

**ANNUAL REPORT OF THE SPECIAL RAPPORTEUR
FOR FREEDOM OF EXPRESSION 2002**

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INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression is an office established as part of the Inter-American Commission on Human Rights in 1997, although the first Special Rapporteur, Santiago Canton, was appointed the following year. The first change in Rapporteurs occurred in 2002, when the Second Special Rapporteur took office in May. The significance of these dates is that, although this is a relatively new office, it became a benchmark for the protection of freedom of expression in the hemisphere under the leadership of the first Rapporteur.

2. The four reports issued by the Office of the Rapporteur since its creation, the organization of a good team of co-workers, the assistance in IACHR activities in the area of freedom of expression, the constant inquiries and communications received by the Rapporteur from various sectors of society and some States, and the emphasis on including several topics on the agenda to strengthen this right are only a few visible examples of the hard work carried out prior to the time that the new Rapporteur took office.

3. The institutional history built by the Office of the Special Rapporteur in some ways facilitates the continuation of the work, unlike the time when the Office was created in 1998. This Office is now known throughout the hemisphere as the entity in the Organization of American States in charge of promoting and monitoring the observance of the right to freedom of expression. As a result, the expectations regarding the Office of the Special Rapporteur have grown significantly.

4. This increase in expectations gives rise to a new challenge: reinforcing the Office to meet a large part of them. The Office of the Rapporteur was established as a financially independent unit; hence, most of its work is financed with voluntary contributions or donations. Since the beginning of his administration, the Special Rapporteur has spoken with various governments to emphasize the fact that along with the institutional and political support given to the Office since its inception, financial support needs to be a priority, because it is essential to operate and carry out the activities required under its mandate.

5. In this Report, the Rapporteurship would like to thank the States that make voluntary contributions to the office. Among them, contributing for the first time, are Brazil, Mexico and Peru. They have joined the list of previous donors, the United States and Argentina. The Rapporteurship would also like to thank the Swedish International Development Cooperation Agency (SIDA) for its support and confidence in our performance as well as for its interest in the activities of the Office of the Special Rapporteur, as is reflected by the new financial cooperation agreement both institutions signed this year.

6. Even though there are many projects under way that will enable the Office to increase its activities in the future, the Rapporteur would like to urge the other States in the region to follow the lead taken by the above-mentioned States, in compliance with the commitments made at hemispheric summits. It is important to emphasize that the Plan of Action approved by Heads of State and Government at the Third Summit held in Quebec in April 2001, states that in order to strengthen democracy, create prosperity, and develop human potential, the States *“will support the work of the Inter-American Human Rights System in the*

area of freedom of expression, through the IACHR's Special Rapporteur for Freedom of Expression."

7. Freedom of expression is one of the most highly valued rights in a democracy. While it is true that there are differences of opinion as to its definition and content, the need for this right to be enforced is widely acknowledged. Some hold that freedom of expression and democracy are not connected in an instrumental way, or in other words, that the former is not an instrument of the latter, but rather that human dignity, protected by freedom of expression, is a key component of a true democracy.

8. Much of the disagreement on the content of freedom of expression actually has to do with divergent views about the content of democracy. Democracy is usually defined as government by the people, as opposed to government by certain families, classes, castes, or tyrants in general. However, the concept of "government by the people" can be interpreted, at least, in two very different ways.

9. On one hand, according to a first school of thought, "government by the people" means government by the majority of the people, what is known as the "majoritarian" concept of democracy. There are, in turn, different versions of this majoritarian concept: the populist version, in which the government formulates policies that are approved by a large number of individuals at a given time; and a more sophisticated version, according to which approval by a large number of people does not matter unless there is appropriate information on public affairs and an adequate debate thereon.

10. On the other hand, the concept of democracy can be viewed from another perspective: a "partnership" by which "government by the people" means government by all the people, acting together as partners in a collective self-government enterprise. This idea is more abstract than the "majoritarian" concept, but its advantage lies in that it sets the foundations for the theory that all individuals must play an equal role in building this collective enterprise. According to this version, equality among citizens means that there shall not exist particular groups at a disadvantage in their efforts to gain attention or express their views.

11. Unfortunately, in this hemisphere not everybody has the opportunity to participate in this collective enterprise. High poverty rates in most of the region make it impossible for those whose basic needs are unmet to participate in this joint enterprise. "It is believably said that if a man is so poor that he cannot afford something for which there is no legal impediment, such as a loaf of bread, a trip around the world, or a hearing in court, then that man has no more freedom to obtain it than he would if the law were to prevent it."¹

12. However, one could wrongly assume that the urgent, poverty-generating economic needs prevalent in many regions of the hemisphere should first be met, before working to expand political freedoms, or, as in the case in point, to strengthen and consolidate freedom of expression. Amartya Sen gives at least three arguments explaining the flaws of this line of reasoning.² The Nobel Prize winner in Economics holds that the supremacy of basic freedoms responds to: a) its direct importance to human life associated with basic capacities, such as

¹ Isaiah Berlin, "Four Essays on Freedom," Alianza Editorial, Madrid, 1998, p. 221.

² See "Development as Freedom," Anchor Books, New York, 1999, p. 148.

social and political participation; b) its instrumental role in enabling individuals to express their claims and call political attention to them, including their economic needs; and c) its constructive role in conceptualizing what “needs” actually means, including the meaning of economic needs in a specific social context.

13. For this reason, this Report deals with the topic of “Freedom of Expression and Poverty.” The research for this report began in 2001, due to the significance that the Rapporteurship gives to the participation of all the groups of society without any kind of discrimination for a better operation of democracy. It is an initial attempt to analyze the right to freedom of expression among sectors of the Latin American population whose basic needs are not met. It is also an appeal to find ways to strengthen and provide for channels of expression for these neglected sectors, as an instrument for development. Freedom of expression can also be a tool to this end. In the report entitled “Building Institutions for Markets,” published by the World Bank in 2002, it is stated that the mass media, as the optimum channels for exercising this right, can have an important role in economic development by influencing both the incentives of participants in the market and the demand for change.³

14. This chapter of the report sets forth considerations for the need to guarantee the exercise of this right without any kind of discrimination. It also discusses the importance of devising mechanisms to ensure access to public information by the poor, as part of their freedom of expression. The Office of the Special Rapporteur has given special attention to this last topic, access to public information, and it will continue to do so.

15. It is important to stress that when public information is systematically kept secret, either because of legislation that provides for it or because of the practices established in a society, the effects, in the view of Joseph Stiglitz, are not only adverse from a political standpoint, but from an economic standpoint as well.⁴ The reason is that many decisions made in the political arena have economic effects, especially as distribution policies are concerned. As a result, information works to ensure a better allocation of the resources existing in a society. Moreover, society as a whole pays for the contents of public information. Expropriation by public officials of this information is, in the eyes of Stiglitz, tantamount to the theft of any other public good.

16. Finally, the chapter on “Freedom of Expression and Poverty” takes up in general terms the exercise of freedom of expression and the right of assembly in public spaces, and the use of community means of communication to exercise these rights.

17. Unfortunately, in the Americas, other practices designed to restrict free expression still exist. Journalists, human rights defenders, and people in general who make use of this right are accused in criminal courts of committing crimes of *desacato* (disrespect) or defamation when they express themselves critically regarding matters of public interest. This is not conducive to the creation of an atmosphere where freedom of expression can fully develop.

³ In addition, the role that the World Bank gives the media to play in relation to poor sectors of society is critical. For instance, the report indicates that in view of the reach of the mass media, its role in Latin America has been important as an adjunct to public education or as a way of lowering prices of products. The report gives examples of original radio programs in Brazil and in Nicaragua.

⁴ See: “The Right to Tell: The Role of the Mass Media in Economic Development,” World Bank Institute Development Studies, Washington DC, 2002, p. 35.

Fear of punitive measures creates fear of expressing oneself freely. The Office of the Special Rapporteur and the Inter-American Commission on Human Rights have repeatedly referred to the harmful “chilling effect” these laws produce. It is important to highlight that there is factual research in support of these arguments. In a paper published a few years ago, it was concluded that the impact of defamation laws clearly shows that this fear exists and that it significantly limits what the public can read or hear.⁵

18. For this reason, the topic of *desacato* laws and criminal defamation is addressed in Chapter V. The chapter begins with the intention of the Office of the Special Rapporteur to renew the arguments and evaluate the progress achieved in the hemisphere with respect to this issue every two years. In 1998 and in 2000, the Rapporteur’s reports referred to the crime of *desacato*, but now there is increasing attention on the problem of the crimes of slander and defamation when used in the same way as *desacato*. In this report, reference will again be made to the need to abolish the crime of *desacato*, with new observations by the international community, and a section will be added on the possibility of partially decriminalizing crimes against honor when referring to matters of public interest. Finally, reference is made to the lack of significant progress on this issue in the region since the publication of the report in 2000.

19. During the Third Summit of the Americas held in Quebec, Canada, in April 2001, the Heads of State and Government ratified the mandate of the Special Rapporteur, adding that the states “will support the work of the Inter-American System of Human Rights in the area of freedom of expression, through the Special Rapporteur for Freedom of Expression of the IACHR, will proceed to disseminate comparative case law studies, and will further endeavor to ensure that national laws on freedom of expression are consistent with international legal obligations.” In compliance with this mandate, the Office has helped further comparative case law studies since it began operating.

20. Following these initiatives, Chapter III of this Annual Report is new, and is expected to continue in future reports as a permanent chapter. It is divided into two parts. The first part deals with the system’s jurisprudence. In the present report, all the jurisprudence of the inter-American system in the area of freedom of expression is presented by topic. The second section of this chapter refers to States’ domestic jurisprudence. It contains decisions of local courts that essentially uphold the standards of freedom of expression. As stated in the introduction to this chapter, I believe that this can be a useful tool for other judges in issuing similar decisions and supporting them using comparative case law from Latin America, which is not always easily available.

21. The rest of the chapters in this report follow the structure of the previous ones. It should be noted that Chapter II, “Evaluation of the Status of Freedom of Expression in the Hemisphere,” expresses the opinion of the Rapporteur, based on information received from various sources throughout the entire year.

22. Finally, as evidenced in this report, free expression continues to prove dangerous in many parts of the hemisphere. Murders of journalists continue to be a serious problem in the

⁵ This study explored the impact of defamation or libel laws on the media. It was carried out on the basis of interviews with attorneys of the media, journalists, publishers, etc. The authors analyzed the status of defamation laws, and gave statistical data on the situation in England and Scotland. See “Libel and the Media: The Chilling Effect,” Oxford University Press, 1997.

area of freedom of expression and information in the Americas. The murder of journalists represents not only a violation of the fundamental right to life, but it also exposes other social communicators and members of the media to extreme risks and vulnerability. Unfortunately, many of these crimes remain unpunished.

23. Regrettably, human rights defenders are now victims of the same treatment as the group that has traditionally been the one most under attack, namely, journalists and communications workers. These defenders are also subject to attacks because they both report fundamental violations and indicate their perpetrators.

24. The Rapporteurship vehemently condemns all such acts of intimidation intended to create widespread fear that suppresses or restricts free expression. And at the same time, it congratulates all the journalists, social communicators, and human rights defenders, among others, who have demonstrated their courage and their determination not to be oppressed by those who want to silence them by continuing to exercise this fundamental right, which is essential for a life of dignity and in democracy.

CHAPTER I

GENERAL REPORTS

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

1. The Office of the Special Rapporteur for Freedom of Expression is a permanent office, with functional autonomy and its own budget. The Inter-American Commission on Human Rights created the Office in exercise of its authority and competence. The Office operates within the legal framework of the Commission.⁶

2. The Inter-American Commission on Human Rights (IACHR) is an organ of the Organization of American States (OAS) whose principal function is to promote the observance and defense of human rights and to serve as an advisory body to the Organization on this subject. The Commission's authority derives mainly from the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States. The Commission investigates and rules on complaints of human rights violations, conducts on-site visits, prepares draft treaties and declarations on human rights and prepares reports on the human rights situation in countries in the region.

3. The Commission has addressed issues pertaining to freedom of expression through its system of individual petitions, ruling on cases of censorship,⁷ crimes against journalists and other direct or indirect restrictions on freedom of expression. It has spoken out about threats against journalists and restrictions placed on the media in its special reports, such as the Report on Contempt (*Desacato*) Laws.⁸ The Commission has also studied the status of freedom of expression and information through on-site visits and in its general reports.⁹ Lastly, the Commission has also requested precautionary measures for urgent action to prevent irreparable harm to individuals.¹⁰ In several cases, such measures were adopted to ensure full enjoyment of freedom of expression and to protect journalists.¹¹

⁶ See Articles 40 and 41 of the American Convention on Human Rights and Article 18 of the Statute of the Inter-American Commission on Human Rights.

⁷ See Inter-American Court of Human Rights. Case "The Last Temptation of Christ" (Olmeda Bustos et al. v. Chile), Judgment of February 5, 2001, VIII Article 13: Freedom of Expression, para. 61C; Francisco Martorell v. Chile in 1996 Annual Report of the Inter-American Commission on Human Rights.

⁸ IACHR, Annual Report 1994, *Report on the Compatibility of desacato Laws with the American Convention on Human Rights*, OEA/Ser L/V/II.88, Doc. 9 Rev (1995).

⁹ See *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100 Doc.7 rev. 1, September 24, 1998, and *Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/II. 102 Doc.9 rev.1, February 26, 1996.

¹⁰ Article 29(b) of the Rules of Procedure of the Commission states that: "In urgent cases, when it becomes necessary to avoid irreparable damage to persons, the Commission may request that precautionary measures be taken to avoid irreparable damage in cases where the denounced facts are true."

¹¹ In this regard, it is worth pointing out, for example, that on November 21, 1999, the Commission asked the Government of Peru to adopt precautionary measures in favor of journalist Guillermo Gonzáles Arica, which were processed in the framework of case number 12.085. Also, on September 17, 1999, the IACHR asked the Mexican government adopt precautionary measures to protect the life and integrity of journalist Jesús Barraza Zavala.

4. At its 97th regular session in October 1997, and in exercise of its authority under the Convention and its own Rules of Procedure, the Commission decided, by unanimous vote, to create the Office of the Special Rapporteur for Freedom of Expression (hereinafter “Office of the Special Rapporteur”). It was created as a permanent unit that is functionally autonomous and has its own operating structure. In part, the Office of the Special Rapporteur was created in response to the recommendations of broad sectors of society in different States throughout the hemisphere who shared a deep concern over the constant restriction of freedom of expression and information. Moreover, through its own observations regarding the situation of freedom of expression and information, the IACHR perceived serious threats and obstacles to the full and effective enjoyment of this right, which is so vital for the consolidation and advancement of the rule of law. At its 98th special session in March of 1998, the Commission determined what the general characteristics and functions of the Office of the Rapporteur would be and decided to establish a voluntary fund for economic assistance for the Office. In 1998, the Commission announced a public competition for the position of Special Rapporteur for Freedom of Expression in the Americas. After evaluating all the applications and interviewing several candidates, the Commission decided to appoint Argentine attorney Santiago Alejandro Canton as Special Rapporteur. He began his work on November 2, 1998.

5. In creating the Office of the Special Rapporteur, the Commission sought to stimulate awareness of the importance of full observance of freedom of expression and information in the hemisphere, given the fundamental role it plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected and violations reported; to make specific recommendations on freedom of expression and information to member States to promote adoption of progressive measures to strengthen this right; to prepare specialized reports and studies on the subject; and to respond quickly to petitions and other reports of violations of this right in an OAS member State.

6. In general terms, the Commission stated that the duties and mandates of the Office of the Rapporteur should include, among others: 1. Prepare an annual report on the status of freedom of expression in the Americas and submit it to the Commission for consideration and inclusion in the IACHR’s Annual Report to the General Assembly of the OAS. 2. Prepare thematic reports. 3. Gather the information necessary to write the reports. 4. Organize promotional activities recommended by the Commission including, but not limited to, presenting papers at relevant conferences and seminars, educating government officials, professionals and students about the work of the Commission in this area and preparing other promotional materials. 5. Immediately notify the Commission about emergency situations that warrant the Commission’s request for precautionary measures or provisional measures that the Commission can request from the Inter-American Court, in order to prevent serious and irreparable harm to human rights. 6. Provide information to the Commission about the prosecution of individual cases pertaining to freedom of expression.

