCSu>

In addition, Article IV of the American Declaration states: "Everyone has the right to freedom of investigation, of opinion and expression and dissemination of ideas by any means".⁵⁶ Article 4 of the Inter-American Democratic Charter states that: "These are fundamental components of democracy, transparency in government activities, probity, accountability of governments in governance, respect for social rights and freedom of speech and press. The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law in all institutions and sectors of society are equally essential to democracy."⁵⁷ Finally, Article 19 of the Universal Declaration of Human Rights of 1948 states that "everyone has the right to freedom of opinion and expression; this right includes the freedom not to be harassed because of one's opinions, to seek, receive and impart information and ideas of all kinds, regardless of borders, by any means of expression."⁵⁸

As we can see, the legal framework of the inter-American system of human rights protection is probably an international system that gives greater scope and surrounds better guarantees of freedom of thought and expression. Both the Commission and the Court have pointed out the importance of freedom of expression within societies on the continent. Thus, Article 13 of the Convention points out that "an indication of the importance attached by the drafters of the Convention [American] is the need to express and receive any kind of information, thoughts, opinions and ideas."⁵⁹

Within the inter-American legal framework, freedom of expression is given a high value of importance based on the principle of autonomy and dignity. Thus the emphasis on the "instrumental value" of Freedom of Expression for the exercise of other fundamental rights is found in international instruments. In addition to the importance

⁵⁶ "American Declaration on the Rights and Duties of Man." Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 10, 2013 from <http://goo.gl/XusNDj>

⁵⁷ "Inter-American Democratic Charter." Organization of American States . Retrieved January 10, 2013 from <http://goo.gl/F0q3iv>

⁵⁸ "Universal Declaration of Human Rights" . United Nations. Retrieved January 19, 2013 from <http://goo.gl/rt4dsL>

⁵⁹ "Inter-American Legal Framework Regarding the Right to Freedom of Expression" . Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved January 15, 2013 from <http://goo.gl/soMF6>

given to this law in particular, the legal framework provides that freedom of expression has a triple role within the democratic system.⁶⁰

First, it is stated that freedom of expression is one of the individual rights that reflects "the virtue that accompanies-and-characterizes human beings: the unique and precious virtue of thinking about the world from our own perspective and communicating this with others to build, through a deliberative process, not only the pattern of life that everyone is entitled to take, but the model of society in which we live."⁶¹ That's how freedom of expression is defined--as an individual right to think for yourself and to share this thought with others.

Second, both the Commission and the Court have pointed out in its jurisprudence that "the importance of freedom of expression within the catalog of human rights also stems from its structural relationship to democracy."⁶² This is how the various organs of the American system have described the relationship between freedom of expression to democracy as an "insoluble" and "fundamental" relationship. Also, the Commission explains that Article 13 of the American Convention aims to strengthen the functioning of pluralistic and deliberative democratic systems by protecting the free flow of information, ideas and opinions of all kinds.⁶³ In this sense, it is necessary to mention the Joint Declaration of the Special Rapporteurs for Freedom of Expression of the UN, in 1999, the OSCE and the OAS cited that "freedom of expression is a fundamental international human right and a basic component of civil society based on democratic principles."

Third, the American system has asserted that the freedom of expression is a key tool for the exercise of other fundamental rights. According to the legal framework, this

⁶⁰ "Inter-American Legal Framework Regarding the Right to Freedom of Expression" . Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved January 15, 2013 from <http://goo.gl/soMF6>

⁶¹ *Ibidem*.

⁶² IACHR, The Compulsory Licensing of Journalists (arts . 13 and 29 American Convention on Human Rights). Advisory Opinion OC- 5/85 of November 13 , 1985. Retrieved January 16, 2013 from <http://goo.gl/KYWq0f>

⁶³ IACHR. Arguments before the Court in the Ivcher Bronstein vs. Peru case . Transcribed Court HR , Case Ivcher Bronstein vs. Peru . Judgment of February 6 , 2001. Series C No. 74, para. 143. d) ; IACHR. Arguments before the Court in the case " The Last Temptation of Christ " (Olmedo Bustos et al) v Chile. Transcribed Court HR , "The Last Temptation of Christ" (Olmedo Bustos et al) v Chile. Judgment of February 5 , 2001. Series C No. 73, para. 61. b)

is a tool to "exercise the right to participation, religious freedom, education, ethnic or cultural identity and, of course, equality not only understood as the right to non-discrimination, but as the right to enjoy certain basic social rights."⁶⁴ That said, freedom of expression is at the center of the system of protection of human rights and as noted by the Commission," the lack of freedom of expression is something that 'contributes to violations of other human rights.'⁶⁵

In this regard, the Commission in considering the fundamental role of freedom of expression permanently seeks to promote the defense of this important law. The creation of a Special Rapporteur was the cornerstone that would mean the true defense, security and promotion of other human rights through freedom of expression.

1.4.1 ORIGIN

The Special Rapporteur for Freedom of Expression was created in the 97th Session of the Commission in October 1997 by a resolution which was adopted unanimously. It was established as a "permanent and independent" office which would act within the framework and the support of the Commission. The objective of the Commission was to stimulate the defense of the right to freedom of thought and expression to consider it fundamental to the democratic system and as a tool for protection, guaranteeing and promoting other human rights that have been so written. In 1998, during the 98th session, the Commission defined the features and functions which work with the Special Rapporteur for Freedom of Expression and also decided to establish a voluntary fund for financing.⁶⁶

It was at the second Summit of the Americas where the Heads of State and Government recognized the crucial role of the right to freedom of expression so they expressed support for the creation of the Special Rapporteur for Freedom of Expression.

⁶⁴ "Inter-American Legal Framework Regarding the Right to Freedom of Expression" . Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved January 15, 2013 from <http://goo.gl/soMF6>

⁶⁵ "Report No. 38/97 . Case No. 10,548 . Bustíos Hugo Saavedra. Peru . October 16, 1997 . " Inter-American Commission on Human Rights (Organization of American States) . Retrieved January 20, 2013 from <http://goo.gl/kY7ULt>

⁶⁶ OAS. Special Rapporteur for freedom of expression. Origin. Retrieved January 22, 2013 from <http://goo.gl/IPVh6d>

In the Santiago Declaration, adopted at the summit in 1998, was expressed the following:

*"We agree that a free press plays a fundamental role [for human rights] and we reaffirm the importance of ensuring freedom of expression, information and opinion. We applaud the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States."*⁶⁷

In this context, the Heads of State and Government have pledged to support the Special Rapporteur for Freedom of Expression for its effective functioning. Thus, included in the Plan of Action of the Second Summit are the following recommendations:

*"Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression, information and thought, through the support of the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression."*⁶⁸

Likewise, in the third Summit of the Americas, there was ratified the mandate of the Special Rapporteur for Freedom of Expression in which they added the following item on its agenda:

*"Support the work of the inter-American System of Human Right and the freedom of expression through the Special Rapporteur for the Freedom of Expression of the IACHR, and proceed with the dissemination of the work of comparative jurisprudence, and seek also to ensure that national legislation on freedom of expression is consistent with international legal obligations."*⁶⁹

⁶⁷ Declaration of Santiago. Second Summit of the Americas. April 18-19, 1998. Santiago , Chile . In : Official Records of the Summit Process from Miami to Santiago. Volume I. Office of Summit Follow . OAS.

⁶⁸ Action plan. Second Summit of the Americas. April 18-19, 1998. Santiago , Chile . In : Official Records of the Summit Process from Miami to Santiago. Volume I. Office of Summit Follow . OAS.

⁶⁹ Action plan. Third Summit of the Americas. April 20-22, 2001. Quebec , Canada. Available in <http://goo.gl/JCRLfs>

It is noteworthy that the General Assembly of the OAS has expressed support for the work of the Special Rapporteur for Freedom of Expression, and also assigned the "monitoring or analysis of some of the rights that comprise freedom of expression."⁷⁰ One example is the 2149 decision in which the right to freedom of expression and contributions reaffirmed the Annual Report of the Special Rapporteur for Freedom of Expression in 2004. In the same it was recommended that follow-up be given to issues related to the "situation of freedom of expression in the region; indirect violations of freedom of expression; the impact of concentration of ownership of the means of social communication; and treatment of hate speech in the American Convention."⁷¹ Different organizations, the media, journalists and people who have been victims of violations of their right to freedom of expression have also supported the work done by the Special Rapporteur for Freedom of Expression.⁷²

1.4.1 MANDATE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

Article 40 of the Convention provides that "the secretariat services of the Commission shall be furnished by the appropriate specialized unit that is part of the General Secretariat of the Organization and must have the necessary resources to accomplish the tasks that are entrusted to them."⁷³ Likewise Article 41 established that they shall perform the functions as set out by the IACHR:

"The Commission has the primary function of promoting the observance and protection of human rights and, in the exercise of its mandate, has the following functions and powers:

- *To develop an awareness of human rights among the peoples of America;*
- *make recommendations, when appropriate, to the governments of the Member States to adopt progressive measures in favor of human rights within the*

⁷⁰ OAS. Special Rapporteur for freedom of expression. Origin. Retrieved January 22, 2013 from <http://goo.gl/bo0IuS>

⁷¹ IACHR. Annual Report 2004. Volume II . Chapters II , V and VII . Retrieved February 1, 2013 from <http://goo.gl/dqw1b6>

⁷² IACHR. Annual Report 2012. Retrieved February 1, 2013 from <http://goo.gl/Bggpnf>

⁷³ "American Convention on Human Rights (Pact of San José)" . Department of International Law (Organization of American States , Washington DC) . Retrieved January 15, 2013 from <http://goo.gl/rzWUvW>

framework of its domestic laws and constitutional provisions, as appropriate measures to further due respect those rights;

- *prepare such studies or reports as it considers advisable in the performance of their duties;*
- *request the governments of member states to supply reports on the measures they take on human rights;*
- *respond to inquiries, through the General Secretariat of the Organization of American States, to inquiries made by the Member States on issues related to human rights and, within its possibilities, to provide advice that they request;*
- *act on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention, and*
- *submit an annual report to the General Assembly of the Organization of American States.*

As can be seen, the Special Rapporteur for Freedom of Expression operates within the legal framework of the Commission and therefore it becomes a permanent office. Since its creation, which was subsequently held by heads of state at the Summit of the Americas in 1998, it has its own structure and functional independence. It is during the third Summit of the Americas that the mandate of this Rapporteur was ratified and where its general mandate to "realized the activities to protect and promote the right to freedom of thought and expression" was established.⁷⁴ Within its mandate includes the following functions:

- Advise the IACHR in evaluating cases and requests for precautionary measures as well as in the preparation of reports;
- Undertaking advocacy and education regarding the right to freedom of thought and expression;
- To advise the Commission in conducting site visits to member countries of the OAS to expand the general observation of the situation and / or to investigate a particular situation having to do with the right to freedom of thought and expression;
- Conduct visits to individual member states of the OAS;

⁷⁴ "Mandate of the Special Rapporteur for Freedom of Expression" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved March 1, 2013 from <http://goo.gl/Q9m04c>

- To undertake specific and thematic reports;
- Promote the adoption of legislative, judicial, administrative or other measures as may be necessary to put into practice the exercise of the right to freedom of thought and expression;
- Coordinate verification and monitoring of the conditions of the right to freedom of thought and expression in the Member States with ombudsmen or national human rights institutions;
- Provide technical advice to the organs of the OAS;
- Prepare an annual report on the situation of the right to freedom of thought and expression in the Americas, which will be considered by the plenary of the Commission for approval of its inclusion in the Annual Report of the IACHR presented each year to the General Assembly; and
- To collect all information necessary for the preparation of reports and previous activities.

1.4.1 STATEMENT OF PRINCIPLES ON FREEDOM OF EXPRESSION

It was in 2000 that the Special Rapporteur for Freedom of Expression worked on the development of a project for the Declaration of Principles on Freedom of Expression. The idea of creating a mission statement was a response to the mandate entrusted to the rapporteur and was aimed at creating a legal framework that would enable an effective system of protection of freedom of expression in the region.⁷⁵ It was in October 2000, after extensive discussion, that the Commission approved the Declaration of Principles on Freedom of Expression. With the approval of this document, it presupposed the recognition of the right to freedom of expression with the respective interpretation of Article 13 of the American Convention on Human Rights.

Before the adoption of the Declaration document, the then Rapporteur attended a conference on freedom of expression organized by the SIP (Inter American Press) where the project was presented. It had the support of organizations like the Carter Center, International Association Broadcasting (AIR), CEJIL (Center for Justice and

⁷⁵ "Background and Interpretation of the Declaration of Principles" . Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) Retrieved March 1, 2013 from <http://goo.gl/oSKzo1>

International Law), Americas Watch, Journalists Association, World Press Freedom Committee and Committee to Protect Journalists (CPJ) and jurists specializing in freedom of expression.⁷⁶ Thus, the Declaration of Principles on Freedom of Expression enjoyed great support from international organizations. It also expressed the importance of freedom of expression as a fundamental tool for the effective development of the democratic process.⁷⁷ Next, are the principles enunciated in the Declaration:

- *Principle 1: Freedom of expression in all its forms and manifestations is a fundamental and inalienable, inherent right of all people. It is also a prerequisite for the existence of a democratic society.*
- *Principle 2: Everyone 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 have equal opportunities to receive, seek and impart information through any media without discrimination on any grounds, including race, color, religion, sex, language, political or other opinion, national or social origin, property, birth or other status.*
- *Principle 3: Everyone has the right to access information about themselves or their assets expeditiously and not onerously, whether it be contained in databases, public or private records and, if necessary, update, correct and / or amend it.*
- *Principle 4: Access to information held by the state is a fundamental right of individuals. States are required to ensure the 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.*
- *Principle 5: Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. The restrictions on the free flow of ideas and opinions, as well as the arbitrary imposition of information and the creation of barriers to free flow of information violate the right to freedom of expression.*

⁷⁶ "Background and Interpretation of the Declaration of Principles" . Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) Retrieved March 1, 2013 from <http://goo.gl/oSKzo1>

⁷⁷ Ibidem.

- *Principle 6: Everyone has the right to communicate their views by any means and form. Compulsory membership or the requirement of a degree for the practice of journalism constitutes unlawful restrictions on freedom of expression. Journalistic activities must be guided by ethical conduct which should at no time be imposed by states.*
- *Principle 7: Prior conditioning, such as truthfulness, timeliness or impartiality of states is incompatible with the right to freedom of expression recognized in international instruments.*
- *Principle 8: Every social communicator has the right to keep their sources of information, notes, personal and professional archives.*
- *Principle 9: Murder, kidnapping, intimidation, or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restricts 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.*
- *Principle 10: Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official or public or private person who has voluntarily become involved in matters of public interest. Moreover, in these cases it must be proven that in disseminating the news, the author intended to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in search of the truth or falsity of such.*
- *Principle 11: Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "insult laws" restrict freedom of expression and the right to information.*
- *Principle 12: The monopolies or oligopolies in the ownership and control of the media should be subject to antitrust laws as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of the right to information for citizens. In no case should such laws apply exclusively to the media. The concession of radio and television must consider democratic criteria that guarantee equal opportunity for all individuals in accessing them.*

- *Principle 13: a use of state power and resources of public finances; the granting of customs duty privileges; the arbitrary and discriminatory placement of official advertising and government loans; the granting of radio and television frequencies, among others, to pressure and punish or reward and provide privileges to social communicators and media depending on their approach, threaten freedom of expression and must be explicitly prohibited by law. The media have the right to conduct its work independently. Direct or indirect pressures aimed at silencing the informative work of journalists are incompatible with freedom of expression.*

1.4.1 KEY FEATURES

For more than a decade the Special Rapporteur for Freedom of Expression has been conducted and has fulfilled the tasks assigned to it by the Commission under its mandate. As can be seen, the creation of the Special Rapporteur aims to advise the Commission regarding the situation of freedom of expression in the States and report on the matter. Among the tasks performed by the Rapporteur are the following:

- **System Individual Cases**

As mentioned above, the Special Rapporteur for Freedom of Expression aims to advise the Commission in evaluating individual petitions and prepare correct reports. Thus, an effective attention is given to the various cases presented and provides them with justice to draw attention to situations involving freedom of expression. In this context, the Special Rapporteur jointly with the IACHR creates "important case law applicable both for American system and for the protection of human rights by the courts of the countries of the region itself."⁷⁸

There are many cases in Freedom of Expression in which the Special Rapporteur has permanently helped the Commission by presenting them before the Court. On issues of freedom of expression, the Special Rapporteur helps the in everyday work of the

⁷⁸ "Main Duties". Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 5, 2013 from <http://goo.gl/6oJkNz>

IACHR and the Inter-American Court as they establish important case law on the limits and scope of the right to freedom of expression.

- **Injunctive Relief**

It is the Special Rapporteur for Freedom of Expression which makes recommendations to the Commission to adopt precautionary measures on issues of freedom of expression. The purpose of an injunction is to prevent "serious injury" that is irreparable to citizens under the jurisdiction of a State or being processed in a case pending before the Commission.⁷⁹ In this context, it is important to note that an injunction is not a prejudgment of the case by the Commission.⁸⁰

There are several occasions in which the Commission has asked the Member States of the OAS to adopt precautionary measures to protect the right to freedom of expression measures. In the case of Ecuador, on February 21, 2012 the IACHR requested the State of Ecuador immediately suspend the effects of a judgment against Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga in an opinion column for the newspaper El Universo that will be analyzed in the following chapters.⁸¹

- **Public Hearings**

When the Commission conducts public hearings on Freedom of Expression, the Special Rapporteur is responsible for preparing reports in addition to interventions and monitoring thereof.⁸²

- **Official Visits**

⁷⁹ "Main Duties". Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 5, 2013 from <http://goo.gl/CWk7HH>

⁸⁰ IACHR. Annual Report 2012. Retrieved February 1, 2013 from <http://goo.gl/zGh6H4>

⁸¹ Commission decision of February 21, 2012 : Precautionary Measures . Retrieved March 5, 2013 from <http://goo.gl/49R1O1>

⁸² "Main Duties". Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 5, 2013 from <http://goo.gl/eUG7dS>

Official visits or visits in loco are one of the main tools used by the Special Rapporteur for Freedom of Expression to collect necessary information on the situation of Freedom of Expression in a particular State.⁸³ These visits allow the Special Rapporteur to promote international standards on the exercise of the right to freedom of expression and the use of the Inter-American Human Rights.⁸⁴ Among the activities of the Special Rapporteur during these visits are meetings with government authorities, members of the legislature and representatives of the judiciary as well as autonomous entities and NGOs, journalists, academics and users of the inter-American human rights, among others.⁸⁵

- **Seminars and workshops with strategic actors in the region**

Another function of the Special Rapporteur is the promotion of the right to freedom of expression as well as the workshops and seminars that allow him to completely fulfill this task.⁸⁶ That is why the Rapporteur has organized several seminars throughout the region with the cooperation of governmental institutions, NGOs and universities where the general public, students, civil servants, journalists, teachers, and others have attended.⁸⁷ Seminars and workshops are taught by staff of the Special Rapporteur in the capitals of the Member States or in remote regions where there is no access to information on guarantees which protect the right to freedom of expression.⁸⁸ The purpose of this tool is to promote the use of Inter-American Human Rights to "raise their problems and present their complaints."⁸⁹ In addition, the seminars put the Rapporteur into contact with strategic partners in order to implement international standards and regulations of internal law on freedom of expression.⁹⁰

- **Annual Report and Development of Expertise**

⁸³ "Main Duties". Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 5, 2013 from <http://goo.gl/eUG7dS>

⁸⁴ *Ibidem*.

⁸⁵ *Ibidem*.

⁸⁶ *Ibidem*.

⁸⁷ *Ibidem*.

⁸⁸ *Ibidem*.

⁸⁹ *Ibidem*.

⁹⁰ *Ibidem*.

Each year, the Special Rapporteur draws up a report on the state of freedom of expression in the hemisphere as part of their main task. In this, the situation of the right to freedom of expression in each of the Member States of the OAS where the main threats to the free exercise of rights and the progress that has been made during the year are included in the analysis.⁹¹ In addition to annual reports, the Special Rapporteur periodically produces specific reports on certain countries and thematic reports that have resulted in major processes of discussion in the region and the implementation of legislative and administrative reforms in many States of the Americas.⁹²

- **Pronouncements and special statements**

The Special Rapporteur for Freedom of Expression is constantly monitoring the state of the right to freedom of expression through its extensive network of contacts and sources. It is through these that the Rapporteur makes statements through press releases, reports and opinions on specific cases that relate to the free exercise of freedom of expression.⁹³ These press releases of the Rapporteur represent the most important mechanism of the work they do. According to reports the CIDJ, the Special Rapporteur for Freedom of Expression, receives about 2,250 emails per month of which 75% represent alerts, press releases, inquiries and consultations on freedom of expression in the region.⁹⁴ In addition, 10% are formal requests to the system of individual cases of the IACHR while 15% relate to issues that are not within the jurisdiction of the Special Rapporteur.⁹⁵ After receiving the emails, the Rapporteur reviews, purifies and classifies these in order to determine what action to take for the different cases.

On the other hand, it is important to mention that the Special Rapporteur has made statements along with other regional and UN rapporteurs for freedom of expression.⁹⁶ These joint statements are usually signed by the rapporteurs of the UN, the Organization for Security and Co-operation in Europe (OSCE), the OAS and the

⁹¹ "Main Duties". Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 5, 2013 from <http://goo.gl/Xt44Eo>

⁹² IACHR. Annual Report 2012. Retrieved February 1, 2013 from <http://goo.gl/KLyBDW>

⁹³ *Ibidem*.

⁹⁴ *Ibidem*.

⁹⁵ *Ibidem*.

⁹⁶ *Ibidem*.

African Commission on Human and Peoples' Rights.⁹⁷ In case of regional joint statements, they are signed only by the rapporteurs of the OAS and the UN.

1.4.1 FINANCING

During the 98th session (March 1998), the Commission defined the functions of the Special Rapporteur for Freedom of Expression and given the lack of financial resources, a separate voluntary fund was established to avoid extra expenses to the Commission. This, in its beginnings, had the financial support of states like Brazil and Argentina which enabled the Rapporteur to effectively perform their functions.⁹⁸ In this context, the Special Rapporteur does not receive the Regular Fund of the OAS nor the Commission so it does not require of the Executive Secretariat the task of acquiring this resource.

The Special Rapporteur for Freedom of Expression seeks its own resources for financing in the form of donations from states like Argentina, Brazil, Chile, Costa Rica, the USA, Mexico or Peru who have contributed to the voluntary fund. In addition, funds also represent participation in the international cooperation process.⁹⁹ In this regard it is noteworthy that the Special Rapporteur is governed strictly by an agenda previously approved by the Commission.

It is in these agenda or work plans that are included specific projects in the areas of freedom of expression that are ongoing procedures within the OAS.¹⁰⁰ These procedures dictate the process that projects must be submitted, in this case, the Project Appraisal Committee-CEP and the offices of legal and financial issues, and others.¹⁰¹ After a project has been subjected to this process, it is presented to the international cooperation agencies who then approve or not a donation to the Voluntary Fund. In this regard, it is important to emphasize that 12% of the proceeds are earmarked for the central administration of the OAS for indirect costs or ICR.¹⁰² Finally, all these

⁹⁷ IACHR. Annual Report 2012. Retrieved February 1, 2013 from <http://goo.gl/KLyBDW>

⁹⁸ *Ibíd.*

⁹⁹ *Ibíd.*

¹⁰⁰ *Ibíd.*

¹⁰¹ *Ibíd.*

¹⁰² OAS. General Standards for the Operations of the General Secretariat of the Organization of American States. Chapter IV (General Provisions of Financial and Budgetary Nature) . OEA / Ser.D / Rev.16 I.1.2 . 4 June 2012. Article 80. Retrieved March 10, 2013 from <http://goo.gl/lthsXH>

resources are posted on the official website of the OAS where you can see all the official figures for public knowledge.

1.4.1 TEAM

The Special Rapporteur for Freedom of Expression is under the direction of a relator or rapporteur which works with a team of two or three expert lawyers on issues of freedom of expression. Furthermore, within the team is a journalist who is responsible for monitoring the status of Freedom of Expression in the region and a person who is an assistant in the administrative area.¹⁰³ It is worth mentioning that within the Special Rapporteur is a person who is responsible for project management and resource mobilization and there are about six people who are part of the administrative and mission staff.¹⁰⁴ A portion of the resources obtained through the rapporteur are used to provide stability and better working conditions to each of the members of the Rapporteur. In this context, it should also be mentioned that the rapporteur has had the help of interns.¹⁰⁵

In 2008, the IACHR elected Colombian attorney Catalina Botero as Special Rapporteur for Freedom of Expression. Within her resume it details that she served as a judge in the Constitutional Court in Colombia, an advisor in the office of the Attorney General's, Director of the National Office of Promotion and Dissemination of Human Rights and Ombudsman in Colombia, was Director of Consulting in Human Rights and International Humanitarian Law at the Social Foundation and professor and researcher at the Faculty of Law, University of the Andes and other national and international universities.¹⁰⁶

¹⁰³ "Team work" Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) . Retrieved March 15, 2013 from <http://goo.gl/tZ5UYv>

¹⁰⁴ Ibidem.

¹⁰⁵ Ibidem.

¹⁰⁶ Ibidem.

CHAPTER II: The position of Ecuador before the Commission and the Special Rapporteur for Freedom of Expression.

Remember that Inter-American Human Rights was born in Bogota in 1948 after the American Declaration of Rights and Duties of Man was adopted. The document, from the beginning, had no binding force; however, it was in 1959 that the foreign ministers of the American States created the Inter-American Commission on Human Rights in order to be a tool for the enforcement of respect for them. In this context, it stressed that it was from the 60's that the Commission began to receive complaints of human rights violations so, in 1965, it was authorized to make such allegations.¹⁰⁷

With the American Convention on Human Rights adopted at the Special Conference on Rights in 1969, a system of individual protection of Human Rights had already been introduced by the Commission and the Court. The Commission was authorized to receive these individual petitions containing violations of the rights guaranteed in the Convention so that any person, group of persons or organizations could file such complaints. In this sense, the Protocol of Buenos Aires was recognized as one of the IACHR organs of the OAS without forgetting that this was independent in the performance of their duties against the Organization. Regarding the Inter-American Court of Human Rights, it has jurisdiction to decide cases that are allocated from the Commission or by the States. In this context it is worth mentioning that the Convention provides that in order to recognize the jurisdiction of the Court, it must be in subjection expressly to it.

The Ecuadorian government signed the American Convention on Human Rights on November 22, 1969 where it solemnly stated, "The Delegation of Ecuador has the honor of signing the American Convention on Human Rights. It does so without reservation, except, only the general power contained in the Convention itself that leaves the

¹⁰⁷ "Legal basis and activities of the Commission" . Inter-American Commission on Human Rights (Organization of American States) . Extracted from the February 15, 2013 from <http://goo.gl/ydJKyz>

governments free to ratify it."¹⁰⁸ Finally, the instrument of ratification was submitted on December 28, 1977 and is published in Official Gazette 452 of October 27, 1997. In this regard, it is worth mentioning that in addition to the Convention, Ecuador recognized the jurisdiction of the Inter-American Court of Human Rights on August 13, 1984.

With the information given above and with more depth in Chapter I of this paper, I will explain below the milestones that have marked Ecuador as a Member State before the Inter-American Commission on Human Rights from the beginning even before the recent questions that it has suffered with the Special Rapporteur for Freedom of Expression.

2.1 HISTORICAL TIMELINE OF ECUADOR BEFORE THE IACHR

2.1.1 1970: Decree No. 177-C "Day of the fight against racial discrimination"

The first time that Ecuador appears in a report of the Commission is in its annual report for 1970 in which the Commission refers to some texts on the subject of the regulation of fundamental rights by decree. In this, Ecuador is mentioned in the section "Right to equality before the law" where the state by Decree No. 177-C dated July 31, 1970 the "Day of the fight against racial discrimination".¹⁰⁹ It is said that this date was inspired by Resolution 2545 (XXIV) of the United Nations General Assembly where it was decided that conferences on the subject would be issued each July 31 in educational institutions and military establishments.¹¹⁰ It should be noted that the number of cases reported by countries is given in the same report and in the Ecuador record there were 2 presented.

¹⁰⁸ "American Convention on Human Rights" Pact of San José de Costa Rica . Inter-American Commission on Human Rights (Organization of American States) . Extracted from the February 15, 2013 from <http://goo.gl/82mmh1>

¹⁰⁹ "Annual Report of the Inter-American Commission on Human Rights 1970" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 15, 2013 from <http://goo.gl/za3EhT>

¹¹⁰ *Ibíd.*

2.1.2 1971 – 1973: Raids on opposition leaders during the government of José María Velasco Ibarra

On November 17, 1970 there were reported to the Commission several acts in violation of the American Declaration, specifically Articles I and XVI on "the right to life, liberty, security and integrity of the person and the right to protection from arbitrary detention."¹¹¹ It is not until January, 1971 that the Commission considered the case in which these events occurred. On the morning of October 27, 1970 during the government of José María Velasco Ibarra, military forces allegedly arbitrarily raided a number of homes of the leaders of the opposition. It was also reported that during the raids, when no opposition leaders were found to be present, that military forces took their family members hostage.¹¹²

On January 25, 1971, the Commission requested from the Government of Ecuador information on the case which had been filed. The response was limited to a promise to provide data on the allegations and to initiate processes by national authorities to find out about the authors of, accomplices and accessories to such facts.¹¹³ Later, the Commission addressed the complainant's case in order to report on the situation of the same and on January 28, 1972, responding to the Commission criticizing them for their actions in the case and, at the same time, presenting their dissent thereof. Finally, in the thirtieth session (April 1973), the Commission adopted a resolution which closed the case because the claimant and the Government of Ecuador did not provide the requested information.¹¹⁴

¹¹¹ "Annual Report of the Inter-American Commission on Human Rights 1971" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 15, 2013 from <http://goo.gl/QdVLNU>

¹¹² "Annual Report of the Inter-American Commission on Human Rights 1973". Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 15, 2013 from <http://goo.gl/07vj12>

¹¹³ "Annual Report of the Inter-American Commission on Human Rights 1972" . Inter-American Commission on Human Rights (Organization of American States). Retrieved February 15, 2013 from <http://goo.gl/cmKn0M>

¹¹⁴ "Annual Report of the Inter-American Commission on Human Rights 1973 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 15, 2013 from <http://goo.gl/QwfbNw>

2.1.3 1974 – 1975: Arbitrary detention of Abdon Calderon Muñoz (Leader of the “Frente Radical Alfarista”)

Within the 1974 report there is mentioned the significant progress in achieving the objectives outlined in the American Declaration. The decree is number 2438 and dated October 17, 1973 and herein are outlined the immunization standards set for Ecuadorians. Article 1 of the decree established that "vaccinations are compulsory for all citizens of the Republic of Ecuador". In the same paragraph it also mentions Decree No. 1413, dated December 20, 1973 in which the salary and minimum wage for all workers in the country regardless of the kind of his work is established.¹¹⁵

As respects presented cases, the report notes that, in case No. 1776, an event was reported on October 3, 1973 concerning the Arbitrary Detention of economist Abdon Calderon Muñoz, leader of the "Radical Alfarista Front". It is alleged in the case that he was arrested in a secluded and inhospitable place by Manuel Araujo Hidalgo and Francisco Huerta Montalvo.¹¹⁶ The complaint also included the fact that "no judge or court had recognized this fact and no authority had been involved in the final decision ... the Ministry of Government assumed responsibility for the arrest."¹¹⁷

The IACHR asked Ecuador for case information on December 19, 1973 and later on June 3, 1974.¹¹⁸ Days later, the Ecuadorian government requested an extension of 180 days to dispose of such information with the justification that, at the time, it was "considering granting amnesty to political prisoners."¹¹⁹ In this context, it became known to the Commission that Mr. Calderón Muñoz was released in mid-October 1973. However, although they had already granted the Ecuadorian government the requested extension, they were again given a further extension in December 1974.¹²⁰

It was not until February 1975 that the Ecuadorian government informed the IACHR that, as of December 1973 there were no political prisoners in the country. In

¹¹⁵ "Annual Report of the Inter-American Commission on Human Rights 1974 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 15, 2013 from <http://goo.gl/hwvRnA>

¹¹⁶ *Ibidem*.

¹¹⁷ *Ibidem*.

¹¹⁸ *Ibidem*.

¹¹⁹ *Ibidem*.

