

***UN Special Rapporteur on the Promotion and Protection
the Right to Freedom of Opinion and Expression***

***Inter-American Commission on Human Rights
Special Rapporteur for Freedom of Expression***

JOINT STATEMENT ON WIKILEAKS

December 21, 2010 – In light of ongoing developments related to the release of diplomatic cables by the organization Wikileaks, and the publication of information contained in those cables by mainstream news organizations, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Inter-American Commission on Human Rights (IACHR) Special Rapporteur for Freedom of Expression see fit to recall a number of international legal principles. The rapporteurs call upon States and other relevant actors to keep these principles in mind when responding to the aforementioned developments.

1. The right to access information held by public authorities is a fundamental human right subject to a strict regime of exceptions. The right to access to information protects the right of every person to access public information and to know what governments are doing on their behalf. It is a right that has received particular attention from the international community, given its importance to the consolidation, functioning and preservation of democratic regimes. Without the protection of this right, it is impossible for citizens to know the truth, demand accountability and fully exercise their right to political participation. National authorities should take active steps to ensure the principle of maximum transparency, address the culture of secrecy that still prevails in many countries and increase the amount of information subject to routine disclosure.

2. At the same time, the right of access to information should be subject to a narrowly tailored system of exceptions to protect overriding public and private interests such as national security and the rights and security of other persons. Secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret. Exceptions to access to information on national security or other grounds should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information. In accordance with international standards, information regarding human rights violations should not be considered secret or classified.

3. Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, government "whistleblowers" releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.

4. Direct or indirect government interference in or pressure exerted upon any expression or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law when it is aimed at influencing content. Such illegitimate interference includes politically motivated legal cases brought against journalists and independent media, and blocking of websites and web domains on political grounds. Calls by public officials for illegitimate retributive action are not acceptable.

5. Filtering systems which are not end-user controlled – whether imposed by a government or commercial service provider – are a form of prior censorship and cannot be justified. Corporations that provide Internet services should make an effort to ensure that they respect the rights of their clients to use the Internet without arbitrary interference.

6. Self-regulatory mechanisms for journalists have played an important role in fostering greater awareness about how to report on and address difficult and controversial subjects. Special journalistic responsibility is called for when reporting information from confidential sources that may affect valuable interests such as fundamental rights or the security of other persons. Ethical codes for journalists should therefore provide for an evaluation of the public interest in obtaining such information. Such codes can also provide useful guidance for new forms of communication and for new media organizations, which should likewise voluntarily adopt ethical best practices to ensure that the information made available is accurate, fairly presented and does not cause substantial harm to legally protected interests such as human rights.

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