7. The Commission’s initiative in creating a permanent Office of the Special Rapporteur for Freedom of Expression enjoyed the full support of OAS member States at the Second Summit of the Americas. At the Summit, the Chiefs of State and Heads of Government of the Americas recognized the fundamental role that freedom of expression and information plays in human rights and in a democratic system and expressed their satisfaction at the creation of this

Office. In the Declaration of Santiago, adopted in April 1998, the Chiefs of State and Heads of Government expressly stated that:

We agree that a free press plays a fundamental role [in the area of human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.¹²

8. At the same Summit, the Chiefs of State and Heads of Government of the Americas also expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. The Plan of Action from the Summit contains the following recommendation:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.¹³

9. At the Third Summit of the Americas held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression and added the following:

[Our Governments will] Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.¹⁴

B. The Office of the Special Rapporteur's Principal Activities in the Year 2001

10. Since taking office in November 1998, the Special Rapporteur has participated in numerous events aimed at publicizing the creation and objectives of the Office. Widespread awareness of the existence of the Office of the Special Rapporteur will contribute to its ability to successfully carry out its assigned tasks. Activities to promote and publicize the Office's work mainly consisted of participating in international forums, coordinating activities with non-governmental organizations, advising states on proposing legislation related to freedom of expression and informing the public about the Office of the Special Rapporteur through the press. The main objectives of these activities were to increase the awareness among various sectors of society regarding the importance of the inter-American system for the protection of human rights, international standards governing freedom of expression, comparative jurisprudence on the subject and the importance of freedom of expression for the development of a democratic society.

11. The Office of the Special Rapporteur has become a strong proponent of legislative reform in the area of freedom of expression. Through its relationships with member States and

¹² Declaration of Santiago, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

¹³ Plan of Action, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

¹⁴ Third Summit of the Americas, April 20-22, 2001, Quebec, Canada.

civil society organizations, the Office has launched a collaborative effort in support of initiatives to amend laws restricting the right to freedom of expression and to adopt legislation that will enhance people's right to participate actively in the democratic process through access to information.

12. The Office of the Special Rapporteur employs various means to protect freedom of expression. In the course of its daily work, the Office:

13. Analyzes complaints of violations of freedom of expression received by the Commission and conveys to the Commission its opinions and recommendations with regard to opening cases. Follows up on cases open before the Commission pertaining to violations of this right. Requests that the Commission solicit precautionary measures from the member States to protect the personal integrity of journalists and media correspondents who are facing threats or the risk of irreparable harm. Makes recommendations to the Commission regarding hearings to be granted during regular sessions and participates with the Commission in hearings having to do with alleged violations of freedom of expression. The Office of the Special Rapporteur also works with the parties to achieve friendly settlements within the framework of the Inter-American Commission on Human Rights.

14. Since the creation of the Office, the Office of the Special Rapporteur has carried out advisory studies and made recommendations to some member States regarding the modification of existing laws and articles that impinge on freedom of expression. The objective in these situations is to make domestic legislation compatible with international standards to more fully protect enjoyment of this right. While preparing its thematic and annual reports, the Office of the Special Rapporteur corresponds with member States to request information on specific subjects related to freedom of expression.

15. The Office of the Special Rapporteur receives information through its informal hemispheric network on the status of freedom of expression in member States. Information is submitted by various organizations monitoring this right, journalists and other sources. In cases considered to involve a serious violation of freedom of expression, the Office of the Special Rapporteur issues press releases about the information it has received, expresses its concern to the authorities, and makes recommendations for reinstating this right. In other cases, the Office of the Special Rapporteur directly contacts government authorities to obtain further information and/or to request that the government take measures to rectify the harm that has been inflicted. The Office of the Special Rapporteur has set up a database comprising numerous press agencies, freedom of expression and human rights monitoring organizations, attorneys specializing in the field and universities, among others, for the dissemination of releases and/or any other information considered relevant.

16. Due to the Office of the Special Rapporteur's efforts to publicize its activities and mandate, diverse sectors of civil society have been able to approach the Office to protect their right to impart, disseminate and receive information.

1. Promotion and Dissemination Activities

17. The following are the principal promotion and dissemination activities carried out by the Office of the Special Rapporteur in 2001.

18. In January 2001, the Special Rapporteur took part in the *Conference on the Role of a Free Press and Freedom of Expression in the Development and Consolidation of Democracies in Latin America and the Caribbean*, to which he was invited by the University of Miami, Florida. At that Conference, the Special Rapporteur described the principal activities of his Office and discussed the general status of freedom of expression in the Americas.

19. In March, the Special Rapporteur was asked to be a panelist at the *Mid-Year Meeting of the Inter-American Press Association* held in Fortaleza, Brazil. In April, he participated in the 111th special session of the IACHR in Santiago, Chile. On April 19-23, the Special Rapporteur attended the Third Summit of the Americas, held in Quebec City, Canada. At that Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur and added the following: “[*Our Governments will*] *Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.*”

20. On the occasion of the World Press Freedom Day, in May the Special Rapporteur was invited by UNESCO to take part in the commemorative conference in Windhoek, Namibia, which was attended by the principal organizations devoted to the defense of freedom of expression. The central theme of the conference was evaluation of the status of freedom of expression in the world and the challenges ahead. In May, the Special Rapporteur traveled to Quito, Ecuador to take part in the conference *Freedom of Expression in America*, organized by the Postgraduate School of International Studies of the Central University. During that same month, Dr. Canton also took part, along with senior members of the IACHR, in the *Third Argentine Seminar on Supranational Legality*. That seminar was held in Córdoba, Argentina, organized by that city’s Bar Association. At both meetings, the Special Rapporteur described the general status of freedom of expression in the Americas and the principal concerns of his Office in this area.

21. In June, the Special Rapporteur, together with other senior members of the IACHR, took part in the OAS General Assembly held in San José, Costa Rica. In response to an invitation by the Inter-American Institute of Human Rights, Dr. Canton was a panelist, specializing in freedom of expression, in the Institute’s annual *Interdisciplinary Course in Human Rights*.

22. In November 2001, Dr. Santiago Canton took part in the *International Seminar for the Promotion of Freedom of Expression* organized by Article XIX in London. There, he had the opportunity to meet for the fourth time with the other two rapporteurs on freedom of expression in the world, Abid Hussain (UN) and Freimut Duve (OSCE). At the end of the seminar, the three Rapporteurs issued a joint declaration on challenges to freedom of expression in the new century, including countering terrorism, regulating the Internet, and regulating broadcasting.¹⁵

23. In August 2001, Dr. Santiago Canton took office as Executive Secretary of the Inter-American Commission on Human Rights. At its 114th regular session, the IACHR announced a

¹⁵ See annex, Joint Declaration Challenges to Freedom of Expression in the New Century.

competition for the post of Special Rapporteur for Freedom of Expression. After evaluating all the applications and having interviewed several of the candidates, the Commission appointed Dr. Eduardo Bertoni, who will take up the post on May 2002.

2. Country visits

24. In June 2001, the Commission conducted an on-site visit to Panama, in which Dr. Santiago A. Canton participated as Special Rapporteur for Freedom of Expression. In December 2001, the Commission conducted an on-site mission to Colombia, in which the Office of the Special Rapporteur for Freedom of Expression participated. In both these visits, reported on in Chapter II of this Report, activities and meetings took place with government authorities, the media, organizations devoted to the defense of freedom of expression, and other bodies in civil society, for the purpose of gathering information and analyzing the status of freedom of expression in those countries.

CHAPTER II

ASSESSMENT OF THE CURRENT STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction. Methodology

1. This Chapter describes certain aspects related to the current state of freedom of expression in the Americas. It includes, as did previous reports, a table summarizing cases in which journalists were murdered in 2002, the circumstances surrounding their deaths, the possible motives of the killers, and the status of investigations.

2. To facilitate the description of the specific situation in each country, the Rapporteur classified the various methods used to curtail the right to freedom of expression and information. All of these methods are incompatible with the Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights (IACHR). The list includes, in addition to murder, other forms of aggression such as threats, detention, judicial actions, intimidation, censorship, and legislation restricting freedom of expression. The Chapter also includes, for certain countries, positive developments, such as the passing of access to information laws, the abolition of *desacato* (contempt of authority) in one country of the hemisphere and the existence of bills or judicial decisions conducive to full exercise of freedom of expression.

3. The data in this Chapter correspond to 2002. The Office of the Special Rapporteur for Freedom of Expression receives information on freedom of expression-related developments from a number of different sources.¹⁶ Once the Office has received the information, and bearing in mind the importance of the matter at hand, it begins the verification and analysis process. Once that task is completed, the information is grouped under the aforementioned headings. For the purposes of this report, the Rapporteur condenses the information into a series of exemplary paradigms reflecting each country's situation *vis-à-vis* respect for, and exercise of, freedom of expression, and it mentions both progress made and any deterioration observed in this field. In most cases, the sources of the information are cited. It should be pointed out that the reason that the situation in some countries is not analyzed is that the Office of the Special Rapporteur has not received information; the omission should not be construed in any other way.

4. Finally, the Rapporteur would, on the one hand, like to thank each of the States and civil society throughout the Americas for their collaboration in forwarding information regarding the current state of freedom of expression. On the other hand, the Rapporteur would also like to urge States to continue and increase that collaboration in order to enrich future reports.

¹⁶ The Rapporteur receives information from independent organizations working to defend and protect human rights and freedom of expression and from directly concerned independent journalists, as well as information requested by the Office of the Rapporteur from representatives of OAS member states and others.

B. Evaluation

5. Freedom of expression and access to information are key ingredients in consolidating democracy in the Hemisphere. Through freedom of expression and access to information members of society are able to monitor the behavior of the representatives they elect. This watchdog function plays a crucial part in preventing impunity for human rights violations.

6. Freedom of expression and access to information also play a decisive part in a country's economic development. Government corruption is the biggest single obstacle to equitable economic development, and the best way to fight it is to expose corrupt practices for public scrutiny and to guarantee the participation of all segments of society in public policy decisions that affect their daily lives.

7. It is precisely because they are the public's watchdogs that members of the press are frequently targeted for acts of violence and intimidation aimed at silencing them. Murders, attacks, threats, and intimidation not only silence individual journalists; they also have a profound impact on their colleagues, by creating an atmosphere of fear and self-censorship. The assassination of media personnel is still a serious problem in this respect: ten were murdered in 2002 for exercising their profession. This is an unfortunately larger number than that published by the Rapporteur in the previous annual report.¹⁷ This means we should insist on the fact that the assassination of media personnel in the course of their profession not only constitutes a violation of the fundamental right to life but also exposes other social communicators to a situation of fear that could induce them to censor themselves.¹⁸

8. At the same time, as Principle No. 9 of the Declaration of Principles on Freedom of Expression indicates,¹⁹ acts of aggression, and not just murder, strongly restrict freedom of expression. In many countries in the Hemisphere, as the report shows, such acts continue, and in some of them have even increased alarmingly.

9. As troubling as these acts against the physical integrity of persons are, equally troubling is the impunity that many such crimes enjoy, whether they are perpetrated by State agents or by private individuals. The IACHR has established that the lack of serious, impartial, and effective investigation and punishment of the material and intellectual perpetrators of these crimes constitutes not only a violation of guarantees of due process of the law but also a violation of the right to inform and express one's views publicly and freely, thereby generating the international responsibility of the State.²⁰

¹⁷ The 2001 Report mentioned the murder of nine journalists. This year's report mentions 10 media personnel who were murdered, including one photographer, one cameraman, one newspaper distributor, the driver of a mobile television van, and six journalists.

¹⁸ Here the Rapporteur recalls Principle 9 of the Declaration of Principles on Freedom of Expression which stated: murder, kidnapping, intimidation of and/or treats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.

¹⁹ *Id.*, Principle 9.

²⁰ IACHR, Report N° 50/99, Case 11.739 (Mexico), April 13, 1999. Likewise, the Inter-American Court of Human Rights stated: "The State is, at the same time, obliged to investigate any circumstances in which human rights protected under the Convention are violated. If the authorities act in such a way that the violation goes unpunished and the victim's full rights are not restored at the earliest possible opportunity, the State may be said to have failed to comply with its duty to guarantee for persons under its jurisdiction the free and full exercise of those rights. The same applies when private individuals or groups of them are allowed to act freely and with impunity in ways detrimental to the human rights recognized in the Convention."

10. Apart from these acts of physical violence, rules and regulations in most countries of the Hemisphere allow other methods designed to silence journalists, the media, and people in general. The Rapporteur expresses his grave concern at the use of lawsuits by the authorities or public figures to silence critics.

11. Taking into consideration what has been said above, the Office of the Special Rapporteur observes that little progress was made in consolidating freedom of expression in the Americas in 2002. There are still legal obstacles to the full exercise of freedom of expression by social communicators, journalists and media in general, as well by human rights defenders and others whose freedom of expression is curtailed, either directly or indirectly.

12. As shown in Chapter V of this Annual Report and as is clear from the information received by the Office of the Special Rapporteur, the arbitrary use of slander and libel laws to silence criticism of government officials or public figures was still a tactic employed against investigative journalists in several countries in 2002. In addition, in many other countries, with some exceptions that are pointed out below, "*desacato*" (or "insult") laws are still in force and are wrongfully used to silence the press.

13. As regards access to public information, discussion continued in numerous countries on the need for and importance of specific laws on the subject.

14. The right to access to information is not just a theoretical priority; it is also a priority for eminently practical reasons. Effective exercise of this right serves to combat corruption, which is one of the factors capable of seriously undermining the stability of the democracies in the Americas. The lack of transparency in the conduct of public affairs has distorted economic systems and contributed to social disintegration. The Organization of American States has identified corruption as a problem requiring special attention in the Hemisphere. At the Third Summit of the Americas, the Heads of State and Government recognized the need to increase efforts to combat corruption since it "*undermines core democratic values, challenges political stability and economic growth.*" The Plan of Action of the Third Summit also stresses the need to support initiatives geared to achieving greater transparency in order to safeguard the public interest and to encourage governments to use their resources effectively for the common good.²¹ Corruption can only be fought effectively through a combination of efforts to raise the level of transparency in government acts.²² Transparency in the conduct of government affairs can be enhanced by establishing a legal regime allowing society access to information.

15. Although it is promising that discussion of this topic has entered the priority agendas of some states, not much progress has been made with respect to the promulgation of laws supporting this right, which is crucial for ensuring transparency in government and the protection of the right of societies to have access to information. Only a few countries adopted legislation of this kind in the course of the year under review. The Office of the Special

²¹ See the Declaration and the Plan of Action of the Third Summit of the Americas. Quebec City, Canada, April 20-22, 2001.

²² See the Inter-American Convention against Corruption, Inter-American System of Legal Information, OAS.

Rapporteur will continue to monitor these processes, as well as the implementation and enforcement of laws regulating access to information.

16. The Rapporteur has heard some States and members of society express concern at the possibility that the media do not always act either responsibly or ethically. First, the Rapporteur would like to draw attention once again to the fact that the media are primarily responsible to the public, and not to the government. The principal function of the media is to inform the public about, among other things, measures taken by the government. This is a basic function in a democracy, so that any threat of imposing legal sanctions for journalistic decisions that are based essentially on subjective insights or professional judgment would also have the effect of inhibiting the media and preventing the dissemination of information of legitimate interest to the public.

17. The fact that governments should not regulate responsibility on the part of the media or their ethics does not imply that there are no ways of improving media practices. Nevertheless, it should be pointed out that the media will take a more responsible approach if they are free to elect how they inform and what they report and they receive the education needed to make ethical decisions.

18. Both journalists and media owners should be mindful of the need to maintain their credibility with the public, a key to their survival over time, and of the important role of the press in a democratic society. In the Plan of Action of the Third Summit of the Americas held in April 2001, in Quebec City, Canada, the Heads of State and Government stated that would encourage the media to practice self-regulation.

19. "The notion of self-regulation of the media refers to a set of mechanisms and instruments based on a shared objective of guaranteeing that the media act in accordance with their own professional values and standards. The distinctive mark of self-regulation is that for it to come about and work effectively there has to be free initiative and a voluntary commitment on the part of the three subjects of communication: the owners and producers of media enterprises; the professionals who work for them; and the public which receives or figures in the communications." The mechanisms and instruments employed in self-regulation include: codes of ethics, style books, drafting by-laws, ombudsmen, information councils, etc.²³ In the Special Rapporteur's view, the media should take up this challenge of self-regulation, encouraging ethical and responsible behavior.

20. On the other hand, the Office of the Special Rapporteur has received expressions of concern on the part of members of civil society and the media about the possible consolidation of practices that impede the existence of diversity and pluralistic expression of opinions, given the concentration of ownership of communications media, including print media as well as radio and television. In this sense, the Rapporteurship recalls that the Declaration of Principles on Freedom of Expression, elaborated by the Office of the Special Rapporteur for Freedom of Expression and adopted by the Inter-American Commission on Human Rights²⁴ is

²³ See, Hugo Aznar, "*Ética y Periodismo*" [Ethics and Journalism], Ed. Paidós, *Papeles de Comunicación* 23, Barcelona, 1999, p. 42.

²⁴ The idea of drafting a Declaration on Freedom of Expression arose out of recognition of the need for a legal framework to regulate the effective protection of freedom of expression in the hemisphere that would incorporate the principal doctrines set

clear in that sense: monopolies or oligopolies in the ownership and control of the communications media affect freedom of expression. The Principle 12, explicitly indicates that "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information." Nevertheless, this principle also clarifies that in no case should these laws be exclusively for communications media. The Rapporteurship will continue observing this problem with attention in order to develop recommendations that correspond to the particular situations in each of the different member States.

