

**T**HE DECLARATION OF CHAPULTEPEC came into being at the Inter American Press Association's Hemisphere Conference on Free Speech held at Chapultepec Castle, in Mexico City, in 1994, which brought together political leaders, writers, academics, constitutional lawyers, editors and private citizens from throughout the Americas to draft a document containing the 10 fundamental principles necessary for a free press to perform its essential role in a democracy.

The Declaration of Chapultepec is based on the essential precept that no law or act of government may limit freedom of expression or of the press, whatever the medium of communication.

The Declaration has been signed by the principal heads of state of the countries of the Western Hemisphere. It represents a commitment to the principle that a free press is necessary in order for societies to resolve their conflicts, promote well being and protect their freedom.

In August 1998, experts in inter-American law, journalists, editors and private citizens from all parts of the Americas met in San José, Costa Rica, to reaffirm the 10 principles and interpret the spirit of the Declaration of Chapultepec. As a result, the "Contributions to the Ten Principles of the Declaration of Chapultepec" were written.

The Principles and the Contributions frame and define in all its aspects a freedom that is the origin, guarantor and custodian of all human rights. It is the essential foundation of democracy and at the same time the best defense against any abuse of authority.

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# PREAMBLE

**On the threshold** of a new millennium, the Americas envision a future rooted in democracy. A political opening has taken hold. Citizens have a heightened awareness of their rights. More than at any time in our history regular elections, governments, parliaments, political parties, labor unions, associations and social groups of every kind reflect the hopes of our people.

**In this environment** of democratization, several developments engender optimism but also suggest prudence. Institutional crises, inequalities, backwardness, unresolvable frustrations, the search for easy solutions, failure to grasp the nature of democracy and special interest groups constantly threaten the advancements made. They also represent potential hurdles to further progress.

**That is why** we who share this hemisphere, from Alaska to Tierra del Fuego, must consolidate the prevailing public freedoms and human rights.

**Democratic rule** must be embodied in modern institutions that represent and respect the citizenry; it must also guide daily life. Democracy and freedom, inseparably paired, will flourish with strength and stability only if they take root in the men and women of our continent.

**Without democracy and freedom**, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

**Freedom must not be restricted** in the quest for any other goal. It stands alone, yet has multiple expressions; it belongs to citizens, not to governments.

**Because we share** this conviction, because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: Freedom of expression and of the press, whatever the medium of communication. The exercise of democracy can neither exist nor be reproduced without these.

**We, the signatories** of this declaration, represent different backgrounds and dreams. We take pride in the plurality and diversity of our cultures, considering ourselves fortunate that they merge into the one element that nurtures their growth and creativity: Freedom of expression, the driving force and basis of mankind's fundamental rights.

**A free society** can thrive only through free expression and the exchange of ideas, the search for and the dissemination of information, the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast. Only by exercising these principles will it be possible to guarantee individuals and groups their right to receive impartial and timely information. Only through open discussion and unfettered information will it be possible to find answers to the great collective problems, to reach consensus, to have development benefit all sectors, to practice social justice and to advance the quest for equality. We therefore vehemently reject assertions which would define freedom and progress, freedom and order, freedom and stability, freedom and justice, freedom and the ability to govern as mutually exclusive values.

**Without freedom** there can be no true order, stability and justice. And without freedom of expression there can be no freedom. Freedom of expression and the seeking, dissemination and collection of information can be exercised only if freedom of the press exists.

**We know that** not every statement and item of information can find its way into the media. We know that the existence of press freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favors an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

**Without an independent media**, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

**Wherever the media** can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.



**After a period** when attempts were made to legitimize government control over news outlets, it is gratifying to be able to work together to defend freedom. Many men and women worldwide join us in this task. But opposition remains widespread. Our continents are no exception. There are still countries whose despotic governments abjure every freedom, particularly those freedoms related to expression. Criminals, terrorists and drug traffickers still threaten, attack and murder journalists.