¹²⁰ *Ibidem*.

the 35th session of the Commission, it was decided to close the case because the information requested was delivered by the Ecuadorian government and because the claimant had not commented on the report.¹²¹ In this regard, it is noteworthy that the economist Abdon Calderon Muñoz after some years (1978) was killed shortly after his nomination for the presidency of the Republic.¹²² Further investigation determined that the mastermind of the murder was the Gral. Bolívar Jarrin Cahueñas, Minister of Government of the military dictatorship.¹²³

The following case was mentioned in the 1930 report dated April 20, 1975 where the persecution suffered by journalist and political leader Julio Prado Vallejo was reported. In the same raid of the Quito newspaper "El Tiempo" mentions the ban against his teaching at the Central University of Ecuador. The arrest warrant against him and the subsequent house arrest are also reported upon. According to the report of the Commission on May 13 of the same year, they asked the Ecuadorian State for information about the case and then considered at its 35th session but the "consideration of the case" was postponed because the deadline for receiving the documents had not yet expired.¹²⁴

It was the 25th of July of the same year when the government of Ecuador, in a statement to the Commission, said that "the Government of Ecuador, as of July 18, 1975 had revoked the arrest warrant issued by the competent authority weighed against Dr. Prado Vallejo and, as regards the part of the complaint concerning the raid on the newspaper "El Tiempo", Quito, the national press has evolved and operates under the most unrestricted freedom." Therefore, the government claimed that the case did not incur in a violation of human rights.¹²⁵ This response was received by the Commission

¹²¹ "Annual Report of the Inter-American Commission on Human Rights 1975 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 20, 2013 from <http://goo.gl/nuuSMD>

¹²² Avilés Pine, Ephrem. " Calderón Muñoz , Eq. Abdon " . Encyclopedia of Ecuador (By Efrén Avilés Pine, Member of the National Academy of History of Ecuador) . Retrieved February 20, 2013 from <http://goo.gl/ORa956>

¹²³ *Ibíd.*

¹²⁴ "Annual Report of the Inter-American Commission on Human Rights 1975 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 20, 2013 from <http://goo.gl/SrB1J3>

¹²⁵ *Ibíd.*

in its 36th session; they examined the case, and decided to file it "without prejudice of the observations or information which is submitted to the claimant".¹²⁶

It is noteworthy that, as in previous cases, the attitude of the Ecuadorian State was evasive because from 1970-1975 all cases were filed. It is with the last case cited that you can see the weakness of the Commission at that time, to give the impression that she responded to a political, non-legal issue, because clearly the Ecuadorian State had indeed committed a violation of the Human Rights.

2.1.4 1979 – 1980: The “Charter of Conduct” by Jaime Roldós

The year 1979 marks a milestone in the Republic of Ecuador because that year was the return to democracy. After the dictatorship of Guillermo Rodríguez, the Supreme Council of Government, by referendum, on January 15, 1978, called for general elections in which candidates Jaime Roldós, Sixto Duran Ballen, Raul Clemente Huerta, Rodrigo Borja, Abdon Calderón Muñoz and René Maugé registered.¹²⁷ For eight years the citizens had not been part of a democratic process. On April 29, 1979, the duo of Jaime Roldós and Oswaldo Hurtado won in the second round and this meant the end of this stage of the de facto governments in Ecuadorian history.¹²⁸ It is noteworthy that this time, in Latin America, existed a pattern of dictatorships and human rights violations. In Chile, Pinochet was in power, Paraguay had Stroessner's dictatorship, Argentina was ruled by Videla's dictatorship and in El Salvador they were ruled by The First Revolutionary Government Junta.

In this context, it was President Jaime Roldós who promoted the so-called "Charter of Conduct" that made him a pioneer in the defense of human rights in a Latin America where he was surrounded by dictatorships.¹²⁹ The letter was signed in Riobamba on September 11, 1980 by Roldós, Colombian President Julio César Turbay, Luis Herrera Campins of Venezuela and Javier Alva Orlandini representing the presidents of Peru, Costa Rica and Panama. It is important to emphasize the fact that the letter mentioned,

¹²⁶ "Annual Report of the Inter-American Commission on Human Rights 1975 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved February 20, 2013 from <http://goo.gl/SrB1J3>

¹²⁷ Barrionuevo Silva , Ney . "Jaime Roldós: his historical legacy."

¹²⁸ *Ibídem*.

¹²⁹ *Ibídem*.

for the first time, human rights as an issue that went beyond borders and which had been left on the back burner for the sovereignty of States.¹³⁰ Thus, the paper raised the defense of human right--that this was a duty of States and that the actions representing their protection did not violate the principle of nonintervention.¹³¹

The 11 points of the Charter of Conduct contain the following:

- 1) Provide a regional political order generated in participatory democracy and, without prejudice to the principles of self-determination of peoples, non-intervention and ideological pluralism.
- 2) Encourage new integrated development schemes, inspired by social justice, allow changes in unjust structures.
- 3) To reiterate the commitment that respect for political, economic and social rights is a fundamental rule of the internal behavior of states of the Andean Group and their defense is an international obligation to those who are subject to the States and that therefore the joint action taken to protect those rights does not violate the principle of nonintervention.
- 4) To promote the settlement of disputes that exists or may arise between the Andean Group countries or between them and third parties, through peaceful means.
- 5) To facilitate a process of sub regional and regional disarmament, inspired by the tenets of the Declaration of Ayacucho, constitutes an effective contribution to total disarmament and allows free resources for development.
- 6) To reaffirm the sovereign right of States to dispose freely of their natural resources as a substantive rule of international coexistence.
- 7) To act jointly against any threat to economic coercion affecting one of the states of the Andean Sub regional Group as a way of consecrating their collective economic security for themselves.
- 8) Encourage greater participation of the countries of the Andean sub region in negotiations of political and economic issues that are debated in the international community, particularly those related to peace and security and the New

¹³⁰ Barrionuevo Silva , Ney . "Jaime Roldós : his historical legacy."

¹³¹ *Ibíd.*

International Economic Order, in cooperation with other Latin American countries and others of The Third World.

- 9) Engage efforts to adopt common policies in the economic, social, labor, educational, cultural, technological and health fields, among others, as well as the approximation of national laws.
- 10) Apply, inspired by the principles of international social justice, instruments of Andean integration in a way which derive equitable benefits among Member States and which establishes the preferential treatment for those relatively less developed countries established in the Cartagena Agreement.
- 11) Contribute to the validity of freedom, social justice and democracy through the implementation of the Andean commitment to implement the fundamental principles established concerning international human rights as set forth in the standards of the UN Charter; in the OAS Charter, the Universal Declaration of Human Rights and other international instruments.

Furthermore, the report of the Commission recognized, in the referendum on January 15, 1978, the rights of the person (life and personal integrity), family, education and culture, social security and popular promotion, labor and political, economic and property rights.¹³² The government also reported that it had amended the Criminal Code with measures necessary to prevent and punish racism. Also mentioned in the report was a "21 point program" covering various actions put into practice in the name of fundamental human rights. Among those points were housing programs, social services and preventive health measures through the IESS (Social Security Administration) and the creation of the Ministry of Social Welfare and Popular Promotion charge with the creation of activities for the social betterment of underprivileged sectors.¹³³

2.1.5 1982: Advances in the issue of rights: "Universality of Social Security"

In the 1982 report it mentions the Social Security Extension Act which put into practice the principle of "universal social security" which was adopted by the Chamber

¹³² "Annual Report of the Inter-American Commission on Human Rights 1979 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved March 15, 2013 from <http://goo.gl/CNKVsN>

¹³³ *Ibíd.*

of the House of Representatives on the 13th of November of 1981.¹³⁴ It is worth mentioning that on October 19, 1981, the Ecuadorian government approved and ratified the Convention for the Elimination of All Forms of Discrimination against Women.¹³⁵ Likewise, Ecuador acknowledged the flaws in the justice system and so in so doing undertook the steps necessary to expedite those measures.¹³⁶

2.1.6 1989: Torture and detention of Fabricio Proaño, Pablo Proaño and Guadalupe Chiriboga

In November 1985 the Commission received a complaint in which it was stated that Fabricio Proaño, Pablo Proaño and Guadalupe Chiriboga were arrested on October 30 of that year by the Police Flying Squadron.¹³⁷ The complaint also stated that young people are held incommunicado and might be victims of torture and abuse in police investigation centers. This was denied by the police who maintained that they had never detained them.¹³⁸ However, it was later learned that Fabricio Proaño and Guadalupe Chiriboga were kept in the remand center of Quito without the ability to communicate with anyone. Meanwhile, Pablo Proaño had been transferred to the Hospital of Quito where he had emergency surgery for a gunshot wound.¹³⁹

The families of the detained youth were unaware of this and had not been told the reasons for which they had been taken to temporary detention center.¹⁴⁰ The IACHR report of 1989 indicates that it was the Ecuadorian press who attributed the arrests to the Ecuadorian police as part of its measures against the group "Alfaro Vive Carajo".¹⁴¹ The charges stated that those arrested had been subjected to suffocation, beatings and electric shocks "that they systematically subjected suspect to secret prisons in the capital belonging to the AVC in order to extract false confessions."¹⁴²

¹³⁴ "Annual Report of the Inter-American Commission on Human Rights 1982" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved March 20, 2013 from <http://goo.gl/DuRSKx>

¹³⁵ Ibidem.

¹³⁶ Ibidem.

¹³⁷ Inter-American Commission on Human Rights. "Inter-American Human Rights Yearbook 1989 " . Page 163. Retrieved March 22, 2013 from <http://goo.gl/ZCd5JT>

¹³⁸ Ibidem.

¹³⁹ Ibidem.

¹⁴⁰ Ibidem.

¹⁴¹ Ibidem.

¹⁴² Ibidem.

After the complaint, the Commission began investigating the case in November 1985 by a note sent to the Ecuadorian government in which the same relevant information was requested. The Ecuadorian government responded to the request in February 1986 in a letter which stated that the youths had been arrested for robbery and assault on a police officer, robbery and assaulting a warehouse, stealing a truck and a weapon, possession of weapons, an armed attack against the police and conspiracy to engage in subversive activities.¹⁴³ According to the reply of the Minister of Ecuadorian government, after the previous investigation, they were processed through ordinary courts under the jurisdiction of the First Criminal Court of Pichincha.¹⁴⁴

The Commission after several communications and requests concerning the parties managed to collect several examples of proof that the youths had been tortured and that the Ecuadorian government did not provide sufficient evidence to the contrary.¹⁴⁵ Therefore, the Commission decided to declare that the Ecuadorian government had violated the right to humane treatment, and recommended that an investigation into the torture received the youths. It was also requested to identify those responsible and that those be brought to justice and to send the respective report on the investigation to the Commission within 90 days, otherwise it would be forwarded on to the General Assembly of the OAS.¹⁴⁶

2.1.7 1994: First “on-site” IACHR visit to Ecuador

Alejandro Ponce Villacis, professor at the Universidad San Francisco de Quito, in a publication in the Journal *Iuris Dictio* provides valuable information in the period (1989-1994) during which the Commission had no relevant comment on the situation of Human Rights in Ecuador. In his publication he indicates those who were part of the delegation that came before the Commission to require that it investigate the situation of human rights in the country at the time.¹⁴⁷ The delegation exposed and denounced before the IACHR data indicating that 75% of detainees were in remand, a figure which

¹⁴³ Inter-American Commission on Human Rights. "Inter-American Human Rights Yearbook 1989 " . Page 165. Retrieved March 22, 2013 from <http://goo.gl/ZCd5JT>

¹⁴⁴ *Ibidem*.

¹⁴⁵ *Ibidem*.

¹⁴⁶ *Ibidem*.

¹⁴⁷ Ponce Villacis, Alejandr . "Ecuador and the Inter-American System of Human Rights. A critical look at the state conduct ." *Juris Dictio Magazine* . Universidad San Francisco de Quito.

showed irregularities in the prison system in Ecuador.¹⁴⁸ On the other hand, it indicated that there were many people that had passed five years in prison without obtaining a judgment. Thus was called into question the obligations of the Ecuadorian State for Human Rights and requested the Commission to find the situation in Ecuador by way of a visit "in loco".¹⁴⁹

After several years during which the Commission had not mentioned the Ecuadorian state in their reports or a request to visit the country to verify the situation of Human Rights, in 1994 the Commission first requested a visit in-loco to the country. The Commission made a formal request to Ecuador on February 11, 1994 and this was accepted on May 25 of that year.¹⁵⁰ The visit took place from the 7th to the 11th day of November 1994 with the participation of the President of the Commission, Michael Reisman, vicepresident Alvaro Tirado Mejía and Leo Valladares Lanza as well as Commission member John Donaldson. The Commission met with the then Ecuadorian Vice President Alberto Dahik Garzozzi, Francisco Acosta (President of the Supreme Court), Hugo Ordóñez Espinosa (President of the Constitutional Court), Heinz Moeller (Chairman of the National Congress), Galo Leoro (Minister of Foreign Affairs), Gustavo Galindo (Minister of Mines and Energy), Fernando Cazares (Attorney General's Office), José Gallardo (Minister of National Defence), Marcelo Santos (Minister of Government and Police), Juan José Páez (Director of Social Rehabilitation), Juan José Castelos (MP who chaired the Standing Commission on Human Rights) and Miguel Rosero Barba (General Commander of the National Police).¹⁵¹

Furthermore, the Commission during its visit met with representatives of CEDHU, ALDHU, CONAIE, CONFENEIA, ECUARUNARI, FICL, FOIN and OINAIE. This, in the context of the complaint of the Sierra Club Defense Fund regarding the situation of the Huaorani people and human rights violations caused by oil exploitation in eastern

¹⁴⁸ Ponce Villacis, Alejandr . "Ecuador and the Inter-American System of Human Rights. A critical look at the state conduct ." Juris Dictio Magazine . Universidad San Francisco de Quito.

¹⁴⁹ *Ibidem*.

¹⁵⁰ "Report on the status of requests for visits in -loco 1994" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved March 25, 2013 from <http://goo.gl/bf9D43>

¹⁵¹ *Ibidem*.

Ecuador.¹⁵² It is noteworthy that the Commission also met with relatives of detainees and missing persons and representatives who put forward allegations of human rights violations. Here was given attention to the complaint filed on February 24 of that year in relation to the detention of citizens Rafael Iván Suárez was given. He was arrested in June 1992 under "Operation Cyclone" at which time the violation of personal integrity, freedom, judicial guarantees and other rights that are contemplated in the American Convention was alleged.¹⁵³

On November 30 of that year, during the visit of the IACHR to Ecuador, was presented the case of the brothers Carlos Santiago and Pedro Andrés Restrepo who were arrested in 1988 and then disappeared during the government of León Febres Cordero.¹⁵⁴

After the site visit by the Commission, it gave a press release prior to the report on the situation of Human Rights in Ecuador. In the statement, the IACHR was clear in expressing concern about the criminal justice system of Ecuador as it found some alarming situations such as a women's prison in Guayaquil which had a capacity of 80 inmates and held more than 200 inmates with their children.¹⁵⁵ Moreover, it was found that in Ecuadorian prisons there was an excessive number of prisoners held without trial (50%) which was a clear violation of the right to be presumed innocent until proved otherwise after due process.¹⁵⁶ In this sense, the Ecuadorian State was not complying with the Convention by failing to prosecute and try quickly the people who had been accused of a crime.

The Commission reminded Ecuador that it must comply with Article 25 of the Convention which states:

"Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental

¹⁵² "Observations and site visits made by the Commission." Inter-American Commission on Human Rights (Organization of American States) . Retrieved March 25, 2013 from <http://goo.gl/ILR3AS>

¹⁵³ Ponce Villacis, Alejandr . "Ecuador and the Inter-American System of Human Rights. A critical look at the state conduct ." Juris Dictio Magazine . Universidad San Francisco de Quito.

¹⁵⁴ Ibidem.

¹⁵⁵ Press Release No. 24 of 1994. Commission on Human Rights (Organization of American States) . Retrieved March 28, 2013 from <http://goo.gl/3MsfLi>

¹⁵⁶ Ibidem.

rights as recognized by the Constitution, the law or this Convention, the violation may have been committed by persons acting in an official capacity notwithstanding.”

States Parties undertake:

- a) to ensure that the competent authority provided for by the legal system of the State shall decide on the rights of any person claiming such a recourse;*
- b) to develop the possibilities of judicial recourse;*
- c) to ensure compliance by the competent authorities of any decision that has such recourses.*

The pollution of the environment within the framework of oil exploitation was another issue about which the Commission was concerned. It had visited five places in eastern Ecuador where it was learned that at the Petro Ecuador facilities in North Shushufindi, contaminated water was being poured into a tributary river. In this context, the Commission urged Ecuador to solve this problem urgently and warned that if it is not resolved, this would represent a violation of Article 4 of the Convention.¹⁵⁷ At the same time, the Commission congratulated Ecuador on issues of inclusion of indigenous and Afro-Ecuadorians, specifically, for the creation of the Ministry of Indigenous and Afro-Ecuadorian at the level of the Secretary of State.¹⁵⁸

2.1.8 1995: “Case Rafael Suárez”, “Los 11 de Putumayo” and “The Restrepo brothers”

The year 1995 was representative of the actions of the Commission which had already processed several cases against the Ecuadorian State. Examples include, case no. 11.273 of Rafael Ivan Suárez Rosero, the case of "The Putumayo Eleven" and the case of the Restrepo brothers.

It was precisely the case of Suárez Rosero that the Commission presented to the IACHR, on December 22, 1995 in the form of a lawsuit against Ecuador in which it sought to determine whether the State had violated Articles 1, 2, 5, 7, 8 and 25 of the

¹⁵⁷ Press Release No. 24 of 1994. Commission on Human Rights (Organization of American States) . Retrieved March 28, 2013 from <http://goo.gl/3MsfLi>

¹⁵⁸ *Ibíd.*

American Convention.¹⁵⁹ Indeed, the IACHR stated that Ecuador violated Articles 2, 7, 8, 5 and 25 of the American Convention against Mr. Suárez Rosero and ordered to pay compensation to the affected parties and their families.¹⁶⁰ It is noteworthy that during the process carried out on this case, the State never took into account the recommendations that the IACHR had given so that the resulting defense unraveled in the application before the Court.¹⁶¹ The performance of Ecuador before the Commission clearly showed that there was still an atmosphere of hostility against it evidenced by their not taking it seriously and the case subsequently being brought to court.

On the other hand, on November 8th of that year, the IACHR processed the request of the Regional Foundation for Human Rights Advisory who denounced the violation of the right to humane treatment (Article 5), personal liberty (Article 7), fair trial (Article 8), and the right to protection of honor and dignity (Article 11) in the case of "Los 11 de Putumayo".¹⁶² The case dealt with the arbitrary detention of citizens committed by Ecuador and violations of their rights during the same, something which would be treated in subsequent years.

The 1995 report of the Commission dealt mostly with case number 10.580 of Manuel Stalin Bolaños Quiñonez who was arrested with three others by Marines on October 14, 1985 on Isla Piedad Esmeraldas. Only 3 of those arrested were released the next day but Manuel Bolaños disappeared after that and his family never could find him.¹⁶³ His detention occurred around the time of murder of Lieutenant Arturo Sotomayor which had occurred on October 12, 1985. So, state agents began questioning Bolaños using the torture which caused his death.¹⁶⁴

¹⁵⁹ "Activities of the Commission related to the Inter-American Court of Human Rights" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 1, 2013 from <http://goo.gl/XNBg8D>

¹⁶⁰ "Suárez Rosero vs. Ecuador - Judgment of January 20, 1999 " . Inter-American Court of Human Rights (Organization of American States) . Retrieved April 1, 2013 from <http://goo.gl/DdnKWL>

¹⁶¹ Ponce Villacis, Alejandr . "Ecuador and the Inter-American System of Human Rights. A critical look at the state conduct ." Juris Dictio Magazine . Universidad San Francisco de Quito.

¹⁶² "Report No. 19/01 - Case 11.478 John Climaco Cuellar, Carlos Cuellar, Aguinda Alejandro Leonel Guinda , Demetrio Pianda , Henry Machoa , Carmen Bolaños , Josué Bastidas , Jose Chicangana , Friolán Cuellar, and Harold Paz" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 1, 2013 from <http://goo.gl/LEc9YG>

¹⁶³ "Report No. 10/95 - Case 10.580 of Manuel Stalin Bolaños Quiñonez " . Inter-American Commission on Human Rights (Organization of American States). Retrieved April 5, 2013 from <http://goo.gl/TFpdJp>

¹⁶⁴ "Report No. 10/95 - Case 10.580 of Manuel Stalin Bolaños Quiñonez " . Inter-American Commission on Human Rights (Organization of American States). Retrieved April 5, 2013 from <http://goo.gl/TFpdJp>

As a result, the relatives of Mr. Bolaños reported these facts to the Commission and requested the Ecuadorian State to take responsibility for the disappearance of Manuel Bolaños, the violation of Articles 4, 5 and 8 of the American Convention Declaration, requested a independent judicial inquiry and payment of compensation to the Bolaños family for damages.¹⁶⁵ Thus, on February 17, 1995, the Commission gave some recommendations to the Ecuadorian State that should be taken into account within 60 days. Once again, these were not met since Ecuador argued that the responsibility for the death of Bolaños should rest on the agents involved and not the State. The Commission therefore reminded the Ecuadorian state that "the State's responsibility is engaged under the American Convention given that the violation of a right protected by the same may have been committed by an act of public authority or by persons vested with that authority; whenever a rape is committed with the consent or support of the government; whenever the government does not impose the appropriate legal mechanisms in case of violation; and since the government does not take steps to prevent such violation. "¹⁶⁶

Consequently, the Commission determined that Ecuador was responsible for the imprisonment and death of Manuel Bolaños and not having taken the initiative to investigate these violations. In this context, the Commission said it would continue to request information about the case until the body of the victim was located and delivered.¹⁶⁷ Furthermore, it was determined that the Ecuadorian State violated Articles 4, 7, 8 and 25 of the American Convention and did not comply with Article 1 thereof.¹⁶⁸ Finally, the Commission recommended to the Ecuadorian State to undertake an impartial investigation into the case, identify and prosecute those responsible, inform the Bolaños family as to the remains of the victim and pay the damages caused by the violation of his Human Rights.¹⁶⁹

2.1.9 1996: “Case of Víctor Rosario Congo” and “Bolívar Camacho”

¹⁶⁵ *Ibidem.*

¹⁶⁶ *Ibidem.*

¹⁶⁷ *Ibidem.*

¹⁶⁸ *Ibidem.*

¹⁶⁹ *Ibidem.*

In the year 1996 there were processed two cases reported to the Commission. One of them was the case number 11.427 for the citizen Victor Rosario Congo. The defense of the victim claimed that he had died as a result of abuse received by security agents in the Social Rehabilitation Center in the city of Machala.¹⁷⁰ According to information provided to the Commission, they had several complaints of irregularities in the prison to the effect that agents exerted violence against inmates to find out information. The complaint also contained evidence that Mr. Victor Rosario Congo had been hit with a stick by guards at the Rehabilitation Center and was taken to the hospital too late resulting in his death a few hours later.¹⁷¹ The Commission decided to declare the case admissible and found the same could be resolved through an amicable solution. The decision was made in accordance with Article 48, paragraph f) of the American Convention and provided that the parties inform the final decision to the Commission.¹⁷²

In addition, the 1996 report includes case number 11.515 of Bolivar Franco Camacho Arboleda who was arrested on October 7, 1989 and who continued so for five years without receiving a sentence.¹⁷³ The complaint before the Commission dictated that the this citizen had been treated wrongfully for having remained in prison for five years without trial. They demanded his acquittal and that he be set free in the year 1995. Mr. Camacho was charged with the unlawful possession of 6 grams of cocaine in Santo Domingo de los Colorados.¹⁷⁴ The Commission met in this case in November 1994 and the government was found to have violated Articles 7 (right to personal liberty), Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention.¹⁷⁵ The Commission declared the case admissible and agreed to allow the parties to reach an amicable solution.¹⁷⁶

2.1.10 1997: “Ruth Garcés Case” and “Manuel García Franco”

¹⁷⁰ "Report No. 12/97 - Case 11.427 of Victor Rosario Congo" . Inter-American Commission on Human Rights (Organization of American States). Retrieved April 5, 2013 from <http://goo.gl/5iSpBi>

¹⁷¹ Ibidem.

¹⁷² Ibidem.

¹⁷³ "Report No. 13/97 - Case 11.515 Bolivar Franco Camacho Arboleda." Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 10, 2013 from <http://goo.gl/sN7sOt>

¹⁷⁴ Ibidem.

¹⁷⁵ "Report No. 13/97 - Case 11.515 Bolivar Franco Camacho Arboleda." Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 10, 2013 from <http://goo.gl/sN7sOt>

¹⁷⁶ Ibidem.

In 1997, two specific cases on Human Rights were forwarded to the Commission. The first case, number 11.778, was that of Ruth Garcés Valladares who was deprived of liberty and held incommunicado by police.¹⁷⁷ Subsequently, the violation of Articles 1, 5, 7, 8, 11, 24 and 25 of the American Convention for failure to ensure due process was asserted; also that the victim had been for remanded to custody for more than six years.¹⁷⁸ It should be added that after the victim was acquitted of the crimes of which she was accused, she was still detained.¹⁷⁹

The other case, referred to in the 1997 report corresponds to case number 10.258 of Manuel García Franco who disappeared in April of 1988 "due to the action of two sailors and three Marines of the Ecuadorian Navy."¹⁸⁰ The complainants stated that the victim was tortured to death after being "hijacked" a neighborhood in Guayaquil.¹⁸¹ The report shows that Ecuador's actions were called into question in the case of Mr. García Franco. Indeed, Ecuador stated that the citizen was arrested but released hours later. However, it was acknowledged that a court of Guayas had initiated proceedings against Naval Captain Fausto López Villegas on charges of the illegal detention of Mr. Manuel García Franco.¹⁸²

It is noteworthy that indirectly, the Ecuadorian State acknowledged that there were irregularities in the arrest and disappearance of the citizen in question. Thus, the Commission blamed Ecuador for violation of Articles 3, 4, 5, 7, 8 and 25 of the American Convention and recommended that they perform an impartial investigation into the events, the necessary measures to be taken in order to locate the body of the victim and the consequences incurred by a compensation to those affected by the violation of Human Rights.¹⁸³

2.1.11 1998: "Consuelo Benavides Case"

¹⁷⁷ "Report No. 14/98 - Case 11.778 Ruth Garcés Valladares." Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 20, 2013 from <http://goo.gl/TvmBTq>

¹⁷⁸ *Ibidem*.

¹⁷⁹ *Ibidem*.

¹⁸⁰ "Report No. 1/97 - 10,258 case of Manuel Garcia Franco" . American Commission on Human Rights (Organization of American States) . Retrieved April 20, 2013 from <http://goo.gl/OWQNqp>

¹⁸¹ *Ibidem*.

¹⁸² *Ibidem*.

¹⁸³ "Report No. 1/97 - 10,258 case of Manuel Garcia Franco" . American Commission on Human Rights (Organization of American States) . Retrieved April 20, 2013 from <http://goo.gl/OWQNqp>

It is noteworthy that in the 1998 report, the Commission reiterated the recommendations made in cases 11.427 of Victor Rosario Congo and 11.778 of Ruth del Rosario Garcés Valladares to the Ecuadorian State.¹⁸⁴ In fact, the Commission hinted that Ecuador had not complied with the recommendations so they reiterated and implicitly announced that it would continue to monitor them.

The 1998 report also mentions two contentious cases which were brought before the Inter-American Court of Human Rights. The emblematic case is that of Consuelo Benavides who was arrested, tortured and murdered by agents of the Ecuadorian State in 1985. The victim was a teacher and worked for the Alfaro Vive group who were regarded as a guerrilla group which had been prosecuted by the government of Febres-Cordero as part of its policy of removing all traces of subversive groups in Ecuador.¹⁸⁵ It was precisely in 1996 that the case was brought before the IACHR and in 1998 during a public hearing; Ecuador acknowledged its responsibility for the forced disappearance, torture and murder of Consuelo Benavides.¹⁸⁶ In the end, there was an amicable agreement between the relatives of the victim and Ecuador pledged to pay damages of \$ 1 million and to investigate the facts and find the culprits.¹⁸⁷

The Consuelo Benavides case presents another milestone in the human rights issue as it was the first time that Ecuador accepted responsibility for violation of Human Rights in the case of the above.¹⁸⁸ The research focused on this case remained in force until as recently as the year 2011 when they were able to locate the tomb of Consuelo Benavides in Rocafuerte - Esmeraldas while attempting to find the culprits.¹⁸⁹ The main suspect is Byron Paredes, former director of Public Security of the National Police in

¹⁸⁴ "Report No. 63/99 - Case 11.427 of Victor Rosario Congo." Inter-American Commission on Human Rights (Organization of American States) : I Retrieved April 25, 2013 from <http://goo.gl/UDBUiQ>

¹⁸⁵ "LFC and accusations against human rights." El Universo. Article 15 January 2009. Retrieved April 25, 2013 from <http://goo.gl/3MSpt4>

¹⁸⁶ "Petitions and cases before the Inter-American Court of Human Rights - Benavides Cevallos Case" . 1998 report of the Inter-American Commission on Human Rights. Inter-American Commission on Human Rights (Organization of American States). Retrieved April 25, 2013 from <http://goo.gl/k7yP4m>

¹⁸⁷ Ibidem.

¹⁸⁸ "State recognizes blame for crime of Consuelo Benavidez" Diario Hoy . Article of February 21, 1998. Retrieved April 25, 2013 from <http://goo.gl/YxqXdl>

¹⁸⁹ "Had they found the tomb of Consuelo Benavides ." Diario Hoy. Article of December 09, 2011. Retrieved April 25, 2013 from <http://goo.gl/z8qR4r>

1985 and one of the main players in the case of drug money laundering where he was known by the nickname "Twin Towers".¹⁹⁰

Notably, the 1998 annual report also includes a detailed account of Human Rights in Ecuador in the following. In it the Commission concluded that the new Constitution of the Republic of 1998 represented an advance in the protection of human rights since it had a legal framework for the protection thereof.¹⁹¹ Also noted was the election of Jamil Mahuad where it highlighted democratic resolution to the border agreement between Ecuador and Peru which represented the end of tensions between the two states is achieved.¹⁹² However, the Commission expressed concern about the economic situation that happened in Ecuador in that time as there were still high levels of poverty. Another point that worried the Commission greatly was that 68% of prison inmates remained there without judgment and that justice was "slow".¹⁹³

It should be emphasized that the report also included for the first time the issue of violence against women and discrimination against indigenous and Afro-Ecuadorian peoples. In fact, the Commission emphasized that Ecuador had made progress in the regulatory recognition of the rights of women but said that in practice there had been no such advances. As for the indigenous and Afro-Ecuadorian peoples, the Commission asked for more progress in the protection and recognition of their rights so as to ensure full respect for human rights.¹⁹⁴

2.1.12 1999: The Illegal Detention of Dayra María Levoyer (Jorge Reyes' wife)

This 1999 report has as its subject a single case--N ° 29/00, that of Dayra Mary Levoyer. She was subjected to arbitrary detention by the Ecuadorian State and was

¹⁹⁰ "'Coscacho' Paredes was the one who gave Consuelo Benavides ." Ecuador Inmediato article of September 04, 2006. Retrieved April 25, 2013 from <http://goo.gl/3USyuo>

¹⁹¹ "Monitoring report on the compliance of the Republic of Ecuador of the recommendations made by the Inter-American Commission on Human Rights in its report on the situation of human rights in Ecuador 1997 " . Inter-American Commission on Human Rights (Organization of American States). Retrieved April 25, 2013 from <http://goo.gl/aX3NyZ>

¹⁹² Ibidem.

¹⁹³ Ibidem.

¹⁹⁴ "Monitoring report on the compliance of the Republic of Ecuador of the recommendations made by the Inter-American Commission on Human Rights in its report on the situation of human rights in Ecuador 1997 " . Inter-American Commission on Human Rights (Organization of American States). Retrieved April 25, 2013 from <http://goo.gl/aX3NyZ>

under detention for more than five years.¹⁹⁵ The case mentioned is very peculiar since the victim in question was the wife of Jorge Reyes Torres, a citizen accused of leading a drug ring. The complaint was made after the state refused to recognize the innocence of same because of their marital ties. In fact, in this case the Commission recognized that Ecuador had violated fundamental rights and made it possible for the parties to resolve the case by mutual agreement.¹⁹⁶

Alejandro Ponce Villavís, in the publication *Journal Iuris Dictio* indicates that Ecuador agreed not to agree with the victim because it was a woman who had a relationship with a drug dealer.¹⁹⁷ Also, it states that Ms. Levoyer expressed this fact during a meeting with Martha Altolaguirre and that this was also discussed by lawyers from the Attorney General. In this sense, the irresponsibility of the Ecuadorian State is clear and obviously there were violations of the rights set forth in the American Convention. They were simply ignored. Therefore, in addition to violating Articles 5, 7, 21, 8 and 25 of the Convention, Ecuador was discriminating against the victim by acting as if this were not a subject of rights due to the relationship the accused had with Jorge Reyes.