21. Finally, as mentioned in previous reports, the Rapporteur continues to feel that there has to be more political will on the part of the member States to pass legislative reforms guaranteeing society ample exercise of the right to freedom of expression and information. Democracy requires extensive freedom of expression and therefore cannot thrive if states continue to allow mechanisms that thwart the exercise of that freedom. The Office of the Rapporteur reaffirms the need for States to make a more robust commitment to guarantee this right and thereby consolidate democracy in the Americas.

C. The status of freedom of expression in member states

ARGENTINA

Threats and Aggression

22. In 2002, the Office of the Rapporteur for Freedom of Expression received approximately 30 alerts of threats to and aggression against journalists. The majority of these cases took place in provincial towns and cities and many of them were related to media coverage of public protests and demonstrations in public spaces.²⁵

23. In 2002, journalist Carla Britos, editor of the newspaper *La Tapa*, in Guernica, in the province of Buenos Aires, was subjected to intense harassment as a result of reports carried by her newspaper. In June, she was watched and followed by a car that was parked at the door of her house. On three occasions, the driver of this car threatened her with death for having published in *La Tapa* reports concerning irregularities committed by the former mayor. She was also threatened by telephone and by electronic mail.²⁶

24. In January 2002, journalist Martín Oeschger of *FM Paraná Radio San Javier* in Capitán Bermúdez was stopped by a car and shot at by five individuals inside. As a result of this, the Secretary General of the Municipal Workers Union of Capitán Bermúdez, Jesús

forth in different international instruments. The Inter-American Commission on Human Rights approved the Declaration of Principles on Freedom of Expression at its 108th regular sessions in October 2000. This declaration constitutes a basic document for interpreting Article 13 of the American Convention on Human Rights. Its adoption not only serves as an acknowledgment of the importance of safeguarding freedom of expression in the Americas, but also incorporates international standards into the inter-American system to strengthen protection of this right. See, IACHR, Annual Report, 2000, Volum III.

²⁵ Association for the Defense of Independent Journalism.

²⁶ Journalists against Corruption (*Periodistas frente a la Corrupción* -PFC), World Association of Newspapers (WAN) and Writers in Prison Committee (WiPC).

Monzón, was detained for a few days. Previously, the same Monzón had damaged the radio station in which Oeschger was working and had also threatened him with death. In previous years, shots were fired at the journalist's house and he suffered death threats and physical assaults.²⁷

25. On April 1, journalist Maria Mercedes Vásquez of *LT7 Radio Corrientes* was struck in the face a week after accusing some members of the New Party (*Partido Nuevo*) of smuggling weapons into the country. In February, Vasquez and her husband Silvio Valenzuela, also a journalist for *LT7 Radio Corrientes*, were accused of defamation by Manuel Sussini, Senator and member of the Autonomist Party (*Partido Autonomista*), because of a news broadcast in which he was linked to acts of corruption. A few months ago, in October 2002, unknown persons threw a Molotov cocktail at the journalist's house, presumably in reprisal for having broadcast a recording of telephone conversations that implicated national legislators, the President of the Upper Court of Justice in Corrientes, and various local leaders, in an apparent conspiracy against the Governor Ricardo Colombi.²⁸

26. On April 29, 2002, Roberto Mario Petroff of the daily newspaper *Tiempo Sur* in the province of Chubut, was physically assaulted by unknown persons days after having published a piece on incidents that occurred during street protests. According to the Santa Cruz Press Union, journalists and photographers are routinely threatened in this province.²⁹

27. Information has also been received about assaults on journalists and television reporters by supporters of former president Carlos Menem. On May 3, 2002, guards of the former president cornered journalist Daniel Malnatti, of the program *Caiga quien Caiga*, in the province of Tucumán, beat him, and threatened him with firearms. On June 23, 2002, journalists of the *Todos Noticias* channel and a photographer for the newspaper *Clarín* were attacked by a group of individuals whose faces were covered, while the reporters were covering a demonstration of neighborhood assemblies protesting against the former President. On September 26, 2002, *Radio Ciudad* reporter Zaida Pedroso and two other journalists for *FM Metro* and *Clarín* were insulted, physically assaulted, and prevented from doing their work by a group of individuals who were in control of the location. On September 30, 2002, once again, journalists and television reporters covering the scene as Menem arrived to appear in court were attacked. The frequency of these attacks on the work of the press reflects the intolerance and use of violence by some political circles in response to the claims and demonstrations of citizens. In November 2002, journalists from *Canal 13* and the cable channel *Todo Noticias* of Buenos Aires were physically assaulted by supporters of former president Menem during a campaign meeting. According to information received by the Special Rapporteur, the organizers refused without explanation to allow them in to cover the event and only one television station was allowed access.³⁰

28. On July 7, 2002, Alberto Lamberti, a town councilor in Comodoro Rivadavia, Chubut, declared that "he would make a José Luis Cabezas (a photographer who was

²⁷ Association for the Defense of Independent Journalism

²⁸ Journalists against Corruption (PFC), December 29, 2002.

²⁹ Id.

³⁰ Id.

murdered in January 1997) of every man in the local press, because they do not write about what he thinks is the news.” These remarks triggered an irate response from local journalists’ associations, which construed them as intimidation. Hours later, the councilor said he had only been joking. Notwithstanding this clarification, the Chubut Union of Local Press Workers demanded that Lamberti should be removed from his post.³¹

29. In September 2002, a federal judge ordered the State Intelligence Secretariat (SIDE) to draw up a list of all the incoming and outgoing calls on the telephone lines of journalist Thomas Catan, *Financial Times* correspondent in Argentina, in connection with an investigation into corruption in the Senate. In August, the journalist had published an article on a denunciation filed by a group of foreign bankers with the embassies of Great Britain and the United States regarding alleged requests for bribes by Argentine legislators. After being summonsed on September 17, the journalist had testified in court and provided the information requested but refrained from identifying his sources. In light of the decision handed down by the federal judge, the journalist appealed for protection (*amparo*) from the Federal Chamber in order to prevent the decision from being implemented. The brief presented by the journalist argues that the judge’s order violated the constitutional protection of the sources of information established in Article 43 and 18 of the National Constitution, which guarantees the privacy of the home, of correspondence, and of private papers of individuals. Finally, the Federal Chamber annulled the judge’s decision and ordered the destruction of the lists of telephone numbers in the presence of the journalist and his lawyers.

30. In October 2002, unidentified persons threw an explosive into the home of journalist María Mercedes Vásquez, in the city of Corrientes, causing material damage to her home. The journalist reported the incident to authorities and was granted police protection. Vásquez works on the *En el Aire* program of *Radio Corrientes* in which some days before the attack she had broadcast recordings of telephone calls that compromised various local officials. The journalist had previously suffered other attempts to intimidate her because of her journalistic work. Between February and March 2002, a provincial senator requested her arrest and that of her colleague Silvio Valenzuela for insulting a public official (*desacato*), a legal provision still in effect in the provincial constitution. Both journalists had broadcast information about the alleged taking of bribes by provincial legislators. Vásquez presented a petition of habeas corpus to the court, which determined that Article 8 of the Provincial Constitution invoked by the Senator was unconstitutional. Days later, the journalist received telephone threats in her house and at the radio. One of the calls was taken by her daughter to whom the callers explained how they were going to kill her mother. In another of the calls they said, “You’re going to end up like Cabezas (an Argentine photographer murdered in January 1997) with six shots in your head and inside a trunk.” On April 1, María Mercedes Vásquez was attacked in the street by two individuals who threatened her and struck her in the face. The journalist immediately made a statement to the authorities and was assigned a police guard.³²

31. On October 26, 2002, police agents fired rubber bullets at journalists Alberto Recanatini Méndez and Tomás Eliashev from the Agency *Indymedia Argentina*. The journalists were covering a demonstration in front of the National Congress and at the moment

³¹ Association for the Defense of Independent Journalism (PERIODISTAS).

³² Id., and Reporters Without Borders (RSF)

of the assault were filming the police taking aim at the balconies of a building from where a man had thrown a flowerpot at them. The police fired notwithstanding the fact that the two journalists were identified as members of the press and carried their equipment. Recanatini was hit in the head and the other on the elbow.³³

32. On November 13, 2002, members of the program *Telenoche Investiga* of Canal 13 of Buenos Aires denounced a series of acts of intimidation against them. The intimidation began after the program broadcast a series of reports looking into cases of abuse of minors by a Roman Catholic priest in a charitable institution. During one of the broadcasts, the presenters informed the audience that members of the program were being followed and subjected to intimidatory acts, and other pressures. The journalists said they did not want to go into greater detail out of fear for their personal safety.³⁴

33. On November 19, at a political party gathering, a group of supporters of former president Carlos Menem punched and kicked journalist Martín Cicioli, producer Nicolás Chausovsky, and television cameraman Sergio Di Nápoli of the *Kaos en la Ciudad* program transmitted by Channel 13 in Buenos Aires. While the journalists were waiting behind a barrier, a group of supporters of the former president approached the members of the press and began insulting, then kicking and punching them. Miguel Santiago, producer of the cable channel, *Todo Noticias (TN)*, and his companion Ignacio Marcalain, were also attacked.

34. On November 26, 2002, one of the guards protecting journalist Miguel Bonasso was shot at in the door of Bonasso's home by an unknown group. The journalist attributed the attack to the investigation that he was carrying out into the events of December 23, 2001 in Argentina after the fall of President Fernando de la Rúa. Bonasso declared in a television program that the intention of the attack had been to intimidate him so as to prevent him from publishing his investigations.³⁵

Others

35. The Office of the Rapporteur for Freedom of Expression received information that the government of Neuquen had ordered the cancellation of all official advertising in the newspaper *Río Negro* after it had published reports on influence peddling and other illicit pressure being exerted on local legislators. It should be recalled in this regard that Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of

³³ Association for the Defense of Independent Journalism (PERIODISTAS).

³⁴ Association for the Defense of Independent Journalism (PERIODISTAS).

³⁵ Association for the Defense of Independent Journalism (PERIODISTAS), and the Committee for the Protection of Journalists, December 11, 2002.

expression, and must be explicitly prohibited by law.”³⁶ The Office of the Special Rapporteur will continue to monitor developments in the aforementioned case of the newspaper *Rio Negro*.

BRAZIL

Assassinations

36. On June 2, 2002, investigative reporter Tim Lopes, of *TV Globo*, disappeared and was later found murdered. According to news reports, he was last seen on assignment in the suburbs of Rio de Janeiro, in an impoverished community, known as a *favela*. On June 12, police found badly decomposed human remains, along with Lopes' camera and watch, in an clandestine cemetery in Favela da Grota. After DNA tests, the police confirmed on July 5 that the remains belonged to Lopes.

37. On above-mentioned date, Lopes had traveled to Favela Vila do Cruzeiro. This was Lopes's fourth visit to Vila do Cruzeiro, and this time, he was carrying a hidden camera. According to *TV Globo*, Lopes was working on a report about parties that were hosted by drug traffickers in Vila do Cruzeiro and that allegedly involved drugs and the sexual exploitation of minors. Reporter Cristina Guimarães, who co-produced the report with Lopes and two other colleagues, received death threats in September 2001 and had to leave the state of Rio de Janeiro, according to *O Estado of Sao Paulo*. The daily *Jornal do Brasil* reported that Lopes, had also received threats as a result of the report.³⁷

38. On September 19, 2002, Brazilian police captured a local drug trafficker who was the leading suspect in the disappearance and murder of Tim Lopes. Elias Pereira da Silva, also known as Elias the Madman, was apprehended in one of Rio de Janeiro's *favelas*. According to the Rio de Janeiro Civil Police, two suspects, both members of the gang headed by Pereira da Silva, were arrested on the morning of June 9. Both men claimed that they heard how Lopes was murdered but denied any involvement in his killing. According to the suspects' depositions, after Lopes told them he was a *TV Globo* reporter, the traffickers called Pereira da Silva, who was in a nearby *favela*. They tied Lopes' hands, forced him into a car, and took him to the *favela* where Pereira da Silva was staying. There, they beat the reporter and shot him in the feet to keep him from escaping. Then they held a mock trial and sentenced Lopes to death. Pereira da Silva killed Lopes with a sword, and his body was burned and buried in a clandestine cemetery, said the suspects.

39. On September 30, 2002, journalist Domingos Sávio Brandão Lima Júnior was murdered. Brandão was the owner, publisher, and a columnist of the daily *Folha do Estado*, which is based in the city of Cuiabá, in the central Brazilian state of Mato Grosso. Brandão was shot at least 5 times by two unidentified men on a motorcycle, according to several news reports.³⁸ The two men had been waiting for Brandão near the paper's new offices, which are

³⁶ Journalists Against Corruption, January 9, 2003, Inter-American Press Association (IAPA), January 29, 2003, Reporters Without Borders, January 10, 2003.

³⁷ The Committee to Protect Journalists (CPJ), June 5, 2002.

³⁸ The Rapporteurship for Freedom of Expression issued a press release to condemn the killing of journalist Domingos Sávio Brandão Lima Júnior and urged the Brazilian government to investigate this murder immediately.

under construction. According to the information received, several people witnessed the murder. According to news information, Brandão's death relates to the paper's extensive coverage of drug trafficking, illegal gambling, and acts of corruption involving public officials, but also mentioned that the journalist was a businessman who owned construction and publishing companies. Brandão had not received any threats, according to the newspaper. Police investigators said evidence indicates that his murder was a contract killing, but that the motive remains unclear.³⁹

40. On 1 October 2002, Hércules Araújo Coutinho, a military police sergeant, and Célio Alves de Souza, a former military police officer, were arrested for their alleged participation in the crime. Hércules Araújo Coutinho was recognized by witnesses as one of the killers. He was also implicated by the ballistic experts' examination and fingerprints connecting him with five other murders that had occurred in the region during the year.⁴⁰

Threats and aggression

41. In September 2002, Saulto Borges and Joana Queiroz, reporters for the newspaper *A Crítica* in the city of Manaus, northern state of Amazonas, and Jutan Araújo, a journalist with the television station *Camaçari*, in the city of Camaçari in the northeastern state of Bahia, reported that they had been threatened. According to the information provided, starting the week of August 26 to 30, the journalists for *A Crítica* complained of receiving intimidating calls after initiating an investigation into homicides committed by a group which, according to them, was engaged in an extermination campaign in Amazonas. Araújo claimed to have received death threats on the telephone after writing an article on persons occupying properties in a neighborhood of Camaçari, a town near Salvador, the capital of Bahia. Araújo added that in the last call, an unknown person assured him that he was very familiar with his daily routine and that his every step was being followed.⁴¹

Positive developments

42. The Office of the Special Rapporteur for Freedom of Expression was informed by the Brazilian State that on October 25, 2002, the Superior Electoral Tribunal of Brazil decided, on a summary basis and by unanimous vote, to invalidate the prior censorship being imposed on the newspaper *Correio Braziliense* in connection with the publication of telephone recordings linking the Governor of Brasília, Joaquim Roriz a Roriz, with businessmen accused of crimes against the state. The day before, October 24, a judge on the Regional Electoral Tribunal of Brazil had ordered that a judicial officer and the attorney for the Governor's political party supervise the content of every page of the October 24 edition of the newspaper *Correio Braziliense*.

43. *Correio Braziliense* and other sources had published information on telephone recordings taped by the Federal Police in connection with a court case entailing the investigation of two businessmen, brothers surnamed Passos, under suspicion of irregular real

³⁹ Committee to Protect Journalists, CPJ, October 1, 2002.

⁴⁰ Reporters without Borders (RSF), October 9, 2002.

⁴¹ *Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), September 17, 2002.

estate zoning activities. As later revealed, some of those intercepted conversations linked the Governor Roriz with these businessmen. In late September, Judge Meguerian of the Regional Electoral Tribunal (TRE), had ordered that no one should publish the content of these recordings. He later reversed this decision since the tapes had already been made public on television and the Internet. Three weeks later, the judge acted on the Governor's request regarding the edition of *Correio*. According to the paper, the judge prohibited publication of a 35-line article entitled "Influence in the government," which only referred to the tapes in question and did not reproduce the conversations between Roriz and one of the Passos brothers.⁴²

CANADA

Judicial actions

44. In July 2002, the Royal Canadian Mounted Police obtained a search warrant and assistance order against the *National Post* to require the *Post's* editor-in-chief to hand over documents pertaining to a controversy over a loan involving the Prime Minister. The paper has presented legal challenges to the order. On October 3, 2002, a judge in the Ontario Superior Court granted a request by two additional media organizations, the CBC (Canadian Broadcast Corporation) and the *Globe and Mail*, to intervene in the case, stating that the limits on police powers in the investigation of crime is an "important public issue" requiring a "full hearing."⁴³

45. On November 4, 2002, the Toronto Police seized the unedited tapes of an interview conducted by *W-5*, a *CTV* program. The interview, which had not yet been aired at the time of the seizure, was with Salim Danji, who is awaiting trial in a case of alleged investment fraud. The Police obtained a warrant for the tapes stating that the material could be helpful to their investigation of the case.⁴⁴

CHILE

46. The Special Rapporteur for Freedom of Expression, Eduardo A. Bertoni, visited Chile on December 16 to 17, 2002, at the invitation of the Chilean government. He observed some progress by the State in adapting its domestic legislation to the international standards that guarantee the observance of the exercise of the freedom of expression. In that respect, it is important to emphasize that the Cinematographic Rating Law was recently passed, abolishing censorship in the constitutional framework, a significant step forward in the observance of freedom of expression in Chile.

