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**Statement by the Special Rapporteur on the promotion and protection of the
right to freedom of opinion and expression, Frank La Rue**

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Mr. President, Excellencies, Ladies and Gentlemen,

My annual report this year explores key trends and challenges of the right of all individuals to exercise their right to freedom of opinion and expression through the Internet. In preparation for the report, I organized a series of regional consultations over the year, with the support of local organizations, to bring together experts and human rights defenders to better understand their experience, needs and priorities in different countries and regions. Based on information gathered through these consultations, the report addresses two dimensions of the right to freedom of expression and the Internet: (1) access to online *content*; and (2) access to Internet *connection* and the necessary infrastructure.

Before addressing these two dimensions, let me begin by briefly outlining the role of the Internet as a unique communications tool which has vastly expanded the ability of individuals to seek, receive and impart information and ideas of all kinds, as enshrined in article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

In this regard, I would like to highlight that by explicitly providing that everyone has the right to express him or herself through *any* media of his or her choice, article 19 of the UDHR and the ICCPR were drafted with foresight to include and accommodate future technological developments through which individuals can exercise their right to freedom of expression. Hence, the framework of international human rights law remains relevant today and equally applicable to new communication technologies such as the Internet.

Mr. President,

Never in the history of humankind have individuals been so interconnected across the globe. While the Internet has been in existence for several decades, recent technological developments and innovations, including social networking platforms, have greatly expanded the possibility of individuals to share information and ideas instantly and inexpensively. The Internet plays a particularly valuable role in countries where there is no independent media. At the same time, the Internet also enables producers of traditional media to greatly expand their audiences at nominal cost. In addition, unlike any other medium of communication, such as radio, television and printed publications based on one-way transmission of information, the Internet represents a significant leap forward as an interactive medium.

Due to such unique features, I believe that the Internet is one of the most powerful tools of the 21st century to increase transparency in the conduct of the powerful, to access information from diverse sources, and to facilitate active citizen participation in building democratic societies. This has been exemplified recently by the use of the Internet to organize and mobilize peaceful assemblies and demonstrations around the world, particularly in the Middle East and North Africa. However, I would like to stress that they were people's revolutions using the Internet, rather than "Internet revolutions" per se.

At the same time, I am deeply concerned that the potential of the Internet as a catalyst for change has generated fear among Governments and the powerful, leading to the adoption of increasingly sophisticated technologies and tactics to censor online content, monitor and

identify individuals who express critical opinions, frequently leading to them being arbitrarily detained.

Mr. President,

The extent to which people can exercise their right to freedom of expression is an indicator of the current state of human rights in any country. The right of all individuals to express their opinions is the fundamental basis of a democratic society that respects human rights.

I would thus like to stress that there should be as little restriction as possible to the flow of information via the Internet, except in a few, very exceptional, and limited circumstances prescribed by international human rights law. The issue of restrictions to the right to freedom of expression has been examined in my report to the Council last year, but in essence, any restriction must be set out in clearly articulated and unambiguous law, and proven as being necessary and the least restrictive means possible to protect the rights of others. In addition, any legislation restricting the right to freedom of expression must be applied by an independent body, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.

Despite these criteria established under international human rights law, many States continue to unduly censor and criminalize online expression. I have selected six such trends in this year's report. I will not be able to speak at length on all these issues, but on the theme of restriction of online content, I would like to focus on four issues, namely: (1) arbitrary blocking or filtering of content; (2) criminalization of legitimate expression; (3) intermediary liability; and (4) the right to privacy and data protection. I will then turn to the issue of access to Internet connection.

1. Arbitrary blocking or filtering of content

Governments have adopted various blocking or filtering technologies to regulate and censor information, which are often hidden from the public. For example, several countries continue to block access to YouTube. I am also deeply concerned by the emerging trend of "just-in-time" blocking to prevent users from accessing or disseminating information at key political moments, such as elections, times of social unrest, or anniversaries of politically or historically significant events.

In the majority of cases, the use of blocking or filtering technologies constitutes a violation of States' obligation to guarantee the right to freedom of expression, as the criteria on restrictions are not met. Firstly, the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively. Secondly, blocking is not justified as being necessary to pursue one of the legitimate aims under international human rights law. Blocking lists are also often kept secret, which makes it difficult to assess whether content is being restricted for a legitimate purpose. Thirdly, blocking measures often constitute an unnecessary or disproportionate means to achieve the intended aim, as they are often not sufficiently targeted and render a wide range of content inaccessible. Lastly, content is frequently blocked without the intervention of or possibility for review by a judicial or independent body.