Furthermore, the 1999 report includes details of the processes carried out in Ecuador in human rights issues and its ups and downs. This highlights the bleak socio-economic situation of Ecuador and the constant examples that occurred during that year.¹⁹⁸ In fact, the report includes a detailed summary of all events in Ecuador with the indigenous uprising, the banking crisis and dollarization; all this was coupled with high levels of corruption that occurred at the time. The Commission, in this sense, states several arguments to justify the report made as there were declared a repeated number of supposed 'states of emergency' which did not meet the requirements of Article 27 of the Convention established.¹⁹⁹ Thus, the Commission concluded that this was a serious institutional situation that was going on in Ecuador. Therefore, they recommended that

¹⁹⁵ "Report No. 29/00 - Case 11.992 Dayra Maria Levoyer" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved April 30, 2013 from <http://goo.gl/qv66TW>

¹⁹⁶ *Ibidem*.

¹⁹⁷ Ponce Villacis, Alejandro. "Ecuador and the Inter-American System of Human Rights: A critical look at the state conduct." *Juris Dictio Magazine* . Universidad San Francisco de Quito.

¹⁹⁸ "Development of Human Rights in the Region" . 1999 Report of the Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 5, 2013 from <http://goo.gl/Qsbf84>

¹⁹⁹ *Ibidem*.

the authorities and powers of the state ensure "the full rule of law" and that the solution to the crisis need be found within a framework of legality and legitimacy.²⁰⁰

2.1.13 2000: "Daniel Tibi Case" and amicable settlement of the "Restrepo Case"

The report for 2000 was full of background reports on cases involving Ecuador and the report of friendly solutions which had been arrived at that year. In this case, I delve into the most representative corresponding to Daniel David Tibi, accused of drug trafficking and the amicable settlement of the case of the brothers Carlos Santiago and Pedro Andrés Restrepo Arizmendi who vanished at the hands of Ecuadorian authorities during the presidency of León Febres Cordero.

It was in July 1998 that the Commission received a complaint from Daniel David Tibi, a French citizen residing in Ecuador and working in the sale of gemstones and objects of art. He was arrested on September 22, 1995 by police in Quito where, as stated in the report, he was taken arbitrarily on a plane to the city of Guayaquil.²⁰¹ Tibi was imprisoned for 28 months and tortured in order to obtain information about his possible involvement in a drug trafficking case. In this context, the violation of Articles 5, 7, 8, 10, 11, 21 and 25 of the American Convention and the IACHR declared this case admissible and made available to the parties the possibility of reaching an amicable settlement.²⁰²

As we can see, Ecuador has had several similar cases which have been reported to the Commission. This helps us to see that the judiciary was weak and lacked legitimacy in implementing torture and indefinitely extending times of detention. This has caused many citizens to be arrested and after several months to be released with all the resulting trauma that this brings. It was just such a case with Tibi, especially since being a French citizen, the French Embassy had to intervene in order for the torture to stop. In fact, the evidence included doctor's reports as well as articles from the French and

²⁰⁰ *Ibidem*.

²⁰¹ "Report No. 90/00 - Case 12.124 Daniel David Tibi" . Inter-American Commission on Human Rights (Organization of American States). Retrieved May 5, 2013 from <http://goo.gl/aOG9QH>

²⁰² "Report No. 90/00 - Case 12.124 Daniel David Tibi" . Inter-American Commission on Human Rights (Organization of American States). Retrieved May 5, 2013 from <http://goo.gl/aOG9QH>

Ecuadorian press.²⁰³ The report also revealed that Tibi's belongings, confiscated at the time of his arrest, were never returned--belongings valued at \$ 1,000,000.²⁰⁴

Additionally, one of the emblematic friendly solutions included in the annual report of 2000 was the case of the brothers Carlos Santiago and Pedro Andrés Restrepo Arizmendi. The case was reported to the Commission in August 1997 by representatives of The International Human Rights Law Group, the Ecumenical Commission on Human Rights of Ecuador (CEDHU), American University, Washington College of Law and International Human Rights Law Clinic.²⁰⁵ The Restrepo brothers were arrested in January 1988 by the Ecuadorian police and then went missing while they were in custody. The case became public after the parents of the children had no clear answer as to their whereabouts and the many threats they received for investigating and making public their disappearance.²⁰⁶ It is worth noting here that the report indicates that a special commission was instructed to inquire more about this case after which they concluded that the brothers had been arrested, tortured, killed and disappeared in the hands of the Ecuadorian National Police who threw their bodies into Yambo Lake near Cotopaxi.²⁰⁷ The case is part of the government's policy of León Febres-Cordero against "crime" and insurgency in Ecuador, an issue that inferred the existence of "death squads".

In February 1998, the Commission made available to the parties the option to reach an amicable solution so, finally, in May of the same year an agreement between the two parties was signed in the city of Quito. In the agreement, the Ecuadorian State acknowledged its guilt in the disappearance of Carlos Santiago and Pedro Andrés Restrepo Arizmendi and so was forced to take measures to redress the grievance by way of an amicable agreement under Article 45 of the American Convention. In addition, the agreement included an indemnity of \$ 2,000,000 from the General State Budget, a new search for the bodies of the slain victims in Yambo Lake and the freedom of their relatives and supporters to gather to commemorate the death of the brothers or

²⁰³ *Ibíd.*

²⁰⁴ *Ibíd.*

²⁰⁵ "Report No. 99/00 - Case 11.868 of Carlos Santiago and Pedro Andrés Restrepo Arizmendi." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 5, 2013 from <http://goo.gl/31qJaz>

²⁰⁶ *Ibíd.*

²⁰⁷ *Ibíd.*

for other related purposes. It is worth mentioning that the agreement includes a clause of redress in which the work of Pedro Restrepo and his family for the progress of Ecuador, without their having gone against the honor and reputation of individuals, be recognized by authorities. Finally, it was agreed that Ecuador criminally punish those people who, during the act of carrying out police duties became involved in the disappearance of minors. The government is also required to inform the Commission periodically as to the fulfillment of the above obligations.²⁰⁸

Certainly the case of the Restrepo brothers taught many lessons for Human Rights. Many things have changed in Ecuador but others remain intact. We must remember that the Commission was responsible for investigating the disappearance of minors and was formed in the government of Rodrigo Borja and not that of President Febres-Cordero who ended his term in August 1988, months after the disappearance of the Restrepo brothers. To date, the bodies have not been found and no one has been punished criminally though the Commission has conducted the respective investigation. On the other hand, it is worth noting that even the National Police in 1992 called for the Restrepo family to be prosecuted for libel against the institution which was against the amicable settlement between Ecuador and the family in the redress clause.²⁰⁹ Impunity in this case is still in force and the importance of freedom of expression a point that will be discussed in the following pages.

2.1.14 2001: “Dahik Case” and “María Levoyer”

For the 2001 report, the Commission included two cases were not accepted by it, namely, that of Alberto Dahik Garzosi. It is in Report No. 93/01 which states that in June 2000, the Commission received a complaint by the former vice president of Ecuador against the state for allegedly violating Articles 8 (fair trial), 9 (principle of legality), 24 (equality before the law) and 25 (right to judicial protection) of the American Convention.²¹⁰ The case was based on an accusation that was done by the

²⁰⁸ "Report No. 99/00 - Case 11.868 of Carlos Santiago and Pedro Andrés Restrepo Arizmendi." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 5, 2013 from <http://goo.gl/31qJaz>

²⁰⁹ "25 years of impunity and weigh meets Restrepo brothers case." El Telégrafo. January 08, 2013. Retrieved May 5, 2013 from <http://goo.gl/dRBDYQ>

²¹⁰ "Report No. 93/01 - Request Alberto Dahik 12,259 Garzosi" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 20, 2013 from <http://goo.gl/Jlmz8N>

Ecuadorian Congress in 1995 against Dahik for bribery and abuse in the exercise of his duties as vice president. Here, two members of Congress filed a complaint with the Supreme Court against the vice president so it issued a remand order. However, the same day that the remand order was issued against Alberto Dahik, he entered Costa Rica as a political refugee. Thus the Commission subsequently decided to declare the petition inadmissible because the petitioner had not exhausted his legal recourses.²¹¹

It should be noted that the position of the Ecuadorian State was blunt about this case because the defendant was asked to return to the country to exercise his right to defense and to appeal the ruling. As a result, it left many to think that Dahik has "fled" the country since, if he were innocent, why not go to international bodies first and only later seek asylum in Costa Rica? If we look beyond this, it was President Rafael Correa who requested amnesty for the former Vice President stating that he was an "honorable man who was a victim of hate."²¹² Furthermore, it should be mentioned that an article in the magazine *Vanguardia* hinted that there was a close relationship between former Vice President and President Correa indicated by the fact that Rafael Correa was Administrative Director of the Implementation Unit of the Ministry of Education when Dahik was in power.²¹³ The case leaves no doubt because it was of a purely political and non-legal ilk, hence the reason why the Attorney General, Galo Chiriboga, has questioned the decision to declare a mistrial against Dahik.²¹⁴

On the other hand, the 2001 report includes an update of case number 11.3992 regarding Mary Levoyer the wife of Jorge Reyes who given her situation was arrested for being allegedly being linked to drug trafficking in 1992. The Ecuadorian State argued that this citizen had not exhausted her possible domestic recourses, however, the Commission concluded that Articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) had been violated. Thus, the Commission recommended to the Ecuadorian State to compensate the victim and conduct an investigation of those responsible for the rights that the Commission concluded had not

²¹¹ *Ibidem*.

²¹² "Rafael Correa seeks amnesty for Alberto Dahik" . Revista Vistazo's editorial . Retrieved May 20, 2013 from <http://goo.gl/Ch9pfu>

²¹³ "Alberto Dahik is free , Bucaram does suitcases." La Hora quoted on 21 January 2012. Retrieved May 20, 2013 from <http://goo.gl/IqEE5S>

²¹⁴ "Chiriboga opposes to CNJ decision." El Telégrafo. January 24, 2012. Retrieved May 25, 2013 from <http://goo.gl/oTaAY1>

been respected and that the necessary measures to reform legislation on the subject of "habeas corpus" be taken.²¹⁵

2.1.15 2002: Precautionary Measures for Rogelio Viteri and citizens who carry HIV / AIDS virus

The precautionary measures granted during the year 2002 are the subject highlighted in this report which the Ecuadorian State was obliged to respect. The first case corresponds to Rogelio Viteri, a former army captain who denounced corruption against members of the Armed Forces and therefore was threatened. On February 11, 2002, the IACHR granted precautionary measures for Viteri and his family about whom the Ecuadorian State was asked to protect with their lives and physical integrity. Indeed, one officer and four policemen were instructed to monitor the safety of the victim but in March he was arrested for more than two weeks and was discharged from his duties. However, in August the same year, the First Chamber of the Constitutional Court granted constitutional protection that allowed him to promote a lawsuit to demand compensation for damages.²¹⁶

The second case corresponds to the citizens with HIV / AIDS who were granted precautionary measures because the health agencies of Ecuador had not provided them with basic clinical tests and appropriate treatment for their disease. In fact, this case is emblematic because the citizens had to go to an international body for their right to health to be respected. Thereafter, applicants who requested processing amounted to 153 affected and for whom precautionary measures were also awarded.²¹⁷ Note that at that time Ecuador did not invest efficiently to provide anti-retroviral drugs to people affected by the disease which was a clear display of irresponsibility by the state to meet a basic need like this. This was demonstrated in the budget for the prevention and control of AIDS in 1999 which was \$ 27,000 but in the year 2001 fell to \$5,000.²¹⁸ Only in 2002 did a budget increase amounting to \$ 618,700 occur because of the intervention of the Commission to grant precautionary measures.

²¹⁵ "Report No. 66/01 - Case 11.992 Dayra Maria Levoyer." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 25, 2013 from <http://goo.gl/RLt9vA>

²¹⁶ "Precautionary measures granted by the Commission during 2002." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 25, 2013 from <http://goo.gl/HGslTH>

²¹⁷ *Ibidem*.

²¹⁸ Lara , Gabriel and Hofbauer , Elena. "HIV / AIDS and Human Rights: The public budget for the epidemic in Argentina , Chile, Ecuador , Mexico and Nicaragua." Page 85.

The report contrasts with other cases but the most striking is the petition, in case number 12.274, of Cesar Verduga Vélez, former Minister of the Government and Police under President Fabián Alarcón, who filed a complaint with the Commission after he has been charged with embezzlement. The complainant claimed that Ecuador had violated Articles 7 (personal liberty), 8 (fair trial), 23 (right), 25 (judicial protection) and 2 (duty to adopt domestic law) of the American Convention. In its report submitted to the IACHR it claims full justification by saying that Ecuador violated the aforementioned articles since he was innocent of what he had been accused. His position was purely based on that fact that he had expenses for which he did have the documentation to justify. He maintained that, at that time, there were secrets expenses which had to be approved by the Comptroller General of the State who had incinerated said documents.²¹⁹ In this context, the Ecuadorian State argued that Verduga had not exhausted domestic legal recourses and that he was a fugitive of the country who had left the case in the middle because he had not even ended the criminal proceedings initiated against him.²²⁰ Finally, the Commission declared the case inadmissible because it did not meet the requirements set forth in its rules.²²¹

2.1.16 2003: Precautionary Measures for the Sarayaku people, Alejandro Peñafiel and The Fybeca Case

In the year 2003, the Commission granted precautionary measures in three historical cases, cases from that year marked the agenda of courts in Ecuador to date. The first case concerns the Sarayaku indigenous people who filed a complaint with the IACHR to intervene in defense of their rights during the seismic exploration campaign of CGC oil in block 23. The event takes place in the context of granting the Ecuadorian state oil company, in July 1996, land, 65% of which was territory which belonged to the Sarayaku. The award was made arbitrarily because it did not include prior consultation and since 1996 the Sarayaku had expressed their rejection of the oil companies because of the negative impacts that its activity represented in its territory. In fact, 130,000

²¹⁹ "Report No. 18/02 - Request Verduga Velez 12,274 Caesar ." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 30, 2013 from <http://goo.gl/rjNsDV>

²²⁰ "Report No. 18/02 - Request Verduga Velez 12,274 Caesar ." Inter-American Commission on Human Rights (Organization of American States) . Retrieved May 30, 2013 from <http://goo.gl/rjNsDV>

²²¹ Ibidem.

hectares of land of block 23 were titled in favor of the Sarayaku community to be considered as ancestral territory, and this since 1992.²²²

CGC repeatedly entered the territory without the authorization of the Sarayaku causing a general malaise in the community. It was in the last months of 2002 and early 2003 when the oil company entered into block 23 to perform a seismic testing geological so, the leadership of the Sarayaku declared an emergency and mobilized the population to "Fields of Peace and Life "to protect its territory from arbitrary and armed entrance by the CGC and the Ecuadorian army.²²³ On January 25, 2003 a violent capture and abduction of 4 Sarayaku people by the CGC oil and the military was recorded. In this context, the IACHR granted precautionary measures on behalf of Franco Viteri, José Cualinga, Francisco Santi, Fabian Grefa, Marcelo Cualinga and other community members requesting that the necessary measures to protect the lives of these people be adopted and to investigate the events that occurred in the "Fields of Peace and Life".²²⁴

The second case corresponds to the precautionary measures granted to Alejandro Peñafiel who was extradited from Lebanon to stand trial for a case of embezzlement when he was the owner Loan Bank. On May 14, 2003 the Commission granted precautionary measures after a complaint which stated that Peñafiel was arrested along with others and that he had suffered attempts on his life. It was the Ombudsman who confirmed the information provided at the time of the complaint so the IACHR asked the Ecuadorian State to take steps to protect their physical integrity.²²⁵ The case remained pending until 2012 where the Commission declared the case admissible and it continues in the process to date.

The third case, herein referred to as "The Fybeca Case" is when, on December 3, 2003, the IACHR granted precautionary measures in favor of Johnny Gómez Balda,

²²² Melo, Mario. "The Sarayaku case : a fight for the environment and human rights in the Ecuadorian Amazon ." Contributions Andean No. 15 - Right to a healthy environment (Simon Bolivar Andean University) . Retrieved June 10, 2013 from <http://goo.gl/wEUkXV>

²²³ Ibidem.

²²⁴ "Precautionary measures granted by the Commission during 2003 " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved June 10, 2013 from <http://goo.gl/XTLL0W>

²²⁵ Ibidem.

Seide Vélez Falcón, César Mata Valenzuela and Edwind Daniel Vivar Palma.²²⁶ The information provided to the Commission indicated that persons mentioned above were arrested during a robbery at a pharmacy in Guayaquil and since then their whereabouts are not known. The case developed in the context of a police operation on the morning of November 19, 2003 where an attempted assault was reported in a Fybeka Pharmacy in Guayaquil. As a result of the operation there were 8 dead and several arrests after which, according to police, there was a confrontation within the locale and the criminals were killed. Subsequently, the wives of the victims reported that their husbands were not criminals since one was a messenger for the pharmacy and another was a customer and still another disappeared after he was arrested.²²⁷

"The Dolores" ("The Sufferers") is the nickname given to the wives of the victims and it was they who filed the complaint before the Commission and, as a result, preliminary injunctions were issued. At this point, the Commission requested the Ecuadorian State to adopt the necessary measures to find the whereabouts of the victims who were missing and clarify the events of November.²²⁸ In fact, the police later admitted that there were irregularities in the operation conducted during the alleged assault and that there had been no conflict; therefore, there was clearly a serious violation of rights committed by the police officers.²²⁹ In December 2003, a process was initiated against 20 police but there was found to be a "lack of evidence" and the case was closed at the request of prosecutor Carlos Pérez Asencio.²³⁰ In 2010, the Interior Minister Gustavo Jalkh ordered the reopening of the case and this continued to date.²³¹

2.1.17 2004: The "Sarayaku Case"

In the 2004 report, the case which stands out is the case of the Sarayaku who were beneficiaries of precautionary measures granted by the IACHR in the year 2003. After

²²⁶ Ibidem.

²²⁷ "Fybeka case, six years of impunity." Revista Vistazo, article of November 19, 2009. Retrieved June 10, 2013 from <http://goo.gl/vrTti3>

²²⁸ "Precautionary measures granted by the Commission during 2003". Inter-American Commission on Human Rights (Organization of American States). Retrieved June 10, 2013 from <http://goo.gl/XTLL0W>

²²⁹ "The police agree that if there were bad Fybeka procedures". El Universo newspaper article of December 3, 2003. Retrieved June 10, 2013 from <http://goo.gl/X0tdzf>

²³⁰ "Missing in case " Fybeka was " antisocial ". Journal article Hoy 10 December 2003. Retrieved June 10, 2013 from <http://goo.gl/nwWze2>

²³¹ "The reopening of the case Fybeka Jalkh orders". El Universo newspaper article of September 08, 2010. Retrieved June 10, 2013 from <http://goo.gl/OyK4CH>

the process was completed in 2003 (and which was already discussed above), on April 29, 2004, the petitioners resubmitted a request for provisional measures in favor of the Sarayaku and precautionary measures in favor of José Serrano Salgado who was the legal representative thereof.²³² It was June 15, 2004 when the Commission presented the case for consideration by the Court which decided to implement interim measures and ordered the Ecuadorian State to protect the life and integrity of the members of Sarayaku. Later, the Commission sued Ecuador before the Inter-American Court and declared that it violated Articles 4, 5, 8, 21, 22 and 25 of the American Convention. It then ordered the fulfillment of the following points:²³³

- Take necessary measures to guarantee and protect the property rights of the Kichwa Indigenous People of Sarayaku and its members regarding their ancestral territory, guaranteeing the special relationship they have with their territory.
- Ensure the members of the Kichwa people of Sarayaku the exercise of their traditional subsistence activities, removing the explosives planted in their territory.
- Ensuring meaningful and effective participation of indigenous representatives in the process of decision making, about development and other issues that affect them and their cultural survival.
- Adopt, with the participation of the Indigenous Peoples, legislative or other measures necessary to implement the right to free, prior, and informed consultation in good faith, in accordance with international human rights standards.
- Take the necessary steps to prevent future similar events from occurring, such as the duty to prevent and guarantee the fundamental rights contained in the American Convention.
- Provide full individual and community reparation for the Kichwa Sarayaku People and its members, including, not only compensation for material and

²³² "Report No. 62/04 - Petition 167/03 of the Kichwa Indigenous People of Sarayaku and its members." Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 1, 2013 from <http://goo.gl/Ir2YI8>

²³³ "Brief before the Inter-American Court of Human Rights in the case of the Kichwa Indigenous People of Sarayaku and its members (Case 12.465) against Ecuador ." Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 1, 2013 from <http://goo.gl/ZjinfS>

moral damages and costs and costs of litigation, national and international level, but also holding certain acts of symbolic importance that guarantee the non-repetition of crimes committed in this case.

Here, it should be mentioned that the position of Ecuador was marked by its intention to avoid responsibility for human rights violations so they asked the Commission to declare the case inadmissible. Their position was based on the assertion that the petitioners had failed to exhaust all domestic resources before turning to an international body, but the Commission was very clear when it stated that, in this case, there could be an exception to Article 46 of the American Convention. On the other hand, the Ecuadorian State argued that the oil concession was a state decision that ruled that it was a "constitutional" principle of public ownership of natural resources of the subsoil and that the contract was an administrative act granting, thereby forgetting the territory statement made by the Sarayaku in the year 1992.²³⁴ The interests prevailed in this case and tried to evade the responsibility it entailed granting so again the Ecuadorian State hinted his lack of commitment to the agreements international, once again the case had to be passed on for consideration by the Inter-American Court of Human Rights.

2.1.18 2005: General recommendations of the IACHR to Ecuador

For the year 2005, the Commission issued a progress report on Human Rights in Ecuador where it noted several important points. First, was emphasized the importance of political stability as the linchpin that enables the separation and balance of powers of the State in order to develop public policies that protect human rights. In this context, it was acknowledged that members of the Supreme Court were appointed during this process in the presence of observers from the United Nations and the OAS. Second, given the institutional crisis that the country was suffering it was recommended that Ecuador take the necessary steps to amend the delay caused by the absence of a Supreme Court and Constitutional Court. Third, the government of Ecuador was urged

²³⁴ "Report No. 62/04 - Petition 167/03 of the Kichwa Indigenous People of Sarayaku and its members." Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 1, 2013 from <http://goo.gl/Ir2YI8>

to take the necessary measures to comply with the recommendations of the report and it was said that the Commission would monitor the state of human rights in the country.²³⁵

2.1.19 2006: Precautionary Measures granted by the IACHR in favor of the hidden people "Tagaeri" and "Taromenani"

The 2006 report mentions the precautionary measures the IACHR granted for the hidden peoples Tagaeri and Taromenani. This does not include details of the case but indicates that precautionary measures were granted in connection with the murder of a group of Taromenani in April 2006, all linked to illegal logging in the Yasuní Park. The Ecuadorian State was asked to adopt measures necessary to protect their life and presence in their territories.²³⁶ However, in the inquiry conducted in this qualification, there have been discrepancies as to the information regarding the date of the slaughter of the Taromenani because in the documentary "Taromenani", by filmmaker Carlos Andrés Vera, it was indicated that the killings occurred in the year 2003 and not 2006 as the report of the Commission showed. However, the precautionary measures were granted on May 10, 2006 and it was in the same year that the two Colombians lumberjacks were killed by members of the hidden Taromenani people.²³⁷

Ecuador, to date has not taken effective measures to protect the life of the hidden villages or those in voluntary isolation now that, with the entry of oil and timber, there has been triggered a conflict between the Waorani and Taromenani peoples who hope to put an end to a conflict that has meant exterminating them. Importantly, both oil and timber, who have won the "trust" of the Waorani people, have managed to give them a place in their territory in exchange for "favors" associated with civilization. The Yasuní Park was declared a protected zone to protect the life of the hidden villages in 1999 and then in 2007 and afterwards delimited, however, so far they have managed to stop the killings.²³⁸ Clearly the degree of danger posed by the presence of oil in the territories of the hidden people is causing their mobilization because they interpret this presence as a threat while their natural environment is being polluted.

²³⁵ "Annual report of the development of human rights in Ecuador 2005" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 1, 2013 from <http://goo.gl/xxU5iS>

²³⁶ "Precautionary measures granted by the Commission during 2006" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 10, 2013 from <http://goo.gl/gUq6kk>

²³⁷ Documentary " Taromenani " . Directed by Carlos Andres Vera . Available in <http://vimeo.com/35717321>

²³⁸ Decree No. 2187 of President Alfredo Palacio González issued on January 3, 2007.

2.1.20 2007 – 2008: "The Death of students from Vicente Rocafuerte High School and The Case of Paola del Rosario Guzman"

In the years 2007 and 2008 two reports surfaced related to events in two educational institutions belonging to the State which involved the violation of human rights of children. The first case relates to minors Marco Javier Zambrano and José Javier Rada, both students of "Vicente Rocafuerte" National High School. The report indicates that on Friday, December 13, 1991 the children left home to attend high school but did not return that day after a series of events that allegedly indicated that an accident had occurred on campus. The father of one of the minors, Segundo Zambrano, was informed that his son had drowned in the pool at that school but it was later noticed that the body of the child had bruises and the puncture mark of a pen in the globe of his eye. Additionally, the father of the other child received information regarding the death of Marco Javier Zambrano and his son who had accompanied him to the school nurse. However, he had also died supposedly due to drowning. The case was related to a gang who had brutally attacked these children and caused their death. Do not forget that the case was not investigated promptly by the school authorities or the Ecuadorian courts.²³⁹

The case was later reported in the Ecuadorian courts but ignored him and went unattended until April 16, 2003 when the Permanent Committee for the Defense of Human Rights and Mr. Segundo Zambrano filed a complaint with the Commission.²⁴⁰ The petitioners alleged that the Ecuadorian State violated Articles 4 (right to life), 5 (right to humane treatment), 8 (fair trial), 25 (judicial protection), 13 (right to truth) and 19 (rights child) of the American Convention--this in addition to the fact that the cause of death of the children has not been made clear and those guilty have not been punished. The Ecuadorian State, as was usual, claimed that domestic recourses had not been exhausted and that the petitioners should have made use of a self-limiting recall petition issued by the Superior Court of the city of Guayaquil. In this case, the Commission established an exception in this case because it was several years and the State had not clarified the facts so that Ecuador was guilty of having made an unwarranted delay in resolving the case. On July 24, 2007, the IACHR concluded that it

²³⁹ "Informe N° 51/07 – Petición 288-03 de Admisibilidad – Caso Marco Javier Zambrano y Javier José Rada". Comisión Interamericana de Derechos Humanos (Organización de los Estados Americanos). Extraído el 10 de julio de 2013 desde <http://goo.gl/fnzvjV>

²⁴⁰ *Ibíd.*

had jurisdiction in the case and declared it as admissible.²⁴¹ This is how the case became the doorway to finding justice after more than a decade of impunity. The case is still in process.

In the year 2008, the case of Paola del Rosario Guzmán Albarracín became known in which relatives alleged that, while the fourteen year old was studying at Dr. Miguel Martinez Serrano High School, the vice principal of the school offered to "help" her pass the year in exchange for going out with him. The complaint states that the vice principal had harassed the girl and that, through friends of the girl, their families came to know that the official had been forcing the victim to touch his genitals and to have sex with him since the year 2002. Moreover, it included the fact that the attacker had been previously denounced for sexual harassment but that he had been reinstated in his post despite the allegations in the complaint. As a result, Paola del Rosario became pregnant and, according to reports from her friends, she had decided to terminate her pregnancy by an injection that the school physician would supply in exchange for having sex with him.²⁴²

On December 12, 2002, Paola del Rosario ingested white phosphorous tablets, known as diablillos, with the knowledge of her friends after which she was taken to the infirmary. However, the complaint maintains that the authorities of the institution did not take steps to ensure that the victim was taken to a hospital as quickly as possible. The report notes that the principal of the school only gave the order to call a taxi for the mother of Paola del Rosario so she could take her to the emergency room. Hours later, the victim died at the Kennedy Clinic in Guayaquil "as a result of poisoning caused by the voluntarily ingestion of white phosphorus."²⁴³ Against this backdrop, the relatives of the victim approached the IACHR claiming the school had used the remedies under domestic jurisdiction but they were unsuccessful and the case was suspended for more than two years. The position of the Ecuadorian State, once again, was to argue that the petition should be declared inadmissible because the petitioners had not exhausted the recourses under domestic law. Furthermore, in this case the Ecuadorian State did

²⁴¹ *Ibidem*.

²⁴² "Report No. 76/08 - Admissibility petition 1055-06 - Case Paola del Rosario Guzmán Albarracín and Family " . Inter-American Commission on Human Rights (Organization of American States) . Retrieved July 10, 2013 from <http://goo.gl/O0gwx8>

²⁴³ *Ibidem*.

acknowledge that Paola del Rosario was the victim of sexual harassment and rape by the school official.²⁴⁴ Once presented the case, the Commission concluded that it had jurisdiction to hear the case and decided that it was admissible and that Articles 4, 5, 8, 19, 24 and 25 of the American Convention and Article 7 of the Convention of Belém do Pará, had been violated by the Ecuadorian State.

2.1.21 2009: “ Nelson Serrano Case”

On August 6, 2009, the Commission issued a report which served as background to the case of Ecuadorian citizen Nelson Iván Serrano Sáenz. Mr. Serrano was sentenced to death for the alleged murder of four people in Florida, U.S.A. The case was heard by the Commission in March 2003 through a complaint against the Ecuadorian State in which it was alleged that Ecuador was responsible for the arrest and "illegal" deportation of Serrano. The complaint mentioned among the violations were Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 and 25 (right to due process and judicial protection), 9 (principle of legality and guaranteed retroactivity), 11 (right to privacy), 20 (right to nationality), 22 (right to movement and residence) and 24 (right to equality) of the American Convention on Human Rights.²⁴⁵

Nelson Serrano was sentenced to death in October 2006 by a Florida court after being found guilty of the deaths of George Gonsalves, Frank Dosso, Diane Patissos and George Patissos who were partners with Serrano in a joint venture concerning the transportation of dry cleaning machines.²⁴⁶ According to the research supplement "White and Black", an analyst at the scene said they had found no fingerprint or DNA sample Serrano which could tie him to the murders. It was in 2000 that Nelson Serrano returned to Ecuador but he was deported to the United States two years later because it was thought that enough evidence had been found to blame him for the crime.²⁴⁷

²⁴⁴ *Ibíd.*

²⁴⁵ “Informe de fondo N°84/09 – Caso 12.525 de Nelson Iván Serrano Sáenz”. Comisión Interamericana de Derechos Humanos (Organización de los Estados Americanos). Extraído el 01 de agosto de 2013 desde <http://goo.gl/UUYzHX>

²⁴⁶ "A jury sentenced to death by a shoe print." Supplement "Blanco y Negro" 20 November 2006. *Diario Hoy*. Retrieved August 1, 2013 from <http://goo.gl/wjGw3G>

²⁴⁷ *Ibíd.*

The Ecuadorian State contends, first, that the complaint should be dismissed because Serrano was not included in the databases of the country and therefore listed as abroad.²⁴⁸ In this context, note that Serrano was born in Ecuador in 1938 and in 1971 became an American citizen losing Ecuadorian nationality due to the 1967 Constitution which was in force at the time. However, Serrano returned to Ecuador in 2000 when the 1998 Constitution was in force and provided that "whoever has Ecuadorian citizenship with the issuance of this Constitution may continue in possession of it" and that "Ecuadorians by birth who naturalize or have naturalized in another country may retain their Ecuadorian citizenship."²⁴⁹ With the information provided here, it was very clear that Ecuador on International Law was still in diapers and decided to deport a legitimate citizen to a country where he expected a death sentence, thereby completely ignoring its own constitution.