47. However, the Special Rapporteur expresses his concern regarding certain judicial decisions that harm the right to freedom of expression. The Special Rapporteur was briefed on cases that concern journalists and individuals that had criticized government officials or public people. The Special Rapporteur will carefully follow up on those and other cases, and points out that one of the main concerns of the Rapporteurship for Freedom of Expression is the

⁴² The Office of the Rapporteur had issued a press release publicly condemning this judicial decision. See annexes.

⁴³ Canadian Journalist for Free Expression (CJFE), October 7, 2002.

⁴⁴ *Id.*, November 6, 2002.

use of the judicial system in many countries of the hemisphere as tools for intimidation, so that in practice it becomes an instrument to restrict freedom of expression.

48. During his visit, the Special Rapporteur also gathered information on a bill sent by the Executive to the Congress about the abolition of the *desacato* (contempt) laws that are included in the Criminal Code and the Code of Military Justice of Chile. The Special Rapporteur recommends that the Congress discuss this promising initiative and promptly pass the law, to finish the process that started with the abolition of Section 6 b of the State Security Law. As long as this bill is not passed, Chile will continue to have legislation on contempt, thus, contravening the international standards universally established, as the Rapporteurship has noted in its previous reports.

Judicial actions

49. On January 15, 2002, Carlos Pinto, journalist and host of the program *El día menos pensado* of *Televisión Nacional*, and René Cortázar, Executive Director of the television station, were charged by Carmen Garay, Judge of the 19th Criminal Court of Santiago with the crime of "serious libel." *El día menos pensado* is a popular program that presents stories about paranormal phenomena in the format of dramatic reenactments. The charges stemmed from a dramatization presented on Mr. Pinto's program in which a psychic had a "vision" that a woman who had allegedly committed suicide had actually been murdered by her husband. Although the real names of the parties involved were not used, businessman Alejo Véliz Palma realized that the story was based on a psychic's reported "vision" of his wife's death. Mr. Véliz filed the complaint for "serious libel."⁴⁵

50. On January 18, 2002, the Consejo de Defensa del Estado (CDE) appealed a favorable decision in the case of journalist Paula Afani of *La Tercera*, calling for a sentence of 5 years and one day. Ms. Afani had been charged in 1999 in connection with the publication of reports in *La Tercera* and *La Hora* about an investigation of drug trafficking and money laundering known as "Operación Océano." The reports were published during the indictment phase of the investigation, when judicial proceedings are secret. The objective of the complaint against Ms. Afani was to force her to reveal her journalistic sources, which she refused to do. As a result, she was jailed on January 15, 1999. She was released a few days later, but the process against her continued. On December 13, 2001, she was absolved by the judge of the Sexto Juzgado del Crimen del Valparaíso, a decision which is currently under appeal by the CDE.⁴⁶

51. On September 30, 2002, lawyer Jorge Balmaceda filed a legal action for libel against Víctor Gutiérrez of the daily *La Nación*. The journalist had written a series of articles about the trials of military members and former military members for human rights violations committed during of the dictatorship of Augusto Pinochet. In one of the articles, Mr. Gutiérrez reported an interview with a former official of the Armed Forces, who stated that Mr. Balmaceda had engaged in irregular practices in the context of his representation of the defendants in the

⁴⁵ *Instituto Prensa y Sociedad (IPYS)*, January 15, 2002.

⁴⁶ *Id.*, January 23, 2002.

human rights trials, to the benefit of those who had participated in the violations. In addition to the lawsuit, Mr. Gutiérrez suffered death threats as a result of his reports on the trials.⁴⁷

52. On October 15, 2002, Colonel Patricio Provoste, counter-intelligence sub-director for the Chilean Air Force, filed a criminal action for libel and associated damages against *La Nación* director Alberto Luengo. Like the action against Víctor Gutiérrez, the action against Mr. Luengo arose out of the circumstances of the trials for human rights violations of former officials of the Pinochet dictatorship. Mr. Luengo wrote an article about a group of military officers who were allegedly working to impede judicial investigations of the human rights violations. According to the journalist's sources, Colonel Provoste was part of this group, an allegation denied by the Colonel.⁴⁸

53. In 2002, the proceedings against businessman Eduardo Yáñez for the crime of *desacato*, or disrespect against authority, continued. As reported in the 2001 Annual Report of the Office of the Special Rapporteur, Mr. Yáñez appeared as a panelist on the *Chilevisión* television channel's *El Termómetro* program on November 28, 2001. During the program, he criticized the Chilean Supreme Court for the mistakes it had committed in two cases. As a result of Yáñez's statements, the Court filed suit under the disrespect provisions of Article 263 of the Criminal Code. On January 15, 2002, Mr. Yáñez was arrested and charged in the Court of Appeals of Santiago. The next day, Mr. Yáñez was able to make bail and was provisionally released. Mr. Yáñez appealed the charges to a higher court, but the appeal was denied on October 29, 2002.⁴⁹ The decision was appealed again, but the appeal was again rejected on December 18, 2002.⁵⁰ Beatriz Pedraids, Prosecutor for the Court of Appeals recommended that Yáñez be sentenced with 541 days' fine.⁵¹ If convicted of the charges against him, he could be sentenced to up to five years in prison. The Office of the Special Rapporteur has repeatedly expressed its concern about these proceedings and has recommended that the State of Chile repeal the provisions of Article 263 of its Criminal Code that establish the crime of disrespect of authority.

Censorship

54. On December 3, 2002, the First Criminal Court of Santiago ordered the seizure of all copies of the book "Cecilia, la vida en llamas." The order was in response to a complaint by Cecilia, a popular singer, against Cristóbal Peña, the author of the unauthorized biography about her. The singer presented a complaint against Mr. Peña for libel, stating that the contents of the work damaged her honor.⁵² In a letter dated December 18, 2002, the Inter-American Commission on Human Rights requested that the government of Chile provide the Commission with information regarding this case within a period of 15 days. At the State's request, the

⁴⁷ *La Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), October 4, 2002.

⁴⁸ *Id.*, October 21, 2002.

⁴⁹ *Id.*, November 12, 2002; See also CPJ, November 19, 2002.

⁵⁰ Committee to Protect Journalist (CPJ), December 18, 2002.

⁵¹ *La Semana Jurídica: Abogados de Yáñez denuncian error judicial* (Yáñez's lawyers denounce judicial error), December 27, 2002.

⁵² *Instituto Prensa y Sociedad* (IPYS), December 3, 2002. The Commission was also notified of this directly by the petitioner in December of 2002.

Commission extended the deadline until January 25, 2003. As of this writing, the Commission has not received any further response from the Chilean government. On January 13, 2003, the Second Chamber of the Court of Appeals of Santiago affirmed the order for seizure of the book.⁵³

Others

55. In October 2002, the Commission received information about attempts to prevent the exhibition of "Prat," a play by Manuela Infante about Arturo Prat, a Chilean hero of the War of the Pacific. First, the president of the Corporación 11 de septiembre brought a complaint under the State Security Law, which was rejected by the court for procedural reasons. A private citizen brought another action, a *recurso de protección*, complaining that the work caused injury to the honor and image of Prat. Additionally, five members of Congress asked the Minister of Education to suspend the play's debut, arguing that the play violates Article 19(10) of the Constitution, which requires the State to protect the cultural patrimony of the nation. The same five members of Congress submitted a resolution (*proyecto de acuerdo*) to Congress to impede the exhibition of the play because they considered that it portrays Prat as "cowardly, irrational, drunk, and homosexual."⁵⁴ The Special Rapporteur for Freedom of Expression expressed his concern about the possible use of prior censorship and asked the Chilean government to provide additional information relating to this situation in a letter dated October 16, 2002. The State replied in a letter dated October 21, 2002. The State noted that the motion presented to Congress was defeated by a vote of 43 to 40, and that, even if it had passed, it would have had the character of a recommendation rather than a legally binding instrument. The State affirmed that the action filed by the *Corporación 11 de septiembre* had been rejected by the Courts. The State did not have any information about the legal actions instituted by private individuals, but noted that the play had been performed in a theater festival on October 18, 2002.

Positive developments

56. In April 2002, the Court of Appeals of Santiago ruled that Chilean television stations must provide sign language interpretation during one of their most watched newscasts. This decision was the result of a protection remedy (*recurso de protección*) presented by two deaf individuals, who argued that sign language is the sole means of communication of 90% of the deaf population of Chile. Without sign language interpretation, this large sector of the population would not have access to news.⁵⁵

57. On May 3, 2002, World Press Freedom Day, the government of Chile announced that it would present a bill to the House of Deputies to repeal the *desacato* laws and to decriminalize defamation.⁵⁶ Also in May 2002, Deputy Victor Barrauto, a member of the House of Deputies, introduced Bill 2929-07, legislation that would eliminate Chile's remaining *desacato*

⁵³ *Instituto Prensa y Sociedad (IPYS)*, January 14, 2003

⁵⁴ Commission of the Chilean Forum for Freedom of Expression (*Comisión del Foro Chileno para la Libertad de Expresión*) in a letter dated October 14, 2002.

⁵⁵ *Red de Derecho de Interés Público*, April 9, 2002.

⁵⁶ World Press Freedom Committee, May 8, 2002; Committee to Protect Journalists (CPJ), May 7, 2002; IPyS, May 7, 2002.

laws.⁵⁷ In September 2002, President Ricardo Lagos introduced Presidential Bill 212-347, which, like Bill 2929-07, would eliminate all remaining *desacato* provisions from Chilean law.⁵⁸

58. On October 30, 2002, the Chilean Senate passed the Law on Film Rating (*Ley de Calificación Cinematográfica*). The law will replace the system of prior censorship of films with a film rating system, based on the age of moviegoers. The Inter-American Commission on Human Rights has been observing the progress of this legislation since it was proposed by President Ricardo Lagos on March 5, 2001, in the context of the sentence of the Inter-American Court of Human Rights against the government of Chile in the case of the Last Temptation of Christ. The IACHR and the Office of the Special Rapporteur have previously expressed satisfaction with the system of film ratings to protect minors from entering films that are inappropriate for their age level.⁵⁹ The law was enacted by the President at the end of 2002, and entered into force upon its publication on January 5, 2003.

COLOMBIA

Assassinations

59. On January 30, 2002, Orlando Sierra Hernández, assistant editor of the daily *La Patria* in Manizales, department of Caldas, was shot in front of the newspaper's offices. He died two days later. Mr. Sierra was one of the most influential journalists in the region. He wrote a column called *Punto de encuentro*, in which he critically analyzed issues of national and regional concern, including cases of corruption. In his weekly columns, Mr. Sierra also criticized leftist rebels and a right-wing paramilitary group. Luis Fernando Soto ultimately pled guilty to the murder and was sentenced by a Special Judge of Manizales (*Juez Especializado de Manizales*) to 19 and a half years in prison. In May 2002, authorities also arrested Luis Arley Ortiz Orozco, on suspicion of having been the intermediary between those who ordered the crime and those who carried it out. The Attorney General's Office is also investigating Francisco Antonio Quintero Torres upon suspicion that he heads the gang of assassins of which Mr. Soto was a part. The intellectual authors of the crime have not been apprehended.⁶⁰

60. On April 11, 2002, two members of a news crew from *RCN Televisión* were shot while covering fighting between the Colombian army and leftist rebels. Wálter López, the crew's driver, died on the scene and Héctor Sandoval, a cameraman, died the next day from the wounds he had received. The news crew came under fire in a mountainous region outside the southwestern city of Cali where the army was pursuing fighters from the Revolutionary Armed Forces of Colombia (FARC). According to a witness from another media organization, the journalists had decided to turn back when an army helicopter hovering above opened fire on their vehicle, hitting López. The witness stated that the letters "RCN" were marked in large,

⁵⁷ World Press Freedom Committee, May 16, 2002.

⁵⁸ The Office of the Special Rapporteur received a copy of this Bill during the Special Rapporteur's visit to Chile in December 2002. See also, World Press Freedom Committee, September 11, 2002.

⁵⁹ See 2001 Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Ch. V, para. 7.

⁶⁰ IPyS, January 30, 2002; IPyS/IFEX, February 14, 2002, May 23, 2002; Fundación para la Libertad de Prensa (FLIP), January 31, 2002; Reporters sans frontières (RSF), January 31, 2002; World Association of Newspapers (WAN), February 1, 2002; *Sociedad Interamericana de Prensa*/Inter-American Press Association (SIP-IAPA), February 1, 2002; Committee to Protect Journalists (CPJ), April 18, 2002; *Centro Análisis de Información*, April 18, 2002.

bright colors on the roof and both sides of the vehicle. The journalists tried to signal the helicopter for help by waving white T-shirts in the air. Fifteen minutes after López was shot, a bullet from the helicopter hit Sandoval. The army has opened an investigation into the killings. The head of the anti-abduction force, Colonel Carlos Arévalo denies that the army was responsible and asserts that the journalists were attacked by the FARC.⁶¹

61. On June 28, 2002, Efraín Varela Noriega, owner of *Radio Meridiano 70*, was murdered. Mr. Varela was driving home from a university graduation in Arauca Department, along with his sister and brother-in-law, when their car was intercepted by a white truck. Several heavily armed men forced the journalist to get out of his car, which was marked with the insignia of *Radio Meridiano 70*, and shot him in the face and chest. Mr. Varela's sister and brother-in-law were unharmed. Mr. Varela was the host of two news and opinion programs at *Radio Meridiano 70*, in which he frequently criticized all sides fighting in Colombia's 38-year civil conflict. Less than a week before the killing, Varela told listeners during his morning news show that fighters from the paramilitary United Self-Defense Forces of Colombia (AUC) had arrived in Arauca and were patrolling the streets in the town, which is on the border with Venezuela. In addition to being a journalist, Mr. Varela was an attorney, teacher, and social leader with a particular interest in peace and conflict resolution and human rights. Mr. Varela's professional activities had made him a frequent object of threats from both the paramilitaries and the guerillas. His name had appeared in a list of people declared "military objectives" by the paramilitaries of the AUC. In the months before his death, Varela had begun warning his family and colleagues that his life could be in danger. According to his widow, Mr. Varela had received threats as recently as two days before his death. The Human Rights Unit of the Attorney General's Office (*La Unidad de Derechos Humanos de la Fiscalía de la Nación*) has assumed the investigation of the case.⁶²

62. On July 11, 2002, Mario Prada Díaz, the founder and director of the monthly newspaper *Horizonte Sabanero* (later renamed *Horizonte del Magdalena Medio*) in the Santander Department in northeastern Colombia, was abducted from his house in the municipality of Sabana de Torres. The next morning, his body was found riddled with gunshots not far from his home. The motives for the killing and the possible perpetrators are unclear. There was no indication that the journalist had received any threats prior to his death. Prada's newspaper is dedicated to covering cultural, social, and community development issues. The paper had written about financial irregularities involving the municipal administration of Sabana de Torres just a week earlier. Additionally, a week before Prada's murder, the head of a right-wing paramilitary force in the region had warned that his group would begin killing journalists. The place where his body was found is located in a zone that has been in constant dispute by the Front 22 of the Revolutionary Armed Forces of Colombia (FARC), the Vásquez Chacón Front of the National Liberation Army (ELN), and the Central Block of the United Self-Defense Forces of Colombia (AUC).⁶³

⁶¹ SIP/IAPA, April 12, 2002; CPJ, April 12, 2002; RSF, April 12, 2002; *Asociación Nacional de Periodistas* (ANP), April 13, 2002.

⁶² IPyS, June 29, 2002; RSF, July 1, 2002; CPJ, July 1, 2002; SIP/IAPA, July 2, 2002.

⁶³ *Fundación para la Libertad de Prensa* (FLIP), July 12, 2002; CPJ, July 12, 2002; IPyS, July 12, 2002; RSF, July 15, 2002; Canadian Journalists for Free Expression (CJFE), July 16, 2002; SIP/IAPA, July 17, 2002; World Association of Newspapers (WAN), July 17, 2002; Writers in Prison Committee (WiPC) of International PEN, July 17, 2002.