I would like to highlight that child pornography is one clear exception where blocking measures can be justified. However, to prevent any “mission creep” or blocking of legitimate content, the law must be sufficiently precise, with effective oversight and review by an independent tribunal or regulatory body. I note, however, that States frequently rely heavily on blocking measures, rather than focusing their efforts on investigating and prosecuting those responsible for the production and dissemination of child pornography. I thus recommend that Governments take holistic measures to combat the root problems that give rise to child pornography in the first place.

I also recommend that Governments disclose lists of blocked websites and full details regarding the necessity and justification for blocking each website. Additionally, any determination on what content should be blocked must be undertaken by a judicial authority or body that is independent of any political, commercial or other unwarranted influences.

2. Criminalization of legitimate expression

One of the gravest forms of restriction to the right to freedom of expression is the existence and use of criminal law to sanction legitimate expression. The threat of imprisonment not only creates a broader chilling effect on the right, but also often leads to other human rights violations, such as torture and other forms of ill treatment during detention.

I remain deeply concerned that legitimate expression continues to be criminalized in many States, often justified as being necessary to protect national security or to counter terrorism. According to Reporters without Borders, 109 bloggers were imprisoned in 2010, with seventy-two individuals imprisoned in the China alone, followed by 17 in Viet Nam, and 13 in Iran. I stress that no one should be imprisoned for peacefully expressing his or her views. I would also like to emphasize that only in exceptional cases can a nation’s security be threatened by a person’s exercise of the right to freedom of expression. Such a threat would require, at the very least, concrete evidence that: (1) the expression is intended to incite imminent violence; (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. In no instance may the exercise of the right to freedom of expression be punished on the mere ground that it might, possibly, jeopardize national security.

Moreover, I would like to reiterate that defamation should be de-criminalized in all countries, and never be used to protect public officials from criticism.

3. Imposition of intermediary liability

One of the unique features of the Internet is that the way in which information is transmitted largely depends on intermediaries, or private corporations that provide services and platforms to facilitate online communication. The range of services offered by intermediaries has flourished over the past decade, mainly due to the legal protection that they have enjoyed from liability for third-party content that Internet users send via their services.

However, I am concerned that in recent years, such protection has been eroding, with many States adopting laws which impose liability upon intermediaries if they do not filter, remove or block content generated by users which is deemed illegal. Holding intermediaries liable for

third-party content severely undermines the enjoyment of the right to freedom of opinion and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.

I would like to emphasize that censorship measures should never be delegated to a private entity, and that no one should be held liable for content on the Internet of which they are not the author. Instead, any request submitted to intermediaries to prevent access to certain content, or to disclose private information for strictly limited purposes such as administration of criminal justice, should be done through an order issued by a court or a competent body which is independent of any political, commercial or other unwarranted influences.

At the same time, I also urge intermediaries, which have gained unprecedented influence over individuals' right to freedom of expression, to refrain from assisting or being complicit in human rights violations. In this regard, I welcome voluntary initiatives to enhance the responsibility of intermediaries to respect human rights, such as the Global Network Initiative, and I would encourage more corporations to join. More generally, I urge all corporations to undertake a human rights impact assessment of their decisions, including before entering a foreign market, and to ensure transparency and accountability when confronted with situations that may undermine the rights to freedom of expression and privacy. They should also establish clear and unambiguous terms of service in line with international human rights principles, and to continuously review the impact of their services and technologies on human rights, as well as on the potential pitfalls when they are misused.

4. Inadequate protection of the right to privacy and data protection

Throughout history, people's willingness to engage in debate on controversial subjects in the public sphere has always been linked to possibilities of doing so anonymously. While the Internet allows a certain degree of anonymity, it also presents new tools and mechanisms through which Governments and private actors can monitor and collect information about individuals' personal information, communication, and activities on the Internet. For example, States have used popular social networking sites to identify and to track the activities of human rights defenders and opposition members, and in some cases have collected usernames and passwords to access private communications of Facebook users.

I stress the obligation of States to adopt effective privacy and data protection laws in accordance with article 17 of the ICCPR. This includes ensuring that individuals can communicate anonymously online, and all forms of online communication and personal data are protected from interference or inspection by State organs or by third parties.