**But that is not the only way** to harm a free press and free expression. The temptation to control and regulate has led to decisions that limit the independent action of the media, of journalists and of citizens who wish to seek and disseminate information and opinions.

**Politicians who avow their faith** in democracy are often intolerant of public criticism. Various social sectors assign to the press nonexistent flaws. Judges with limited vision order journalists to reveal sources that should remain in confidence. Overzealous officials deny citizens access to public information. Even the constitutions of some democratic countries contain elements of press restriction.

**While defending a free press** and rejecting outside interference, we also champion a press that is responsible and involved, a press aware of the obligations that the practice of freedom entails.

## TEN PRINCIPLES

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.

6. The media and journalists should neither be discriminated against nor favored because of what they write or say.
7. Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.
9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.
10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

## CONTRIBUTIONS

### CONTRIBUTION TO PRINCIPLE ONE

It is an essential value in human life for individuals to be able to express themselves, seek, disseminate and receive information with complete freedom.

Freedom of speech, freedom of press and the right to information are individual rights, which belong to all: individuals, community and society, the latter viewed as the totality of the individuals. The absence of these freedoms therefore has a dual consequence: it violates an individual right and at the same time it leads to a society and a community without liberty. From this perspective, the violation of freedom of expression and of the press is a violation of democracy, the framework for provision of human rights.

It is inconceivable for a society to be democratic and free if it does not have a press that can act with absolute freedom. The news media are the institutional underpinning of the right to free speech and the right of the public to information, and without the media these rights would inevitably be limited.

As for its origin, freedom of expression and of the press must not be subject to the whim of authorities or of the written law. If freedom of expression and of the press were to be established only in current laws, their content and protection would have a precarious basis. In noting the inalienable character of this right, the action of authorities that deny it or the existence of contradictory legislation amount to violations of a superior juridical order — whether based on concepts in natural law, on international norms and principles enshrined in treaties or declarations or international customary law.



## CONTRIBUTION TO PRINCIPLE TWO

This principle recognizes the right to seek, disseminate and receive information of any kind, air views on any matter and disseminate any and all of them in any medium. The holders of this right are not only those who work as journalists, but everyone.

There can be no free press or free society if journalists in particular and citizens in general find themselves restricted in their seeking timely and complete information. Nor if those in government or the authorities surround their actions with secrecy or seek protection in laws that uphold secrecy as a means of preventing their actions being transparent.

The recognition of this right – to be informed and to form and express opinions – presupposes the recognition of the right to information that every member of society has. It is not a matter of a right of those who actively seek information, but also a right of those who hope to receive it through those divulging the information. There is no justification for imposing upon news media and journalists regulations on how they should do their work or news content.

The American Declaration of Rights and Duties of Man and the Universal Declaration of Human Rights which established that “everyone has the right” was an essential development above all. This premise recognizes the rights of each and every person, regardless of age, sex, race, nationality or belief. At the same time, it rejects restrictions imposed because of territorial limits and gives individuals internationally recognized rights, which they also may claim against their home country’s government, while in the past they were unable to take international action.

Regulation of the press often has been used to restrict or deny these rights. Such restrictive regulation conspires against plurality and sows the seeds of totalitarianism at the same time that it strangles individual creativity that enables progress in civil liberties. Similarly, invoking the color of law to justify restriction, international denunciation and repudiation of dictatorships is made more difficult.

To the traditional restrictions that have been imposed on news media are being added new ones. All these restrictions must be rejected as being an obstacle to the free dissemination of information and opinion.

Social communication no longer knows national borders, it is not subordinated to the state or pressure groups. It is part of the trend toward consolidation of an international society, in a process of increasing deregulation of news media, which excludes any interference that may restrict freedom of expression.

## CONTRIBUTION TO PRINCIPLE THREE

Every person has the right to receive information that will permit him to make judgments about public affairs affecting his welfare or that of the community. This unavoidably forces the authorities to permit free access to information in its possession generated within the public sector. This information ought to be provided in a timely and fair manner, containing complete facts, including necessary supporting documentation, accurate data regarding its sources and any necessary explanations in order to understand the information being provided.