63. On July 11, 2002, Elizabeth Obando, who was responsible for the distribution of the regional newspaper *El Nuevo Día* in Roncesvalles municipality, Tolima department, was shot. Obando was travelling on a bus in Playarrica, Tolima department when unknown armed men intercepted the vehicle, forced her to get out and minutes later shot her several times. She died two days later from the injuries. Angela Yesenia Bríñez, the municipality's spokesperson, was also killed. The 21st division of the Revolutionary Armed Forces of Colombia (FARC) is believed to be responsible for the attack. Ms. Obando had previously been threatened by "Donald," leader of the FARC's 21st division, because of a September 21, 2001 article published in *El Nuevo Día* criticizing the FARC.⁶⁴

Threats and Aggression

64. On January 30, 2002, a car bomb exploded in front of the *Canal Caracol* television station studios, in Bogotá's La Soledad neighborhood, resulting in extensive damage to the station and surrounding buildings. No one was injured. The incident occurred at 4:15 a.m. (local time), after three men abandoned the vehicle, which was loaded with approximately 30 kilograms of dynamite. According to Police Colonel Rubén Jaramillo, the assailants fired shots at a local police post before carrying out the attack. Initial findings reportedly pointed to the Revolutionary Armed Forces of Colombia (FARC) guerrilla movement as likely being responsible for the attack.⁶⁵

65. In March 2002, seven journalists who have covered high-profile criminal investigations for major Colombian media organizations were threatened with death and given three days to leave the country. The threats were communicated in two letters that were styled after funeral notices and contained all of the journalists' names. The first letter was received by *RCN Televisión* on March 1. *Caracol Televisión* received an identical letter three days later. The threatened journalists are: Jairo Lozano, reporter for the daily *El Tiempo*; Juan Carlos Giraldo, senior correspondent for *RCN Televisión*; Julia Navarrete, correspondent for *Caracol Televisión*; Jairo Naranjo, correspondent for *RCN Radio*; Hernando Marroquín, correspondent for *Caracol Radio*; Marilyn López, correspondent for *Noticias Uno*; and José Antonio Jiménez, a former correspondent for *TV Hoy*, which recently folded. All seven journalists had covered high-profile drug investigations for their news organizations. The Attorney General's Office is investigating the threats. The journalists have been provided with bodyguards through the Interior Ministry's Program for the Protection of Journalists and Social Communicators. At least three of them are currently in hiding within Colombia and some have temporarily left the country.⁶⁶

66. In March 2002, the Office of the Special Rapporteur received information that newspaper columnist Fernando Garavito had recently fled Colombia after a series of events that made him fear for his life. Garavito, who writes a Sunday column for the Bogotá-based newspaper *El Espectador*, left Colombia for the United States on March 21. In a series of columns, Garavito attacked the right-wing United Self-Defense Forces of Colombia (AUC). He

⁶⁴ *Fundación para la Libertad de Prensa* (FLIP), July 25, 2002; RSF, July 26, 2002.

⁶⁵ SIP/IAPA, January 30, 2002; *Fundación para la Libertad de Prensa* (FLIP), January 31, 2002; World Association of Newspapers (WAN), February 1, 2002; RSF, February 1, 2002.

⁶⁶ IPyS, March 8, 2002; CPJ, March 11, 2002; RSF, March 12, 2002.

also wrote about the upcoming May 2002 presidential election, describing then-front-running presidential candidate Álvaro Uribe as an ultra-right candidate whose election would be dangerous for the country. Garavito began having problems soon after the columns appeared. His name appeared in a communiqué published by the AUC criticizing the Colombian press.⁶⁷

67. On March 25, 2002 Cesar Mauricio Velásquez, dean of the Sabana University Faculty of Communications and Journalism, received a telephone call warning him of a planned attack against a number of journalists in Bogotá. The caller, who identified himself as a retired army sergeant, said he was calling to warn Velásquez about a plan to assassinate journalists believed to be "Colombia's enemies." Velásquez's name was included on one of the lists of journalists to be killed. The name of journalist Carlos Pulgarín also figures on the list. Velásquez received another similar call on April 8. In addition to the threats, Velásquez also reported that on April 6, as he was heading home, a vehicle tried to block his way and corner him. A similar incident occurred on April 8, but on both occasions he was able to escape his pursuers. Velásquez is unsure of the reason that he is being targeted. As faculty dean, Velásquez oversees the Media Watch (*Observatorio de Medios*) project, which analyzes various issues affecting the media. One of the project's reports, published in *Semana* magazine during the first week of February, featured journalists who cover the conflict reflecting on who is responsible for intimidating the Colombian press. Velásquez is also a reporter for the *Hora Cero* television news program. Velásquez notified authorities and the other journalists about the alleged plot. The Interior Ministry's Program for the Protection of Journalists and Social Communicators has provided him with a bodyguard.⁶⁸

68. On April 4, 2002 Carlos José Lajud, of the works for the Bogotá station *Citytv*, received a threatening letter at the *Citytv* offices. "Our sincere condolences...for the death of Carlos Lajud," read the note. The letter accused the journalist of serving the interests of Colombia's ruling class, declared him and his family military targets, and demanded that he leave the country within three days. Since February, Lajud has produced some 20 investigative reports claiming that the Revolutionary Armed Forces of Colombia (FARC) and the smaller National Liberation Army (ELN) have established armed cells in the capital. The letter was the most serious of several threats against Lajud that began in late February, just three days after his reports on the new urban guerrilla groups began to air. Lajud claims not to know the source of the threats. The journalist was provided with a bodyguard by the Interior Ministry's Program for the Protection of Journalists and Social Communicators. Lajud and his wife Patricia Busigo left Colombia on July 16 as a safety precaution. Lajud is the son of the late radio journalist Carlos Alfonso Lajud Catalán. In 1993, Catalán was shot and killed after he publicly accused a local mayor of corruption.⁶⁹

69. On April 7, 2002, two bombs exploded near the *Radio Super* station in Villavicencio, the capital of Meta department. The explosions killed twelve people, injured seventy, and caused material damage to the station and other surrounding buildings. The authorities suspect that guerrillas of the Revolutionary Armed Forces of Colombia (FARC) are responsible for the attack. It was not clear whether the attack was directed at the radio station

⁶⁷ CPJ, March 29, 2002.

⁶⁸ IPyS, April 29, 2002; CPJ, May 9, 2002.

⁶⁹ CPJ, April 11, 2002; IPyS, April 24, 2002; *Fundación para la Libertad de Prensa* (FLIP), July 19, 2002.

or against the public in general. Presidential candidate Álvaro Uribe suggested that the blast was directed at the *Radio Super* station for having transmitted his speeches. The radio station was contracted to transmit live Uribe's visit and began to receive threats after promotional spots advertising the upcoming broadcast were aired. The radio station went ahead with the broadcast despite the threats.⁷⁰

70. On April 12, 2002, a rocket exploded near the studios of *RCN Televisión* in Bogotá. Local authorities said the station was intentionally targeted. The blast destroyed a brick wall surrounding a building located less than 40 feet from the station in an industrial neighborhood in south Bogotá, according to a spokesman for the city's police department. There were no victims. The rocket was apparently fired at a range of less than 1,000 feet (300 meters) from the station by a man who was driven to the area on the back of a motorcycle. No one was injured in the attack, which authorities blamed on the leftist Revolutionary Armed Forces of Colombia (FARC).⁷¹

71. On April 22 and 23, unidentified men threatened to kill television journalist Daniel Coronell and his 3-year-old daughter. Coronell, news director of *Noticias Uno*, a current affairs program on the Bogotá TV station *Canal Uno*, received threatening calls on his cellular phone at his home and office after he aired an investigative report examining possible links between the country's leading presidential candidate, Álvaro Uribe Vélez, and drug traffickers. The report also questioned whether Uribe gave his father preferential treatment when he was director of the Civil Aeronautics Department by accelerating the granting of a license for a helicopter that belonged to a company that his father co-owned. In addition to the threats received by Coronell, Ignacio Gómez, director of investigations at *Noticias Uno*, received numerous death threats after the reports were aired. Coronell reported the threats to police and sent his daughter out of the country with relatives.⁷²

72. On May 6, 2002, Mauricio Amaya and Diego Burgos, two drivers for the television station *Caracol* were kidnapped in the municipality of Santa Cecilia, near the border of Chocó and Risaralda departments. Amaya and Burgos were travelling in vehicles belonging to *Caracol* to pick up a team of journalists. The captors identified themselves as members of the *Ejército Revolucionario Guevarista*, a dissident group of the National Revolutionary Army (ELN). The captors accused television stations of belonging to the economically powerful groups in the country and stated that "the war is changing, and everyone is playing a role in it." The two men were released 48 hours later.⁷³

73. On May 14, 2002, Carlos Pulgarín, a journalism professor at the Universidad de La Sabana in Bogotá, left the country out of concern for his safety. He had suffered repeated incidents of threats and intimidation, apparently resulting from his exposés of violence perpetrated by Colombia's warring factions. On March 14, 2002, his birthday, Pulgarín received

⁷⁰ IPyS, April 11, 2002; CPJ, April 19, 2002.

⁷¹ CPJ, April 15, 2002; *Centro Análisis de Información*, April 13, 2002; *Asociación Nacional de Periodistas*, April 13, 2002.

⁷² CPJ, April 26, 2002; IPyS/IFEX, April 26, 2002; RSF, May 6, 2002.

⁷³ IPyS, May 7, 2002; *Centro de Análisis de Información*, May 7, 2002; SIP/IAPA, General Assembly Reports, October 2002.

a phone call from an unidentified man who told him to enjoy his birthday because it would be his last. On March 19, Pulgarín received a phone call from someone identifying himself as a retired army sergeant who warned of plan to kill him and other journalists. Later that day, he received another call, this time the caller stated that the plot would be carried out by paramilitaries and members of the army. He received another similar call on April 8. On May 8, 2002, he was threatened by two men who approached him as he was walking toward the bus stop to go to work. The men also asked him to deliver a threatening message to César Mauricio Velásquez, the dean of the Universidad de La Sabana's department of social communication and journalism. Pulgarín said that the same men had harassed and threatened him on several previous occasions since 2001.⁷⁴

74. On May 16, 2002, journalists Nidia Álvarez Mariño and Ramón Vásquez Ruiz of the Santa Marta-based daily *Hoy Diario del Magdalena* and their driver, Vladimir Revolledo Cuisman, were abducted in Magdalena by the leftist Revolutionary Armed Forces of Colombia (FARC). The reporters had been traveling to a town south of Santa Marta to cover stories on a local court case and on satanic cults when they unknowingly drove into a rebel roadblock near Ciénaga, about 420 miles (670 kilometers) from Bogotá. The rebels kidnapped nine other people in addition to the reporters and the driver. Álvarez was freed unharmed the following morning, but the rebels continued to hold Vásquez and Revolledo. Several days after the abduction, the newspaper received a demand for the equivalent of U.S. \$250,000 and the publication of a four-page communiqué in exchange for the release of Vásquez and Revolledo. The communiqué apparently analyzed the current political situation in Colombia and lambasted the paramilitary army. The newspaper did not comply with the abductors' demands, but offered instead to publish an interview with a FARC commander. However, both Vásquez and Revolledo were ultimately released unharmed without any action taken by the station. Revolledo was released on May 24 and Vásquez was released on May 28.⁷⁵

75. On June 29, 2002, the radio station *Meridiano 70*, in the city of Arauca, capital of Arauca department, received two telephone calls in which death threats were made against journalist Josédil Gutiérrez. These threats came only 19 hours after the director and owner of the station, Efraín Alberto Varela Noriega, had been murdered.⁷⁶ The caller identified himself as a member of the United Self-Defense Forces of Colombia (AUC) and gave the journalist 24 hours to leave the city. Mr. Gutiérrez chose to stay out of fear that his family members could be in danger of retaliation if he were to leave. He requested protection from the State, however, the Office of the Special Rapporteur has no information as to whether or not this was granted. Mr. Gutiérrez, who has over ten years of experience as a journalist in local and national media, had been working with Mr. Varela on the program *Hablemos de Política*, which, over the course of the month, had been presenting different points of view on the candidates for governor of the department.⁷⁷

⁷⁴ CPJ, May 9, 2002; IPyS, May 20, 2002.

⁷⁵ IPyS, May 20, 2002, May 29, 2002; CPJ, May 21, 2002, May 24, 2002; Writers in Prison Committee (WiPC) of International PEN, May 22, 2002, June 6, 2002.

⁷⁶ See, *supra* regarding the murder of Efraín Alberto Varela Noriega.

⁷⁷ IPyS, July 1, 2002.

76. On June 30, 2002, Luis Eduardo Alfonso, another *Meridiano 70* journalist, decided that it was necessary for him to flee the city when his name appeared on a list of individuals targeted for assassination by the United Self-Defense Forces of Colombia (AUC). On March 9, he had also received a threatening telephone call from someone claiming to be with the Revolutionary Armed Forces of Colombia (FARC). The threat was apparently related to the station's coverage of the presidential elections.⁷⁸

77. On July 3, 2002, Astrid María Legarda Martínez, a correspondent who covers the conflict in Colombia for independent *RCN Televisión*, fled the country after learning that the Revolutionary Armed Forces of Colombia (FARC) was plotting to kill her in reprisal for her coverage of the conflict. She had reported on the fighting between paramilitaries and guerrilla groups and conducted interviews with paramilitaries of the United Self-Defense Forces of Colombia (AUC). Legarda learned of the alleged plan from a source in a high-security prison in Bogotá. She declined to identify her source but described him as reliable and said that he has connections to the FARC.⁷⁹

78. On July 8, 2002, four employees of the *RCN Radio* and *Radio Caracol* stations were kidnapped, allegedly by the Revolutionary Armed Forces of Colombia (FARC) guerrillas. The kidnapped media workers were: Luis Eduardo Perdomo and José Rodríguez, a driver and technician for *RCN Radio*, respectively, along with Oscar González and Elio Fabio Giraldo, a technician and driver for *Radio Caracol*. The incident occurred while they were reporting on the national long-distance bicycle race, in Tolima department. All four individuals were released unharmed on July 11, but their equipment and vehicles were not returned to them.⁸⁰

79. Also on July 8, 2002, United Self-Defense Forces of Colombia (AUC) paramilitaries threatened the newspapers published in Barrancabermeja, Santander department. The threats were delivered by Commander "Alex," of the AUC central block, who stated in an interview printed in the July 8 edition of *Vanguardia Liberal*: "Either [the press] stops toying with the community's pain, or we will find ourselves in the unfortunate position of having to execute someone, so that they understand the people's pain." According to "Alex," the threats stem from the "sensationalistic" way in which local media report in the Barrancabermeja port. The oil-producing region is disputed territory between the AUC and the guerrillas. There are four weeklies published in Barrancabermeja: *La Noticia*, *El Vocero*, *La Tarde de Santander* and *Periódico 7 días*.⁸¹

80. On July 9, 2002, two unidentified gunmen accosted Anyela Muñoz, owner of the weekly *El Vocero*, on a street in Barrancabermeja. The gunmen told her that if this week's issue of her paper were published, someone was going to die. She refused to stop production of the paper, instead reporting the incident to the local Human Rights Ombudsman (*Defensoría del Pueblo*) and the National Police. The Police have placed a guard outside of the newspaper's offices and have provided Muñoz with personal protection.⁸²

⁷⁸ IPyS, July 1, 2002.

⁷⁹ CPJ, July 12, 2002; FLIP, July 19, 2002.

⁸⁰ IPyS, July 8, 2002, July 12, 2002; RSF, July 10, 2002; World Association of Newspapers, July 15, 2002.

⁸¹ RSF, July 10, 2002; IPyS, July 8, 2002; *Fundación para la Libertad de Prensa* (FLIP), July 9, 2002.

⁸² IPyS, July 9, 2002; CPJ, July 12, 2002; FLIP, July 12, 2002.