Mr. President,

The Internet has become a key instrument for democratic participation and the enjoyment of a range of human rights. Hence, I believe that ensuring universal access to the Internet should be a priority for all States. In my report, I highlight several initiatives that have been taken at national and international levels in an attempt to bridge the digital divide. For example, the "One Laptop Per Child" project, which distributes affordable laptops that are specifically customized for the learning environment of children, has reached 2.4 million children and teachers worldwide since 2006. In Uruguay, 480,000 children now have access to these laptops,

and in Rwanda, over 56,000 laptops have been distributed, with plans for the figure to reach 100,000 by June 2011. However, much remains to be done, and I would like to underscore that each State should develop a concrete and effective policy, in consultation with the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of the population, with special attention to the poor. Where Internet access is present, I encourage States to support initiatives to ensure that online information can be accessed in a meaningful way by all sectors of the population, including persons with disabilities and persons belonging to linguistic minorities. I intend to elaborate further on the issue of Internet access in my report to the General Assembly.

Mr. President,

With regard to country visits, I have undertaken a visit to the Republic of Korea, Mexico, and most recently to Algeria.

In the second addendum to my report, I have highlighted eight key issues in the Republic of Korea, following my mission in May last year. I would like to thank the Government once again for inviting me to undertake this mission.

I commend the progress made over the decades in the Republic of Korea as a vibrant democracy, which also has one of the highest broadband Internet connectivity in the world.

However, I was surprised to find out that breaches of restricted types of expression in the Republic of Korea carry prison sentences. This includes defamation, which carries a prison sentence of up to seven years; distributing materials supporting or opposing a political party or candidate within six months of elections, which is punishable by up to two years of imprisonment; failure of online service providers to comply with the request to take down material deemed to be illegal, which is punishable by up to two years of imprisonment; and anyone who "praises, incites or propagates the activities of an anti-Government organization" can face imprisonment for up to seven years, as stipulated in the National Security Act.

While I recognize the important role played by the judiciary in upholding the right to freedom of expression, the mere existence of such laws and the threat of imprisonment encourages self-censorship. I therefore recommend the Government to decriminalize offences related to the right to freedom of expression, and in particular remove defamation as a criminal offence from the Criminal Act, as it is already prohibited under the Civil Act. I also urge the Government to repeal article 7 of the National Security Act, which has a long history of seriously infringing on human rights and inhibits discussion on matters of public interest. More generally, I encourage the Government to promote a culture of tolerance regarding criticism, which is essential in any democratic society.

During my mission, I met with several individuals who were facing lawsuits on various charges for expressing an opinion or disseminating information that were critical of the Government or powerful corporations. In this regard, I note the general trend that the space for freedom of expression in the Republic of Korea has been diminishing since the candlelight demonstrations in May 2008.

However, since my visit one year ago, I am pleased that there have been positive developments. For example, I noted in my end-of-mission statement that article 47(1) of the Framework Act, which stipulated that anyone who publicly makes “a false communication” via the Internet to harm public interest is punishable by imprisonment of up to five years, does not meet international standards on the right to freedom of expression. In December 2010, the Constitutional Court ruled that this provision is unconstitutional, and is now void. As a result, the case of a blogger known as “Minerva”, who was charged for violating article 47 of the Framework Act after he posted articles on the Internet predicting the financial crisis and criticizing the Government’s economic policy, has been dropped. I had also expressed concerns about the lack of identifiable information on the uniform of the riot police, which has hindered investigations of excessive use of force against protesters. However, I have been informed by the Government that name badges are now attached to all police uniforms, which I commend.

I hope that the Government will continue to implement other recommendations contained in my report, including repealing the banning of books considered to be “seditious” within military units and barracks, and fully guaranteeing the right of freedom of expression of public school teachers, independence and plurality of the media, and the independence of the National Human Rights Commission of Korea.

Señor Presidente,

La adición 3 a mi informe se refiere a la visita que realicé en misión oficial a México en agosto del año pasado, conjuntamente con la Relatora Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos (CIDH), Sra. Catalina Botero. Se trata de la primera visita conjunta de dos Relatores de Libertad de Expresión en misión oficial realizada con mi colega del Sistema Interamericano. Permítame expresar mi reconocimiento por la apertura del Estado mexicano al habernos invitado a visitar el país y destacar su cooperación antes, durante y con posterioridad a la visita, la misma que incluyó, además del Distrito Federal, los Estados de Chihuahua; Guerrero; Sinaloa y el Estado de México.