If the information is denied – or inadequately administered – it should be able to be obtained through the presentation of a petition, Habeas Data, writ of relief or another appropriate legal resource. The government official responsible for withholding information should be punished.

Journalists are in special need of this right.

It is indispensable for journalists that the officials in charge of ordering, conserving and administering public information understand that they do not own the information. The information belongs to citizens who, as its owners, have the right to know it. It is necessary to watch for cases in which the bureaucrat unjustly invokes such exceptions as national security, public order, etc., with the objective of limiting information about public affairs.

This third principle also includes guarantees for journalistic access to cover court trials and other legal proceedings, coverage that constitutes a guarantee of full and transparent administration of justice.

This principle, moreover, calls upon authorities not only to adopt the necessary measures, including legislative means, to ensure free access to public information, but moreover to make information available.



Finally, the third principle concludes with a call to public officials, especially judges, not to require journalists to reveal their information sources. This is an essential guarantee for the free practice of the journalistic profession because it allows the source to open himself to the journalist, confident that he will not be persecuted either by the subject of his information or by the justice system.

## CONTRIBUTION TO PRINCIPLE FOUR

Attacks on the practice of journalism and freedom of expression described in Principle Four restrict the rights of all other citizens, for they limit the right to information of those citizens. They are thus open violations of human rights that on occasion manifest themselves in a gross and criminal manner and in subtle and deceitful ways.

The way in which those who take such actions repeatedly escape justice is one more assault to be added to the list of crimes against press freedom and news-gathering. The authorities cannot avoid their responsibility for this impunity. As a result:

- It is reaffirmed that governments have an obligation to guarantee and respect the practice of journalism and freedom of the press, to put an end to the assaults and in every case to encourage the relevant agencies to investigate and punish the guilty.

- Legal action must be taken promptly to punish the guilty harshly, swiftly and surely. The judiciary must act through the lower courts, excluding any participation of military or special tribunals that might end up protecting the criminals.

- The fight against impunity forces the national legislatures to stipulate that there shall be no statute of limitations for crimes against press freedom and news-gathering activities, and to be more cautious in considering granting amnesty or pardon to those guilty of those crimes. Similarly, legislation must be geared toward establishing rules for a more effective legal process and the conviction of those who mastermind and execute these crimes.

- International financial and cooperation organizations must make a commitment in this fight against impunity, making it a condition that

there be full respect for freedom of expression and effective investigation and punishment of those responsible for crimes against news-gathering activities.

- Violations of Principle Four of the Declaration of Chapultepec and the investigation and punishment deriving from it should be included in a special chapter of the report of the Special Rapporteur for Freedom of Expression appointed within the Inter-American system.

- In addition, it is for both the Inter-American Human Rights Commission and the Inter-American Human Rights Court as a matter of priority to take up those cases in this respect that have been brought before them, thus enriching hemisphere case law on freedom of expression and the safety of those who work as journalists.

## CONTRIBUTION TO PRINCIPLE FIVE

The actions that make up violations may have either a public or a private origin. Whatever their origin, however, the state has a responsibility for the actions it initiates or carries out, but also for not adopting the rules and regulations empowering it to prevent and punish violations of freedom of expression and of the press. The United States Supreme Court held that a prior restriction of that nature was "the essence of censorship." According to the justices, the true essence of freedom of the press was the protection against prior restrictions, a philosophy that remains in effect currently. The power that a state has to halt publication – prevent facts from being disseminated or published – is of a highly repressive nature. That power can amount to prior censorship, or a court order not to disseminate or publish a report. Together with the orders that restrict the free movement of journalists and those that gag news sources, these direct restrictions make the existence of a free and active press impossible. Similarly, it is inadmissible for the private sector to exert pressure or prior censorship on the news media and influence their reporting or editorial opinions.