81. On July 19, 2002, a threatening letter was delivered to the offices of the *RCN* news program in Cali, Valle del Cauca department. It listed eight journalists who were given 72 hours to leave the city or face being declared "military targets." The letter was signed by the Manuel Cepeda Vargas urban militia, western division of the Revolutionary Armed Forces of Colombia (FARC) guerrillas. The journalists named in the letter were: Albeiro Echavarría, of the *Noti5* television station newscast; Álvaro Miguel Mina, reporter for *Radio Caracol*; Luis Eduardo Reyes, director of a program broadcast on *RCN Radio*; Diego Martínez Lloreda, assistant editor of the daily *El País*; Humberto Briñez and Wilson Barco, correspondents for the *RCN* television station; Hugo Palomar, of *Caracol Televisión*, and columnist Mario Fernando Prado. The journalists were accused of being "puppets of President Pastrana's military regime" and "enemies of the people who defend the interests of the oligarchy." The letter ends by referring to the journalists as "liars who lack in professional ethics." A number of the journalists on the list have previously received threats or been victims of intimidation. In addition to the threats against the journalists, the letter reiterated threats against several local officials. The authorities do not believe that the letter is authentic. In a similar incident, on July 18, 2002, a letter signed "FARC Secretariat" was received at the offices of *Radio Super*, in Bogotá. The note claimed that the newscasts of the *Caracol* and *RCN* radio and television stations had been declared "military targets." The authenticity of this letter was not confirmed or denied by authorities.⁸³

82. On July 23, 2002, journalists Jorge Carvahalo Betancur, former director of *Todelar* in Antioquia, and Fernando Vera Ángel, director of *Radioperiódico Clarín*, a regional news program specializing in political news, were wounded by an attack with explosives in a cafeteria in Medellín. In the same attack, Hildebrando Giraldo Parra, a former congressman and former manager of the Energy Company of Medellín (Empresa de Energía de Medellín), was killed. Council member Fabio Estrada Chica and four other were also injured. The cafeteria was a popular gathering place for politicians and journalists, including Carvahalo and Vera, to meet each day to discuss local political issues. The motive of the attack is still unclear, although it was believed to have been aimed at some politicians who were present that day.⁸⁴

83. On July 29, 2002, a threatening e-mail message was sent to *Radio Meridiano-70* and to *Caracol Televisión* correspondent Rodrigo Ávila. The writer of the e-mail accuses press members and media owners in the Arauca Department of flouting justice and warns that they could be declared military targets. The Arauca Liberators Block of the paramilitary United Self-Defense Forces of Colombia (AUC) signed the letter. Ávila, *Caracol's* correspondent in Arauca, said he has received at least 10 threats by telephone during the last week and has hired a bodyguard with financial help from a private human rights group in Colombia. He said repeated requests for protection from the previous government and the new government of President Álvaro Uribe Vélez, who took office August 7, have gone unanswered. Evelyn Varela, manager of *Meridiano-70* and daughter of the late journalist Efraín Varela, who was assassinated on June 28, 2002, said she reported the e-mail message to local authorities, who have not responded.⁸⁵

⁸³ IPyS, July 23, 2002; *Centro de Análisis de Información*, July 23, 2002.

⁸⁴ FLIP, July 23, 2002.

⁸⁵ CPJ, August 14, 2002; IPyS, July 30, 2002.

84. On August 6, 2002, an *El Tiempo* news crew was kidnapped in the municipality of Mistrató, Risaralda department. Abducted were legal affairs editor Iván Noguera, photographer Héctor Fabio Zamora, and their driver, John Henry Gómez. The news crew was travelling in the area to report on local indigenous groups caught in the conflict between leftist rebels and right-wing paramilitaries in the region. They were intercepted on the highway by heavily armed individuals, members of the Aurelio Rodríguez Front of the Revolutionary Armed Forces of Colombia (FARC) guerrillas. The guerrillas forced the three individuals to walk into the mountains for two hours, where they were held overnight. The guerrillas reproached the journalists for the way in which the media refer to them as terrorists. They were released on the following day but did not arrive in Pereira, where the newspaper's offices are located, until August 8.⁸⁶

85. On September 17, 2002, Edgar Buitrago Rico, founder and director of the monthly *Revista Valle 2000*, fled the city of Cali in fear for his life after receiving repeated death threats since May. The latest threat to Buitrago came in late August in a letter sent to the local press and politicians in Cali. It was signed by the Committee for the Rescue of Cali, a group that authorities believe was fabricated by the unidentified individuals responsible for the threats. The letter accused Buitrago of publishing lies in support of Cali's mayor, whom the journalist has backed publicly because of the mayor's alleged stand against corruption. The letter warned that Buitrago and 10 other people would be declared "military targets" unless they left the city immediately. In May, Buitrago received two death threats by e-mail. Then, in June, armed men mistook the magazine's advertising salesman for Buitrago, forced him into a vehicle, and threatened to kill him before realizing their mistake and freeing him. Based on these incidents, Buitrago sought the protection of the Ministry of Interior on August 21. Receiving no response for several weeks, he decided to leave the city. Buitrago launched *Revista Valle 2000* in 1998 as a publication dedicated to investigating and denouncing cases of political corruption in Valle del Cauca. Death threats in recent years have forced four of his volunteer correspondents to resign. Before starting the magazine, Buitrago was assistant editor of *El Caleño* and a reporter for *El País*.⁸⁷

86. On October 14, 2002, a group of journalists and camera operators from several media outlets was the target of gunfire while covering confrontations between police and urban militias in the Comuna 13 neighborhood, west of Medellín. Claudia Garro of *Caracol TV*, Javier Arboleda of *El Colombiano*, Victor Vargas of *Teleantioquia*, Fernando Cifuentes of *Noticias Uno* and Carlos Franco of *RCN TV*, along with their camera operators, were hiding behind a wall near where the confrontations were taking place and attempting to get some footage of the confrontations. Shots were fired on the journalists and the journalists withdrew immediately to a nearby clinic. All of them escaped unhurt.⁸⁸

87. On November 13, 2002, a bomb placed inside a vehicle exploded in front of the *RCN* radio station studios in Cúcuta. Four individuals, including a police officer, a security guard and two local residents were injured and there was material damage to some of the surrounding buildings, including the nearby home of the Norte de Santander police commander, Colonel

⁸⁶ IPyS, August 8, 2002; FLIP/IFEX, August 9, 2002; CPJ, August 9, 2002.

⁸⁷ CPJ, September 17, 2002; IPyS/IFEX, August 21, 2002.

⁸⁸ FLIP, October 16, 2002; WAN, October 21, 2002.

Carlos Alberto Barragán. No *RCN* journalist or media worker was injured in the blast. No threats had been received at the radio station since the end of May, in the weeks preceding the presidential elections. Authorities have stated that they believe the police commander was the real target for the attack, but that a security perimeter around his house prevented the culprits from parking the car any closer to his house. Prior to the explosion, the assailants had reportedly fired shots at the guards stationed outside the police commander's house and then fled, leaving behind a taxi packed with 40 kilograms of explosives in front of the *RCN* studios.⁸⁹

88. On November 19, 2002, a bomb that was concealed inside a suitcase was left in front of the offices of the regional newspaper *La Opinión*, located in Cúcuta, northern Santander. The attackers tried to enter the newspaper's offices, but the guards stopped them from gaining access. Since the perpetrators were unable to enter the building, they left the suitcase containing the bomb outside the main entrance and fled the scene. A guard noticed the bomb and informed the police. An anti-explosive unit deactivated the bomb, which contained 30 kilos of the explosive Anfo, the same explosive used in the November 13 bombing in front of the *RCN* radio station. Neither the newspaper nor its journalists had recently received any threats. North Santander Police Chief Colonel Barragan attributed the attack on the *La Opinión* offices to the ELN.⁹⁰

89. On November 26, 2002, a taped message, allegedly recorded by the National Liberation Army (ELN) guerrillas, was delivered to the *Radio Catatumbo* station, an *RCN* radio network affiliate in Ocaña. In the message, the ELN urges the municipality's media outlets to "report impartially or else face attacks" similar to those against *RCN* radio and the daily *La Opinión* in Cúcuta. The ELN also cites a number of grievances that the ELN has with the army. *Radio Catatumbo* manager Agustín McGregor noted that after the tape was delivered, he received a telephone call from Commander "Raúl," spokesperson for the Armando Cauca Guerrero and Camilo Torres ELN divisions. The guerrilla leader threatened him with consequences if he did not air the tape in its entirety and communicate the ELN message to other media outlets in Ocaña and southern Cesar department. The tape was aired the following day.⁹¹

90. In December 2002, the Office of the Special Rapporteur was notified that journalists Roció Silva, of *Emisora ABC*, and Hernando Lozano, of *Radio Reloj Caracol*, had suffered ongoing threats and harassment from Miriam Llanos, president of the City Council (*Concejo Municipal*) of Galapa, and her mother, Yolanda Matera. These actions were in retaliation for the journalists' reports criticizing some actions of the City Council.⁹²

Follow-up on the assassination of journalist Guzmán Quintero Torres

91. In January 2002, the Criminal Judge of the Specialized Circuit of Valledupar (*Juez penal del circuito especializado de Valledupar*) also absolved Jorge Eliécer Espinel Velásquez

⁸⁹ IPyS, November 14, 2002; FLIP, November 15, 2002; SIP/IAPA, November 15, 2002; *Centro de Análisis de Información*, November 20, 2002.

⁹⁰ FLIP, November 20, 2002; IPyS, November 19, 2002; *Centro de Análisis de Información*, November 20, 2002.

⁹¹ FLIP, November 29, 2002; RSF, December 5, 2002.

⁹² IPyS, December 5, 2002; *Centro de Análisis de Información*, November 20, 2002.

and Rodolfo Nelson Rosado, two suspects in the murder of journalist Guzmán Quintero Torres. Quintero Torres was murdered on September 16, 1999. He was the editor-in-chief of the daily *El Pílon*. Shortly before he died, he had published a series of articles denouncing homicides and abuses committed by members of the National Army. The decision absolving the two suspects was appealed by the prosecution. The appeal is currently pending.⁹³

92. In 2002, there were a number of developments in the case of journalist Jaime Garzón's assassination. Garzón was assassinated on August 13, 1999. He was a popular journalist and critical humorist in Colombia who denounced and criticized drug trafficking, political and military corruption, and paramilitary actions. He was also involved in negotiations for the release of individuals kidnapped by the FARC and had participated as a mediator in peace talks with the ELN guerrilla. On January 13, the investigation phase of the case was closed, some press freedom groups feel too early, as the possible involvement of some members of the army was not fully investigated. In March, the Garzón case was brought to trial, after the Attorney General's Office found that there was sufficient evidence to try Carlos Castaño Gil, head of the paramilitary forces in Colombia, for having allegedly masterminded the crime. Juan Pablo Ortiz Agudelo, alias "El Bochas," and Edilberto Sierra Ayala, alias "Toño," were alleged to have carried out the assassination. On September 16, 2002, the seventh judge of the Bogotá Specialized Court stated that he would not be able to rule on the case due to lack of subject-matter jurisdiction. According to the Criminal Code, a case should be treated by a Specialized Court when the homicide is believed to have been committed "with terrorist aims or as part of terrorist activities," or if the victim "was a public official, journalist, justice of the peace, labor leader, politician or religious leader." The Specialized Court judge determined that in this case, the assassination did not occur while the victim was acting as a journalist and the motive was not connected to terrorist activity. Therefore, he did not have jurisdiction over the case and the case should be tried in an ordinary court.. On October 23, the Division of Criminal Appeals of the Supreme Court of Justice (*Sala de Casación Penal de la Corte Suprema de Justicia*) overruled the Specialized Court judge's decision, finding that the Specialized Court must hear the case because the crime had been committed with "terrorist aims."⁹⁴

93. On October 2, 2002, the Barranquilla Specialized Criminal Court acquitted Alfredo de Jesús Liévano Alcocer of the murder of journalist Carlos Lajud Catalán. Lajud Catalán was murdered on March 19, 1993, in the city of Barranquilla, Atlántico department. It has been suggested that the motive of the crime was to silence his criticism about issues of corruption in the regional administration and about drug trafficking. Two other individuals were suspected of having been involved with the assassination: Enrique Sornoza, alias "Garnacha," and Bernardo Hoyos Montoya, a priest, mayor of Barranquilla on two occasions and currently a senator. However, Sornoza was assassinated in 1994 and the investigation of Hoyos Montoya's role in the crime was closed on June 5, 2002. As a result, no individuals are currently being investigated in connection to the crime. On October 11, 2002, the Attorney General's Office appealed the Specialized Criminal Court's ruling. The Lajud Catalán murder is one of the cases the Inter American Press Association (IAPA) has submitted to the Inter-American Commission on Human Rights (IACHR).⁹⁵

⁹³ IPyS, February 7, 2002, March 13, 2002.

⁹⁴ IPyS, March 13, 2002, October 24, 2002; *Fundación para la Libertad de Prensa (FLIP)*, August 13, 2002, September 26, 2002; SIP/IAPA, September 27, 2002.

⁹⁵ IPyS, June 13, 2002; SIP/IAPA, October 16, 2002.

Legislation

94. On August 11, 2002, President Alvaro Uribe declared a state of "Internal Disturbance" ("*Conmoción Interior*"). Under the Colombian Constitution, such a declaration gives the president the power to issue decrees, with the force of law, suspending norms that are incompatible with it. The declaration was made in response to the grave disruptions to the public order caused by the internal armed conflict. In September 2002, President Uribe issued a presidential decree designating 27 townships in three separate departments in northern and northwestern Colombia as security zones, giving state authorities greater leverage in their battle against paramilitary soldiers and leftist guerrillas. The decree also required all foreigners traveling to the security zones to get permission from the government first. On October 24, the government clarified the process for obtaining such permission. Foreign journalists are required to fax a request to the Interior Ministry listing their employer, where they plan to visit, and the length of their stay. Foreigners found in the zone without permission could be deported. According to a government spokesperson, journalists are not to be required to reveal what they plan on reporting inside the security zones. The spokesperson added that Interior Ministry officials will be on hand 24 hours a day, seven days a week to process requests in under an hour if needed. The regulations were designed to prevent foreigners from coming to Colombia to train armed groups under the guise of being journalists. On November 25, the Constitutional Court overturned sections of the decree. The Court stated that the requirement that foreigners traveling to the zones get permission first from the government could not be applied to journalists who are already accredited. The court also ruled that other key elements in the decree, such as searches without warrants, arrests, and communications intercepts, violate the Colombian Constitution.⁹⁶

Positive Developments

95. On September 24, 2002, the Attorney General's Office announced that it would add 12 new prosecutors to a unit dedicated to investigating attacks against the press. The unit in the Attorney General's Office charged with investigating attacks against the press was created in May 1999. It previously had four prosecutors based in Bogotá. With the addition of the new prosecutors, the unit will have six prosecutors in Bogotá and eleven more working in seven other towns and cities throughout the country. The Attorney General's Office took this measure in response to a rising number of crimes against journalists in Colombia.⁹⁷

COSTA RICA

Follow-up on the assassination of journalist Parmenio Medina

96. According to public information, two individuals were included in a criminal case brought by the Office of the Public Prosecutor and the Judicial Investigation Agency (OIJ) as part of an investigation into the murder of journalist Parmenio Medina on July 7, 2001. The

⁹⁶ IPyS, August 12, 2002; RSF, September 18, 2002, October 26, 2002; August 12 de 2002; *Fundación para la Libertad de Prensa* (FLIP), September 20, 2002, CPJ, October 25, 2002, December 3, 2002.

⁹⁷ CPJ, October 30, 2002; IPyS, October 11, 2002.

source indicates that the alleged perpetrators of the crimes have been identified as Luis Aguirre Jaime and Andrés Chaves Matarrita.⁹⁸

Positive developments

97. In March 2002, the Legislative Assembly of Costa Rica rescinded article 309 of the Penal Code, which criminalized “insults” against the dignity of the President and other public officials.

98. On April 25, 2002, a press release by the Inter-American Commission on Human Rights (IACHR) welcomed this decision by the Legislative Assembly of Costa Rica.

CUBA

99. Cuba continues to be a concern for the Office of the Special Rapporteur due to the absence of a pluralistic democracy, which translates in practice as a systematic violation of freedom of expression. The legal system places countless restrictions on the ability to disseminate and receive information. Moreover, tactics of intimidation and repression are used to put further pressure on journalists and dissidents to prevent them from criticizing the government.

Threats and Aggression

100. On February 27, 2002, police and state security agents attacked *Reuters* journalists Alfredo Tedeschi and Andrew Cawthorne with batons while they covered an incident in front of the Mexican embassy in Havana.

101. According to the information received, a group of Cuban citizens used a bus to crash into the gates of the embassy in hopes of seeking asylum, according to international news reports. Police chased, beat, and detained several onlookers who had congregated outside the embassy. Two Reuters journalists were caught in the fray: Tedeschi, a cameraman, was beaten to the ground by police, and his camera was taken. Cawthorne, *Reuters'* Cuba correspondent, was beaten on the arm and back.⁹⁹

102. On March 4, 2002, Jesús Álvarez Castillo, a correspondent for *CubaPress*, was covering a protest of the Cuban Foundation for Human Rights (FCDH), in the city of Ciego de Ávila, when a police officer applied a strangulation device and injured his neck.

103. On the way to the police station, Álvarez Castillo lost consciousness and had to be taken to a local hospital, where x-rays revealed a sprained cervical vertebra.¹⁰⁰

104. The same day, several journalists and activists from the FCDH gathered in the hospital to protest the attack against Álvarez Castillo. During that gathering, several persons

⁹⁸ *La Nación* de Costa Rica, at www.nacion.co.cr, 22 January 2003.

⁹⁹ Committee to Protect Journalist (CPJ), March 1, 2002.