En mi informe me refiero a la actual situación de violencia e impunidad, ejemplificada por el hecho que muy pocos de los 66 casos de asesinato de periodistas ocurridos entre los años 2000 y 2010 hayan sido esclarecidos. La ausencia de investigaciones concluidas en la gran mayoría de los casos impide determinar con exactitud las causas y los responsables de estos crímenes. Durante el mismo período, 12 periodistas fueron desaparecidos. Menciono también los atentados recientes contra los medios de comunicación y el hecho que, en algunas zonas del país, los periodistas se encuentran sujetos a intimidación y autocensura.

Las agresiones contra periodistas y comunicadores sociales tienen efectos multiplicadores que impactan a los demás miembros de la profesión; generan autocensura y zozobra; privan a la sociedad de su derecho fundamental a la información y desalientan la denuncia, todo lo cual incrementa la impunidad. Por tal razón estimo que el mecanismo de protección para periodistas recientemente establecido debe ser realmente efectivo.

El gasto público en publicidad oficial es alto y tiende a incrementarse. Existen casos en que la publicidad oficial ha sido utilizada como mecanismo para presionar y premiar, castigar y privilegiar a los medios de comunicación en función de sus líneas informativas. Creo que

deberían establecerse criterios objetivos, claros, transparentes y no discriminatorios en la asignación de publicidad oficial para todos los niveles y decisiones de gobierno.

Señor Presidente,

Como elementos positivos quiero destacar la despenalización de los delitos de calumnia, difamación e injurias en 2007 y el hecho que 18 entidades federativas han ya despenalizado estas conductas. Sin embargo, la Ley sobre Delitos de Imprenta de 1917, que prevé penas privativas de la libertad, sigue vigente. Otro elemento positivo son los avances registrados en los últimos años en materia de acceso a la información, que han convertido al país en referente de la materia.

Por último, considero que debe establecerse un marco jurídico claro, preestablecido, preciso y razonable que reconozca las características especiales de la radiodifusión comunitaria y contenga procedimientos sencillos y accesibles para la obtención de frecuencias especialmente para pueblos indígenas; y crear un órgano público independiente del gobierno que regule la radio y la televisión.

Mr. President,

Most recently, I undertook a visit to Algeria from 10 to 17 April 2011. I would like to thank the Government for voluntarily extending me an invitation, which I consider as good practice, as it demonstrates a Government's openness to external advice and recommendations. Although the report of my mission will be presented to the Council next year, I would like to share with you some of my preliminary findings.¹

The right to freedom of opinion and expression is guaranteed in the constitution of Algeria, but several legal restrictions persist. This includes defamation as a criminal offence, which I recommended the Government to decriminalize as a matter of priority. In this context, I strongly welcome the announcement by the President to decriminalize press offence, which, I was recently informed, is to materialise through the introduction of a related draft Bill by the Government of Algeria.

I also welcome the fact that today, journalists in Algeria no longer fear for their lives while performing their work. Yet, as described in my press statement, journalists still face a number of challenges and legal intimidation that impede their important work.

The recent lifting of the state of emergency, and a package of constitutional reforms proposed by the President, are also positive signs. However, I caution that the existing legal framework which governs the right to freedom of peaceful assembly is still restrictive and infringes upon the right to freedom of expression. These two freedoms are complementary and should therefore be fully guaranteed by the State.

¹ The full press statement is available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10946&LangID=E>

People from all walks of life in Algeria are now demanding their rights, including the right to freedom of opinion and expression. I stand ready to continue my cooperation with the Government to assist in responding to its people's expectations.

Mr. President,

I would also like to thank the Government of Hungary for its ongoing cooperation and dialogue regarding the media legislation which was adopted in December last year. As part of our continuing dialogue, I have shared my analysis of the legislation with the Government, which can be found in the first addendum to this report, visited Hungary from 3 to 5 April this year to engage with members of the judiciary, parliament and the executive, and I was in Budapest yesterday to participate in a roundtable organized by the Parliamentary Committee on Human Rights with civil society groups. I welcome such efforts, and hope that the Government will consider my recommendation to hold broad public consultations on the legislation, which I am willing to accompany, and to implement recommendations made by the experts of European human rights bodies and through the Universal Periodic Review. I would also like to reiterate that I stand ready to assist the Government to bring the media legislation into conformity with international standards on the right to freedom of opinion and expression.

Finally, I hope that my requests to visit the Bolivarian Republic of Venezuela, Italy, the Islamic Republic of Iran, Sri Lanka, Tunisia, and Uganda, will be responded to positively by the Governments concerned.

Thank you very much for your attention.