Prior censorship is the best known of the restrictions of free speech and press freedom. It supposes a control of information before it is disseminated and, consequently, the possibility of total or partial veto on the part of the censor. This has been used, and continues being used, by



totalitarian political regimes. As a weapon of restriction of a fundamental right of man, it merits the repudiation anywhere it may appear and whatever the grounds used to justify it.

The express or hidden attacks, often unintentional, on free speech and press freedom may be committed not only by officials with executive functions, but also by legislators in their eagerness to regulate these rights, or by judges, with the aim of protecting other rights equally worthy of protection. And they might even come from persons or organizations that are not connected with the state.

No limitation on the exercise of free speech and press freedom, on the grounds of defending democratic stability, can be allowed, as this stability is not endangered by those who denounce unlawful or immoral activity or incompetence but rather by the corruption, impunity or cover-up engaged in by those in positions of power.

The American Convention on Human Rights only admits responsibilities following the dissemination of information, so long as they are established in law and the regulations required to ensure respect for the rights or reputation of others, or the protection of national security, public order or public health or morals. This is the limit beyond which legislators, and even less judges or public officials, may not go — they may only act under applicable law.

Prior censorship and its subtle applications in the restriction of circulation of the media, arbitrary imposition of distorted reports, restrictions on advertising, creation of obstacles to the independent and unhindered flow of information and the free movement of journalists are all directly opposite to freedom of expression.

The control of information on the part of the state may manifest itself in various ways, including sophisticated ones, such as the hiding of information and the control of the content of opinions or expressions citizens may utter.

The hiding of information can be achieved by classifying the information as confidential or secret, giving censorship a certain air of legitimacy.

Control of the content of opinions can be made through control of correspondence, phone-tapping, placing hidden microphones and tape

recorders, and other procedures utilized by governments to prevent a citizen from knowing he is being watched. These procedures not only interfere with freedom of expression, they also interfere with the exercise of other rights, such as the right to privacy.

It is necessary to add to the term “prior censorship” the phrase “at any time,” as there exists in many Latin American countries within the structure of the state the concept of States of Exception or States of Siege or States of Disturbance (internal or external), which because of their very exceptional character, tend to restrict this principle. It follows from the foregoing that the principle of free speech and press freedom must be safeguarded even under civilian governments, which could resort to these to assume dictatorial powers.

But as serious as prior censorship is the “forced publication of information” as stated in Principle Five of the Declaration of Chapultepec. Prior censorship can prevent journalists or news media from disseminating a report or opinion. Forced publication implies making journalists or news media publish a report or opinion with which they do not agree or they believe should not be published. It is perhaps even more serious to run something they do not believe in or is contrary to their views than to come out with a censored, blank space. The so-called rights of reply, response or rectification are clearly an arbitrary and obligatory form of publication. In free and democratic countries where there is competition and a plurality of media, no citizen remains defenseless over information that may be given about him. There will always be a news outlet that will be prepared — because of its own ethics, to gain credibility or for political or ideological reasons or even through friendship or acquaintance — to publish his version. And if the justice system works as it should in any democratic country, this will be the best recourse to check and punish any unlawful behavior by the press, without restricting the rights and freedoms of journalists and the media to express themselves freely and unreservedly, make their own professional judgments, observe standards of ethics and even be protected, should the case arise, in their right of ownership.

Self-censorship, for which the media and journalists themselves share a responsibility, is another form of attacking free speech, press freedom and especially the people’s right to be informed. It can be the product of violence, an arbitrary act, the lack of legal guarantees, all of which are



common in authoritarian and totalitarian regimes. It is also something achieved through their violent actions against the media and journalists those who murder journalists with impunity and assault the news media.

There is another kind of behavior with the aim of causing journalists and media to censor themselves, and sadly it can be found in democratic countries as well. It is financial pressure, the arbitrary use of public funds to reward or punish the media according to their editorial views or reporting.

A third aspect, in which certainly the media and journalists play a larger role, is the acceptance of self-censorship because of financial interests or for partisan, political, ideological or religious reasons.