¹⁰⁰ *Id.*, March 14, 2002.

were struck by the police, forced into police cars, and taken to the local unit of the Technical Investigations Department of the Cuban Criminal Police. The members of the group included Lester Tellez Castro, director of the independent news service *Agencia de Prensa Libre Avileña* and organizing secretary of the FCDH, and Carlos Brizuela Yera, a reporter with the independent news agency *Colegio de Periodistas Independientes de Camagüey*.¹⁰¹

105. According to the information received on the same day, Téllez Castro, who heads of the *Agencia de Prensa Libre Avileña* (APLA) and Brizuela Yera, who works for the *Colegio de Periodistas Independientes de Camaguey*, were beaten by police on March 4 and then detained along with eight human rights activists. They were arrested on their way to visit Jesús Alvarez Castillo, correspondent of the *Cuba Press* agency in Ciego de Avila (central Cuba), who had been hospitalized after being beaten up the same day by police.

106. Téllez Castro was transferred to a prison in Cienfuegos (west of Ciego de Avila) on March 11 and Brizuela Yera was sent to a detention center in the eastern province of Holguín. The two men are expected to be charged with "insulting behavior," as well as "causing trouble in a medical facility" and "refusing to obey instructions." APLA director Téllez Castro has been on hunger strike since March 5. The eight human rights activists were also taken to detention centers.¹⁰²

107. According to information received, on March 21, 2002, state security police officers prevented the association's journalism classes in Havana from going ahead. Three independent journalists, Jorge Olivera Castillo, Dorka Céspedes Vela and Omar Rodríguez Saludes, were stopped on their way to the home of Ricardo González Alfonso, the association's president. Two other journalists, Carmelo Díaz Fernández and Victor Manuel Domínguez García, already at González Alfonso's home, were intercepted as they left by a policeman who warned them the classes were illegal. Later that night, association member Iván García Quintero was interrogated by two state security police officers about the association's activities.¹⁰³

Detention

108. On February 23, 2002, Cuban journalist Carlos Alberto Domínguez, of the *Cuba Verdad* independent press agency, was arrested. According to the information received, Domínguez was arrested at his home by four state security police and jailed first in Havana at a center run by the Technical Investigation Department (DTI), which is part of the Interior Ministry and notorious for ill-treating prisoners. The health of the journalist, who suffers from migraines and high blood pressure, deteriorated badly and since March 8 he has been held at the Mariana military hospital. Domínguez has reportedly been charged with "disturbing public order" and "refusing to obey instructions"¹⁰⁴.

¹⁰¹ Id., March 1, 2002

¹⁰² Reporters without Borders (RSF), March 15, 2002 and The Writers in Prison Committee (WiPC) of International PEN).

¹⁰³ RSF, March 28, 2002.

¹⁰⁴ Id., March 15, 2002.

109. On May 3, 2002, Garcell Pérez, of the *Agencia de Prensa Libre Oriental* (APLO) news agency, was detained and beaten for one hour. The incident occurred at the Juan Paz Camejo hospital, Sagua de Tánamo municipality, in the province of Holguín, eastern Cuba. At the time, the journalist had been recording an interview with a patient's mother for an article he was writing. According to information provided by Raúl Rivero, the regional vice-president in Cuba of the IAPA's Committee on Freedom of the Press and Information, National Police and state security officers raided Garcell Pérez's home at midnight on Friday, May 3. The officers seized five books on journalistic practices, documents, letters, magazines and the journalist's files. The journalist is the Holguín representative of the Sociedad Manuel Márquez Sterling, an association not recognized by the Cuban authorities that provides training courses for independent journalists. Garcell Pérez was released on Saturday afternoon and fined 400 pesos. He was given a warning and an official card, which identifies him as an "individual highly likely to commit a crime"¹⁰⁵.

110. On July 30, 2002, journalist Angel Pablo Polanco of the *Servicio Noticuba* was arrested at his home in Havana. State Security officials came to his home in the early hours of the morning and searched it for several hours. According to Polanco's wife, Angela Salinas, the security officials seized technical material, many documents and money. Finally, at around 9 pm, they arrested Polanco without showing a warrant. When Polanco refused to go with them, they took him away by force. He has been detained at State Security headquarters in Villa Maristas, in Havana. His wife, who has been authorized to visit him on August 6, has said she does not know whether her husband has been charged. Polanco's arrest, which was preceded by the arrest of two government opponents the day before, comes in the run-up to a day of protest against the Castro government that had been called for August 5 by opposition organizations. Polanco was previously arrested by two State Security officials on February 23, 2000 after having published reports on the proceedings against Dr. Oscar Elias Biscet, president of the Lawton Foundation. Prior to that, Polanco was briefly held for questioning five times in 1999.¹⁰⁶

State regulation

111. On January 16, 2002, a decree was approved by the Ministry of Domestic Commerce prohibiting the sale of personal computers to individuals. According to an article published on March 25 in the digital periodical *wired.com*, Decree 383/2001 prohibits "the sale of computers, printers, duplicating machines, photocopiers, or any other instrument for large-scale printing" to any association, foundation, nonprofit civil organization, or individual. In cases where the purchase of such equipment or related spare parts or accessories is considered indispensable, authorization must be requested from the Ministry of Domestic Commerce.

112. According to the information received, this prohibition was issued after the launch of a web page by the Cuban Institute of Independent Economists—an illegal organization—(www.cubaicei.org), directed by the dissident economist Marta Beatriz Roque. Access to this web page from within Cuba was blocked on December 7, less than one week after it opened. According to the information provided, access to the Internet is strictly regulated in Cuba and

¹⁰⁵ Inter-American Press Association (SIP/IAPA), May 7, 2002.

¹⁰⁶ Reporters Without Borders, August 2, 2002.

subject to respect for "the moral principles of Cuban society and the laws of the country." Access is restricted to foreign companies and government institutions. Two cybercafes have been set up but one is reserved for tourists, and access to the other is restricted to members of the Official Association of Cuban Writers and Artists (UNEAC).

113. Since September 2001, four post offices in Havana have offered Cubans access to the Internet and the possibility of creating an electronic address. However, navigation is limited to web pages approved by the authorities, referred to as "the Intranet."¹⁰⁷

Others

114. On May 5, 2002, The dissident writer Vladimiro Roca Antúnez was released, 70 days before the completion of his five-year sentence.

115. An honorary member of English PEN, Roca Antúnez, aged 59, was arrested on July 16, 1997, a month after the publication of a pamphlet entitled "La Patria es de Todos" ("The Homeland Belongs to Everyone"). In it, Roca Antúnez and his co-authors -Félix Bonne Carcasses, René Gómez Manzano, and Marta Roque Cabello – urged the Cuban government to hold democratic elections, liberalize the economy and improve human rights. All four were found guilty in March 1999 of "sedition and other acts against state security." Roca Antúnez was given the longest sentence, presumably because he was the most prominent of the four, being the son of Blas Roca, one of the founders of communism in Cuba. Roca Antúnez is the last of the four to be freed.¹⁰⁸

116. In November 2002, Cuban authorities confiscated the files and photographs of French journalist Catherine David, who had entered Cuba on a tourist visa to report on the human rights situation and dissidents.

117. David, who works for the French weekly *Le Nouvel Observateur*, was stopped at Havana international airport on October 8 as she was going through customs with a friend who is a sculptor and photographer. They were led to a room in the airport's basement where their bags were searched thoroughly.

118. All the files on David's computer were copied. Her audio tapes containing interviews with dissidents and all her notes were confiscated. All of her rolls of film as well as several books and reports on the human rights situation in Cuba were also seized. The customs officials also copied all of the pages in David's address book. In Cuba, Law 88 of March 1999 provides for up to eight years in prison for any person assisting the foreign news media.

119. After missing their flight because of the length of the search, the two individuals were finally able to leave Cuba two days later. David's requests for the return of her material, which she has since then addressed to the Cuban customs agency, have so far been in vain.¹⁰⁹

¹⁰⁷ Id., March 29, 2002.

¹⁰⁸ Writers in Prison Committee (WiPC), International PEN, London, May 15, 2002.

¹⁰⁹ Reporters Without Borders (RSF), November 22, 2002.

ECUADOR

Legislation

120. On September 18, 2002, the Congress of Ecuador approved a series of reforms to the Law on Radio and Television. These reforms recognize the right of community radio stations to operate under the same conditions as commercial radio stations.¹¹⁰ On November 7, 2002 the Law was published.

Judicial actions

121. In October 2002, the First Criminal Chamber of the Supreme Court of Justice (*Primera Sala de lo Penal de la Corte Suprema de Justicia*) absolved Jorge Vivanco Mendieta, assistant editor of the Guayaquil daily *Expreso*, of criminal charges for insult and injury to honor in a case filed against him by Fernando Rosero, a deputy for the Ecuadorian Roldosista Party (PRE), in July 2001. This legal action was based on a report in which the journalist had criticized armed forces generals for not asserting their right of defense against Rosero's accusations regarding the scandal surrounding the purchase of weapons from Argentina in 1995, when Ecuador was at war with Peru. In addition to the criminal suit, Mr. Rosero filed a civil suit for libel and insults, in which the deputy sought damages totaling USD \$1,000,000. The civil action is currently pending a final judgment.¹¹¹ Mr. Vivanco also reported that he received threats while waiting for the verdict in these cases and requested protection from the government.¹¹²

EL SALVADOR

Legislation

122. On August 15, 2002, the Legislative Assembly of El Salvador approved the new National Defense Act, whose purpose is "to establish the legal, organizational and functional basis for preparing and executing national defense." Article 25 of this law provides that "Public or municipal officials and authorities and natural or legal persons must duly provide information officially requested by competent authorities for the purposes of national defense." According to the information received, on August 20, the Association of Journalists of El Salvador (APES), the Foundation for the Study of Applied Law (FESPAD) and PROBIDAD sent a letter to the President of the Republic, Mr. Francisco Flores, stating that the article in question violated the rights to freedom of expression and freedom of the press, especially because it could force journalists to reveal their sources of information in the interests of "national defense."¹¹³

¹¹⁰ CORAPE (*Coordinadora de Radios Populares de Ecuador*) and *Asociación Mundial de Radios Comunitarias*, (AMARC), October 4, 2002.

¹¹¹ *Instituto Prensa y Sociedad* (IPYS), October 15, 2002, May 29, 2002, February 5, 2002.

¹¹² *Id.*, April 23, 2002.

¹¹³ *Probidad*. San Salvador, and Reporters without Borders (RSF), August 22, 2002.

123. According to the information received by the Office of the Special Rapporteur, a letter to the President dated August 20, signed by APES, the Foundation for the Study of Applied Law (FESPAD), and PROBIDAD, the President was asked to suggest that legislators amend Article 25 requiring journalists to reveal their information sources in the interests of “national defense.” In October 2002, according to the information provided by these organizations, President Francisco Flores presented his comments on the recently approved National Defense Act to the Legislative Assembly, suggesting that legislators amend the law to exempt natural and legal persons from the obligation to turn information over to the authorities for the purposes of defense.¹¹⁴

124. On September 26, 2002, the Legislative Assembly of El Salvador approved a package of reforms to the Court of Accounts Act (concerning the principal oversight institution in El Salvador), including an amendment to Article 46 to provide that “audit reports (...) shall be disclosed to the public as soon as a resolution of exoneration of responsibilities has been issued or the judgment of the Court of Accounts has been declared enforceable.” Previously, this article did not place any legal restriction on the disclosure of audit reports to journalists or citizens immediately following their issuance. According to the information received, with the approval of this reform, audit reports will henceforth be secret in character until responsibilities have been determined or judgments of the Court of Accounts have been declared enforceable, which normally takes several years. On October 16, 2002, President Flores approved the reforms to the aforementioned law.¹¹⁵ This reform could impede timely access to information.

UNITED STATES

Judicial actions

125. On January 9, 2002, Dolia Estévez, the Washington, D.C. correspondent for the Mexican daily *El Financiero*, was ordered by the U.S. District Court for the Eastern District of Virginia to hand over materials she used in the preparation of a 1999 news article about a Mexican family allegedly linked to drug trafficking. On March 19, 2002, U.S. District Court Judge Welton Curtis Sewell granted Estévez's motion to quash the subpoena.¹¹⁶ The plaintiff in the case appealed Judge Sewell's ruling. At the time of this writing, the appeal was still pending. The Office of the Special Rapporteur expressed its concern about this case in a press release on February 21, 2002.¹¹⁷

126. On July 17, 2002, David W. Carson and Edward H. Powers, Jr., publisher and editor, respectively, of *The New Observer*, were found guilty on seven counts of criminal defamation in a jury trial in Kansas. The charges stemmed from statements made in *The New Observer* about Carol Marinovich, the mayor/chief executive of the Unified Government of Wyandotte County/Kansas City, and her husband, Ernest Johnson, a district court judge.¹¹⁸ Mr. Carson and Mr. Powers were each sentenced to pay a \$700 fine and to a year of probation.

¹¹⁴ Id., August 22, 2002.

¹¹⁵ *Periodistas Contra la Corrupción*, October 8, 2002

¹¹⁶ CPJ, April 2, 2002.

¹¹⁷ See Annexes, PREN/53/02.

¹¹⁸ CPJ, July 18, 2002; Inter-American Press Association (SIP/IAPA), July 19, 2002.

The sentence is suspended pending appeal of the case.¹¹⁹ The Office of the Special Rapporteur previously expressed its concern about this case in its 2001 Annual Report.¹²⁰

127. On August 2, 2002, US District Court Judge Gladys Kessler issued a decision in a suit filed by more than two dozen civil rights and public interest organizations under the Freedom of Information Act (FOIA). The groups were appealing the denial by the Department of Justice (DOJ) of requests filed with DOJ agencies to obtain information regarding the nearly 1,000 individuals detained on criminal charges, material witness warrants, and immigration violations as part of the September 11 investigation. The plaintiffs sought such information as the names of detainees, the circumstances of their arrest and detention, including dates of arrest and release, locations of arrest and detention, the nature of any charges filed, and their attorneys' names. Judge Kessler ordered the DOJ to release the detainees' names, or show that such information may validly be kept secret, and the names of their attorneys, but said that the DOJ had valid grounds to maintain the secrecy of other information regarding the arrests.¹²¹ The judge's order to release the names has been stayed pending appeal.¹²²

128. On August 26, 2002, the United States Court of Appeals for the Sixth Circuit ruled on a challenge to a directive that required that deportation hearings in "special interest cases" be closed to the press and the public, including family members and friends. At issue in the case was the Creppy Memorandum, a directive issued by Chief Immigration Judge Michael Creppy to all United States Immigration Judges on September 21, 2001. The Memorandum was intended to prevent the disclosure of information that could jeopardize national security in the aftermath of the terrorist attacks of September 11. The Court held that the Creppy Memorandum was an unconstitutional limitation on the right to freedom of speech. Noting that public access plays a significant positive role in deportation hearings because it is the main means by which the fairness of such proceedings can be monitored, the Court found that there should be a presumption of openness in these proceedings. The government's national security concerns were valid, however, any closures of proceedings had to be decided on a case-by-case basis, with particularized findings of fact as to the need for closure. The government had not met this burden because the Creppy directive did not set forth the standards used to classify a case as "special interest."¹²³ On October 8, 2002, the U.S. Court of Appeals for the Third Circuit also decided a case challenging the Creppy Memorandum and concluded that there was no constitutional right of access to deportation proceedings because these are administrative, rather than criminal, proceedings and there has not been an "unbroken, uncontradicted history" of openness in such cases.¹²⁴ Due to the conflict between the rulings of the two Circuit Courts, the issue is likely to be considered by the Supreme Court. According to some press freedom

¹¹⁹ CNN.com, December 9, 2002.

¹²⁰ IACHR, Annual Report 2001, vol. II, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.114, Doc. 5 rev. 1, at Chap. II, para. 193.

¹²¹ Center for National Security Studies v. Department of Justice, Civil Action N° 01-2500 (D.D.C. filed August 15, 2002), <http://www.dcd.uscourts.gov/district-court-2002.html>.

¹²² Reporters Committee for Freedom of the Press, August 15, 2002.

¹²³ Detroit Free Press v. Ashcroft, N° 02-1437 (6th Cir. August 26, 2002), <http://www.findlaw.com/cascode/courts/6th.html>.