The Commission finally concluded that Ecuador illegally detained and deported Nelson Serrano so it was guilty of the violation of his rights to personal integrity, personal liberty, fair trial, nationality, movement and residence, and judicial protection under the American Convention. It also recommended that Ecuador immediately recognize the violations of the rights of Nelson Serrano, take steps for the victim to return home, provide legal assistance, and obey the law of Ecuador on issues of deportation suits and reparations to the victim for Human Rights violations.²⁵⁰ The IACHR gave the Ecuadorian State two months to comply with the recommendations made previously but Ecuador requested an extension, which was granted for another month. In fact, in this period, Ecuador hired a special lawyer for Nelson Serrano, acknowledged responsibility for the violation of human rights of the victim and brought to the attention of the IACHR that human mobility issues would meet international standards.²⁵¹

²⁴⁸ "Background Report No. 84/ 09 - 12,525 Case of Nelson Ivan Serrano Saenz." Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 1, 2013 from <http://goo.gl/UUYzHX>

²⁴⁹ Ecuador Constitution of 1998. Political Database of the Americas , Georgetown University, February 2009. Retrieved August 15, 2013 from <http://goo.gl/YwpyVu>

²⁵⁰ "Background Report No. 84/ 09 - 12,525 Case of Nelson Ivan Serrano Saenz." Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 1, 2013 from <http://goo.gl/UUYzHX>

²⁵¹ *Ibíd.*

2.1.22 2010: “Angostura Case”

In 2010, the Inter-American Commission on Human Rights declared admissible, for the first time, an interstate claim which was brought by the State of Ecuador against Colombia for the events of March 2008 in the FARC camp in Angostura.²⁵² In June 2009, the Commission requested copies of recognition by Ecuador and Colombia, its jurisdiction as interstate petitions as required by Article 45 of the American Convention. In this regard, it was found that Ecuador recognized the competence of the IACHR to examine interstate requests on July 30, 1984 and Colombia, later on May 8, 1985.²⁵³ Note that in the year 2006, the Commission met an interstate petition by Nicaragua against Costa Rica, but it was declared inadmissible.²⁵⁴

The event took place in the framework of the "Phoenix" operation conducted on March 1, 2008 by the Colombian military, where after an air raid in Ecuadorian territory, they killed the FARC spokesman Raul Reyes.²⁵⁵ In the operation the Ecuadorian Franklin Aisalla Guillermo Molina died and his corpse was brought together with that of Raul Reyes and the identities confirmed by the prosecutor Alfredo Alvear.²⁵⁶ The incident sparked a controversy between the governments of Ecuador and Colombia because no one knew for certain whether the Colombian President Alvaro Uribe had contacted President Rafael Correa to inform him of the operation to be conducted.²⁵⁷ In this context, President Rafael Correa decided to expel the ambassador of Colombia as a defensive measure since they considered this act a violation of Ecuadorian sovereignty. This sparked a diplomatic crisis that lasted several months.²⁵⁸ In fact, on March 7th the same year they held the Rio Summit where the presidents of

²⁵² Commission confirms that it admitted the demand for Ecuador against Colombia in Angostura case. El Universo, Guayaquil, Ecuador , November 05, 2010. Retrieved August 5, 2013 from <http://goo.gl/9A97oL>

²⁵³ "Report No. 112/10 - Petition PI- 02 Interstate Franklin Aisalla Guillermo Molina (Ecuador - Colombia)." Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 5, 2013 from <http://goo.gl/k94OBD>

²⁵⁴ "Report No. 11/07 - Interstate Case 01/02 - Nicaragua against Costa Rica." Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 5, 2013 from <http://goo.gl/8V2Rl5>

²⁵⁵ Colombian government confirms death of Raul Reyes in Ecuadorian territory. El Universo, Guayaquil, Ecuador , March 01, 2008. Retrieved August 5, 2013 from <http://goo.gl/I1P8AJ>

²⁵⁶ On the trail of locksmith Franklin Aisalla . Time , Guayaquil, Ecuador , March 25 , 2008. Retrieved August 5, 2013 from <http://goo.gl/Nv8yBP>

²⁵⁷ Colombian government confirms death of Raul Reyes in Ecuadorian territory. El Universo, Guayaquil, Ecuador , March 01, 2008. Retrieved August 5, 2013 from <http://goo.gl/I1P8AJ>

²⁵⁸ Ecuador protests and expelles the ambassador of Colombia . El Universo, Guayaquil, Ecuador , March 03, 2008. Retrieved August 5, 2013 from <http://goo.gl/jUJnr3>

both Colombia and Ecuador staged an embarrassing confrontation around the case and finally ended in a hypocritical handshake with Rafael Correa angry and Álvaro Uribe offended.²⁵⁹

On June 11, 2009, over a year after the crisis, the Ecuadorian State filed a complaint against Colombia in which it alleged that it had violated Article 4.1 (right to life), 5.1 (Right to integrity staff), 8.1 and 8.2 (Trial) and 25.1 (Judicial Protection) of the American Convention, in addition, Article 1.1 against the Ecuadorian citizen Franklin Guillermo Aisalla.²⁶⁰ The complaint also expressed that the death of the aforementioned citizen performed an alleged "extrajudicial" execution by the Colombian government forces during Operation "Phoenix" on March 1, 2008. Here, the position of Ecuador was blunt in arguing that, although Colombian authorities have said that the attack on the camp was made from Colombia, the operation was in violation of the sovereignty of the Ecuadorian State. They also presented as arguments the decision on March 5, 2008 in the Permanent Council of the OAS the subsequent apology from President Álvaro Uribe, who had publicly acknowledged the breach of its international obligations.²⁶¹

From the aforementioned information one can see the clear political overtones that this case especially given that the complaint before the Commission included two issues, first the death of Ecuadorian Franklin Guillermo Aisalla, and secondly, the alleged violation of sovereignty Ecuador though it was not clear whether the bombing was carried Colombia or not. In fact, the Colombian State responded to Ecuador's complaint alleging that the evidence presented did not have to do with the alleged violation of Articles 4.1 of the American Convention and therefore it should be dismissed.²⁶² In this context, the Commission clarified that the analysis of the admissibility requirements would be based on the case of the alleged violation of human

²⁵⁹ "After unprecedented verbal brush with Uribe , Correa puts an end to litigation." El Universo, Guayaquil, Ecuador , March 08, 2008. Retrieved August 8, 2013 from <http://goo.gl/OK8C0f>

²⁶⁰ "Report No. 112/10 - Petition PI- 02 Interstate Franklin Aisalla Guillermo Molina (Ecuador - Colombia)" . Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 5, 2013 from <http://goo.gl/k94OBD>

²⁶¹ "Report No. 112/10 – Interstate Petition PI- 02 Franklin Aisalla Guillermo Molina (Ecuador - Colombia)". Inter-American Commission on Human Rights (Organization of American States) . Retrieved August 5, 2013 from <http://goo.gl/k94OBD>

²⁶² *Ibidem*.

rights of Ecuadorian citizen Franklin Aisalla.²⁶³ Notably, the Commission began processing the case because other evidence was presented about the Ecuadorian citizen who died in Operation "Phoenix". These included a forensic report by the National Institute of Legal Medicine and Forensic Sciences of Colombia, where it indicated that the body had "lesions on the skull and the back, produced with an explosive and penetrating object."²⁶⁴

2.1.23 2011 – 2012: “El Universo Case”

On September 30, 2010, Ecuador was part of a series of events that led to its prominence in several headlines in the international press related to the police revolt that took place in Regiment N1 in Quito. There were more than 500 policemen who gathered in the regiment responsible for security in the capital, all in the context of protests against the Public Service Act that "eliminated" bonuses, promotions and decorations.²⁶⁵ The personnel from Military Complex and La Recoleta Quito Air Base staged a protest where tires were burned, traffic was blocked on Maldonado Avenue and Mariscal Sucre Airport operations were suspended. In this context, President Rafael Correa went to the police station while looting and police protests were held across the country; so from an window of the office of police headquarters in Quito, the president gave a speech in which, amid boos and after removing his tie he pronounced, "Here I am, if you want, kill me."²⁶⁶

The atmosphere became tenser after the speech by President Correa because, minutes afterwards, tear gas bombs were thrown at the president who was on his way to the heliport, in fact, there were clashes between the president's bodyguards and police. He was forcibly transferred to the Police hospital where their emerged the controversy of his alleged "kidnapping" by Cesar Carrion who was then the director of the hospital.²⁶⁷ There were attempts come to an agreement between the government and their subordinates but the demonstrations continued even outside the National Assembly. At this point, the government declared a state of emergency and suspended

²⁶³ *Ibidem.*

²⁶⁴ *Ibidem.*

²⁶⁵ 30 - S Insubordination of the Police . Special Diario El Comercio , Quito, Ecuador , September 30 , 2011. Retrieved January 15, 2014 from <http://goo.gl/UH2XDL>

²⁶⁶ *Ibidem.*

²⁶⁷ *Ibidem.*

media transmission to join the state signal. Minutes later the Armed Forces of Ecuador reaffirmed their "loyalty" to President Correa, however, clashes between protesters and police became more violent resulting in the deaths of 5 people and injuries to hundreds across the country. Later, President Correa said that it was a coup attempt and that he had been kidnapped for which the GOE and GIR sought to rescue the president of the hospital Police that night in the middle of a shootout between soldiers, policemen and members of the elite groups. Finally, after his rescue the president gave a euphoric speech in which he condemned the events of September 30, something that was subsequently described by the government as "the day that democracy triumphed."²⁶⁸

Against this background, the "Case of El Universo" is developed during the judicial process which was carried out against newspaper executives Carlos, Cesar and Nicolas Perez and the director of opinion Emilio Palacio for his opinion column entitled " No to lies "in which, in his analysis of the events during the riots of September 30, he claimed that" The Dictator should remember, finally, and this is very important, that regarding pardon, in the future, a new president, perhaps his enemy, could bring him to face a criminal court for ordering gunfire at will and without warning against a hospital full of civilians and innocent people."²⁶⁹ It was in March of the same year that President Correa filed a lawsuit against the newspaper, its directors and columnist in order to "reinforce accountability" regarding the publication of the opinion column and asked for an award of \$10 million for moral damages.²⁷⁰ Subsequently, in July the same year in one of the fastest lawsuits in history, Judge Juan Paredes exacted a sentence of three years in prison against newspaper executives and Emilio Palacio and compensation in the amount of \$30 million for the president of the Republic.²⁷¹ After the judgment arose several controversial events involving Judge Paredes because allegedly he had not written the sentence, plus they gave different versions of how it was written.²⁷²

²⁶⁸ Ibidem.

²⁶⁹ Palacio, Emilio . " No to lies " . Opinion Piece of El Universo , Guayaquil, Ecuador , 06 February 2011. Extracted on October 10, 2013 from <http://goo.gl/hO9shk>

²⁷⁰ Correa sues this newspaper and its executives. El Universo , Guayaquil, Ecuador , March 29, 2011. Retrieved October 10, 2013 from <http://goo.gl/PHGrJz>

²⁷¹ 3 years in prison for Carlos , Cesar and Nicolas Perez Emilio Palacio , finds Judge Paredes . El Universo , Guayaquil, Ecuador , July 20 , 2011. Retrieved October 10, 2013 from <http://goo.gl/NbrwjH>

²⁷² Judge Paredes gives different versions of how he prepared statement. El Universo , Guayaquil, Ecuador , 18 December 2011. Retrieved October 10, 2013 from <http://goo.gl/PBhqBF>

The case was appealed in all instances but the sentence was finally ratified by the National Court of Justice on February 15, 2012, the directors of El Universo and Emilio Palacio requested the Commission to act urgently before anything else could compromise the scene.²⁷³ It was February 21 of that year the Commission through a statement issued precautionary measures in favor of Emilio Palacio, Nicolas, Carlos and Cesar Perez stating "The facts known to the Commission could constitute irreparable damage to the right to freedom of expression of Mr. Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga. Consequently, the Inter-American Commission on Human Rights requested the Government of His Excellency to immediately suspend the effects of the judgment of the 15th of February, 2012 in order to guarantee the right to freedom of expression."²⁷⁴ "Precautionary measures were strongly criticized by the government starting with the Attorney General of the State who said that the Commission had no power to order interim measures and that, according to counsel the president, Alembert Vera, they were being subjected to a "legal outrage" and so these orders should not be followed."²⁷⁵

Against this background, several media and human rights organizations harshly criticized the Ecuadorian government with headlines and articles such as in Human Rights Watch that said "Ecuador: A Blow to Free Speech: Newspaper Directors, Journalist Convicted for Criticizing President."²⁷⁶ Finally, on February 27, 2012, after harsh criticism of the case against "El Universo and 'Big Brother' President Correa" it was decided to "forgive" the accused while at the same time citing "inappropriate" the interference by the Special Rapporteur for Freedom of Expression and dissatisfaction with the precautionary measures that the IACHR granted to the directors of the newspaper and the opinion columnist.²⁷⁷ With the pardon granted by the President, the Commission lifted the precautionary measures on March 9 of the same year and adjourned the hearing agenda for March 28 in which the positions of the parties would

²⁷³ Three criminal judges confirm the prison sentence for managers of the Universe . El Universo , Guayaquil, Ecuador , February 16 , 2012. Retrieved October 15, 2013 from <http://goo.gl/9JeoYp>

²⁷⁴ MC 406/11 - Emilio Palacio , Carlos Perez Nicolas Lapentti , Carlos Pérez Barriga , and César Pérez Barriga, Ecuador . Inter-American Commission on Human Rights , Organization of American States , Washington DC , USA, 21 February 2012. Retrieved October 15, 2013 from <http://goo.gl/tPR4Np>

²⁷⁵ IACHR issued precautionary measures for executives Journal. El Universo , Guayaquil, Ecuador , February 22 , 2012. Retrieved October 20, 2013 from <http://goo.gl/m7ATcz>

²⁷⁶ Ecuador: A Blow to Free Speech . Human Rights Watch , July 21 , 2011. Retrieved November 1, 2013 from <http://goo.gl/aBea5k>

²⁷⁷ Rafael Correa announced without forgetting pardon for convicted if the Universe . El Universo , Guayaquil, Ecuador , February 27 , 2012. Retrieved on November 5, 2013 from <http://goo.gl/knvLaT>

be received. Note that this case would be the stimulus to arouse the interest of the government of Rafael Correa to "reform" the Inter-American Human Rights in order to "strengthen" it. This is a theme that will be discussed in the last chapter of this work.

2.1.24 2013 - 2014: Case "Jimenez Figueroa and Villavicencio regarding 30-S"

During the year 2013, the aftermath of the September 30 protests continued with prosecutions by President Correa against opponents of his government. Years earlier, on August 4, 2011, then-Assemblyman Clever Jimenez filed criminal charges against the President of the Republic it was asked to investigate the events during the 30-S as to who would have given the order which caused the armed forces to be mobilized that day.²⁷⁸ The assemblyman stated that, in his opinion, that that day "crimes against humanity, internal unrest in the country and the inciting of a public revolt of the Armed Forces and National Police were committed when he (Correa) so arrogantly spoke to Quito regiment and, taking off his shirt, said to shoot him. He (Correa) forgot that was not in a position that he, as the First Person of the Ecuadorian State, should have acted that way. He put into harm's way the President of the Ecuadorian people, we are not interested Rafael Correa, what was of interest to us was the President ".²⁷⁹

After Jimenez filed the lawsuit, the judge of the National Court, Richard Villagomez, rejected it and called it "reckless and malicious". As a result, the presidency decided to prosecute the assemblyman and Fernando Villavicencio for accusing the President of the Republic of genocide. In this context, the staff attorney for President Correa, Alexis Mera, said that the legislative immunity normally enjoyed by Jimenez, did not apply in this case because it is a serious charge that damaged the honor of the president.²⁸⁰ Thus, on April 17, 2013, Judge Lucy Blacio convicted Cléver Jiménez, Carlos Figueroa and Fernando Villavicencio for the crime of insulting President Rafael Correa with a sentence of 18 months imprisonment and denial of citizenship rights for the duration thereof. Also, the judge recognized the right of the President to reparation which provided that the defendants make a public apology

²⁷⁸ Assemblyman Jiménez filed a criminal lawsuit against President Correa due to the 30 - S . Ecuador Inmediato, August 04, 2011. Retrieved April 10, 2014 from <http://goo.gl/tBdiff>

²⁷⁹ *Ibíd.*

²⁸⁰ Presidency will sue Clever Jimenez for reckless accusation. El Telégrafo , Guayaquil, Ecuador , May 09, 2012. Retrieved May 25, 2014 from <http://goo.gl/GUOBHB>

through the media and repair the damage that would be the remuneration, the value of which calculated based on the President's salary for each of the months from the August 4, onward.²⁸¹

Subsequently, on January 30, 2014, Cléver Jiménez, Carlos Figueroa and Fernando Villavicencio, approached the IACHR to seek injunctive relief for alleged violations of Articles 8 (fair trial), 9 (principle of legality), 13 (freedom of expression) and 25 (judicial protection) of the American Convention in the execution of the judgment on appeal against them. In this context, the Commission analyzed the facts and the parties requested reports on the case and noted with concern the alleged threats against the assemblyman. Thus, the Commission considered that the case represented a serious matter because it was a complaint against an authority in the exercise of its functions and that, therefore, the sentence "could lead a silencing effect regarding all persons who then shall be subject to constant self-censorship before reporting anything that could offend the highest public officials."²⁸² Finally, on March 24, 2014 the Commission granted precautionary measures on behalf of those sentenced asking the Ecuadorian government to immediately suspend the effects of the aforementioned ruling.

The Foreign Minister Ricardo Patiño, spoke about the decision of the Commission and said, through his Twitter account, that the Commission had no jurisdiction to seek injunctive relief.²⁸³ Thus, on March 27 of that year, the Chancellor officially informed them that Ecuador would not take the precautionary measures for Villavicencio, Figueroa and Jimenez and asked the Commission to repeal the decision because it was a topic outside their purview.²⁸⁴ On April 8, 2014, Assemblyman Jiménez officially lost the position of assemblyman after the Council of the Legislative Administration judged it by a vote of four votes in favor and one against.²⁸⁵ The three defendants appealed to the Sarayaku indigenous people, who granted them asylum generating a legal

²⁸¹ Court sentences to 18 months imprisonment Assemblyman Clever Jimenez. El Universo, Guayaquil, Ecuador , April 17 , 2013. Retrieved June 10, 2014 from <http://goo.gl/VVRBpp>

²⁸² Subject Fernando Villavicencio Valencia Alcibiades and others about Ecuador - Injunction No. 30-14 of March 24, 2014 - Resolution 6/2014 . Inter-American Commission on Human Rights , Organization of American States . Retrieved June 10, 2014 from <http://goo.gl/kEEEn3>

²⁸³ The IACHR granted precautionary measures to Assemblyman Clever Jimenez. El Universo, Guayaquil, Ecuador , March 24 , 2014. Retrieved June 10, 2014 from <http://goo.gl/zTQroi>

²⁸⁴ Ecuador asks the Commission to revoke precautionary measures for Clever Jimenez . Ecuavisa , Guayaquil, Ecuador , April 09, 2014. Retrieved June 15, 2014 from <http://goo.gl/R5FdVq>

²⁸⁵ Clever Jimenez officially stopped being Assemblyman . El Comercio, Quito, Ecuador , April 08, 2014. Retrieved June 15, 2014 from <http://goo.gl/FOTnFY>

controversy to protect Jiménez and his companions in the jungle.²⁸⁶ To date, Carlos Figueroa is the only one serving his sentence in prison since April after he left the jungle to visit his mother who was in a delicate state of health.²⁸⁷

2.2 HISTORICAL TIMELINE OF ECUADOR TO THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION

The Special Rapporteur for Freedom of Expression began its duties in the year of 1998, when it started the preparation of annual reports on the situation of Freedom of Expression in member countries. The Ecuadorian State was not mentioned until the year of 2001 and, to date, the Rapporteur has closely followed this issue in each of the states.

2.2.1 2001: “White Legion” and prosecutions against journalist

The first time the Special Rapporteur for Freedom of Expression mentioned Ecuador in its annual report was after the clandestine group "White Legion" threatened to kill citizens who opposed the participation of Ecuador in the Colombia Plan.²⁸⁸ Organizations such as the Observatory for the Protection of Human Rights Defenders, a joint program of the FIDH and OMCT, expressed concern over the emergence of the group, after human rights defenders made public their position by stating that increased violence in the country was one of the consequences of the Colombia Plan. It was July 30, 2001 when the regional Foundation of Human Rights Assistance (INREDH), the Peace and Justice Service of Ecuador (SERPAJ), the Andean Committee Services and Front Ecuadorian Human Rights received emails where the accused of having links with the FARC and ELN thereto threatening them with that "will have its days and monitored their actions."²⁸⁹

²⁸⁶ Sarayaku in legal controversy protect Clever Jimenez. El Comercio, Quito, Ecuador . Retrieved August 1, 2014 from <http://goo.gl/TPSA4Z>

²⁸⁷ Activist sentenced for insulting President Correa taken to jail 4. El Universo, Guayaquil, Ecuador , July 22 , 2014. Retrieved August 1, 2014 from <http://goo.gl/F5gw8s>

²⁸⁸ Annual report of the Special Rapporteur for Freedom of Expression 2001. " Evaluation of the State of Freedom of Expression in the Hemisphere." Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 5, 2014 from <http://goo.gl/AGShBZ>

²⁸⁹ Effects of Plan Colombia in Ecuador : Formation of a "political and military " group against human rights defenders . International Federation for Human Rights , August 08, 2001. Retrieved August 5, 2014 from <https://goo.gl/EjRgv1>

Furthermore, the report noted with concern the court proceedings against two journalists who were sued for alleged defamation against public officials. The first case involved two lawsuits filed by Fernando Rosero (deputy of the PRE) against Jorge Vivanco Mendieta of the newspaper Expreso de Guayaquil for the report that had presented in which he criticized the military for not taking their right to defense after several accusations were made by the deputy on the subject of buying weapons from Argentina when the conflict with Peru was developed.²⁹⁰ In this context, the deputy demanded a compensation of one million dollars and a criminal case against the journalist; however, the First Criminal Division of the then Supreme Court acquitted Jorge Vivanco stating that the allegation was unfounded.²⁹¹ The second case concerns the journalist Malena Cardona Battles of Manabita TV who was sentenced to 30 days in jail and a fine for allegedly insulting the deputy Roberto Rodriguez (PRE) as part of an interview in which the reporter asked about his alleged involvement in a scam.²⁹²

2.2.2 2003: Gag Law in the government of Lucio Gutiérrez

In 2003, the Special Rapporteur for Freedom of Expression was especially concerned by statements of then President Lucio Gutierrez, who in that year threatened reporters to push for reforms to the Organic Law for the Dissemination and Access to Public Information under the argument that the reform law would not protect his government but for anyone not "insults to his neighbor."²⁹³ In fact, weeks after a debate he said that people "misuses the media" and that his intention was to strengthen freedom of expression while "punishing the gossip, the liar, the slanderer and those who spread false rumors".²⁹⁴

²⁹⁰ Annual report of the Special Rapporteur for Freedom of Expression 2001. " Evaluation of the State of Freedom of Expression in the Hemisphere." Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 5, 2014 from <http://goo.gl/AGShBZ>

²⁹¹ Dismiss charges against Jorge Vivanco. La Hora, Guayaquil, Ecuador , October 15 , 2002. Retrieved August 5, 2014 from <http://goo.gl/UOGxwt>

²⁹² Annual report of the Special Rapporteur for Freedom of Expression 2001. " Evaluation of the State of Freedom of Expression in the Hemisphere." Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 5, 2014 from <http://goo.gl/rTaunI>

²⁹³ President defends law. El Universo, Guayaquil, Ecuador , September 10 , 2003. Retrieved August 5, 2014 from <http://goo.gl/as1wT8>

²⁹⁴ Gutiérrez debate on press statements . El Universo, Guayaquil, Ecuador , October 07, 2003. Retrieved August 10, 2014 from <http://goo.gl/pssbaQ>

It is important to mention that it was Congress that decided to reject the Gutierrez government's claim to limit freedom of expression. The resolution was adopted by 65 votes in favor and 3 abstentions in the Party of the government. It was also Congress that jointly expressed their solidarity with El Comercio having been threatened by the president after it published a story about the alleged donation of \$30,000 from César Fernández (former governor of Manabí) to his campaign.²⁹⁵ In this context, the Rapporteur expressly concluded that the reforms had not been undertaken while at the same time recognizing that there would always be a degree of discrepancy between public officials and the independent press.²⁹⁶

2.2.3 2005: Rise of “Los Forajidos”

Under the Rebellion of the Outlaws, the year 2005 was marked by several violations of the right to freedom of expression by the government of Lucio Gutiérrez who tried to silence the voices protesting against him and demanded his resignation. Here, the Special Rapporteur for Freedom of Expression included in their report the interference suffered by Radio La Luna de Quito after the station opened the microphone to the public so that citizens could express their discontent with the government.²⁹⁷ The government of Lucio Gutiérrez fell by the 20th of April, 2005 and was seven days before this that Paco Velasco of Radio La Luna opened the microphones which would mark an important key in the context of the marches which toppled Gutiérrez and subsequently became the "Citizens' Revolution."²⁹⁸ In fact, between April and May 2005, Velasco claimed he had received threats after urging protest against President Gutiérrez. In the report it states that he left the country on May 3rd because he did not feel safe in his work.²⁹⁹

²⁹⁵ Congress supports freedom of expression . El Universo, Guayaquil, Ecuador , November 19 , 2003. Retrieved August 10, 2014 from <http://goo.gl/3waiWt>

²⁹⁶ Annual report of the Special Rapporteur for Freedom of Expression 2005. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 10, 2014 from <http://goo.gl/Gvlsz6>

²⁹⁷ Ibidem.

²⁹⁸ Politics stoked and Radio La Luna eclipsed. El Comercio, Quito, Ecuador , 09 January 2011. Retrieved August 15, 2014 from <http://goo.gl/Gs10Qf>

²⁹⁹ Ibidem.

Other journalists like Mark Villavar of the program "Television" were arrested by the military and 10 radio stations were forced to suspend the dissemination of news in the provinces of Orellana and Sucumbíos due to the "state of emergency" in which the country currently was. On the other hand, reporters Ximena Montenegro and Walter Villarreal of Gamavisión and Ecuavisa were kidnapped by supporters of Lucio Gutiérrez who tried to force them to disclose reports in support of the former president.³⁰⁰ Also, the National Police intervened in telephone calls of Milton Pérez and Maria Fernanda Zabala of Teleamazonas who allegedly tried to locate the fugitive Oscar Ayerve for his involvement in the use of violence against citizens during protests of "los forjados".³⁰¹

2.2.4 2007: The first friction between Rafael Correa and the press

The Special Rapporteur for Freedom of Expression expressed his concern over the situation which came to life regarding Freedom of Expression in Ecuador. On May 10, 2007, President Rafael Correa filed a suit against Francisco Vivanco Riofrío, president of the editorial board of the newspaper La Hora, for publishing the editorial "Official Vandalism".³⁰² In the text, the author criticized the management Correa's government, accusing it of "governing so tumultuously, with sticks and stones", all in the context of clashes between government supporters and opponents.³⁰³ At that time, the Penal Code provided penalties of from six months to two years in prison for the crime of contempt, which caught the attention of organizations such as "Reporters without Borders" and the "Inter American Press" who qualified this as an attack on Freedom of Expression. The complaint against Vivanco was archived by a judge on June 18, 2008 who said that in the editorial that there was no intent to slander.³⁰⁴

³⁰⁰ Ibidem.

³⁰¹ Annual report of the Special Rapporteur for Freedom of Expression 2005. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 15, 2014 from <http://goo.gl/tAAAFy>

³⁰² Annual report of the Special Rapporteur for Freedom of Expression 2007. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 15, 2014 from <http://goo.gl/196QBC>

³⁰³ Reporters Without Borders calls on President Rafael Correa to withdraw the complaint of 'disrespect ' to a journalist. La Hora, Guayaquil, Ecuador , May 21 , 2007. Retrieved August 17, 2014 from <http://goo.gl/T7vMoQ>

³⁰⁴ Judge files complaint against Francisco Vivanco . El Universo, Guayaquil, Ecuador , June 23 , 2008. Extracted from the August 18, 2014 from <http://goo.gl/smG06D>

The same year, the Supreme Court sentenced to 60 days imprisonment journalist Nelson Fuentala of the periodical Gazette for alleged defamation against the commissioner of the province of Cotopaxi. The Rapporteur recalled that criminal proceedings conducted against persons who report and disseminate information of public interest are "discourage" research and generate self-censorship which signifies a serious obstacle to the right to freedom of expression.³⁰⁵ Yet another fact seriously worried the Rapporteur when, on the 9th of July of that same year President Rafael Correa issued Decree No. 468 which amended the Regulations to the Law on Radio and Television. The decree added in Article 80 of the Act that h) "to play videos and / or covert tape recordings and / or non-authorized recordings by those who appear in the video or recording in such a way as to affect the right to privacy and honor of the people as stated in the Constitution of the Republic is affected. Be exempt from this penalty, those videos that have been recorded by Social Media or public sector institutions with their own equipment, to prevent the commission of a crime or check for an existing one."³⁰⁶

In this context, the then National Congress prepared a constitutional claim by a legislative resolution that considered the decree to limit freedom of expression and ignored the fact that several "underground" video had served to denounce corruption.³⁰⁷ In fact, the Rapporteur again recognized that restrictions on freedom of expression should be established in a formal law and not by a presidential decree that clearly violated the principle of legality.³⁰⁸ Notably, there was a balance of power at that time which was the only reason that there existed a constitutional challenge to a decree that clearly curtailed freedom of expression and limited the possibility of denouncing any corruption.

2.2.5 2008: The new constitution and freedom of expression

³⁰⁵ Annual report of the Special Rapporteur for Freedom of Expression 2007. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 15, 2014 from <http://goo.gl/196QBC>

³⁰⁶ Decree No. 468 of July 18 , 2007. Retrieved August 20, 2014 from <http://goo.gl/mt6nYu>

³⁰⁷ Congress will send the resolution about the TC's on Tuesday. El Universo, Guayaquil, Ecuador , July 20 , 2007. Retrieved August 2014 120 from <http://goo.gl/Yg2UwB>

³⁰⁸ Annual report of the Special Rapporteur for Freedom of Expression 2007. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 15, 2014 from <http://goo.gl/196QBC>

With the new Constitution of the Republic, the Special Rapporteur for Freedom of Expression recognized the progress that the new constitution had regarding issues of freedom of expression.³⁰⁹ In particular he referred to Articles 16, 17, 18, 20, 91 and 92 on the rights of people to communicate; however, he had some qualms about the interpretation of the Constitution since it gives the possibility to public authorities to directly or indirectly be involved in the exercise of the right to freedom of expression. In this context, the Rapporteur recommended that the Ecuadorian government ensure respect for this right when it came time to reform the laws and regulations of the country and that they be consistent with the standards of the ISHR.³¹⁰

Indeed, Articles 16 to 20 of the CRE gathered several rights, among these, the right to universal access to information technology which would open the door for the creation of media in the context of the "equality" of conditions in the use of the airwaves and the creation of public, private and community media.³¹¹ Moreover, with the new Constitution was born the banning of financial institutions to have as part of their property some media based the principle of not allowing the "oligopoly or monopoly" of companies using said type of media at their convenience. In fact, a time limit was given to financial institutions to transfer ownership of media, the same which was won in 2010.³¹² Another issue which left open the possibility of the limiting of the freedom of expression was Article 18, where the first literal specifies that all people have the right to "seek, receive, exchange, produce and disseminate truthful, verified, timely, contextualized, plural, information without prior censorship of the facts, events and processes of general interest, and further responsibility." The ultimate responsibility is still a matter of debate, but for the Rapporteur it was necessary that the laws arising from the Constitution guaranteed the full exercise of rights such as freedom of expression.

³⁰⁹ Annual report of the Special Rapporteur for Freedom of Expression 2008. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States . Retrieved August 20, 2014 from <http://goo.gl/uiPRLI>

³¹⁰ Annual report of the Special Rapporteur for Freedom of Expression 2008. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States . Retrieved August 20, 2014 from <http://goo.gl/uiPRLI>

³¹¹ Constitution of the Republic of Ecuador 2008. Retrieved August 20, 2014 from <http://goo.gl/2SqK3H>

³¹² Ecuador : forced to sell shares in media bankers. BBC World, Ecuador , October 22 , 2010. Retrieved August 22, 2014 from <http://goo.gl/LDFDnS>

It should be mentioned that only with the new Constitution were topics included that other constitutions did not address such as that, from now on, the law would consider the prevalence of content with informative, educational and cultural purposes thereby fostering the dissemination of national production. Also, the playing of advertisements encouraging violence in all its forms and that are discriminatory, racist, intolerant or sexist are prohibited. However, despite progress on issues of freedom of expression, it was also ordered that the new Constitution should issue a media law that regulates the media.³¹³ In this regard, it should be stressed that with the government's position at the time, it was going to be very hard to believe that an act of communication would be made independently and ethically.