## CONTRIBUTION TO PRINCIPLE SIX

On the basis of this principle, the following definitions apply:

1. discrimination is any manner of making access to information difficult or denying such access, when it is the duty of the state and its agents to provide it;
2. favor is that which harms freedom of expression. It is the granting of any privilege to news media or journalists in order to stimulate praise, create bias in reporting, express ideological commitment or other conduct which damages the reliability and credibility of information.

## CONTRIBUTION TO PRINCIPLE SEVEN

This principle responds to legal and administrative measures that at times are used by governments to favor or harm media or journalists. This directly or indirectly restricts the right to free speech and press freedom.

These actions take different forms, such as the application of discriminatory and abusive taxes and duties, placement of official advertising not based on the criteria of efficiency and fairness, lack of transparency in the award of radio and television frequencies, and the absence of controls to prevent the operation of illegal broadcast stations.

In short, the aim of Principle Seven is to prevent authorities from acting arbitrarily in their relations with the media.

The existence of trustworthy and independent legal systems and swift justice are a fundamental guarantee that any legislative or administrative action which assails free speech and press freedom will be corrected.

## CONTRIBUTION TO PRINCIPLE EIGHT

This principle of the Chapultepec Declaration is a result of a struggle begun by the English poet John Milton, in his book "Aeropagitica," in which he clamored for the freedom to write and publish without any official license.

The Inter-American Court of Human Rights, in its advisory opinion OC-5/85, resolved to consider the contents of articles 13 and 29 of the American Convention on Human Rights, and ruled that the duality in information must remain intact: every citizen has the right to inform and every citizen at the same time also enjoys the special privilege of receiving information. This should be accomplished without any official agency or private entity discriminating among the informers or journalists on the basis of whether or not they belong to an association of public or private nature. The danger lies where the enemies of the freedom of the press, principally the governing class or the pressure groups, attempt to manipulate or intimidate the journalists by abusing the compulsory association requirement, that is, by establishing, suspending or doing away with it in order to favor or punish the journalists.

Article 20 of the United Nations Universal Declaration of Human Rights of 1948 declares that, "No one may be compelled to belong to an association." There is, therefore, a right of persons to associate or not — rather than an obligation. This has a particular connotation regarding obligatory membership of journalist associations, as this requirement, administered as it is by governments or professional association leadership, is the source of discrimination or political control in the field of communication.

The Inter-American Court of Human Rights ruled on November 13, 1985, in a unanimous decision of the six justices, that "the compulsory licensing of journalists is incompatible with Article 13 of the American



Convention on Human Rights if it denies any person access to the full use of the news media as a means of expressing themselves or imparting information.”

“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.”

This principle provides the basis to one of the highest standards of jurisprudence and doctrinal trends of thought, as it establishes with unquestionable foundation the incompatibility of compulsory licensing or mandatory membership in associations or guilds with the right of each person to seek, receive, and impart information and ideas through any medium. This is accompanied by the right of society to receive information without obstacles. In the same manner, the right to freedom of association – incorporated for centuries into western civilization – is a principle that ought to remain intact.

Academic efforts and the attainment of university degrees to improve the practice of journalism ought to be supported, insofar as these efforts do not impose restrictions on freedom of expression, incompatible with the American Convention on Human Rights.

This principle within the widest and most ecumenical concept of freedom and resolution of conflicts in society enshrines the voluntary nature of association established in Principle Eight regarding the membership of an association, labor union or professional guild and of the media as businesses in chambers of commerce. Thus, we are faced with the defense and recognition of the most absolute freedom and independence.

In recent history there has been vast case law against obligatory membership of associations or mandatory licensing, stemming from the advisory opinion of the Inter-American Court of Human Rights. Among these, noteworthy is decision No. 2313-95 of the Constitutional Chamber of the Supreme Court of Costa Rica of May 12, 1995, which declared Law 4420 requiring licensing of journalists to be unconstitutional. Elsewhere, the Constitutional Court in Colombia on March 18, 1998, repealed and quashed enabling legislation for Law 51 of 1975, which regulated the practice of journalism. Previously, in 1989, the

Dominican Republic Supreme Court had declared as unconstitutional the requirement that journalists must belong to the local journalist association, or “colegio,” as stipulated in Law 148 creating the Dominican Journalists Association. Some time earlier, in 1938, the United States Supreme Court (in *Lovell v. City of Griffin*) had ruled that, “Whatever the motive which induced [ordinance’s] adoption, its character is such that it strikes at the very foundation of freedom of the press by subjecting it to license and censorship.”