2.2.6 2009: The rise of attacks and threats against journalist and the media

In 2009, the Special Rapporteur for Freedom of Expression recorded attacks on several journalists from media; an example of this was the aggression that Ana María Cañizares, Manuel Tumbaco and Francisco Quizno of Teleamazonas received after conducting coverage of the National Assembly.³¹⁴ In addition, the Rapporteur noted that journalists from the dailies Hoy, El Comercio, El Universo, Express and Teleamazonas were threatened by an email in which they were accused of manipulating information and "keeping the country in ignorance." Also, Emilio Palacio, opinion editor of El Universo, said he was threatened in an email for its many criticisms against President Rafael Correa. In this context, the Office issued several recommendations to the Ecuadorian government in order to protect the physical integrity of journalists and strengthen the right to freedom of expression.

In the report, the Rapporteur urged Ecuador to investigate attacks registered and to promote "a culture of respect for diversity of thought" and recommended that the authorities refrain from making any comments that would foster a climate of social intolerance.³¹⁵ In this sense, it became put under discussion the fact that diversity, pluralism and respect for ideas are essential issues in a democracy and that this is

³¹³ Constitution of the Republic of Ecuador.

³¹⁴ Annual report of the Special Rapporteur for Freedom of Expression 2009. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved August 20, 2014 from <http://goo.gl/c6DSOF>

³¹⁵ Ibidem.

precisely why it was necessary to promote this culture of respect with the goal that all ideas can be disseminated freely. It also warned that it is the duty of States to prevent murder, kidnapping, intimidation and threats against journalists and these acts severely violate the principle of freedom of expression, fostering in its citizens a culture of fear to issue any opinion whatsoever on the possibility of it being sanctioned or stigmatized.³¹⁶

Furthermore, the report mentions the constant declarations made by President Correa about reporters during his weekly link. In this context, the Rapporteur noted with concern the opinions of the president regarding the media which have labeled them the conspirators, corrupt, destabilizing, irresponsible and lying, not forgetting that he has urged the public not to buy and read newspapers of the "corrupt press." It should be mentioned that the report emphasizes public threats by the President to take to court the media and journalists who are critical of his administration.³¹⁷ Against this background, the position of the Inter-American Court of Human Rights regarding the limitations of public officials, reminded journalists that it is their duty to find reasonable, although not necessarily exhaustive facts on which their opinions are based and that they should do so "with even greater diligence than that used by other individuals, given the high degree of credibility enjoyed and in order to prevent citizens from receiving a distorted version of the facts."³¹⁸ However, the right of public servants to speak out and disagree with the content or criticisms that they believe is deceptive or unfair was recognized.

In several cases of attacks on journalists, there are such things as the arbitrary detention of journalist Francisco Farinango of Intipacha Radio while covering an indigenous protest in Pedro Moncayo, the aggression given by police towards Israel Diaz and Vicente Alban of Channel 4, Lago Sistema Television while covering an operation in Nueva Loja, the arrest of Adolfo Caiminagua of the paper Opinion while covering election day in Machala, the denial of access to documents of Petroecuador by the daily Hoy, denial of accreditation to Channel Teleacosta to cover a public event by the Director of Culture of the Municipality of Esmeraldas who considered that the

³¹⁶ *Ibidem*.

³¹⁷ Annual report of the Special Rapporteur for Freedom of Expression 2009. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved August 20, 2014 from <http://goo.gl/c6DSOF>

³¹⁸ *Ibidem*.

periodical printed "biased" information, and the list goes on. We must not forget that throughout the year were conducted prosecutions against journalists, such as was the case with Milton Chacaguasay, editor of the weekly La Verdad, the same which was prosecuted by former prosecutor Minister Francisco Quevedo, and who was sentenced to four months in prison for the crime of slander.³¹⁹ The case developed in the context of a publication in the weekly La Verdad which reported, in 2007, about the discovery of a check for \$ 5,000 on behalf of the former minister during a raid conducted by the police at the home of notary Cabrera.³²⁰

The sanctions were not only for journalists as television station Teleamazonas had to suspend its programming for 72 hours after the Superintendent of Telecommunications decided to do so for their allegedly having committed an administrative offense referred to in Article 80 of the General Regulations of the Law on Radio and Television . The sanction was given because of the information released by the channel regarding the exploitation of gas on Puna Island, where it was reported that 90% of the population was engaged in this work and had been told that work would be suspended for six months.³²¹ The resolution was supported by the argument that they had disseminated information based on assumptions and had caused a "national commotion". The channel argued that it was a government persecution. With this background, it is an interesting posture and concern of the Special Rapporteur to emphasize several times in a single report the fact that public officials are the ones who are mostly subject to criticism from society and that punitive penalties silence democratic debate. He ultimately recommended that the sanctions to protect the reputation of public officials should be handled on the civil level. However, by then, the government of Rafael Correa began to undermine the work of the media, which marked the beginning of a scenario where the debate was being affected by limits on the exercise of the right to Freedom of Expression.

2.2.7 2010: The year in which 230 national channels were broadcast

³¹⁹ Journalist returns to be jailed for libel and seeking protection because of death threats . Fundamedios 09 July 2009. Extrapido the August 30, 2014 from <http://goo.gl/7Bmegi>

³²⁰ Journalist returns to be jailed for libel and seeking protection because of death threats . Fundamedios 09 July 2009. Extrapido the August 30, 2014 from <http://goo.gl/7Bmegi>

³²¹ Teleamazonas off the air until Friday, by ruling of the Supertel . El Comercio, Quito, Ecuador , December 23 , 2009. Retrieved August 30, 2014 from <http://goo.gl/ix3wiO>

The report of the Special Rapporteur for Freedom of Expression for 2010 unveiled an extensive list of journalists who were assaulted in the police revolt of "30 S" before and after the uprising. The report mentions attacks by rebel police, protesters, government supporters and others against journalists doing their job of news coverage. In fact, attacks against journalists such as Ana María Cañizares Teleamazonas, Eduardo Cordova and Roberto Molina of TV Ecuador, who were in the National Assembly during the riots, are mentioned. It was noted that in addition to aggression, these and other journalists were stripped of their cameras and their photographs deleted.³²²

However, the attention of the Special Rapporteur for Freedom of Expression in part was focused on the more than 230 broadcasts that the government of Rafael Correa aired in 2009. All this under the study by the Ethos Foundation Ecuador which recorded a total of 233 national broadcasts surpassing the 195 that then Venezuelan President Hugo Chavez had aired, causing controversy in the world by overuse of them.³²³ In fact, in an article published by Paul Mena at the BBC, he said the government was the largest advertiser in the media based on what they spend on advertising which, according to a report of Infomedia, reached \$40 million.³²⁴ In this context, the Special Rapporteur reminded the Ecuadorian State that it recognized the authority of a president and senior officials to use the media with the aim of informing the public on matters of public interest those these are required to be disclosed urgently and quickly. However, he stressed that this power was not absolute and that not all information could be legitimized by a president but only "that which can reverse a collective interest in the knowledge of the fact's importance to the public."³²⁵ Excessive spending on advertising and the high number of national broadcasts made the balance between the free flow of ideas and opinion imposed indirectly from the government very difficult to distinguish.

Also mentioned was the fact that the government by then had 19 media including television, radio, newspapers, magazines and news agencies.³²⁶ In this

³²² Teleamazonas off the air until Friday, by ruling of the Suputel . El Comercio, Quito, Ecuador , December 23 , 2009. Retrieved August 30, 2014 from <http://goo.gl/ix3wiO>

³²³ Correa beat Chavez. BBC World, England, January 16 , 2010. Retrieved September 5, 2014 from <http://goo.gl/c7A0vX>

³²⁴ Ibidem.

³²⁵ Report of the Special Rapporteur for Freedom of Expression 2010. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 5, 2014 from <http://goo.gl/MgyJ0o>

³²⁶ Ibidem.

scenario it was hard to believe that the country had a diversity of ideas contributing to the public debate of the day. On the contrary, the government's presence in the media created an environment that legitimized propaganda, true or not, the work of the President. Indeed, the Rapporteur made an excellent contribution on this topic in reminding us that in a democracy, diversity of opinions was a fundamental issue and that the only way that there truly existed a means of public communication was only when they were completely independent of executive power.³²⁷ Note that a means of public communication should be pluralistic, accessible to all citizens, with funding provided by law and to ensure the participation of citizens and in production, circulation and reception of content than the media spreads.

Furthermore, it should be mentioned that in 2009 the Special Rapporteur for Freedom of Expression issued a press release expressing concerns about the sentence issued against Emilio Palacio in the lawsuit that was filed against him by the president of the National Finance Corporation. The demand came after Palacio published an opinion column in the newspaper El Universo on August 27, 2009 under the title "Camilo, the Bully" in which he blasted government officials and Camilo Saman, who was then president of the CFN as well as the president's family. In the column, Emilio Palacio said the power was tainted by "a mafia that is willing to use any method to continue to enjoy public funds".³²⁸ Then, on Saturday of that week, President Correa described the opinion column of Palacio as slander and issued strong statements against it referring to "this gentleman who messes with my family, to whom I will have to answer someday. You are playing with fire. Come and tell it to me man to man to if you dare ".³²⁹

On Monday September 1st of that year, Camilo Saman filed a complaint against Emilio Palacio to the prosecutor to be carried out against him for defamation claiming that the columnist had undermined and wounded his honor.³³⁰ The complaint was

³²⁷ Report of the Special Rapporteur for Freedom of Expression 2010. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 5, 2014 from <http://goo.gl/MgyJ0o>

³²⁸ Camilo , the bully . Opinion column by Emilio Palacio , El Universo , Guayaquil, Ecuador , on August 27, 2009. Retrieved September 5, 2014 from <http://goo.gl/HIzmXn>

³²⁹ He justified claim to Journal and threatened Emilio Palacio . El Universo, Guayaquil, Ecuador , August 30, 2009. Retrieved September 5, 2014 from <http://goo.gl/i8yoL9>

³³⁰ Camilo Saman filed a complaint against Emilio Palacio. Ecuador Inmediato, Ecuador , 01 September 2009. Retrieved September 5, 2014 from <http://goo.gl/EuiJVl>

covered by Article 386 of the Code of Criminal Procedure then in force, so that the legal representative of El Universo would make this known to the writer of the column and then take action to repair the moral damage suffered by Saman. It was on March 28, 2010 that Judge Carmen Argüello sentenced Emilio Palacio to three years in prison and a fine of \$10,000 for court costs. In the judgement, it was stated that it was proved that Emilio Palacio was the author of "serious crimes against the honor, of calumnious defamation and insult though not slanderous."³³¹

Against this backdrop, the Rapporteur in his statement, urged the Ecuadorian State to apply the standards of the Inter-American Commission on Human Rights on issues of freedom of expression as it considered that the use of criminal law to punish critical speech was against this law especially when it was a matter of public interest related to authorities. In fact, the Special Rapporteur described the ruling as a setback in human rights issue by noting that by then there were several Member States who had reformed their legislation to conform to the principles of the ISHR. In this context, he again reminded the Ecuadorian government that Principle 10 and 11 of the Declaration of Principles on Freedom of Expression stated that "public officials are subject to greater scrutiny by society" and that "the protection of one's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official or public or private person who has voluntarily become involved in matters of public interest."³³²

On the 4th of June the same year, Camilo Saman withdrew the lawsuit against Emilio Palacio under the premise that he "wanted to prove that he could do obtain justice himself and clear his name."³³³ However, by then, the door was open to the opinion that citizens are restricted by the Criminal Code. The case of Emilio Palacio was proof that public officials could defend their honor using the law based on the fact that officials were citizens regardless of the constant reminders of the Special Rapporteur and the Commission on issues of freedom of expression. In this regard, it is

³³¹ Emilio Palacio sentenced to three years in prison. Vistazo, Guayaquil, Ecuador , March 28 , 2010. Retrieved September 5, 2014 from <http://goo.gl/eRTxo4>

³³² Special Rapporteur for Freedom of Expression expresses its concern over prison sentence to journalist in Ecuador . Press Release R40-10 , Special Rapporteur for Freedom of Expression , Washington DC , United States , March 31 , 2010. Retrieved on September 6, 2014 from <http://goo.gl/Lndvx4>

³³³ Camilo Saman withdraws lawsuit against Emilio Palacio. Ecuador Inmediato, Ecuador , June 04, 2010. Retrieved on September 6, 2014 from <http://goo.gl/ZWE0ml>

noteworthy that cases like "Kimel vs. Argentina" set a precedent for freedom of expression, where the Inter-American Court of Human Rights noted that "the opinion on the actions of public officials, based on trial value, cannot be punished, despite the offensive, shocking or disturbing the words ". Eduardo Kimel was the journalist who investigated the Slaughter of San Patricio, where three priests and two seminarians were killed by the Argentine military in 1976. In his book, he criticized the actions of Judge Guillermo Rivarola who should have been responsible for clarifying the murder of priests. Kimel was sentenced to one year in prison and ordered to pay damages for slander, but his case reached the Inter-American Court which ruled in his favor and that later would result in the decriminalization of defamation in the case of matters involving public interest.³³⁴

2.2.8 2011: The Price of the President's honor

During the year 2011, the Special Rapporteur for Freedom of Expression devoted about 30 pages of his report to the situation of Freedom of Expression in Ecuador, dividing his observations into six themes. It is noteworthy that the report commended the Ecuadorian State for the importance given to the hearing on the situation of Freedom of Expression in Ecuador that took place in the headquarters of the Inter-American Commission on Human Rights. The meeting took place on October 25 of that year and was attended by the then Minister of Justice, Johanna Pesántez, Secretary of Communication, Fernando Alvarado, President of the Constitutional Court, Patricio Pazmiño, Assemblyman and Mauro Andino and Tania Arias of the Judicial Council. Moreover, the audience was also attended by César Ricaurte, Mauricio Alarcon, Juan Carlos Calderon, Christian Zurita, Diego Cornejo, Monica Almeida and Vicente Ordonez.³³⁵ At the hearing the government's position was stated in terms of the Freedom of Expression and cases such as the lawsuit of the president because of the publication of the book "The Big Brother", the events regarding "El Universo" and the attacks on journalists were exposed.

³³⁴ Case Decision Kimel vs. Argentina . Inter-American Court of Human Rights , May 02, 2008. Retrieved on September 6, 2014 from <http://goo.gl/p1n7xy>

³³⁵ State of freedom of expression in Ecuador debated today in the US. El Universo, Guayaquil, Ecuador , October 25 , 2011. Retrieved September 7, 2014 from <http://goo.gl/k6LPB9>

First, the report notes that on December 17, 2010, the offices of the magazine Vanguardia were raided during which several computers were seized and facilities were searched "for weapons" used by journalists.³³⁶ In this context, it is noteworthy that the then director of the magazine was Juan Carlos Calderon co-author of the book "The Big Brother" the same book which had bothered President Correa. According to notes by national newspapers, the search conducted was exaggerated as officers of the AGD Trust--No more impunity entered the premises of the magazine accompanied by several GIR officers, all this because supposedly the magazine had an outstanding debt of \$14,000 of escrow in their lease.³³⁷ On February 28, 2011, President Correa sued for moral damages against journalists Juan Carlos Calderón and Christian Zurita because of a part of his book chronicling the lucrative contracts of the president's brother, Fabricio Correa with the Ecuadorian State.³³⁸ In the book he quotes the brother of President Rafael Correa who said he did have knowledge of these contracts. This was denied by the president who proceeded to begin a lawsuit which would ask for compensation of \$10 million. In this case, the Rapporteur stressed the importance of fostering a climate of "respect and tolerance" of all ideas and opinions with respect to Principle 9 of the Declaration of Principles of the IACHR which states that "[t]he murder, kidnapping, intimidation or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restricts 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."³³⁹

Secondly, the Rapporteur included in his report a number of cases involving the arrest of citizens who criticized government officials for public activities. One case concerned the arrest of Marcos Luis Soveneis who shouted "fascist" to President Correa when he was on his way through Babahoyo on the 25th of February 2011.³⁴⁰ According

³³⁶ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

³³⁷ Juan Carlos Calderon claimed by way raid magazine Vanguardia ran. La Hora, Guayaquil, Ecuador, 21 December 2010. Retrieved September 10, 2014 from <http://goo.gl/caXGoI>

³³⁸ Rafael Correa sues the authors of the book 'Big Brother'. El Universo, Guayaquil, Ecuador, March 17, 2011. Retrieved September 11, 2014 from <http://goo.gl/aV8k9L>

³³⁹ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

³⁴⁰ Ibidem.

to the version of the citizen, he had left home by bicycle when he met the President as he was entering Martin Icaza Hospital where he greeted him, calling him a "fascist." The presidential guard dragged him to the back of a white van where he was beaten but then let go because they did not have a police presence or a warrant.³⁴¹ Other similar cases occurred during the president's campaign for a "Yes" in the referendum. One of them was in Salcedo when citizen Germán Ponce is reported to have said "why do you welcome this son of a bitch" and who was then arrested and placed in the Provisional Detention Center of Latacunga. Likewise, the entrepreneur Irma Parra was arrested after she signaled her with finger indicating "no" to the president while on his way through Riobamba. According to Parra, Correa when he saw her gesture got out where he asked that this "insolent twit" be detained.³⁴² The detention of two citizens is supported by Article 230 of the then Criminal Code regarding offenses against public administrators in the chapter of rebellion and attacks against public officials.

In the second part of the report the great lawsuit on the part of the president against El Universo and the authors of the book "The Big Brother" is also mentioned but others were also mentioned such as the case of Freddy Aponte who was convicted for the crime of libel for having called the mayor of Loja a "thief", the libel suit having been filed by attorney Gloria Bravo. Another case was the sentencing of Monica Chuji to a year in prison and a compensation of \$100,000 for having called Vinicio Alvarado "new rich" as well as the order of President Rafael Correa for the immunity of Assembly Galo Lara to be raised in order to try him on charges of defamation against him. In this regard as well, the Commission's Rapporteur reminded the Ecuadorian government that public officials will always be subject to greater scrutiny by the public and that laws punishing offensive expressions directed to these contravene the principle of Freedom of Expression. It is for this reason that the Special Rapporteur stressed that in a democratic society, public officials have a "different threshold" of protection as they are voluntarily exposed to the highest scrutiny.³⁴³

³⁴¹ A citizen complained aggression after calling "fascist" to Correa. El Universo, Guayaquil, Ecuador, February 28, 2011. Retrieved September 10, 2014 from <http://goo.gl/7wzUWH>

³⁴² Two arrested in the course of Correa. El Comercio, Quito, Ecuador, April 14, 2011. Retrieved September 10, 2014 from <http://goo.gl/6y4NSu>

³⁴³ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

Third, the Rapporteur recorded several government disruptions of newscasts that expressed opposition to the government. In the report, 3 interruptions, which happened on the 18th, 25th and 31st of January of the same year of the program "The Breakfast of 24 Hours" where Maria Josefa Coronel, the host, is mentioned. Regarding the call for a referendum, María Josefa Coronel opened up a debate on the subject in her morning show which caused the reaction from the government. Afterwards, on January 25 of that year it was decided to discontinue the program in favor of 3 minutes and 10 seconds with a government message that criticized the program and labeled it "a political actor in opposition." It argued that it does not moderate a fair debate to see "it was not what could be called an interview with a balance and strength of valid arguments but a perfect platform to tear down the opposition by calling for a referendum."³⁴⁴ It is necessary to mention that the attitude of the government was to criticize the journalist because in this "chain of testimonies" there were "three women, a housewife, a teacher and an autonomous worker who defended the administration of President Correa and "asked" Colonel to "stop lying and cheating the people."³⁴⁵ On the other hand, the same situation occurred in other programs such as "In Direct Contact" (En Contacto Directo) on Ecuavisa that was interrupted for 10 minutes the same day that former President Lucio Gutierrez was going to be interviewed. In fact, during the entire video Gutierrez' government was criticized and all errors and contradictions of it were listed.³⁴⁶

The aforementioned situation was very particular as the government was dedicated exclusively to criticizing and refuting their opponents under the guise of national broadcasts. Thus, on June 29 of that year, the program "The Morning in 24 Hours" of the television station Teleamazonas criticized its host, journalist Jeannette Hinostroza, accusing her of having a conflict of interest with Assemblyman Galo Lara whom she interviewed as she had uncovered irregularities by the MIES (Ministry of Economic and Social Inclusion) on issues of life insurance and the alleged non-payment of human development bonuses to their recipients. The network went far beyond the personal scope of the reporter for several minutes as they discredited her alleging that

³⁴⁴ Government spends another chain to stop and criticize his host . Andean Group for Freedom of Information , June 01, 2011. Retrieved September 11, 2014 from <http://goo.gl/XuJU5Q>

³⁴⁵ *Ibíd.*

³⁴⁶ Chain interrupted for nearly ten minutes talk show to disqualify opposition . Fundamedios , Quito, Ecuador , February 10 , 2011. Retrieved September 15, 2014 from <http://goo.gl/UyyQIA>

her position was such because her father owned an insurance company.³⁴⁷ On the other hand, it is necessary to mention that the Commission requested information from the Ecuadorian State on the abovementioned cases and offensive messages against Fundamedios, a representative of social networks. In this context, it was a rather paradoxical response from the government who assured that freedom of expression was being "greatly affected" in the country because not only should public servants be subject to limitations but the "private media as it misinforms, lies and restricts freedoms, as they represent important national and international sectors as they seek to destabilize democracy in the country."³⁴⁸

Fourth, the report mentions discrediting statements made to the media by public officials. One of those examples is the claim of President Rafael Correa regarding television station Teleamazonas which it was described as "corrupt" during a press conference at the Palace of the Carondelet.³⁴⁹ Also, the Rapporteur highlighted the list of adjectives that the President and other public officials have used to refer to mass media which have been critical to the government such as ink assassins, corrupt press, tabloid, manipulators and irresponsible conspirators would have been used in two public forums.³⁵⁰ On the other hand, the discrediting statements were not only aimed at media but also to criticize government NGOs. In this context, during a public presentation on June 25 of that year, the president argued that Fundamedios and Citizenship Participation were USAID (U.S. Agency for International Development) funded NGOs and that, as such, they would serve "others." In fact, the Special Rapporteur mentioned in his report a letter published in several national newspapers which claimed that Fundamedios is not only funded by the USAID but also by the NED (National Endowment for Democracy). In this regard, the Special Rapporteur expressed concern about descriptions and actions used, showing that those statements only stigmatize media and the USAID and are therefore critical toward the management of civil servants. In this way he reminded the Ecuadorian government that public officials must

³⁴⁷ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

³⁴⁸ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

³⁴⁹ Ibidem.

³⁵⁰ Ibidem.

take care that their statements do not impair the rights of those who "contribute to public debate."

Fifthly, the report questioned two of the inquiries posed in the referendum of 2010 regarding the establishment of a regulator of the media and the ban on financial institutions and the media to own or have equity participation in both activities.³⁵¹ The two questions posed in the referendum and on the aforementioned issues were read as follows:³⁵²

Question 3

Do you agree to prohibit that the private financial institutions and private media companies of national character, their directors and principal shareholders, own shares outside the financial or communications field, respectively, amending the Constitution as established in annex 3?

The first paragraph of Article 312 of the Constitution says

"The institutions of the private financial system, as well as private media at the national level, directors and major shareholders, may hold, directly or indirectly, shares in companies outside the financial realm of communication related activity, according to case. The respective control agencies will be responsible for regulating the provision under existing constitutional and regulatory framework. "

In the first paragraph of the twenty-ninth transitional provision will it will say:

"The shares owned by the institutions of the private financial system, as well as private media at the national level, their directors and major shareholders in companies other than the sector are to be sold within one year counting from the adoption of this reform in a referendum."

³⁵¹ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 7, 2014 from <http://goo.gl/0bn3qY>

³⁵² Questions Referendum Consultation and its annexes . El Universo, Guayaquil, Ecuador , February 16 , 2011. Retrieved September 10, 2014 from <http://goo.gl/ZeaMIp>

Question 9

Do you agree with the National Assembly without a delay within the period specified in the Organic Law of the Legislative Branch, that there be issued a Communication Act that creates a Council of Regulation governing the dissemination of content from television, radio and publications of newspapers that contain messages of violence, sexually explicit or which is discriminatory; and to establish criteria for further responsibility of journalists or media issuers?

As stated in the report, the Special Rapporteur had expressed to the National Assembly his views on the approach of the questions as this "causal responsibility" turned out to be ambiguous and that the entity responsible for such regulation could apply excessive discretion and end the end infringe on the American Convention.³⁵³ On the other hand, he warned that the regulator would be able to regulate any media without differentiation which would mean that the measure would include media such as internet and pay TV.³⁵⁴ In this context, the Special Rapporteur reminded that only in the case of the medium of radio was it admissible to establish administrative control authorities and only in the exercise of certain aspects of Freedom of Expression. It is noteworthy that a regulator is legitimate as long as they meet aspects of independence and autonomy from other branches such as the executive so that the political reality in which these events were given. This was a subject that generated a lot of controversy. In fact, the above two questions were approved with 52.97% and 51.67% respectively, which showed that about half of the population voted "no".³⁵⁵

Sixth and lastly, the report mentions the closing of Radio La Voz de la Esmeralda Oriental Canela after CONATEL ordered its seizure and closure because and that it refused to renew the granting of the frequency for alleged "technical failure."³⁵⁶

³⁵³ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 10, 2014 from <http://goo.gl/0bn3qY>

³⁵⁴ Ibidem.

³⁵⁵ The CNE proclaimed the official results of the referendum . El Comercio, Quito, Ecuador , July 12 , 2011. Retrieved September 12, 2014 from <http://goo.gl/B6zgrQ>

³⁵⁶ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 10, 2014 from <http://goo.gl/0bn3qY>

In this context, the Ecuadorian State indicated that the reason for the closure was that the radio station had not complied with the recommendations of the Comptroller and because it was not operating with the authorization of the competent authority. Against the background of the above, the Special Rapporteur recalled that the State must ensure respect for due process in making "such sensitive" decisions to the freedom of expression as in the case of a closure of a radio station.³⁵⁷ Taking into account Principle 12 of the Declaration of Principles of the IACHR, one can observe that it is always necessary to consider the "democratic criteria that provide equal opportunity for all individuals in accessing same".

In addition, the report included the fact that there were eight groups that manage and participate in the media industry and that one of those was the Isaias Group, which was the same state-run media which had seized those private ones. In this regard, it is noteworthy that when these were managed directly by the Ecuador state, it became, according to the Rapporteur, "one of the major players in the management and ownership of media in Ecuador."³⁵⁸ The aforementioned fact was contrasted with Principle 12 of the Declaration of Principles of the IACHR as it provides that those are subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of the right to information citizens. In no case should such laws apply exclusively to the media. The concession of radio and television frequencies should consider democratic criteria that provide equal opportunity for all individuals in accessing them.³⁵⁹ "In the case of laws in Ecuador, the Constitution states that "access on equal terms to the use of radio spectrum to manage radio stations and public, private and community television," and an "oligopoly or direct or indirect monopoly ownership of the media and the use of frequencies is not allowed."³⁶⁰

³⁵⁷ Report of the Special Rapporteur for Freedom of Expression 2011. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 10, 2014 from <http://goo.gl/Obn3qY>

³⁵⁸ Ibidem.

³⁵⁹ Principle 12 of the Declaration of Principles on Freedom of Expression. Retrieved September 15, 2014 from <http://goo.gl/sypBh4>

³⁶⁰ Article 17, paragraph 3 of the Constitution of the Republic of Ecuador. Retrieved September 15, 2014 from <http://goo.gl/zjBYfg>

2.2.9 2012: Freedom of Expression in Ecuador's legal system

In 2012, the year prior to the presidential elections, the Special Rapporteur for Freedom of Expression noted with concern the reforms proposed by the President of the Republic in the Code of Democracy. In the opinion of the Rapporteur, these reforms could "result in disproportionate constraints upon freedom of expression during elections" and that in Article 21 of the same it was established that the media should refrain from "direct or indirect" promotion of a particular candidate or list either through reports or media specials.³⁶¹ It was precisely on January 6, 2012 that the President of the National Union of Journalists (UNP) filed a lawsuit challenging the constitutionality of Article 21 of the Organic Law Reform to the Organic Law on Elections and Political Organizations citing reasons of form and substance.³⁶² In this context, the Constitutional Court ruled on the 17th of October that same year declaring the conditional constitutionality of Article 21. It stated that Paragraph 1 of the Code of Democracy in the opinion of the Court was constitutional where it says that "it is acceptable to issue information (no advertising) during the period and veto campaign, as long as they seek guardianship rights such as security, health, education, public safety or other similar nature."³⁶³ However, it was declared unconstitutional the phrase "either through special reports or any other form of message" and that the Constitutional Court considered it something that limited the journalistic freedom. Finally, Article 21 of the Act, after the unconstitutional statement reads: "(...) the media should refrain from direct or indirect promotion that tends to affect, either for or against, a particular candidate, nominee, options, electoral preferences or political thesis".³⁶⁴

Despite the declaration of the unconstitutionality of Article 21 of the Reform Law, there was unrest among journalists because no one knew for sure what was meant by "indirect promotion" as well as who would be responsible for judging this type of

³⁶¹ Report of the Special Rapporteur for Libertad de Expresión 2012. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved September 18, 2014 from <http://goo.gl/mHZ1JF>

³⁶² UNP introduced in CC constitutional challenge to the Code of Democracy. Ecuadorinmediato.com, Ecuador, January 06, 2012. Retrieved September 15, 2014 from <http://goo.gl/RocvVT>

³⁶³ The Constitutional Court ensures the observance of rights, freedoms and constitutional obligations during the election campaign. Constitutional Court of Ecuador, October 18, 2012. Retrieved October 16, 2014 from <http://goo.gl/T4NLXh>

³⁶⁴ Ibidem.

promotion.³⁶⁵ In fact, there were other points that had not been clarified by the Constitutional Court; one of them was a restriction that was included in the article on promotion through social networking accounts and media blogs. Doubt was generated because it was not specified whether the restriction applied to others who use social networks for comment on the matter.³⁶⁶ In this context, in December of that year the Constitutional Court ruled on the request for extension and clarification of the Code of Democracy which was requested by the UNP and that was when it was established that "indirect promotion" refers to equality in media communication. That is, the Freedom of Information Media during the time of electoral campaigns always guarantees that the parameters of equality for the candidates on issues of information that does not benefit anyone in particular are respected.³⁶⁷ Needless to say, all the above was discussed and analyzed a few months before the election and it was not until the end of December 2012 that an explanation was given to certain rules which were not clear, all in the context of elections that would take place in February 2013.

On the other hand, the Rapporteur's report showed concern about the increasing use of laws that criminalize contempt or "slandorous" libel against a public official and other civil penalties that are disproportionate in the eyes of the Rapporteur.³⁶⁸ In fact, the report notes the condemnation of journalists Juan Carlos Calderón and Christian Zurita who were the authors of the book "Big Brother".³⁶⁹ On February 7, 2012, they were sentenced to pay \$ 1 million dollars each to President Rafael Correa in compensation for moral damages because, as the judgment stated "of their false, malicious and reckless statements published in their book entitled Big Brother ". The case drew attention especially since the authors had based the book on the statements of Fabricio Correa, the president's brother, who assured them that the president had knowledge of them. In his defense, the president would argue that he did not know of

³⁶⁵ Journalistic discussions to cover a restricted electoral campaign. El Comercio, Quito, Ecuador , November 22 , 2012. Retrieved September 18, 2014 from <http://goo.gl/p3zc8x>

³⁶⁶ Constitutional Court not led to restrictions on reporting during the campaign. El Comercio, Quito, Ecuador , October 17 , 2012. Retrieved September 18, 2014 from <http://goo.gl/cHURrj>

³⁶⁷ The CNE will make regulations for the press campaign , questions remain . El Comercio, Quito, Ecuador , December 27 , 2012. Retrieved September 18, 2014 from <http://goo.gl/oeJIO2>

³⁶⁸ Report of the Special Rapporteur for Libertad de Expresión 2012. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 18, 2014 from <http://goo.gl/mHZ1JF>

³⁶⁹ Judgment of the Fifth Civil Court of Pichincha against Juan Carlos Calderón and Christian Zurita by delicto moral damages. Judicial Function of Pichincha , 06 February 2012. Extraído the September 18, 2014 from <http://goo.gl/TvY6C5>

these contracts as they would have been done through "proxies and shell companies" and that after learning of this he would have proceeded to terminate them.³⁷⁰

The cases of "Big Brother" and "El Universo" resulted in millions of years in prison sentences which were "pardoned" by President Rafael Correa on February 27, 2012 by a letter granting them remission of convictions that were "deservedly received."³⁷¹ In this context, it should be mentioned that the two cases marked a precedent in the country's history in terms of freedom of expression as a human right and that the letter of pardon from the president, he said that "in this fruitful struggle, we have been allowed us to discover distortions of the American system of Human Rights. The financing of the Special Rapporteur (HH.RR.) comes from the United States. This only reflects the hegemony of capital behind it."³⁷² The Special Rapporteur emphasized in his report on the president's remarks when he said that "there is forgiveness but not a forgetting", "the victims have had no role", "the victims are all Ecuadorians who have been reviled."³⁷³ However, we remember that not only the book's authors and Emilio Palacio and the directors of El Universo were sued, but also the suit against the members of the oversight of the Council of Citizen Participation and Social Control (CPCCS) who were part of a commission investigating alleged crimes against the public trust.³⁷⁴ In fact, the oversight was on the president's brothers' contracts with the state, where they presented a controversial report endorsing the fact that the president himself was aware of the contracts in question. Because of this, the 4 suppliers were brought to trial since to Correa and Paul Chambers (supplier) the lies concerning these contracts would not be tolerated since such information would hurt his government.³⁷⁵

The previous claims by President Correa would be the causal factors for the constant confrontations with the media in which the dynamics of the country in the following years would be developed. To this it must be added that the start of the harsh

³⁷⁰ Fabricio Correa declares contracts scandal if ' Big Brother ' . El Universo, Guayaquil, Ecuador, October 18 , 2011. Ettraído the September 20, 2014 from <http://goo.gl/A8UA1F>

³⁷¹ Correa decides to forgive perpetrators of the Universe and Big Brother . El Comercio, Quito, Ecuador , February 27 , 2012. Retrieved September 20, 2014 from <http://goo.gl/aBQj4F>

³⁷² Ibidem.