## CONTRIBUTION TO PRINCIPLE NINE

Freedom of expression and of the press is taken to be, in this day and age, as the exercise of freedom of expression affecting the public and through any technical medium of social communication such as the graphics media, radio, cinema, television, telephone call-in shows, communication by satellite transmission, computer networks and all other technical means of communication. But no one is responsible for its performance except the press itself. To impose any kind of official demands for measuring what the press does is incompatible with freedom.

Even when the idea is implicit in “commitment to truth,” it is worth noting that in the same way a clear distinction is made between news items and advertisements, there should be a similar distinction made between news and the opinion of the person writing it.

The best press law is the one that is never passed because there is no better regulator than an informed public.

## CONTRIBUTION TO PRINCIPLE TEN

When Principle Ten specifies that no news medium nor journalist may be punished for publishing the truth, truth should be understood to be an ideal to be achieved, a goal to be pursued. The human condition also allows for a limited truth, which is not necessarily the truth of everyone else and in no way the sole and whole truth.

The free dissemination of this and other truths must be preserved, with



all their peculiarities and limitations, and fundamentally the imposition of an official truth must never be accepted.

Truth emerges from the marketplace of ideas: even false ideas and information contribute to the search for truth.

In the exercise of freedom of the press, an abuse only exists if the information is disseminated with malice and full awareness of its falsehood. Neither presumptive liability nor the presumption of harm is sufficient. In case of doubt, the solution must be favorable to freedom of the press through application of the democratic principle: *in dubio pro libertate*.

On this matter, it is necessary to clarify that press crimes do not exist as such, rather there are crimes committed through the press. The press is one of the means through which an illegal act exercising the right to expression can be committed; and the consequent liability should fall on the author of the expression and not on the journalist or communications outlet reporting it, when journalists or the media are republishing the information without making it their own.

Specifically, the journalist or the communication medium bears no liability when:

- they limit themselves to republishing remarks by a third party without presenting the remarks as their own;
- the defamatory matter is not published as a statement of fact;
- the defamatory matter is not directed in particular at the alleged offended party; and
- opinions are given about public officials, public figures or private individuals involved in matters of institutional or public interest.

Legal liability for the journalist or media for publishing defamatory matter is subject to the following proof by the plaintiff:

- the defamatory matter in the concrete case, which cannot be presumed;
- actual damage suffered, which cannot be presumed;
- malice of the journalist or communication outlet;

- the actual knowledge of the falsehood of the information if the plaintiff is accused of an illegal act;
- in criminal libel, the proof of malice is necessary; and
- in a civil lawsuit, in regards to moral damages, the award shall not exceed reasonable bounds.

The plaintiff must clearly prove the following when the defamatory matter published refers to public officials, public figures or private individuals involved in matters of public interest:

- the defamatory matter in the concrete case, which cannot be presumed;
- actual damages suffered, which cannot be presumed;
- the falsehood of the facts published and actual knowledge of its falsehood; and
- direct malice by the journalist or communications outlet.

Whether the media outlet or the journalist was acting in the interest of the public must be considered in all cases.

These principles also apply to those countries whose legislations establish the right to rectification or reply as forced publication of information. But even in those cases, those rights should only be admitted when dealing with information published as statements of fact and not of opinion.



# APPENDIX

## UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## EUROPEAN CONVENTION ON HUMAN RIGHTS (1950)

### Article 10

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

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



## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

### Article 19

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

### Article 20

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

## AMERICAN CONVENTION ON HUMAN RIGHTS (1969)

### 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 communication outlets, 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.