³⁷³ Ibidem.

³⁷⁴ Report of the Special Rapporteur for Libertad of Expression 2012. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 20, 2014 from <http://goo.gl/mHZ1JF>

³⁷⁵ Rafael Correa accuses Chambers for lying about oversight Big Brother. El Comercio, Quito, Ecuador , May 19 , 2012. Retrieved September 22, 2014 from <http://goo.gl/aB6Erj>

criticism by the government as to the functioning of the Inter-American System of Human Rights and in particular the financing of the Special Rapporteur for Freedom of Expression, is a topic that will be discussed in the last chapter of this work . Needless to say, the Rapporteur was alert to the cases presented subsequently, that is, the controversy over the publication of the photo of the grandchildren of Abdala Bucaram with the president, the arrest of former assemblyman Fernando Balda for the crime of libel, the order for a detraction by the daily "La Hora" for the headline "71 Million On Advertising," the intention to initiate criminal investigations against online journals who publish readers' comments that are defamatory and the habit of attacking those group means of communications used by citizens by President Correa.

Finally, the Rapporteur included in his report the detention of ten young people who were in a private building in Luluncoto (Quito), who were arrested, prosecuted and subsequently detained for the alleged crime of sabotage and terrorism.³⁷⁶ The fact was developed within the framework of a police investigation called "Red Sun" after pamphlet bombs exploded in Guayaquil, Cuenca and Quito.³⁷⁷ According to the Regional Advisory Foundation on Human Rights (INREDH), on March 3, 2012, before the date of the National March for Water, the police operation "Red Sun" stopped the ten young people who were in a debate meeting about the "good life" because they were allegedly planning to destabilize the government.³⁷⁸ In this context, the prosecution held to the idea that these young people belonged to the group "Fighters Popular", allegedly responsible for the above pamphleteering bombs, even though no weapons or explosive devices were found to prove this. At the close of the 2012 report, the Special Rapporteur warned that young people remained in detention.

2.2.10 2013: The position of Ecuador before the IACHR

By 2013, the Special Rapporteur again stressed that the Ecuadorian government continued using networks to spread the official opinion in private media. In fact, the

³⁷⁶ Report of the Special Rapporteur for Libertad of Expression 2012. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved September 20, 2014 from <http://goo.gl/mHZ1JF>

³⁷⁷ Ávila Santamaría , Ramiro . " Tens of Luluncoto , terrorists? " . Andean Human Rights Program , Universidad Andina Simon Bolivar. Retrieved September 22, 2014 from <http://goo.gl/gdviDJ>

³⁷⁸ I am also Red Sun : 10 prisoners of Luluncoto . Regional Advisory Foundation on Human Rights (INREDH) , Ecuador . Retrieved September 22, 2014 from <http://goo.gl/LDB0fL>

Special Rapporteur included in his report a list of official channels, one of those was ordered by the National Communications Secretariat (SECOM) who, for eight minutes, had interrupted the program "The Breakfast of 24 hours" in order to "deny" statements of an assemblyman who attended the program and to ensure that the representative of the National Financial Corporation had committed perjury.³⁷⁹ The interruption of a Teleamazonas news program to defend the Minister of Non-Renewable Natural Resources is also mentioned. The story about the minister asserted that he had no professional title and an alleged conflict of interest was issued because a member of the same family had been working for private oil companies.

In that same year, the IACHR issued precautionary measures in favor of Clever Jimenez, Carlos Figueroa and Fernando Villavicencio, in the framework of a lawsuit undertaken by President Correa against Assemblyman Jiménez. At the same time there was another interruption in the news station of Ecuavisa in which Alfredo Pinoargote reported on the precautionary measures mentioned above.³⁸⁰ In the interruption it was stated that Pinoargote "had interpreted everything in his own way and convenience as to what happens inside the ISHR", all in the framework of the precautionary measures that, according to the journalist, and would be respected by the Ecuadorian government.³⁸¹ Note that similar situations occurred throughout the year on other channels such as Teleamazonas, considered as part of the "corrupt" media. In reference to this, the Special Rapporteur recalled what the Ecuadorian government had said, in the 147th session of the Commission, that there was no harassment in the national media networks since such interruptions were made in order to "clarify distorted versions". Needless to say, the Rapporteur does recognize the authority of a president and other senior officials to use the media in order to communicate issues of public interest, provided they are "dominant". However, in his report it is clear that this right is not absolute and that not only the Rapporteur or the Commission, but other national bodies of State Parties to the Commission clarified that "it is not just any information that legitimizes the President of the Republic when interrupting regular programming, but

³⁷⁹ Report of the Special Rapporteur for Libertad of Expression 2013. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved October 1, 2014 from <http://goo.gl/fhGlo6>

³⁸⁰ Report of the Special Rapporteur for Libertad of Expression 2013. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States. Retrieved October 1, 2014 from <http://goo.gl/fhGlo6>

³⁸¹ *Ibidem*.

that which can reverse the collective interest in the knowledge of facts which could present information of public importance and which is really necessary for the effective participation of citizens in community life. "³⁸²

Apparently, the Ecuadorian government was ignoring the fifth principle of the Commission, which states that "[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. The restrictions on the free flow of ideas and opinions, as well as the arbitrary imposition of information and the creation of barriers to the free flow of information violate the right to freedom of expression." Taking into account cases like that of Apitz Barbera against the Venezuelan State, part of the ruling of the Inter-American Court recalled that it is precisely the public officials who are responsible for ensuring and safeguarding the fundamental rights of people and, for this reason, there was excuse for them to be unaware of such rights.³⁸³ The Court has even warned that the lives of people who exercise freedom of expression can be put at risk when they step into situations where official speeches provoke, suggest actions or lead to interpretations.³⁸⁴

The same year, the National Court convicted Clever Jimenez, Fernando Villavicencio and Carlos Figueroa for the crime of slanderous libel against President Correa, Pepe Acacho and Pedro Mashiant were also sentenced to 12 years in prison and a fine for "sabotage and terrorism".³⁸⁵ The case developed in the context of the death of the indigenous teacher, Wisuma Bosco, during indigenous protests against the law on water management in 2009.³⁸⁶ But the harassment was not just limited to opposition politicians and journalists. It was on January 30 that El Universo was required to publish a letter from President Correa and Vice-president Glas in the space where usually the caricature of Xavier Bonilla (Bonil) was published.³⁸⁷ The letter requested

³⁸² Ibidem.

³⁸³ Court HR . Case of Apitz Barbera et al ("First Court of Administrative Disputes") V. Venezuela . Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5 , 2008. Series C No. 182. Para. 131. Retrieved October 1, 2014 from <http://goo.gl/IM7ebF>

³⁸⁴ Report of the Special Rapporteur for Libertadad of Expression 2013. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved October 1, 2014 from <http://goo.gl/fhGlo6>

³⁸⁵ Ibidem.

³⁸⁶ Pepe Acacho lawmaker is sentenced to 12 years in prison . El Universo, Guayaquil, Ecuador , August 12 , 2013. Retrieved October 10, 2014 from <http://goo.gl/YvxIYB>

³⁸⁷ Letter form Correa and Glas to Bonil. El Universo, Guayaquil, Ecuador , January 30 , 2013. Retrieved October 10, 2014 from <http://goo.gl/3VDdWx>

the newspaper to apologize for the Bonil cartoon in which he referred to the duo as "A kidnapping of Delgado ... Kidnapping of Glas ...Kidnaping of the Alvarado Brothers"; and, "And the President that the 30-S also invented another kidnapping" as candidates it affected his image and "perversely harmed."³⁸⁸ In this context, the Special Rapporteur recalled that Principle 10 of the Declaration of Principles of the IACHR stated that "[t]he Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official or public or private person who has voluntarily become involved in matters of public interest. Moreover, 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 search of the truth or falsity of such".³⁸⁹ In the case of the Bonil caricature, it wasn't a report but as mentioned, it was a cartoon; a reader is not seeking information on the humor section of a newspaper.

What was also of interest to the Special Rapporteur was the fact that the government had criticized the people and institutions in various groups who had attended the 147th session of the Commission.³⁹⁰ In fact, in one of the meetings President Correa questioned the legitimacy of the organization Fundamedios which was in attendance at the Commission, by asking questions such as, "Who here has voted in favor of Fundamedios? Who feels represented by Fundamedios? Why can Fundamedios go to the Commission to report about Ecuador? What has solvency do they have? What representation do they have?"³⁹¹

With the attendance of Fundamedios at the Commission, one could say that the criticism regarding the legitimacy of the Commission and the Rapporteur was now a direct criticism and was emerging as a clearer position on the part of Ecuador regarding the functioning of the Inter-American System of Human Rights. In this context, the Special Rapporteur included in his report on the criticism of the government regarding

³⁸⁸ Glas and Correa ask El Universo to apologize for Bonil's cartoon. The Republic , Quito, Ecuador , January 30 , 2013. Retrieved October 10, 2014 from <http://goo.gl/mipAZ4>

³⁸⁹ Report of the Special Rapporteur for Freedom of Expression 2013. Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights , Organization of American States . Retrieved October 10, 2014 from <http://goo.gl/fhGlo6>

³⁹⁰ Ibidem.

³⁹¹ Citizen Link no. 313 from Sevilla de Oro, Azuay. President of the Republic of Ecuador , March 16 , 2013. Retrieved October 10, 2014 from <http://youtu.be/nnEYuZkrn3U>

the ISHR tweets of Fernando Alvarado who said, "It is time that Ecuador not participate in the pantomimes staged by opportunistic politicians under the guise of rights human."³⁹² However, government statements through social networks were not the only assertions. In May 2013 and June 2014 the government issued a formal response to the report of the Special Rapporteur for Freedom of Expression in two documents titled "Response of the Ecuadorian State to the Annual Report of the Inter-American Commission on Human Rights, Volume II: Report of the Special Rapporteur for Freedom of Expression."

2.3 ECUADOR'S RESPONSE

In May 2013, Foreign Minister Ricardo Patiño said it was preparing a response to the 2012 report of the Special Rapporteur for Freedom of Expression because in this they asserted that there were "several distortions, which affected the international image of the country and favored the media groups and other political powers of Ecuador ".³⁹³ According to Ecuador, the Rapporteur's report contained errors and biases as well defects and "methodological flaws" thus affecting its quality.³⁹⁴ In this context, it was noted that the "absence of a robust methodology" was a methodological vice and stated that the Rapporteur does not apply a code of conduct or methodological manual when it reports on the situation of Freedom of Expression. Furthermore, the alleged "discretion" when presenting results in the report of the Special Rapporteur was criticized since, according to the Ecuadorian State, in reports such as those concerning Ecuador and Venezuela there is no section included about "progress" which would give the impression that the country had not progressed on the issue of freedom of expression.³⁹⁵ For Ecuador, the Rapporteur exercised an "unlimited and unrestricted discretion" by its use of sources and references resulting in a "very serious" mistake because it used a large number of emails with complaints which could not be ascertained as being accurate.

³⁹² Report of the Special Rapporteur for Freedom of Expression 2013.

³⁹³ Ecuador ready to reply to the Commission report. El Universo, Guayaquil, Ecuador , May 09, 2013. Retrieved October 15, 2014 from <http://goo.gl/cplejb>

³⁹⁴ Ecuador 's response to the Annual Report of the Inter-American Commission on Human Rights 2012 , Volume II : Report of the Special Rapporteur for Freedom of Expression. Ministry of Foreign Affairs, Trade and Integration of Ecuador , Quito, Ecuador , May 31, 2013 .

³⁹⁵ Ibidem.

In one of his presidential chats, in April of 2013, President Correa called the report of the Special Rapporteur "clownish" and a "farce" and that in cases like that of Jaime Solorzano, the Rapporteur was making a big mistake to qualify his actions a "critical expression" when they were an insult against government officials to ensure that they received bribes to allow the operation of casinos.³⁹⁶ He also mentioned the case of providers of "Big Brother", the contents of which he called "vulgar" as well as comments on the news daily El Comercio and questioned the position of the Rapporteur, expressing that those same official broadcasts were harmful to the Freedom of Expression. He argued that there was no right of reply, something that is a fundamental human right according to the Pact of San José.³⁹⁷ In fact, in the response of the Ecuadorian State to the 2012 Report of the Rapporteur, Ecuador claimed that there was a breach of the objective which was lacking in "minimal methodological rigor", that the findings from the report were not right. The fact was somewhat paradoxical since Chancellor Patiño had given a period of two months for the Commission to respond to the Ecuadorian State on the methodology used by the Rapporteur at the time of their reports and if necessary rectify and apologize "for treating a country incorrectly with that report."³⁹⁸

In April 2014, Marco Albuja, Ecuadorian ambassador to the OAS, again expressed the position of Ecuador in terms of discretion and the "bias" of the 2013 report of the Special Rapporteur. Emphasis was placed on the information provided by the alleged statements "stigmatizing, threats and attacks" of the government against the media the Ecuadorian State; the latter had been repeatedly denied but that, however, was not mentioned by the Special Rapporteur in his report.³⁹⁹ In this context, the ambassador criticized the Commission because it would prioritize the right to freedom of expression in favor of the other rights enshrined in the American Convention. At this point, it is important to note that this argument would also be part of the position of Ecuador regarding the Rapporteur and his proposed reform of the ISHR (something

³⁹⁶ Ecuador defends its sovereignty against biased report "Special " Rapporteur on Freedom of Expression. El Ciudadano, Valencia, Spain , April 20 , 2013. Retrieved October 18, 2014 from <http://goo.gl/GtYZnJ>

³⁹⁷ Ibidem.

³⁹⁸ The OAS received a complaint from Ecuador to the Report of the Special Rapporteur for Freedom of Expression. President of the Republic of Ecuador , La Antigua, Guatemala , 06 June 2013. Retrieved October 20, 2014 from <http://goo.gl/5mIg6C>

³⁹⁹ Ecuador requires corrections to the Commission by tendentious report. El Ciudadano, Quito, Ecuador , April 24 , 2014. Retrieved October 20, 2014 from <http://goo.gl/AjrxO0>

which will be discussed on the following pages of the last chapter of this work). There were two specific points in the report that the Ecuadorian State asked the IACHR to remove due to "flaws in form and substance". The first point concerned the "ultimate responsibility" in cases like Clever Jimenez, Fernando Villavicencio and Carlos Figueroa as the Commission allegedly tried to "match" the right to freedom of expression "as a right to influence the judiciary and to change a sovereign decision in law."⁴⁰⁰ The second point concerned the criticism of the Commission as to the independence of the judiciary in the country, to the Ecuadorian State. This assertion they maintain, is just trying to discredit the national justice system, something that had been admired by bodies such as the UN.

In response to the 2013 report of the Special Rapporteur for Freedom of Expression, Ecuador again criticized the report, calling it inaccurate and biased in each of its sections and that it was "incomprehensible" that the Commission had once again approved something which would not contribute to the promotion and defense of Human Rights.⁴⁰¹ This time, the response of Ecuador focused, not only on terms of methodology but also claimed that the report was "rife with politicized visions" that put into question the legitimacy of the entire American System of Human Rights. In this context, several questions were included in the official response, one of which was about the legitimacy and accuracy of the report because, according to Ecuador, the reports of the Special Rapporteur lacked legitimacy their being funded by the European Commission, Costa Rica, Chile, France, Finland, Switzerland and the United States; four of them are not part of the American Convention. Similarly, the fact that the Commission would have given the Special Rapporteur for Freedom of Expression a mandate that apparently the Ecuadorian State, was not statutory or regulatory and was "far superior" to the same powers questioned of the Commission.

Ecuador's position before the Commission and the Special Rapporteur for Freedom of Expression since its inception has fluctuated depending on the ruling government, however, it should be noted that no other government has undertaken a

⁴⁰⁰ Ecuador requires corrections to the Commission by tendentious report. The Citizen , Quito, Ecuador , April 24 , 2014. Retrieved October 20, 2014 from <http://goo.gl/AjrxO0>

⁴⁰¹ Ecuador 's response to the Annual Report of the Inter-American Commission on Human Rights 2013 , Volume II : Report of the Special Rapporteur for Freedom of Expression. Ministry of Foreign Affairs and Human Mobility of Ecuador , June 2014. Retrieved October 25, 2014 from <http://goo.gl/qKu47x>

campaign against the legitimacy of the Inter-American System of Human Rights as much as the government of President Rafael Correa. At the beginning of his administration there were not many challenges to the functioning of the Commission but with the passage of time, the relationship with the Commission has become one with many disagreements. In fact, in recent years the Ecuadorian government proffered a number of suggestions as to the functioning of the Commission and its rapporteurs as a measure to strengthen the ISHR. As recently as June 6, 2014, Foreign Minister Ricardo Patiño confirmed at the 44th General Assembly of the OAS that Ecuador would contribute one million dollars to the Inter-American Court of Human Rights to strengthen them.⁴⁰² For Ecuador, the processes of the Commission became "obstacles" to the proper functioning of the Inter-American Court because in cases like the one in Ecuador regarding the rights of Taromenane girls, the work of the Court was correct in stating that there was no danger of irreparable damage to the protection thereof.⁴⁰³ On the other hand, we must mention the position of the then Rapporteur for Freedom of Expression, Catalina Botero, who, before ending his term in office, said that "Ecuador, after Cuba, has the most restrictive legislation on freedom of expression throughout the region."⁴⁰⁴

⁴⁰² Ecuador contribute one million dollars to strengthen the Inter-American Court of Human Rights . Los Andes , Quito, Ecuador , June 06, 2014. Retrieved November 1, 2014 from <http://goo.gl/TNPXaG>

⁴⁰³ *Ibíd.*

⁴⁰⁴ "Ecuador is , after Cuba , the most restrictive country in freedom of expression." El País, Washington , United States , July 26 , 2014. Retrieved on November 5, 2014 from <http://goo.gl/1uIxe0>

CHAPTER III: Ecuador's proposal to reform the Commission

Formal responses from Ecuador in 2012 and 2013 regarding the report of the Special Rapporteur for Freedom of Expression were, in fact, the official position of the country under the operation of the Inter-American System of Human Rights. However, it was in March 2011 that Ecuador was part of the "Ad Hoc Working Group Reviewing the Workings of the CIDH in Order to Strengthen the SIDH"; the group was created with the aim of deepening the process of analysis under which the Commission operated. All this was about the Commission's proposal to amend article 11 of its rules on the selection and appointment of its Executive Secretary.⁴⁰⁵ Among the topics discussed by the working group was: appointment of the executive secretary of the Commission, challenges and objectives of the IACHR, the procedures for precautionary measures in cases and petitions, friendly solutions, the criteria of the report of the Commission, and the promotion of Human rights and the financial strengthening of the ISHR. In the case of Ecuador, it focused on financing and the universality of the Commission as well as its preparation of the annual report and procedural matters.

The first observation made by Ecuador in the meetings of the working group was on the financing of the IACHR, in fact, Ecuador reiterated that the funding should come from the regular fund of the organization in accordance with the resolution of the General Assembly of the OAS.⁴⁰⁶ Indeed, on the 7th of June that same year they voted for the adoption of resolution AG / RES. 2675 (XLI-O / 11) "Strengthening of the ISHR in furtherance of the mandates arising from the Summits of the Americas," in which the Member States were urged to contribute to the specific fund for strengthening the ISHR as was the case with the Oliver Jackman capital fund of voluntary contributions. However, the delegation of Ecuador failed to mention that in the same resolution, the member States were urged to support the initiatives of the Inter-American Court and the IACHR and to request financial support from other international organizations in the

⁴⁰⁵ Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights to Strengthen the Inter-American Human Rights System for consideration by the Permanent Council (Approved by the Working Group at its meeting on December 13, 2011) . Permanent Council of the OAS , 2011. Retrieved November 20, 2014 from <http://goo.gl/JEUFSp>

⁴⁰⁶ Points raised by the delegation of Ecuador in the meetings of the working group . Permanent Council of the OAS , November 02, 2011. Retrieved November 20, 2014 from <http://goo.gl/JEUFSp>

framework of strengthening its financing. Moreover, the position of Ecuador was somewhat paradoxical and the use of the resolution was as a backup since in the same resolution to Member States it expressed appreciation to the permanent observers for their voluntary contributions to the Inter-American Court and the Commission.⁴⁰⁷ In this context, Ecuador merely stated that it did not agree that the search for funding sources be one of the tasks of the organs of the ISHR, but suggested that the Regular Fund be the main source of financing as a measure to ensure the independence of the system.⁴⁰⁸

On the issue of "universality", the Ecuadorian State questioned the existence of several OAS member countries that had not ratified the American Convention on Human Rights. The delegation here noted that the Convention was focused on "minimal common human rights which are identified by the states of the Hemisphere".⁴⁰⁹ In this regard it is important to mention that the States which acceded or ratified the Convention are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and Venezuela. In the case of the United States, they are one of the signatories to the Convention but they are the only state that has not ratified it. On the other hand, Trinidad and Tobago denounced the Convention on May 26, 1998 and Venezuela did so on the 10th September, 2012.⁴¹⁰ In this regard, it was made clear that Ecuador criticism of SIDH operations was based on the political will of the Member States of the OAS, in this case, referring indirectly to the United States as in the case of Trinidad & Tobago and Venezuela; this was another issue concerning discrepancies ergo the denunciation of the Convention.

⁴⁰⁷ Resolution AG / RES. 2675 (XLI- O / 11) "Strengthening of the Inter-American Human Rights System Pursuant to the mandates arising from the Summits of the Americas ," adopted on June 7, 2011 at the fourth plenary session of the forty-first regular session sessions. General Assembly of the OAS , San Salvador , El Salvador , from 05 to 07 June 2011. Retrieved November 22, 2014 from <http://goo.gl/3IXOx5>

⁴⁰⁸ Points raised by the delegation of Ecuador in the meetings of the working group . Permanent Council of the OAS , November 02, 2011. Retrieved November 20, 2014 from <http://goo.gl/JEUFsP>

⁴⁰⁹ Ibidem.

⁴¹⁰ American Convention signed at the Inter-American Specialized Conference on Human Rights. Department of International Law of the OAS , Washington DC , United States. Retrieved November 20, 2014 from <http://goo.gl/GY8ZsY>

The third point made by Ecuador referred to the preparation of the fourth chapter of the annual report of the IACHR, an issue that drew the attention of the Ecuadorian State since, according to them, there was some "convenience" in the criteria used by the Commission to include certain states in that chapter. In Ecuador, it was found to be disturbing that the Inter-American Commission on Human Rights based its report "almost exclusively" on the testimonies and information received from private sources and did not take into account any information provided by State.⁴¹¹ In this context, as proposed by the delegation of Ecuador, Chapter IV would be based on information provided by private and government sources so that in this way there would be a "healthy balance". Moreover, they added that they should review and update the reporting criteria as a measure to visualize, in a balanced way, all human rights violations and not focus on the report violations of civil and political rights. Ecuador said that there was an imbalance in this issue having established that there were "privileged situations" of attention and funding in the treatment of the rights of some and not with respect to others; with that he referred specifically to the Special Rapporteur for Freedom of Expression. Criticism in this regard is based on the fact that the Rapporteur has staff dedicated to the subject and a special budget from external funds of the OAS.⁴¹² For this specific issue, the Ecuadorian delegation stated that all rapporteurs must have specialized personnel and equipment and the budget to make visible the protection of all rights equally.

Finally, the fourth point raised was regarding procedural matters which was actually nothing more than a call to the other States' parties to bear in mind the inputs that had been produced in the framework of the review process on strengthening the ISHR which had been carried out between 2007 and 2008.⁴¹³ This theme was touched on by the delegation of Ecuador as part of that process since there came into circulation a document that became an important tool for this when formulating proposals from the working group. In the document was a reminder to the delegations as to what resolution AG / RES 2675 (XLI-O / 11) did, namely: "Strengthening the Inter-American Human Rights System Pursuant to the Mandates Arising from the Summits of the Americas"; in this document there was a call made to continue with this process of review as this was

⁴¹¹ Points raised by the delegation of Ecuador in the meetings of the working group . Permanent Council of the OAS , November 02, 2011. Retrieved November 20, 2014 from <http://goo.gl/JEUFP>

⁴¹² Ibidem.

⁴¹³ Ibidem.

of the utmost importance.⁴¹⁴ It notes that this document was issued by the presidency of the Committee on Legal Affairs, the same which was responsible for Ecuador, and in whose contributions the Commission and Court of HR were included.⁴¹⁵

On December 5, 2011 during the final phase of operations of the working group, the delegation of Ecuador introduced a document with specific proposals for strengthening the Inter-American Human Rights System.⁴¹⁶ Of the four areas identified in the preceding paragraphs, the following are proposed:

FINANCING:

- The financing of the Inter-American System of Human Rights-SIDH-from the same resources of the OAS has been set as a goal to be achieved in the shortest possible time; consequently it should immediately begin to take steps towards the inner workings leading to the achievement of that task.
- While the financing of the organs of the ISHR is covered with resources from the Organization, it is proposed that the Inter-American System of Human Rights establish a policy, without exception, that voluntary contributions received cannot be conditioned or targeted so that the independence, objectivity, non-selectivity and non-politicization treatment of sensitive issues in their charge be preserved.
- The Inter-American Commission on Human Rights -CIDH- will correct the imbalance of economic and human resources available to their rapporteurs so that the rights for which each rapporteur is called upon to watch and forewarn can be attended to on an equal footing, both in human resources and financial resources commensurate with the characteristics of universality, equality and the interdependence of human rights.

UNIVERSALITY:

⁴¹⁴ Results of the process of reflection on the ISHR (2008-2009) . Permanent Council of the OAS on October 18, 2011. Retrieved November 22, 2014 from <http://goo.gl/j9qdCO>

⁴¹⁵ Ibidem.

⁴¹⁶ Proposals of the delegation of Ecuador on the topics " financing ", " universality ", " procedural matters " and " Annual Report of the Commission " . Permanent Council of the OAS , 05 December 2011. Retrieved November 25, 2014 from <http://goo.gl/HIUv6F>

- That the Inter-American System of Human Rights work together with States and with the General Secretariat of the OAS in the design and implementation of a strategy to promote the universality of Inter-American Human Rights in order to quickly achieve the goal strategy that all American States have the same legal conditions relating to the protection and defense of human rights.

MATTERS OF PROCEDURE:

- The establishment of a Code of Conduct to regulate the management of the rapporteurs of the Commission such as exists in the United Nations system. This will ensure the necessary coordination of the work that should exist between these mechanisms and States.

ANNUAL REPORT OF THE IACHR:

- The Commission, in consultation with the States will revise and update the criteria applied for the inclusion of countries in the Annual Report--Chapter IV-- and that there be a process for a balanced contrast of private and state sources thereby broadening the spectrum of the chapter to the end that all States are subject to the same assessment, regardless of the date or whether or not they are attached to binding human rights instruments of the Inter-American system. Also, the main theme of this chapter focuses not only on civil and political rights but also those of the ESCR.⁴¹⁷
- That the report presented annually by the Special Rapporteur for Freedom of Expression be presented in the same way-in the same section-which is intended for the other rapporteurs of the Commission. It will not be understood or accepted that this Rapporteur have a special section within the Annual Report of the IACHR.

On December 13, 2011, the task force adopted the final report of the time for reflection on the functioning of the Commission. In the final report, they included several recommendations to be brought to the attention of the Permanent Council of the

⁴¹⁷ Acronyms refer to the Economic , Social and Cultural Rights.

Organization in the framework of strengthening the ISHR. In the first instance, a brief assessment and recommendations on the challenges and objectives in the medium and long term of the Inter-American Commission on Human Rights was presented. In this regard, the Working Group noted that one of the main challenges for the Commission was to achieve the universality of the ISHR, ensure compliance with the decisions and recommendations of its organs, achieve a better balance between the promotion and protection of all human rights, improve procedural aspects and the strict observance of the regulatory frameworks of the petition system as well as to improve quality and efficiency in dealing with petitions and cases. Likewise, the need for adequate funding of the Inter-American System, in this case the Commission and the Court was included.⁴¹⁸ Furthermore, recommendations were included on the subject of precautionary measures, procedural issues, amicable solutions, evaluation criteria of the fourth chapter of the annual report of the Commission, the promotion of human rights and the strengthening of the financial system.⁴¹⁹

Needless to say, all observations of the delegation of Ecuador were included in the final report on the issue as regards the preparation of the fourth chapter of the annual report of the Commission; the recommendations were in agreement with them. In fact, the task force believed that the criteria and methodology for the drafting of the chapter as well as the sources of information included at the time of the report should be revised. For this, the Working Group recommended that the Commission consider corroborating sources equally and recognize the progress made by States on human rights in order to give them the opportunity to express their views on the sources and the information used.⁴²⁰ On the other hand, the working group agreed that the Commission should explore other mechanisms in the development of Chapter IV so that the evaluation is objective and comprehensive in observing the situation of human rights in the region.

On January 25, 2012, the Permanent Council of the OAS approved the report of the "Ad Hoc Working Group Reviewing the Functioning of the Commission to

⁴¹⁸ Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights to Strengthen the Inter-American Human Rights System for consideration by the Permanent Council (Approved by the Working Group at its meeting on December 13, 2011) . Permanent Council of the OAS , 2011. Retrieved November 25, 2014 from <http://goo.gl/JEUFsP>

⁴¹⁹ Ibidem.

⁴²⁰ Ibidem.

Strengthen the SIDH" by a consensus of all members of the organization.⁴²¹ At the meeting of the Permanent Council, the Ecuadorian ambassador to the OAS stressed that, for Ecuador, the principle of the universality of the American system was paramount since the other points proposed by delegations during meetings of the ad hoc working group had been removed. On this occasion, the speech of Maria Isabel Salvador, Ambassador of Ecuador to the OAS, revolved around 4 points proposed by Ecuador, however, she emphasized that all human rights should have the same treatment.⁴²² In this context, it is noteworthy that Ecuador has since based its proposal for "strengthening" on the argument that the Special Rapporteur for Freedom of Expression is the only rapporteur that receives "special" and external financing.

During the session in which the report was approved, the President of the IACHR, Dinah Shelton, pledged to consider the report as a priority, however, she made some clarifications as to the legitimacy of it. Shelton recalled that the Commission is a universal body created by the States and therefore, it has the power to hear cases of all OAS members regardless of whether they have ratified the American Convention or not.⁴²³ On the other hand, for the presidency of the Commission, its legitimacy depended on transparency and adherence to the law in procedures; this has been an issue that the Commission had been considering for some time. After the presentation of the report which is strongly critical of the sources used for Chapter IV, the Commission pledged that the annual report for 2011 would include information sources.⁴²⁴

The government of Ecuador welcomed the adoption of the report with recommendations by the Permanent Council of the OAS, but a month later was in a compromising situation given that the Commission issued precautionary measures in favor of the directors of El Universo and journalist Emilio Palacio. On February 22 of that year, President Correa strongly criticized the decision of the Commission as to the precautionary measures which he qualified as "total nonsense". At the same time, he asserted that he continued to stress the urgency of the reform of the Inter-American

⁴²¹ OAS Permanent Council approves report on the functioning of the Commission. Ministry of Foreign Affairs and Human , January 26, 2012- mobility. Retrieved November 30, 2014 from <http://goo.gl/a0z4xu>

⁴²² Ibidem.

⁴²³ OAS countries position was consensus to reform American System of Human Rights. Immediate Ecuador , Ecuador , January 26 , 2012. Retrieved November 30, 2014 from <http://goo.gl/gnm3HH>

⁴²⁴ Ibidem.

System of Human Rights.⁴²⁵ This time, Rafael Correa focused on the fact that the IACHR headquarters was in Washington and that the head was an American in this case; this was another "paradoxical" situation for the President of Ecuador since the United States had not ratified the American Convention on Human Rights. In this context, the President proposed that CELAC, (La Comunidad de Estados Latinoamericanos y Caribeños) The Community of Latin-American and Caribbean States replace the OAS since the United States and Canada were not part of that organization and it don't have an independent body such as in the case of the Commission.⁴²⁶

Ecuador's position has been more emphatic since 2012. In fact, in the month of May of that year, the Attorney General's Office sent a letter addressed to the Inter-American Commission protesting the "sudden frequency" of requests for information for the IACHR from Ecuador.⁴²⁷ In its statement, the prosecutor had sent 64 new requests for information that the Commission sent to Ecuador between November 2011 and April 2012 while stating that response times requested by the Commission were not "reasonable" since developing research for answers was time consuming. In this regard, the Commission's communications were criticized as to the Ecuadorian State because of the increased number of requests which coincided with the comments made by Ecuador about the functioning of the Commission in the context of recommendations for strengthening the ISHR. It was a somewhat illogical argument on the part of the Attorney since, to support his argument, he made a comparison of the period from November-April--the last 10 months before the same--where 44 submissions were received. It should be mentioned that during the same period the multi-million dollar sentences in cases like that of El Universo and Big Brother had occurred.

3.1 OTHER REFORM PROPOSALS (OAS GENERAL ASSEMBLY IN COCHABA,BA – JUNE, 2012)

⁴²⁵ The Comission's petition is a "complete nonsense". Ecuador Inmediato, February 22 , 2012. Retrieved December 3, 2014 from <http://goo.gl/ikL5wI>

⁴²⁶ Ibidem.

⁴²⁷ Ecuadorian State received 64 new communications of the Commission between November 2011 and April 2012. Attorney General, Quito, Ecuador , May 2012. Retrieved December 3, 2014 from <http://goo.gl/IPxQKA>

On January 31, 2012, President Rafael Correa announced that the next step in the framework of its reform proposal would be a change of venue of the Inter-American Commission and that he would desist from proposing this point only if the United States recognized this organization and the participation of other States that it did not recognize.⁴²⁸ Ecuador's main objective at the OAS General Assembly, held in June 2012 in Cochabamba (Bolivia), was to follow-up on the recommendations adopted by the Permanent Council. During the meeting in Bolivia, Foreign Minister Ricardo Patiño said that if the OAS was not reinvented, it would disappear and that the proposals were part of the positioning campaign of the international policy of the Ecuadorian State regarding the Inter-American System of Human Rights. Needless to say, of the 5 proposals approved by the Permanent Council, 4 were from the delegation of Ecuador in which they proposed the establishment of a code of conduct to regulate the management of the rapporteurs with the objective of insuring coordination with the States and in that way working together with the organs of the ISHR and the General Secretariat of the OAS.⁴²⁹

As part of the 42nd General Assembly of the OAS, President Correa delivered a speech against the Commission, the media and non-governmental organizations which he considered as "manipulative".⁴³⁰ For the president, the OAS and the IACHR should "reinvent themselves" or else disappear if they didn't align themselves with the political changes in the region. In this context, the president said the revolutionary processes that are taking place in Latin America are demanding change in "the relationship of powers according to the majority" in order to put an end to those "bourgeois" States.⁴³¹ On the specific topic of the OAS, the president said the agency was not in keeping with modern times as it lacked a specific timeframe for decision making at the presidential level and that "bureaucracy sometimes worked outside of continental reality".⁴³² He added that the OAS worked in a framework which, agreeing with Fidel Castro, he called a

⁴²⁸ Ecuador : Correa Commission recognizes that the US will seek or exit the body. Third Information , Spain , January 31, 2012. Retrieved December 10, 2014 from <http://goo.gl/hzgoGi>

⁴²⁹ Changes to the Commission , the main objective of Ecuador in Bolivia . El Universo, Guayaquil, Ecuador , June 04, 2012. Retrieved December 10, 2014 from <http://goo.gl/mYKz7w>

⁴³⁰ Rafael criticizes Commission , media and NGOs. El Universo, Guayaquil, Ecuador , June 04, 2012. Retrieved December 10, 2014 from <http://goo.gl/3ZTLJo>

⁴³¹ Speech by President Rafael Correa to the General Assembly No. 42 of the OAS in Cochabamba , Bolivia . President of the Republic of Ecuador , June 04, 2012. Retrieved December 10, 2014 from <http://youtu.be/Ih7gFFmVQR4>

⁴³² Rafael criticizes Commission , media and NGOs. El Universo, Guayaquil, Ecuador , June 04, 2012. Retrieved December 10, 2014 from <http://goo.gl/Ka4oTN>

"Ministry of Colonies" by its alleged inefficiency in resolving colonial situations such as had been the case of the Malvinas Islands. Hence, his criticism was also against NGOs which he qualified as being influenced by "hegemonic countries and big capital" organisms. During his speech, it is necessary to mention that he emphasized the alleged "monopoly" of communication, all in the context of his critical stance against the Special Rapporteur for Freedom of Expression. Furthermore, on the subject of the Commission He reiterated the need to change its headquarters whose location in the United States he considered an "aberration". Finally, with regard to the media and the Special Rapporteur for Freedom of Expression, President Correa accused them of "manipulating", "lying" and "insulting" because they allegedly accused him and other leaders of being dictators who did not submit to "business communication". He also said that the Rapporteur did not defend freedom of expression but "freedom of extortion" because among other things, the Latin America press is lies and manipulates in the name of that right.⁴³³

In the words of the former Ecuadorian ambassador to the UN, Francisco Carrión, the reform proposals turned out to be a real challenge "to the extent that the care for the Human Rights of an individual does not always coincide with the interests of the States".⁴³⁴ In the opinion of the former ambassador it is essential that there be a balance between an interstate organization and the defense of Human Rights but that there should not exist under any circumstances political/state interference.⁴³⁵ In contrast to the opinion of Francisco Carrion, another former Ambassador, Mauricio Gangara, said the changes are negative because they demonstrate the true intentions of the Correa administration since it intended to reduce the ability of freedom of expression of its citizenry and that therefore, the proposed reform would be "backtracking" as to the subject of human rights.⁴³⁶ To Gangara, the proposal is "the desire to control the functions of the Commission and is a coordinated effort on the part of Cuba, Venezuela and Ecuador, which is leading to a shameful line of the suppression and diminution of the human rights in America."⁴³⁷ In this context, it is important to reflect on the reason

⁴³³ *Ibíd.*

⁴³⁴ Changes to the Commission , the main objective of Ecuador in Bolivia . El Universo, Guayaquil, Ecuador , June 04, 2012. Retrieved December 11, 2014 from <http://goo.gl/mZEIXG>

⁴³⁵ *Ibíd.*

⁴³⁶ *Ibíd.*

⁴³⁷ Changes to the Commission , the main objective of Ecuador in Bolivia . El Universo, Guayaquil, Ecuador , June 04, 2012. Retrieved December 11, 2014 from <http://goo.gl/mZEIXG>

that led the Ecuadorian government to push for these reforms. Personally, I would say that it was because the Ecuadorian government was seen to be involved in various situations that caused questions as to its legitimacy, and that these situations were driven by the media while what should have been targeted were the issues of positioning and credibility.

In the process of strengthening the Commission, it should be mentioned that the Commission presented, in October 2012, its response to the strengthening of the ISHR in which the recommendations of the Ad Hoc Working Group was welcomed. In response, the Commission detailed each of the recommendations made by the States that were part of the Special Working Group and received them positively.⁴³⁸ However, later that month when the Commission presented a proposal to reform itself, it was not well received by states like Ecuador, Venezuela and Nicaragua. The proposal was divided into three parts: Project of Regulatory Reform, Project of Procedural Reform Policies and the Project to Reform Practices.⁴³⁹ In the case of Ecuador, the then ambassador to the OAS, María Isabel Salvador, said that such a momentous decision as the reform of the Commission should be made by Member States and not the Commission itself.⁴⁴⁰ In this context, the Ecuadorian government said it would not accept a parallel process "that seeks to replace the one initiated by Member States."⁴⁴¹

3.2 THE DECLARATION OF GUAYAQUIL

On the 29th of November, 2012, the States party to the American Convention on Human Rights took the initiative to convene a conference of the Member States in order to discuss the reforms "necessary" to strengthen the ISHR. The initiative was proposed by Ecuador to UNASUR and was approved by the foreign ministers of the States' parties for the conference to be held in 2013 since the members of the organization were

⁴³⁸ Response of the Inter-American Commission on Human Rights to the Permanent Council of the Organization of American States on the recommendations contained in the Report of the Special Working Group to Reflect on the Workings of the IACHR for Strengthening the Inter-American Human Rights. Inter-American Commission on Human Rights, Washington, October 2012. Retrieved December 15, 2014 from <http://goo.gl/LP5Fpa>

⁴³⁹ Public consultation on the proposed amendments to the Regulations, policies and practices of the Inter-American Commission on Human Rights. Inter-American Commission on Human Rights, Washington, February 2013. Retrieved December 15, 2014 from <http://goo.gl/WMfbLF>

⁴⁴⁰ Ecuador and Venezuela reject Commission proposal to reform. The Republic, Guayaquil, Ecuador, October 31, 2012. Retrieved December 15, 2014 from <http://goo.gl/0BWxeO>

⁴⁴¹ Ibidem.

part of the Pact of San José.⁴⁴² Here, it was clear that the leadership of Ecuador in its proposed reform of the ISHR before UNASUR had found the perfect setting to further the proposals submitted to the Permanent Council of the OAS in late 2011. The conference would be held on March 11, 2013 in Guayaquil under the premise that the member countries of the OAS had seen the fundamental role of the Commission appear to “change direction”.⁴⁴³ In this sense, it is necessary to mention that Ecuador's proposals to reform the ISHR could be summed up by its recent criticism of the granting of protective measures. In fact, Maria del Carmen Jacome, the then Secretary of Human Rights of the Ministry of Justice said that the Commission did not have a clear system to order such measures since they were granted for any case and for any reason without a previous study of gravity or urgency.⁴⁴⁴ The Ecuadorian government then said that the proposed changes for the SIDH were not an attempt to weaken the system but an attempt to prevent their bodies from becoming a “political” instrument.⁴⁴⁵

Prior to the meeting in Guayaquil, the official government newspaper described the twelve points that would be raised in the meeting as part of the reform process of the ISHR:

1. Amend the Statute of the IACHR so that, by January 2015, those states that had not ratified or acceded to all inter-American instruments, would cease to enjoy the rights set out in Article 3.
2. Reform the Statute of the Commission to establish as functions, promotion, dissemination and training.
3. Improve standards so that they are made from a “positive” view that reflects the work and efforts of States in the Field of Human Rights, including collective, environmental and development rights. At this point, it is proposed to instruct the Permanent Council of the OAS to create a new chapter that addresses those rights.
4. Develop a single report where the rapporteurs report thematically with a focus on the progress and efforts of States where the framework of the protection of

⁴⁴² UNASUR welcomes Ecuador’s proposal to urge the OAS to put in motion reforms to the IACHR. El Telégrafo, Guayaquil, Ecuador , November 29, 2012 .

⁴⁴³ America as a whole seeks new directions for the Commission. El Ciudadano, Quito, Ecuador , March 10 , 2013. Retrieved December 21, 2014 from <http://goo.gl/FpHTuN>

⁴⁴⁴ Ibidem.

⁴⁴⁵ Ibidem.

human rights is included. In this context, it was included in the proposed reform of the rapporteurs that these become advisory bodies or specialized experts of the Court.

5. Change IACHR headquarters to a country that is part of the Pact of San José.
6. The members of the Commission are elected from a list of candidates from Member States that have ratified by all members of Inter-American States.
7. To ratify the need to generate a financial scheme using two parallel and complementary conduits.
8. That the Commission be maintained with resources allocated from the regular budget of the OAS.
9. That resources from the regular budget and voluntary contributions be distributed equitably and without specific purposes for all organs of the ISHR including rapporteurs.
10. That the allocation of the granting of precautionary measures be the exclusive responsibility of the Court and that during this process, a transitional plan be developed, allowing the Commission to arrange precautionary measures under the following terms:

- Before taking this action, the Commission shall verify the situation has exhausted all national bodies; to identify the beneficiaries (including those groups); that they obtained a work schedule for the review of this measure; that the imposition of the measure is confined to the seriousness and urgency of the situation, that it has been legally and factually motivated, that it reflects the vote of the commissioners and that the information be true and verifiable.
- That the creation of a Technical Commission for Supervision and Monitoring of the recommendations and decisions of the organs of the ISHR be ratified.
- The IACHR will challenge decisions to apply precautionary measures imposed by the Commission, for the duration of the transition.
- Improve the mechanism of friendly solutions in order to promote mediation between states and victims from a preventive perspective where the Commission will be responsible for exercising such a mechanism.

11. That the casework and petitions be passed to the Commission of the Court considering a transition period in which the Commission must observe: a manual for the admissibility of cases; motivation for admissibility; identification of alleged victims; develop deadlines for each procedural step; develop objective criteria to file petitions; and implement the creation of computer files on the website, to allow consultation.

"We will fight to transform the Inter-American System of Human Rights, so that their bodies truly protect the rights and the citizens of our America without succumbing to interests and different visions as to its function or other pressures of a similar nature" was part of President Rafael Correa's inaugural speech at the First Conference of the States Parties to the American Convention on Human Rights.⁴⁴⁶ The first point which was discussed was the proposal of Ecuador that Argentina be the headquarters of the Commission since this state had ratified all Inter-American instruments.⁴⁴⁷ Another reason for the proposal was the fact that the US maintains a historical embargo against Cuba, which for President Correa, went against international law, in particular with the Charter of the OAS and with the exception of Articles 1, 15 19 and 20.⁴⁴⁸ On the other hand, the president commented on the Special Rapporteur for Freedom of Expression which he criticized because, in his opinion, "this is the only one that has increased funding and other support which has resulted in Human Rights being set aside."⁴⁴⁹ In this context, the Commission proposal to allocate equal resources to all rapporteurs and at the same time, a ban on contributions from States or third parties which specify specific preset destinations for such funds.

After the meeting, the states that attended issued a statement in which they considered that the ratification and accession to the Convention and the acceptance of the jurisdiction of the Court was "an incontrovertible manifestation of the commitment

⁴⁴⁶ President Correa : Reform the Inter-American System HR is irreversible. El Ciudadano, Guayaquil, Ecuador , March 11 , 2013. Retrieved December 23, 2014 from <http://goo.gl/4fziYb>

⁴⁴⁷ President Correa proposes Argentina as the permanent headquarters of the Commission. El Ciudadano, Guayaquil, Ecuador , March 11 , 2013. Retrieved December 23, 2014 from <http://goo.gl/BtGMzI>

⁴⁴⁸ Government rejects the interference of international bureaucracy in the Commission. El Ciudadano, Guayaquil, Ecuador , March 11 , 2013. Retrieved December 23, 2014 from <http://goo.gl/HxIXch>

⁴⁴⁹ The Rapporteur for Freedom of Expression should be equal to other committees of the Commission. El Ciudadano, Guayaquil, Ecuador , March 11 , 2013. Retrieved December 23, 2014 from <http://goo.gl/3N6l4S>

of member States”.⁴⁵⁰ They also acknowledged that the Commission has played an important role in the democratization processes in the region, however, they expressed that the ISHR should "evolve" according to the new "democratic reality, both socially and politically." In this context, the statement reads:

1. To emphasize the importance of balance between the rights and obligations of States that are part of the OAS. In view of this, it is agreed to promote positive incentives to secure the support of all member states of the OAS toward those members of the San Jose Pact. To this end they agreed to appoint a delegation of foreign ministers of the States' Parties to conduct direct negotiations with those states that are not part of the ACHR. In this context, we will promote that the members of the Commission be elected from among nationals of the countries that have ratified the Convention.
2. To instruct the Inter-American Commission on Human Rights to strengthen efforts to promote human rights, by supporting national systems.
3. To call upon all our countries and States' Parties to fully assume the financing of the system through the OAS regular budget and voluntary contributions from Member States of the Organization. Also, voluntary contributions may be considered which are not conditional or directed.
4. In accordance with the principle of the indivisibility of human rights, be it proposed that rapporteurs be considered special and ensure funding for the full implementation of their ends.
5. To request the Secretary General to present a detailed cost of the operations of the organs of the ISHR for analysis.
6. Consider the desirability of the headquarters of the Inter-American Commission on Human Rights to be located in a State which is party to the American Convention on Human Rights.
7. To give continuity to the meetings of the Conference of States Parties to the American Convention on Human Rights, as a platform for ongoing dialogue in this area.

⁴⁵⁰ Declaration of Guayaquil. Conference of States Parties to the American Convention on Human Rights , Guayaquil, Ecuador, March 11 , 2013. Retrieved December 26, 2014 from <http://goo.gl/d72HB2>

8. Assign to Ecuador the responsibility to make preparations for the next Conference of States Parties and the configuration of the delegation of foreign ministers for the purposes stated in paragraph 1.

On March 12 of that year, the Permanent Mission of Ecuador submitted the text of the statement to the General Secretariat of the OAS. However, there were protests by delegates from the United States, Canada, Barbados, Jamaica, Panama and Peru since, in his opinion, there were exclusions in Guayaquil meeting. The Panamanian government said that there was doubt about the meeting in Guayaquil, because it was not made clear whether it was a meeting of UNASUR or States Parties with the Pact of San José.⁴⁵¹ In this context, the Secretary General of the OAS was criticized because he did not allow several countries to be present as observers and refused to listen to Paraguay for which the Panamanian delegate questioned whether it was a democratic or conciliatory process or if it sought the agreement of the consensus. Insulza, Secretary General of the OAS, said several times that he agreed with the Guayaquil meeting and that he had circulated invitations of Ecuador to States parties but that he had never suggested that two tables meet. On the contrary, he said he had proposed the possibility that members of the organization also participate.⁴⁵² Indeed, the United States had asked to be an observer but was refused, as was Canada. Jamaica showed dissatisfaction with the restrictions and other states like Mexico and Brazil expressed reservations because of the absence of the other members of the OAS meeting in Guayaquil.

It should be mentioned that during the meeting in Guayaquil, there was a proposal for the Mexican State to lead a working group to prepare a draft of amendments to the ISHR which would be presented to the Permanent Council of the OAS. This was the consensus of the majority of Council members and ended with the commitment of delegates from Mexico, Peru and the chief of staff of the OAS to prepare the draft resolution before the meeting that would be held to finalize the new reforms to the System. The extraordinary meeting of the General Assembly of the OAS for the reform of the Commission was held on March 22 of that year in Washington. Prior to this meeting, on 19 March, the Inter-American Commission approved "Reform for Rules

⁴⁵¹ OAS members reveal "exclusions" in quotes Monday in Guayaquil. *El Universo*, Guayaquil, Ecuador, March 13, 2013. Retrieved December 28, 2014 from <http://goo.gl/dSmN4X>

⁴⁵² *Ibidem*.

Policies and Practices" as the result of the process initiated in 2011. In it, Articles 25, 28, 29, 30, 36, 37, 42, 44, 46, 59, 72, 76 and 79 of the Regulations of the Commission were amended and measures taken in policy and institutional practice; the reforms took effect on August 1, 2013.⁴⁵³

After the Conference of Guayaquil, the Ecuadorian government ratified the non-recognition of the allocation of the Inter-American Commission of interim measures since, in his opinion, they did not exist in the statute itself.⁴⁵⁴ President Correa said it was unacceptable that the Commission have its own agenda when it was delegated to the States which were party to the Pact of San José to promote human rights.⁴⁵⁵ For the president, the meeting in Guayaquil was historic and it was precisely in this context that the Ecuadorian government confirmed their attendance to the OAS General Assembly to be held on March 2013. The goal, no doubt, was the acceptance of the proposed recommendations and that the possibility of using bodies such as CELAC will not be discarded.

3.3 SPECIAL MEETING OF THE OAS (MARCH 2013)

On March 22, began the Special Session of the OAS General Assembly convened by the Permanent Council, the aim of which was to continue the reform process initiated by the Inter-American Commission on Human Rights. Needless to say, in principle, the recommendations made in 2012 by the OAS were not binding and it was specifically the Commission that would decide what to implement, however, the meeting in Cochabamba ruled that the Commission submit its decisions to the Permanent Council. For the year 2013, the Permanent Council was charged with making proposals in order to ensure compliance with the recommendations of the States that were part of the Special Working Group. In this context, the then Executive Secretary of the Commission said that the main priority of the extraordinary meeting

⁴⁵³ Commission approves reform "Rules , policies and practices." Inter-American Commission on Human Rights , Washington , United States , March 19 , 2013. Retrieved January 4, 2015 from <http://goo.gl/etJqIA>

⁴⁵⁴ The government does not recognize assignment of Commission of interim measures . El Ciudadano, Guayaquil, Ecuador , March 12 , 2013. Retrieved January 4, 2015 from <http://goo.gl/t7IXwf>

⁴⁵⁵ Ibidem.

was to finalize the process while offering "full availability" to meet with the Permanent Council.⁴⁵⁶

As part of the celebration of the extraordinary session of the OAS in Washington, there were several accusations and warnings from politicians and human rights activists against the delegations of states such as Ecuador and Venezuela. One was the accusation by former Colombian President Cesar Gaviria, who said that Ecuador and other partners had claimed that they would "muzzle" the Commission and that the proposed reforms would limit the autonomy of the Commission.⁴⁵⁷ In this context, the Inter American Press Association sent a letter to 19 presidents and 33 diplomats in which he warned that the SIP would be vigilant against any initiative that seeks to weaken the powers of the Special Rapporteur for Freedom of Expression as well as the Inter-American Commission.⁴⁵⁸ Other organizations such as Fundamedios denounced alleged attacks for their participation in a hearing on freedom of expression with the Commission. In fact, prior to the special meeting days, SECOM broke the news to Ecuavisa to transmit a national broadcast in order to "clarify" the alleged misrepresentations expressed by César Ricaurte on issues of freedom of expression.⁴⁵⁹

The Permanent Council of the OAS submitted to the General Assembly the report following the recommendations of the Ad Hoc Working Group Reviewing the Inter-American Commission on Human Rights for the Strengthening of the Inter-American System. The presidency of the Council said in its report that, in early 2013, a schedule of meetings was approved through which 13 sessions were to be held where the proposed draft resolution, submitted by the previous presidency of the Council was to be the basis. According to the then prime minister, a language of consensus to reach an agreement implementing the recommendations of the working group was planned but this was not possible.⁴⁶⁰ In this context, proposals for recommendations were

⁴⁵⁶ The OAS held on March 22 a General Assembly on reform of the Commission. El Universo, Guayaquil, Ecuador, January 30, 2013. Retrieved January 4, 2015 from <http://goo.gl/zp1fmL>

⁴⁵⁷ Growing accusations of proposed amendments to the Commission. La Hora, Guayaquil, Ecuador, March 21, 2013. Retrieved January 4, 2015 from <http://goo.gl/bl4Sso>

⁴⁵⁸ Ibidem.

⁴⁵⁹ Ibidem.

⁴⁶⁰ Report on the monitoring of resolution AG / RES. 2761 (XLII- O / 12) (Presented by the Permanent Representative of Nicaragua to the OAS in its capacity as Chair of the Permanent Council) . General Assembly of the OAS, Washington, DC, United States, March 22, 2013. Retrieved January 10, 2015 from <http://goo.gl/dQA1bk>

distributed to implement what was agreed upon in Cochabamba, where Member States considered one of the eight that were developed. After this, to optimize time, the presidency presented a draft resolution regarding the ISHR in which it looked to the Commission to implement the support recommendations, and with this, to draw up draft amendments to the Convention and take into account the other measures proposed by states as to the change of the headquarters of the Commission. Also, to the draft resolution were made adjustments and amendments in order to include paragraphs of the Declaration of Guayaquil without forgetting that the points related to the promotion of human rights were included as well as the special character of all rapporteurs and equitable funding.⁴⁶¹

Finally, the Permanent Council of the OAS made in consideration of the General Assembly, the draft resolution mentioned above in which the following points were made by consensus and those still under negotiation were included in brackets:

1. Taking note of the responses of the Inter-American Commission on Human Rights (IACHR) to the Permanent Council on the recommendations of the "Ad Hoc Working Group to Review the Workings of the Inter-American Commission on Human Rights for Strengthening the Inter-American System of Human Rights", and the Regulation Reform, Policy and Practices Inter-American Commission on Human Rights, Resolution No. 1/2013 was approved by the Commission on the 18th of March 2013- (CP / doc.4846 / 13), and it was asked that continued progress in its implementation in accordance with the relevant inter-American instruments be made.
2. [Order] [Ecuador: Encourage] to the Commission, in the framework of its Strategic Plan, to implement those recommendations [whose application is pending] [Grenada: is pending].
3. [Request] [Ecuador: Encourage] the Commission to strengthen its efforts to promote human rights, including through support to national systems.
4. To reaffirm its commitment to [full funding] / [Chile suggests that the scope of this concept clarification] of the IAHRs through the Regular Fund of the

⁴⁶¹ Ibidem.

Organization of American States (OAS). While this compromise is reached, to invite member states, and observer states and other institutions that continue to make voluntary contributions [Nicaragua: unconditional nor addressed] under the Guidelines of the Inter-American Court of Human Rights 2010-2015 and the Strategic Plan of the IACHR 2011-2015 [Paraguay: "preferably" be replaced by "with preference to"] [Paraguay + Colombia: suggests finishing this paragraph in "Commission 2011-2015"], and [preferably] / [without specific purposes] /. /
//

- Alternative wording proposed by Grenada:

To reaffirm its commitment to finance the Inter-American Human Rights System. To invite member states, observer states and other institutions that continue to make voluntary contributions under the Guidelines of the Inter-American Court of Human Rights 2010-2015 and the Strategic Plan of the Commission from 2011 to 2015.

- Alternative wording proposed by Ecuador:

Reaffirm their commitment to achieving the full funding of the SIDH through the Regular Fund of the Organization of American States (OAS). While this compromise is reached, to invite member states, observer states and other institutions to make voluntary contributions without specific purposes in the framework of the Guidelines of the Inter-American Court of Human Rights 2010-2015 and the Strategic Plan Commission 2011-2015.

5. To request the Secretary General to present to the Permanent Council as soon as possible a detailed analysis and updated costs of full operation of the organs of the ISHR.
6. Propose to the Commission that, under the principle of indivisibility of human rights, strengthen/all rapporteurs, including through the consideration of the granting the character of existing particular special rapporteurs, based on adequate financing and [without affecting] [Grenada: without prejudice to] their other responsibilities. //

7. To urge member states of the OAS, [where appropriate,] to ratify or accede [Grenada: when appropriate,] to all inter-American legal instruments on human rights, especially the American Convention on Human Rights and accept [Venezuela: as appropriate] the contentious jurisdiction of the Inter-American Court of Human Rights, without prejudice to the obligations of the Charter of the OAS.

For their part, Ecuador, Bolivia, Nicaragua and Venezuela submitted a draft resolution "to mandate the Permanent Council to continue the dialogue on the functioning and strengthening of the Inter-American System of Human Rights, particularly on issues relevant to precautionary measures, the location of IACHR headquarters, Chapter IV, universality, indivisibility of Human Rights, Rapporteurs and autonomy and the independence of the Commission; and to submit the results of this dialogue to the XLIV Annual General Assembly of the OAS."⁴⁶² However, after a 12-hour long debate, the OAS failed to reach a unanimous agreement on the Commission and its rapporteurs leaving open the possibility that more reforms be formulated in the future.⁴⁶³ The final text of the resolution adopted reads as follows, notes that a point was raised at the end of it:

1. Regarding the Functioning of the Commission take note of the responses of the Inter-American Commission on Human Rights (IACHR) to the Permanent Council on the recommendations of the Ad Hoc Working Group of Inter-American Human Rights Reflection on Strengthening the Inter-American Human Rights System, and the reform of the Regulations, Policies and Practices of the Inter-American Commission on Human Rights -Resolution Ollie # 1/2013 adopted by the Commission on 18 March 2013- (CP / doc.4846 / 13), and request continued progress in its implementation in accordance with the relevant inter-American instruments.
2. Emphasize that, in the spirit of constant improvement of the Inter-American Human Rights (ISHR), and with the participation of all parties involved, to

⁴⁶² Draft resolution of the forty-fourth special session of the General Assembly (Presented by Ecuador , Bolivia , Nicaragua and Venezuela) AG / doc.10 (XLIV -E / 13). General Assembly of the OAS , Washington , DC , United States , March 22 , 2013. Retrieved January 10, 2015 from <http://goo.gl/P8A8lY>

⁴⁶³ OAS approves amendments to the Commission. Ecuador relents and joins . The Washington, DC , USA, 22 March 2013. Republic Retrieved January 15, 2015 from <http://goo.gl/dX3WsD>

- mandate the Permanent Council to continue the dialogue on fundamentals for strengthening the ISHR aspects, taking into account all the contributions made by Member States, organs of the ISHR and civil society throughout the process of reflection and discussion during this special session of the General Assembly.
3. To urge the IACHR in the framework of its Strategic Plan, to implement those recommendations that are pending.
 4. To encourage the Commission to strengthen its efforts to promote human rights, including through support to national systems.
 5. To reaffirm its commitment to the full financing of the ISHR through the Regular Fund of the Organization of American States (OAS) without detriment to the funding for the other mandates of the Organization. While this compromise is reached, to invite member states, observer states and other institutions to continue making voluntary contributions under the Guidelines of the Inter-American Court of Human Rights 2011-2015 and the Strategic Plan of the Commission 2011- 2015, preferably without specific purposes.
 6. To request the Secretary General to submit to the Permanent Council as soon as possible, a detailed and updated cost of the full functioning of the organs of the ISHR according to information provided by the Commission and the Inter-American Court of Human Rights analysis.
 7. Propose to the Commission that, under the principle of indivisibility of human rights, strengthen all its rapporteurs, including through the consideration of granting the character of existing thematic special rapporteurs, on the basis of adequate funding and without prejudice their other responsibilities.
 8. To urge member states of the OAS to ratify or accede to, as appropriate, all inter-American legal instruments on human rights, especially the American Convention on Human Rights, and to accept, when appropriate, the contentious jurisdiction of the Court of the American Commission on Human Rights without prejudice to the obligations of the Charter of the Organization of American States.

The resolution was reached more unanimously despite opposition from states such as Ecuador, Nicaragua, Bolivia, Venezuela and Haiti who requested that precautionary measures be removed and that rapporteurs not be funded through donations from States

that have not ratified the American Convention.⁴⁶⁴ As can be seen in the final text of the resolution, the document encourages states that fund the Commission and its rapporteurs to be ratified members but not the possibility that there be outside funding. On the other hand, issues such as the change of venue of the Commission were not touched on despite the insistence of the Ecuadorian State. However, Argentina proposed an amendment to the resolution that allowed the door to be opened to an extension of the dialogue.⁴⁶⁵ Thus, the aim of the proposal was “to mandate the Permanent Council to continue the dialogue on the fundamental aspects for strengthening the Commission, taking into account all the contributions made by states, organ system and civil society throughout the process of reflection and discussion during this extraordinary General Assembly. “Needless to say, the OAS Member States provide 55% of the total financing for the Commission and the Court, therefore, the proposal to limit external financing would mean a financial weakening of the bodies of the defenders of human rights by 45%.⁴⁶⁶ Finally, the General Assembly agreed and the head of the Ecuadorian Republic relented though he made it clear that the discussion should be resumed since major problems of the SIDH could not be treated in depth, something which had left many countries out of the discussion.⁴⁶⁷

3.4 THE COCHABAMBA DECLARATION

May 14, 2013 saw the States parties to the American Convention meet for the second time in order, to analyze the mechanisms necessary to move the headquarters of the Commission. The meeting was held in Cochabamba, Bolivia where all countries that were party to the Convention attended but with the news that, in September 2012, the then President Hugo Chavez of Venezuela had denounced the American Convention at the same time announcing his withdrawal from SIDH.⁴⁶⁸ In the meeting a joint declaration was made in which States' parties decided to set up an open working group under the direction of Uruguay and Ecuador in order to identify budgetary, regulatory and functional challenges that could arise in the possible transfer of the headquarters.

⁴⁶⁴ OAS approves amendments to the Commission. Ecuador relents and joins . The Washington, DC , USA, 22 March 2013. Republic Retrieved January 15, 2015 from <http://goo.gl/dX3WsD>

⁴⁶⁵ Ibidem.

⁴⁶⁶ Ibidem.

⁴⁶⁷ OAS states decide to leave open debate on Commission and resolve substantive issues. Time , Washington DC , United States , March 22 , 2013. Retrieved January 16, 2015 from <http://goo.gl/JnIG7A>

⁴⁶⁸ Meeting of foreign ministers of the American Convention on Human Rights will be held in Bolivia. Ecuador Inmediato, May 06, 2013. Retrieved January 18, 2015 from <http://goo.gl/hHk0vi>

For this, Uruguay and Ecuador would report at the next meeting of States Parties. On the other hand, they decided to submit a proposal to the OAS for a mandate that the Commission incorporate a guide for the promotion of Human Rights with events broadcast about the national practices of States.⁴⁶⁹ In addition, it was decided to request of the Secretary General of the OAS a detailed analysis of the financing sources and operating costs of the Inter-American System.⁴⁷⁰ The Declaration of Bolivia reads as follows:

1. To establish the Special Committee of Foreign Ministers, for visits to countries that are not part of the American Convention on Human Rights. The Special Committee shall be composed of the foreign ministers representing South America (Uruguay), the Caribbean (Haiti) Central America (pending) and North America (pending). In turn, the Committee of Ministers will organize a Forum of States Parties and Non Party States to involve civil society and other stakeholders, to strengthen and promote the universality of the system. They will report back to ministers at the Third Meeting of the States Parties.
2. Advance the consideration of the desirability of the headquarters of the Inter-American Commission on Human Rights (IACHR) to be relocated to a State which is party to the American Convention on Human Rights, through the creation of an open working group headed by Uruguay and Ecuador to identify budgetary, regulatory and functional challenges of the transfer, among others, as well as the impact on smaller countries, and present a report at the Third Conference of States Parties to the American Convention on Human Rights.
3. Propose to the General Assembly of the OAS to instruct the Inter-American Commission on Human Rights to incorporate in its Strategic Plan, a Guide for the Promotion of Human Rights which would include events broadcast on national practices of all States.
4. To request of the Secretary General of the Organization of American States (OAS) to present to the Permanent Council a detailed analysis of the sources of

⁴⁶⁹ States Parties to the Convention discussed mechanisms to transfer Commission headquarters . National Communications Secretariat , Cochabamba , Bolivia , May 15 , 2013. Retrieved January 20, 2015 from <http://goo.gl/u35dSS>

⁴⁷⁰ *Ibidem*.

funding of the costs of operation of the Inter-American System of Human Rights, in the shortest time possible.

5. To charge Ecuador and Bolivia with the necessary coordination of the States Parties for organizing the Third Conference of States Parties to the American Convention on Human Rights.

3.5 THE DECLARATION OF MONTEVIDEO

To follow up on the commitments made during the first and second meetings of States Parties to the Convention, a third conference would be held on the 21st and 22nd of January, 2014. The meeting would see the presentation of the progress report registered since the first meeting in Guayaquil and the meeting in Cochabamba.⁴⁷¹ As was agreed upon previously as respects the formation of a working group, both Ecuador and Uruguay presented a report on the budgetary, regulatory and functional challenges of the Inter-American Commission and the vision of the Commission and its rapporteurs with a "strengthening" of the Inter-American system in view".⁴⁷² To this was added Ecuador's proposal to institutionalize the Conference of the States Parties to the American Convention however, the necessary support for this proposal was not given the necessary relevance between states who attended the conference. Interestingly, an article in the Oxford Human Rights Hub considered that one of the political achievements of Ecuador was not having the "uncomfortable" presence of countries like the United States and Canada as well as the Commission and civil society.⁴⁷³

In the declaration of Montevideo, the agreements reached at the two previous meetings of States parties as to the following points were reaffirmed:

1. To receive and acknowledge the Report of the Working Group for the change of venue of the Inter-American Commission on Human Rights (CIDH) prepared by

⁴⁷¹ Third Conference of States Parties to the Pact of San José will be held in Uruguay . Ministry of Foreign Affairs and Human Mobility , January 21 , 2014. Retrieved February 2, 2015 from <http://goo.gl/ZW7oUf>

⁴⁷² Ibidem.

⁴⁷³ Hilly , Laura. Third Conference of States Parties to the American Convention on Human Rights : one more brick to the wall (brick or less?) . Oxford Human Rights Hub, April 22 , 2014. Retrieved February 2, 2015 from <http://goo.gl/xavTQS>

the Government of the Republic of Ecuador and the Eastern Republic of Uruguay which was presented and discussed preliminarily during the Third Conference of States Parties to the American Convention on Human Rights.

2. To deepen that report in its legal, political, budgetary, regulatory and functional aspects, among others and analyze the best alternatives to, consistent with the existing regulatory framework, measure the consequences and requirements of a possible change of venue.
3. To request the states parties to express their interest in permanently hosting the Commission.
4. To invite the IACHR to hold its sessions in the States of the Parties to the American Convention on Human Rights.
5. To readjust the integration of the Special Committee of Foreign Ministers representing the following regions: South America (Uruguay and Ecuador), the Caribbean (Haiti), Central America (Guatemala) and North America (Mexico, to be confirmed), with the attendance of the General Secretariat of the OAS, completing the task of approaching States which are not party to the American Convention in order to find alternatives that allow adherence to the Pact of San José de Costa Rica. This Commission will be coordinated by Uruguay until the celebration of the Fourth Conference of States Parties and shall propose practical action to achieve universalization of the system.
6. To deepen, by way of the Special Committee of Ministers of Foreign Affairs, the dialogue with the OAS member states that are not party to the Inter-American System of Human Rights, continue especially with contacts started by the Presidency Pro Tempore of CARICOM with a view to seeking alternatives to joining the referral system.
7. To instruct the General Secretariat of the OAS to conduct a study in order to analyze the legal impediments of nonparty States to the Convention for their inclusion in the Inter-American system and to propose practical solutions.
8. Continue efforts initiated in order to extend the consultation of other Member States which are not party to the Inter-American system and civil society organizations as it was envisaged in operations paragraph 1 of the Declaration of Guayaquil.

9. Continue the dialogue for strengthening the Inter-American System of Human Rights, in order to achieve equity and indivisibility in promoting, monitoring and ensuring those human rights enshrined in the Protocol of "San Salvador"
10. To establish an open-ended working group to identify and recommend a new institutional framework for the current scheme of Rapporteurs of the Commission.
11. To recommend to States Parties who are members of UNASUR to submit a report on the progress made in the Conference of States Parties to the American Convention on Human Rights at the next meeting of the Heads of State of UNASUR and other meetings of the Heads of State.
12. To delay consideration of the point of the Rules of the Conference of States Parties to the American Convention on Human Rights until the occasion of the next conference.
13. Greet and accept the initiative of the Republic of Haiti to host the Fourth Conference of States Parties to the American Convention on Human Rights.

3.6 THE DECLARATION OF PETION-VILLE

It should be mentioned, that it was during the Conference of States Parties held in Montevideo in which the States were asked to speak out in case of an interest in permanently housing the Commission. During the conference in Haiti, on May 27, 2014, it was stressed that there was a considerable consensus among States parties to the American Convention regarding its "necessary" universalization with the aim of achieving a fair balance between rights and responsibilities of all states of the OAS.⁴⁷⁴ In this way it was taken for granted the perspective that states act within the framework of the reforms to the Inter-American System which were based on the principles of universality, indivisibility and interdependence. In the text of the statement from the Haitian representatives it was announced that President Michel Joseph Martelly had offered Haiti as a possible headquarters for the IACHR, which news was received positively by the States parties. It was noted that this issue would be discussed at the General Assembly of the OAS in 2015.⁴⁷⁵ The text of the statement reads:

⁴⁷⁴ IV Conference of States Parties to the Pact of San José , Declaration of Petion- Ville . Haiti, May 27 , 2014. Retrieved February 12, 2014 from <http://goo.gl/2Piz3n>

⁴⁷⁵ IV Conference of States Parties to the Pact of San José , Declaration of Petion- Ville . Haiti, May 27, 2014. Retrieved February 12, 2014 from <http://goo.gl/2Piz3n>

1. To recognize and support the efforts of the Special Committee of Foreign Ministers of Uruguay, Haiti, Ecuador, and Guatemala as commissioned by the Third Conference of States Parties to promote universalization of the American Convention on Human Rights. The willingness of the Caribbean States to further dialogue on this subject is also welcome.
2. To request the Secretary General of the OAS, no later than September 2014, to conclude direct consultations regarding the concerns and challenges of each State for accession to the American Convention on Human Rights, and to report thereon to the States and the Permanent Council of the OAS in order to propose technical, legal and political solutions.
3. To instruct the Special Committee of Foreign Ministers already established to advance the technical support that the Caribbean states have requested to finalize its accession to the American Convention on Human Rights so that they may be formalized during the General Assembly of the OAS in 2015. To this end, to form a cooperation platform for the exchange of experiences and to strengthen the national capacities necessary to fulfill the obligations of membership. To request the General Secretariat of the OAS and the Inter-American Institute of Human Rights to organize activities to support the process of globalization.
4. To welcome the offer made by President Michel Joseph Martelly of Haiti to house the headquarters of the IACHR, and invite other countries for consideration. In this regard, they emphasize their willingness to continue strengthening efforts in the political, economic and legal analysis of a possible change of venue of the Commission. The issue will be discussed at the General Assembly of the OAS in 2015.
5. To propose, during the General Assembly of the OAS in Paraguay 2014, the provision of Uruguay and Mexico, states parties to the ACHR, to accept to host the sessions of the Commission over the next two years.
6. To propose the presentation to the OAS Permanent Council a proposal to conduct a study on the various dimensions of the system of rapporteurs for the Commission within the framework of the principles of equality, interdependence and indivisibility of human rights, with concrete proposals regarding balanced financing for which the rapporteurs have decided to establish an open-ended working group, to be coordinated by Bolivia.

7. To request the Commission to conduct a thorough review of the sources and methodology used for the realization of all the reports of the rapporteurs, and to adopt a code of conduct to be applied by all the rapporteurs.
8. To deepen the analysis with the aim of the Inter-American System of Human Rights to be financed exclusively by Member States of the OAS. While this goal is being achieved, the creation of a single Fund to receive extra-budgetary contributions which should be assigned according to a work program previously approved by the States.
9. To strengthen efforts to promote human rights on the continent, by conducting an Annual Forum on Policy, Legislation and National Experiences to be realized by States Parties. The first will be held in Ecuador in the first quarter of 2015.
10. To hold consultations on the rules of procedure for Conferences and procedures this could be adopted in order to be considered in the Fifth Conference of States Parties.
11. To thank the Government and people of Haiti for hosting the Fourth Conference of States Parties to the American Convention on Human Rights.
12. To welcome the proposal of Guatemala for the realization of the Fifth Conference of States Parties to the American Convention on Human Rights in the last quarter of 2014.

If we compare the statements of the States Parties to the Convention, we can see that Ecuador has had strong leadership in the region since in April 2014 when they asked the Commission to reconsider its report by stating that there were alleged "serious restrictions" resulting from Communication Act.⁴⁷⁶ With frequent meetings promoted by Ecuador and other aligned States in the last conference in Haiti it was requested that the IACHR conduct a "rigorous" review of the sources and the methodology used by the rapporteurs. In reference to this, the statement also requested the adoption of a "Code of Conduct" to be applied by all the rapporteurs. For Ecuador, the data which was not included in the reports of the Special Rapporteur for Freedom of Expression are not contrasted and for this reason should be rectified as the government has repeatedly clarified and denied the alleged threats and assaults that have been included in the

⁴⁷⁶ Ecuador asks the Commission to rectify report. The Telegraph , Guayaquil, Ecuador , April 24 , 2014. Retrieved February 15, 2015 from <http://goo.gl/3hrfG6>

same.⁴⁷⁷ In fact, Ecuador's initiative to reform the Commission arises from the alleged "fixing" of the then Rapporteur for Freedom of Expression, Catalina Botero, against President Rafael Correa, something which has made the Rapporteur lose her "professionalism, fairness and wisdom, " or at least according to OAS Ambassador Marco Albuja.⁴⁷⁸ However, we must remember that, only in the government of Correa, have somewhat abrupt and expensive penalties for libel and damages to repair "moral damage" been incurred. The next step would formalize their criticism through a draft resolution to be presented to the General Assembly of the OAS, which took place in June of that year.

3.7 THE DRAFT RESOLUTION PRESENTED TO THE OAS

During the forty-fourth General Assembly of the OAS, Ecuador, together with Argentina, Bolivia, Brazil, Colombia, Chile, Paraguay, Peru and Uruguay, presented a draft resolution to strengthen the framework of the OAS, the agreements reached during the meetings UNASUR and conferences of States party to the American Convention.⁴⁷⁹ The draft resolution proposed, among other things, moving the IACHR headquarters in Washington to a country that is party to the American Convention on Human Rights. The document was delivered into the hands of the members of the OAS on Tuesday, June 3, 2014 during the General Assembly and was scheduled to be debated behind closed doors for the meeting of the General Committee. Only a few hours afterwards, Ecuador decided to "downplay" the draft resolution because, after a bilateral meeting with UNASUR, Brazil, Argentina and Uruguay requested to wait a while before addressing those changes.⁴⁸⁰ Apparently, the countries that supported Ecuador's introduction of the draft resolution backed down due to the evident division and the wave of criticism that arose in the international arena. In fact, several of the media described Ecuador's intentions as the straw that divided the OAS since their proposals contain sensitive points that generate controversy when trying to be reformed.

⁴⁷⁷ Ecuador asks the Commission to rectify report. The Telegraph , Guayaquil, Ecuador , April 24 , 2014. Retrieved February 15, 2015 from <http://goo.gl/3hrfG6>

⁴⁷⁸ Ibidem.

⁴⁷⁹ Ecuador concrete progress on peace , security and human rights in the OAS. Citizen diplomacy , bimonthly magazine No. 8 of the Ministry of Foreign Affairs and Human Mobility , May-June 2014.

⁴⁸⁰ Ecuador seeks to revive debate on Commission reform in the OAS Assembly . The Universe, Asuncion, Paraguay , 04 June 2014. Retrieved February 15, 2015 from <http://goo.gl/h0Qc9D>

According to several sources, the document proposed to prevent that only a few areas of the Inter-American Commission have more funding than others and thus encourage "rigorous review" of the mandates assigned to the rapporteurs in order to prevent inputs from the States being "directed" as was alleged in the case of the Special Rapporteur for Freedom of Expression.⁴⁸¹ In a report published in the bimonthly magazine of the Ministry of Foreign Affairs and Human Mobility, it indicated that the proposal aims to revise the current system of the rapporteurs of the Commission and, in this way, to guarantee the principles of "interdependence" and "indivisibility" of the Human rights within the Inter-American System.⁴⁸² It notes that the Special Rapporteur for Freedom of Expression specifically has been the one that has repeatedly criticized how the government of Rafael Correa handled issues of freedom of expression and it is not surprising that the proposal would focus on its financing although organizations had warned that this would represent a weakening of the same since it is a body which ensures such an important right as the denunciation of the violations of the rights of others.

Furthermore, the document states deemed to Haiti, Costa Rica and Guatemala as possible venues for the Commission to be those states party to the American Convention and thus prevent other countries not part, as in the case of the United States do not affect the body. The proposal is not limited to these three countries that have offered to host but also invites others to propose other possible venues for the Commission. However, it is necessary to mention that José Miguel Insulza, Secretary General of the OAS, said that this point would be difficult since it would involve changing the treaties by which the organization operates.⁴⁸³ For Insulza, it is legitimate for a state to seek to reform the ISHR but as he said this is only possible by amending the rules of law contained in the OAS Charter and the American Convention.⁴⁸⁴ In this context it is worth mentioning that the support given to the proposed amendment to tone down SIDH, which led the Secretary General of the OAS, to ask to be put aside "parallel efforts" since they represent a weakening of one of the principal organs of the

⁴⁸¹ Ecuador seeks to revive debate on Commission reform in the OAS Assembly . The Universe, Asuncion, Paraguay , 04 June 2014. Retrieved February 15, 2015 from <http://goo.gl/h0Qc9D>

⁴⁸² Ecuador concrete progress on peace , security and human rights in the OAS. Citizen diplomacy , bimonthly magazine No. 8 of the Ministry of Foreign Affairs and Human Mobility , May-June 2014.

⁴⁸³ Ecuador presents project to OAS General Assembly to reform the Commission. Ecuador Inmediato, Asuncion, Paraguay , June 03, 2014. Retrieved February 18, 2015 from <http://goo.gl/e5cnZC>

⁴⁸⁴ Ecuador presents project to OAS General Assembly to reform the Commission. Immediate Ecuador , Asuncion, Paraguay , June 03, 2014. Retrieved February 18, 2015 from <http://goo.gl/e5cnZC>

OAS. However, Ecuador in an attempt to keep alive the debate that began in 2011, offered to the General Assembly that a grant from the state for \$ 1,000,000 would be to strengthen the Court without any "conditioning" to change and as a way of demonstrating its "strict coherence" to the protection of Human Rights.⁴⁸⁵

3.8 FINAL THOUGHTS

The draft resolution presented to the OAS by Ecuador was a surprise to all Member States of the organization since, at the previous meetings of States party to the American Convention; they realized the division of the country in terms of points presented to reform the Commission. It is true that there was consensus in approving the various statements made in the meetings but in June 2014, during the General Assembly of the OAS there was an atmosphere of relief after the UNASUR bloc was able to convince Ecuador to take a lower profile of the proposal. Here, we could see two legitimate views on the functioning of the Commission and its rapporteurs; in the opinion of Denis Moncada de Nicaragua the Commission, as an autonomous body of the OAS should not be "instrumentalized for political purposes" in order to go against certain countries in its analysis.⁴⁸⁶ On the other hand, for Carmen Lomellin of the U.S. it was a dangerous precedent that members of the organization have control of the distribution of the resources of the Commission.⁴⁸⁷ The two views are legitimate and successful; however, it is necessary to point out that representatives of the two aforementioned countries express their opinions based on their convenience. Ecuador, for its part, launched a campaign to reform the ISHR following the controversy which arose after the million dollar trials of El Universo and Emilio Palacio; in the case of the United States, the Commission has made several appeals to Guantanamo but the state has ignored them.

In a note from the newspaper El Telegrafo, they state that Ecuador "discovered" in 2011 that the Inter-American Commission on Human Rights had no authority unlike the Court. In fact, by the year 2014 it was said that the Commission had erred in its analysis to grant interim measures in the case of Clever Jimenez, Fernando

⁴⁸⁵ Ibidem.

⁴⁸⁶ Ecuador surprised the OAS proposal to reform the Commission. RCN Radio, Colombia , June 05, 2014. Retrieved February 20, 2015 from <http://goo.gl/XSo3EP>

⁴⁸⁷ Ibidem.

Villavicencio and Carlos Figueroa.⁴⁸⁸ The article notes that there are three conditions for the Commission to issue a "non-binding" recommendation: gravity, the urgency of the situation and the irreparable harm of a right. In this context, the opinion of Salim Saidan, was that the Commission committed an error of analysis in evaluating the violation of the right to freedom of expression in the same way as rights such as life and personal integrity. This could result in something irreparable such as in the case of Nelson Serrano who was sentenced to death in the United States. The Commission based this stance on Article 25 of the same regulation which states that "in situations of gravity and urgency the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or the object of the process in connection with a pending petition or case, as well as to people who are under their jurisdiction, independently of any pending petition or case." But Ecuador based its argument on Article 41 of the Convention where it was not established that the Commission has such powers. However, Ecuador has taken precautionary measures, always, as decisions are binding while the same rules of the Commission indicates that "the granting of such measures and their adoption by the State shall not constitute a prejudgment on the violation of the rights protected in the American Convention on Human Rights and other applicable instruments." So, is the whole process of reform promoted by Ecuador a strategy of reputation?

It was because of the multi-million dollar lawsuits filed by President Correa against the media that Ecuador appeared in a series of headlines worldwide which triggered a wave of criticism of his administration. In this case, it could be said that the issue went from legal to political since according to the government, the Commission had given "special interest" to his political opponents and that this was supposedly demonstrated during the public hearings on the situation of Freedom expression in Ecuador. In this, the government used the argument that those who attended the hearings, such as Fundamedios, have to do with USAID funded organizations so their participation is nothing more than a "political show" and, in short, all this is "interference" by the Commission.⁴⁸⁹ What about the legal justification for this? Beyond the argument that the Commission has no jurisdiction, Ecuador has more political than

⁴⁸⁸ Parsing error Commission commits to grant interim measures . The Telegraph , Ecuador , April 03, 2014. Retrieved February 20, 2015 from <http://goo.gl/02ojsu>

⁴⁸⁹ Parsing error Commission commits to grant interim measures . The Telegraph , Ecuador , April 03, 2014. Retrieved February 20, 2015 from <http://goo.gl/02ojsu>

legal justification going as far as giving a speech that would discredit defenders of human rights organizations and opponents of the government of Correa. In fact, it appears that the Correa government feels the moral authority to assert that the views of opponents as well as concerns of organizations like Fundamedios are just falsehoods intended to defend the interests of the few and not the "Ecuadorian people." In this context, the government newspaper gave some evidence to justify the non-compliance with the precautionary measures issued by the Inter-American Commission on Human Rights. It notes that the argument used is, in simple words, a manipulation by the Ecuador to take for granted that they will not abide by the measures if other States Parties do not, therefore, they shall be ignored, just as they has been doing for years.

According to the article, Ecuador is not the only state that does not abide by the precautionary measures issued by the Commission and that since 2012, 15 of the 35 countries that are part of the OAS have not. In this context, the countries with the highest number of precautionary measures in 2011 were Honduras and the United States but the latter was not complied with most of the time. It cites the case of Juan Raul Garza, who was sentenced to death and the case of the 254 detainees at Guantanamo, who have not been abided or taken into account. In fact, it is recognized that the Commission has insisted in its annual reports the urgent need for the United States to allow a mission to verify the status of detainees--an issue to which there has been no response to date. But was the speech was not based on the alleged "fact" that the Commission dedicates its reports to certain countries? The article cited in this work dates from April 2014, which notes that the government's discourse has been changing over time. Although the government's position has been clear, the initiative to reform the Commission has been toned down gradually, so much so, that Ecuador relented and in 2014 decided to downplay the proposal in the General Assembly of the OAS. There is expected to be a new meeting in 2015 of States' party to the American Convention and the new session of the General Assembly is to be installed. However, it is necessary to wait for the 2014 report of the Commission to be published in order to view the panorama of its reform process.

DATA PUBLISHED BY "EL TELÉGRAFO"

- The Inter-American Commission on Human Rights has issued 870 precautionary measures since 1996 in 24 countries of the 35 that are part of the OAS.
- Of the precautionary measures granted, 12% of those were not enforced.
- Of the 870 precautionary measures granted since that year, 73% are related to death penalty cases.

CONCLUSIONS

The Inter-American Human Rights System has two agencies that protect human rights, these are the Commission and the Inter-American Court of Human Rights. Article 33 of the Convention sets that the Commission and the Court will be the bodies that " shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention." On one hand, the Commission oversees the conduct of States regarding Human Rights, whether or not they belong to the American Convention. As noted in the first chapter of this work, the Statute of the IACHR provides that certain mechanisms may be applied by the Commission to all Member States of the OAS regardless of whether they have ratified the ACHR and other mechanisms may be applied only States that are part of it. That is, there are mechanisms derived from the framework of the Charter of the OAS and others that are derived from the Convention, but in practice, they do not have a very noticeable difference between them. In this context, the Commission is based on several instruments that allow you to monitor in general the situation of human rights in the region, an issue that is reflected through their annual reports. On the other hand, the Court has the task of resolving contentious cases involving violations of the American Convention by a State which has ratified and also gives advisory opinions in the case that a member of the OAS's requests this.

Since 2011, Ecuador promoted a debate about the future of the inter-American system in the framework of the reform proposals presented to the members of the OAS. It even got to ensure that if the ISHR is not reformed, it should disappear because it supposedly serves the interests of the great powers. In this context, it is necessary to make clear that the Commission has closely monitored the behavior of those great powers, such as the United States on the specific topic of Guantánamo. In fact, there are two resolutions on the situation of detainees which were made in the year of 2006 and 2011 and it has granted precautionary measures five times. The first was issued in March 2002.⁴⁹⁰ In addition, it has been the interest of the Commission for the detention center to the point of asking twice the United States its consent for a visit to

⁴⁹⁰ Decisions on the US detention center at Guantanamo. Inter-American Commission on Human Rights. Retrieved February 25, 2015 from <http://goo.gl/Ax40K9>

Guantánamo to check the status of detainees.⁴⁹¹ And we can not ignore the fact that there are so many other resolutions issued against the United States for human rights violations in their fight against drug trafficking. It has toughened penalties and simplified criminal proceedings to condemn people for this crime, depriving the right to due process. In Ecuador, we have examples like the Tibi case referred to earlier in this work.

The Inter-American Human Rights System has played an important role in the national and continental scene, in fact, the Commission and the Court have served as a tool to rebuild the memory of the victims of the most serious violations of human rights from the past dictatorships in South America. The former Ecuadorian President Jaime Roldós, was the one who promoted the "Charter of Conduct" for the first time citing human rights as a principle that transcends national borders and ignores the sovereignty of States. Thus, with Roldós in 1980 the defense of human rights as a duty of the state is raised and hence its protection did not violate the principle of nonintervention. After decades, even though Ecuador appeared as a pioneer in the defense of human rights in the midst of an area of dictatorships, the government has come to ensure that both the Commission and the Court are not appropriate forums to address the violation of rights because "its lack of Independence". This is somewhat paradoxical because these criticisms come from the same government that has used the IACHR to sue another state for the Angostura case in 2010. The case is not the only one, it was also the same government of Rafael Correa that requested the IACHR to issue precautionary measures in the case of Nelson Serrano in order to stop his execution in 2011.

With the participation of Ecuador in the "Special Working Group to Reflect on the Work of the IACHR to Strengthen the Inter-American Human rights System", the four points were put on the table for possible reform. The points correspond to financing, universality, matters of procedure and the annual report of the IACHR. However, during the process of reflection, Ecuador also focused on issues such as the change of venue of the IACHR and the granting of precautionary measures. Ecuador had "noticed" that the Commission allegedly did not have the competence to issue them because their statute does not mention them unlike its rules that it does and therefore are

⁴⁹¹ Decisions on the US detention center at Guantanamo. Inter-American Commission on Human Rights. Retrieved February 25, 2015 from <http://goo.gl/Ax40K9>

not binding. In this context, the government has forgotten that the interim relief is a protection mechanism for Human Rights and as provided in the regulations of the Commission, the provision and adoption of these measures do not constitute a prejudgment on the violation of rights protected by the American Convention and other applicable instruments. In this sense, precautionary measures may come to be seen as the "opportunity" for states not to be punished for the violation of Human Rights and these are a "warning" that they are making a possible violation of one or more rights protected and, thus, they can remedy the situation before the damage becomes irreparable. On the other hand, we must mention that it is the American Convention on Human Rights itself that gives it the power to issue its own rules to the Commission, so provides Article 39 where it says that " The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations." Strictly speaking, Ecuador ratified the American Convention and, therefore, saying that the Commission has no power to issue injunctions is more a political than a legal argument.

It is clear the position of the current Ecuadorian government when it comes to independent media. With lawsuits against El Universo, journalist Emilio Palacio, the authors of "Big Brother" and the constant attacks on critical journalists of his management, they are just a sample of the real intentions of the government with its reform proposal. We shall not forget that in March 2013, the same President Correa offered to meet the quota of 15 million dollars to finance the Commission in the case that any country can not provide that amount.⁴⁹² Backed by governments that are intolerant of the independent press, we would be facing a scenario where the media in the successive governments reduce the number of critical voices, healthy and essential in a democracy. In this case, bodies like the Commission are a vital tool in the observance and protection of human rights and without them the citizens of the continent would be exposed to violations. The rapporteurs of the Commission, therefore, guarantee the fulfillment of international obligations of States parties to the OAS on issues of freedom of expression, women's rights, rights of indigenous peoples, rights of children, etc. The current government debt is to respond if its reform proposal is to: weak or strength the system?

⁴⁹² Rafael Correa proposed Argentina as the new Commission headquarters. El Universo, Guayaquil, Ecuador, March 11, 2013. Retrieved February 25, 2015 from <http://goo.gl/s7aV4t>

It is paradoxical that a government which calls itself as “leftist” questions bodies such as the Commission after it has used it in the past. One of the adjectives used to describe the work of the Commission has been that this is nothing more than "an imperial court advocate of speculative financial capital", but they have forgotten that the Commission has been defending the rights of people through monitoring mechanisms for governments that abuse their power, thus, becoming the last resort where they can achieve justice. Since the government of Jaime Roldós to the current Rafael Correa's government, there has been no government that has lashed out against the work of the Inter-American Commission. In fact, this gives us a clue that we will face a complex situation in the case of the reform proposal is taken up in the coming months and even more when Ecuador has had a visible leadership on this issue with the support of other countries who do not see the independent press as part and the "price to pay" for living in a democracy. Change is always relevant when it is to improve, however, in the case of the reform proposals it would mean a reversal of the great progress made on the continent in the field of Human Rights. With no bodies such as the Commission, what would have happened to the illegal detention and torture of Suárez Rosero, the murder of Consuelo Benavides, the disappearance of the Restrepo brothers, the right to consultation with indigenous peoples as the Sarayaku case? It would have been justice?

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Annex I

AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA"

Preamble

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I - STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I - GENERAL OBLIGATIONS

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II - CIVIL AND POLITICAL RIGHTS

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labor:

a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

d. work or service that forms part of normal civic obligations.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g. the right not to be compelled to be a witness against himself or to plead guilty; and

- h. the right to appeal the judgment to a higher court.
- 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
- 4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
- 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9. Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10. Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11. Right to Privacy

- 1. Everyone has the right to have his honor respected and his dignity recognized.
- 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
- 3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of Conscience and Religion

- 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
- 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
- 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression

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

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

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

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

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

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

Article 14. Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in

danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

a. to take part in the conduct of public affairs, directly or through freely chosen representatives;

b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

CHAPTER IV - SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28. Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.
3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the

provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31. Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

CHAPTER V - PERSONAL RESPONSIBILITIES

Article 32. Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

PART II - MEANS OF PROTECTION

CHAPTER VI - COMPETENT ORGANS

Article 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

a. the Inter-American Commission on Human Rights, referred to as "The Commission;"
and

b. the Inter-American Court of Human Rights, referred to as "The Court."

CHAPTER VII - INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Section 1. Organization

Article 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

Article 35

The Commission shall represent all the member countries of the Organization of American States.

Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.

2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 37

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.

2. No two nationals of the same state may be members of the Commission.

Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

Section 2. Functions

Article 41

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a. to develop an awareness of human rights among the peoples of America;
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;
- d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
- g. to submit an annual report to the General Assembly of the Organization of American States.

Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

Section 3. Competence

Article 44

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and

d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

a. any of the requirements indicated in Article 46 has not been met;

b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;

c. the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section 4. Procedure

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.
2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

CHAPTER VIII - INTER-AMERICAN COURT OF HUMAN RIGHTS

Section 1. Organization

Article 52

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.
2. No two judges may be nationals of the same state.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.
2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.

3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Article 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge.

3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an ad hoc judge.

4. An ad hoc judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

Article 57

The Commission shall appear in all cases before the Court.

Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court considers it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

Article 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respects not incompatible with the independence of

the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

Article 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

Section 2. Jurisdiction and Functions

Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Section 3. Procedure

Article 66

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

CHAPTER IX - COMMON PROVISIONS

Article 70

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.

2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

PART III - GENERAL AND TRANSITORY PROVISIONS

CHAPTER X - SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION

Article 74

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.

2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI - TRANSITORY PROVISIONS

Section 1. Inter-American Commission on Human Rights

Article 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Section 2. Inter-American Court of Human Rights

Article 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.