¹²⁴ North Jersey Media Group, Inc. v. Ashcroft, N° 02-2524 (3rd Cir. filed October 8, 2002), <http://www.findlaw.com/cascode/courts/3rd.html>.

advocates, there have been at least 600 secret immigration proceedings since the Creppy Memorandum was issued.¹²⁵

129. The Special Rapporteur recognizes the serious threat posed by terrorist activity and the obligation of the government to prevent and punish terrorist activity. However, the Special Rapporteur also reiterates that, in carrying out initiatives to prevent and punish terrorism, states must continue to respect fundamental human rights and freedoms. In its Report on Terrorism and Human Rights, the Inter-American Commission on Human Rights noted that access to information held by the government should be governed by the principle of "maximum disclosure," meaning that there is a presumption of openness with respect to such information.¹²⁶ In order to withhold information, the government must show that such withholding is necessary to protect a legitimate aim, such as national security.¹²⁷ Access to meetings of government bodies, such as court proceedings, should also be governed by a presumption of openness.¹²⁸

Other

130. On July 12, 2002, reporter Joel Mowbray of the *National Review*, was detained for 30 minutes after a State Department briefing. Guards and a federal agent demanded that Mowbray answer questions about his reporting on a classified cable concerning the U.S. system of issuing visas to Saudis. The guards who stopped Mowbray wanted to know who gave him the cable. He denied having the cable and was not searched.¹²⁹

GUATEMALA

Aggression and threats

131. On February 1, 2002, several public prosecutors, staff members of the Criminal Investigations Service (SIC) and 10 members of the National Civil Police raided the administrative office of Carlos Victor Hugo Hernandez Rivas, the director of radio programs on *Radio La Voz de Hehuetenango* and *Radio Santa Fe*. Mr. Hernandez alleges that the officials forced their way into the office outside of the authorized hours for such raids and without a warrant, in order to search his files.¹³⁰

¹²⁵ Reporters Committee for Freedom of the Press, *Homefront Confidential*, Second Edition, September 2002, p. 20.

¹²⁶ Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.LV/II.116, Doc. 5 rev. 1, October 22, 2002, para. 284.

¹²⁷ *Id.* para. 286.

¹²⁸ *Id.* para. 287.

¹²⁹ Reporters Committee for Freedom of the Press, *Homefront Confidential*, Second Edition, September 2002, p. 32.

¹³⁰ Amnesty International USA, February 2002.

132. On February 5, 2002, a group of armed men threatened Arnulfo Augustin, Guzman, general director of *Radio Sonora*, and attempted to kidnap him outside of the radio station. The men fled at the sight of a security guard, but shot at the victim's vehicle.¹³¹

133. On February 6, Deccio Serano, a photographer with the newspaper *Nuestro Diario*, and other members of the press were attacked by members of the Municipal Traffic Police (Emetra). The agents filmed the journalists as they arrived to cover a traffic dispute.¹³² On the same day, Jose Candido Barrillas, director of the Commission on Freedom of the Press of the Association of Journalists of Guatemala (*Comisión de Libertad de la Prensa de la Asociación de Periodistas de Guatemala*, APG), was assaulted, forced into a car at gunpoint and later released.¹³³ Also on February 6, journalists Ana Lucia Ramirez and journalist Nery de la Cruz, of *Radio Sonora*, were attacked in two separate incidents.¹³⁴

134. In April 2002, freelance journalist David Herrera was abducted by unknown persons as he was investigating the disinterment of clandestine graves. According to the information received, the abductors threatened to kill him and asked him for "the material," which he assumed referred to recordings of interviews taped the previous day. The journalist escaped from his abductors and felt it was necessary to go into exile.¹³⁵

135. On June 7, 2002, Abner Gouz, of the newspaper *El Periódico*, Rosa María Bolaños, of the newspaper *Siglo XXI*, Ronaldo Robles and Marielos Monzón, of radio station *Emisoras Unidas*, as well as seven members of organizations for the defense of human rights, were threatened with death. In an anonymous message to the organization "Alliance against Impunity," and to several news media organizations, a group identifying itself as "los guatemaltecos de verdad" [real Guatemalans] called them "enemies of the country," and threatened to "exterminate" them.¹³⁶ The IACHR issued a press release strongly expressing its concern over the growing number of violent and intimidating acts perpetrated against defenders of human rights and journalists.¹³⁷

136. On July 7, 2002, Adrián Zapata, a columnist with *Siglo XXI*, received a call at his home from someone identifying himself as a member of "organized crime" and warning him that he would be killed.¹³⁸

137. In August 2002, the anthropologist Victoria Sandfor, of the Catholic University of Amsterdam in the Netherlands, and journalists David González and Wesley Boxed, of the U.S.

¹³¹ Id.

¹³² Id.

¹³³ Id.

¹³⁴ Id.

¹³⁵ United Nations Verification Mission in Guatemala (MINUGUA), Thirteenth report on human rights of the United Nations Verification Mission in Guatemala, August 22, 2002, para. 30; CPJ, April 12, 2002; *Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala*, April 18, 2002; RSF, June 10, 2002.

¹³⁶ Reporters without Borders, June 10, 2002.

¹³⁷ See IACHR, Press release N° 27/02: "THE IACHR EXPRESSED CONCERN OVER THE SITUATION OF HUMAN RIGHTS DEFENDERS IN GUATEMALA"

¹³⁸ *Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala*, July 11, 2002.

newspaper the *New York Times*, received death threats from *el Kaibil* (an elite counterinsurgency corps of the Valentin Chen Gómez Army), as they were investigating the disinterment of graves in Rabinal, Baja Verapaz. The journalists accompanied the investigation team to the excavations being conducted by the *Asociación para el Desarrollo Integral de las Víctimas de la Violencia Maya Achí* (Adivima) in a clandestine burial site located in the *Instituto Experimental* (Ineba) of the aforementioned municipality, where more than 600 persons massacred in 1981 had been buried by the army and paramilitary groups.¹³⁹

Access to information

138. In July 2002, the Legislation Committee of the Congress issued a favorable opinion on a bill concerning access to information and *habeas data* prepared by the Strategic Alliance Department (SAE). The bill was assigned No. 2594 and was referred to the full Congress for discussion. In October 2002, upon second reading, the Congress approved the body of the law. To enter into force, the law must be approved after a third reading article-by-article for final revisions and then sent to the Executive Branch for signature. Once signed, it must be published in the official journal.¹⁴⁰ The Association of Guatemalan Journalists (APG) and others organizations have criticized the law for failure to take civil society opinions into account.

Other

139. In January 2002, the Superintendency of Telecommunications (SIT) announced that it was reinitiating a call for economic bids on radio frequencies in the country.¹⁴¹ In April, the SIT temporarily suspended the bidding process, reinitiating it on August 27, 2002 with a call for bids on 13 radio frequencies.¹⁴² According to various civil society groups, this policy could make it difficult for grass-roots entities to gain access to the radio frequencies being auctioned.¹⁴³ It should be recalled that Principle 12 of the Declaration of Principles on Freedom of Expression provides that “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

140. In February 2002, a draft Community Radio Broadcasting Act was presented to the Congress.¹⁴⁴ The bill recognizes the importance of community radio for “the promotion of national culture, development, and education” in thousands of communities throughout the country.¹⁴⁵ Given the fundamental role of community radio stations in informing society, the objective of the bill is to ensure “that they exercise the right to free expression of thought

¹³⁹ Id., August 23, 2002.

¹⁴⁰ SEDEM (*Seguridad en Democracia*) in a communication dated November 13, 2002.

¹⁴¹ AMARC, January 27, 2002.

¹⁴² *Consejo Guatemalteco de Comunicación Comunitaria* (CGCC), April 29, 2002; AMARC, September 9, 2002.

¹⁴³ *Asociación de Periodistas de Guatemala*, during the 116th Period of Sessions of the IACHR, October 2002.

¹⁴⁴ *Consejo Guatemalteco de Comunicación Comunitaria* (CGCC) and *Asociación Mundial de Radios Comunitarias* (AMARC), February 4, 2002.

¹⁴⁵ *Propuesta de Ley de Radiodifusión Comunitaria*, January 2002, *Exposición de motivos*, p.2.

through the use of radio broadcast frequencies under equal conditions."¹⁴⁶ This bill remains under consideration by Congress.

141. In September 2002, Government Agreement 316-2002 was issued. By means of this agreement, the government announced that it would award concessions, free of charge, for nine national and regional radio frequencies to civil society institutions and associations.¹⁴⁷ The Guatemalan Council on Community Communication rejected this agreement, which it considered an obstacle to access by indigenous peoples to available radio frequencies, running counter to the democratic spirit that should characterize the allocation of radio frequencies.¹⁴⁸

142. The Office of the Special Rapporteur has received with concern a number of complaints about a campaign to discredit media organizations that criticize the actions of public officials. Information has also been received alleging that this campaign has been accompanied, *inter alia*, by decisions to bar access by the press to public events and citations by the Solicitor General of the Nation against journalists to force them to reveal their sources. This information was received in late 2002. The Office of the Special Rapporteur will carefully follow developments in this situation.

Positive developments

143. The Office of the Special Rapporteur notes with satisfaction that on January 23, 2002, the Constitutional Court provisionally declared the partial unconstitutionality of the Law on Mandatory Membership in Professional Associations (*Ley de Colegiación Profesional Obligatoria*). By decree 72-2001, the Court established that the compulsory character of this legislation applied to all professions, with the exception of journalists. It should be noted that contrary to the ruling of the Inter-American Court with respect to freedom of expression, the Guatemalan Congress, on November 30, 2001, approved the Law on Mandatory Membership in Professional Associations, requiring that all journalists possess a university degree and be a member of the association of journalists in order to practice their profession.¹⁴⁹

HAITI

144. In May and August of 2002, the Special Rapporteur for Freedom of Expression, Eduardo A. Bertoni participated together with the Inter-American Commission on Human Rights in two on site visits to Haiti with the objective of evaluating the state of freedom of expression in that country. During the visits, the Special Rapporteur met with the President of Haiti, Jean-Bertrand Aristide, state officials, judges, civil society organizations, journalists and the media.

145. The Special Rapporteur notes that human rights defenders and journalists are increasingly at risk in Haiti. Since the killings of prominent journalists Jean Dominique in April 2000 and Brignol Lindor on December 3, 2001, freedom of expression has been severely undermined and a number of journalists and human rights defenders have been attacked or killed. The Special Rapporteur for Freedom of Expression expressed deep concern regarding

¹⁴⁶ *Id.*

¹⁴⁷ *Acuerdo Gubernativo Número 316-2002*, September 10, 2002, Article 2.

¹⁴⁸ *Consejo Guatemalteco de Comunicación Comunitaria (CGCC)*, September 25, 2002.

¹⁴⁹ *Prensa Libre*, January 24, 2002.

the murders, threatening, and harassment of journalists, which are creating adverse conditions for the exercise of the right to freedom of expression in Haiti. Additionally, the Special Rapporteur expresses concern over reports received from many journalists expressing that President Jean-Bertrand Aristide's June 2001 announcement of a "Zero Tolerance" campaign, ostensibly designed to crack down on crime, might encourage the sort of extrajudicial mob action that killed Lindor.

146. The Special Rapporteur received information on the status of inquiries into the murder of radio reporter Jean Léopold Dominique in April 2000, an investigation that has been fraught with irregularities, including threats and intimidation of judges and witnesses that have led to several judges resigning, including Judge Claudy Gassant. The Special Rapporteur points out once again that behavior of this kind constitutes an indirect form of curtailing freedom of expression, since it creates a terrifying environment for other social communicators, who are frightened to denounce further attacks. During the visit, Bertoni requested that efforts should be intensified to ensure progress in the investigation into who killed and who ordered the murder of Dominique. The Special Rapporteur was also briefed on the inquiries into the murder of the news editor for *Radio Eco 2000*, Brignol Lindor, in December 2001. In the Special Rapporteur's opinion, the slow pace of the investigation is a cause for concern. Bertoni voiced these concerns at a meeting with the judge in charge of the investigation, Fritzner Duclaire. The Special Rapporteur also requested the judge to take the necessary steps to protect witnesses and other people involved in the investigation.

147. The following information summarizes information received over the past year by the Office of the Special Rapporteur. It should be noted that the incidents referred to in this section do not in any way constitute the complete report of all of the complaints received by this Office. It is merely a series of examples that indicate the seriousness of the situation in Haiti.

Threats and Aggression

148. On January 7, 2002, Guyler Delva, secretary-general of the Haitian Journalists' Association (AJH), reported that a dozen journalists working for different media outlets in Port-au-Prince had left the country for the USA or France. These journalists, who had covered the attempted *coup* against President Aristide last December 17, had taken refuge in certain diplomatic missions in Port-au-Prince. According to their testimonies, some members of popular organizations close to the Lavalas Family government had exerted pressure and issued threats against members of the press, accusing them of favoring the opposition.

149. Robert Philomé, the top news presenter at *Radio Vision 2000*, fled the country after receiving threats from pro-Aristide protesters. Colleagues from *Radio Caraïbe*, *Galaxie* and *Signal FM* have also reported having received threats against their lives.

150. In addition, four provincial journalists have fled to the capital and are in hiding after being threatened by government supporters. The four are: Charité André and Rémy Jean of *Radio Eben-Enzer*; Duc Jonathan Joseph, *Radio Métropole* correspondent in Gonaïves; and Ernst Océan, *Radio Vision 2000* correspondent in Saint Marc.¹⁵⁰

¹⁵⁰World Association of Newspapers and the World Editors Forum, January 31, 2002.

151. On January 21, 2002, members of the Young People's Power Organization (JPP), which has political ties to the ruling party, gave Guyler Delva, secretary-general of the Haitian Journalists' Association, 48 hours to withdraw a legal complaint he had lodged against JPP leader René Civil, otherwise they would "teach him a lesson." Mr Delva lodged a complaint against Mr. Civil on January 18, after being threatened on a January 15 radio program, during which Mr. Civil accused Mr. Delva of being "on the payroll of foreigners" and "betraying his fellow Haitians." On January 11, Figaro Désir, leader of the pro-government organization Bale Wouze, called Mr Delva "a traitor in the service of white foreigners" and threatened to have him "necklaced" (a euphemism for setting him on fire). Mr Désir retracted his threats on January 21, saying that his earlier remarks had been misinterpreted.

152. On February 22, 2002, Patrick Merisier, a radio broadcaster and human rights worker from the National Coalition for Haitian Rights (NCHR), was shot in the chest and arm by two men as he waited to be served in a restaurant in Port-au-Prince. Prior to this, in January 2002, he had received anonymous threats that he would be killed if he did not stop his human rights monitoring and broadcasts.¹⁵¹

153. On December 25, 2002, two armed men appeared at the gates of Montas' house in Pétienville, a suburb of Port-au-Prince, in the late afternoon a few minutes after she had arrived at home. They threatened her security guards, who immediately shut the gates. One of the guards ran to the house to get a gun. The attackers then fired at the second guard, fatally wounding him before fleeing.

154. As the gunmen fled on foot, police cordoned off the area outside Montas' house to investigate. No arrests have been made at this time.¹⁵²

155. On January 8, 2003, the Inter-American Commission on Human Rights issued precautionary measures requesting the Government of Haiti to take the necessary measures to protect the personal integrity of Montas and to investigate the attacks against her.

156. On July 16, 2002, human rights defender Sylvie Bajoux was attacked in her home in the Péguenville area of the capital, Port-au-Prince. The organization Amnesty International reported that this attack may have been aimed at trying to prevent Mrs. Bajoux and her husband and other human rights defenders and journalists from carrying out their work.

157. The attack occurred at around midday, when three armed men broke into the house where Sylvie Bajoux lives with her husband Jean Claude. The assailants reportedly beat and tied up the three employees of the Bajoux who were in the house at the time. One of them then reportedly approached Sylvie Bajoux with his gun in his hand, knocked her onto the ground and struck her on the back. The attackers also stole some small items from the house and then left, leaving the staff and Sylvie Bajoux tied up in the house.

¹⁵¹ National Coalition for Haitian Rights (NCHR), February 2002.

¹⁵² The Committee to Protect Journalists (CPJ), December 27, 2002.

158. Both Sylvie and Jean Claude Bajeux are long-term human rights defenders. They currently run the Ecumenical Center for Human Rights (*Centre Oecuménique des droits humains*, CEDH).¹⁵³

159. On September 26, 2002 the privately-owned Port-au-Prince station *Radio Kiskeya* stopped broadcasting and evacuated its offices after being told that the building was to be burned down that evening. The station also received several threatening phone calls and faxes. *Reuters* news agency said the threats came after the station's coverage of the arrest of the head of an organization defending the rights of thousands of people who recently lost money in a collapsed pyramid scam based on traditional cooperatives. The station resumed broadcasting the next day. Also on September 26, another Port-au-Prince radio station, *Caraïbes FM*, decided to stop broadcasting news for several hours in protest against threats it had received, apparently from pro-government organizations. The next day, Roger Damas, of *Radio Ibo*, was attacked by three strangers when he arrived at the radio station. He said they threatened to burn it down.¹⁵⁴

160. On November 21, 2002, *Radio Etincelle* suspended broadcasting after militants of the Popular Organization for the Development of Raboteau (commonly known as the "Cannibal Army"), a heavily armed popular group that supports President Jean-Bertrand Aristide, accused the station of "working for the opposition" and threatened to burn down its studio. Four days later, on the evening of November 25, unidentified assailants set fire to *Radio Etincelle's* station, damaging property, including a generator and other equipment. Meanwhile, on November 28, unidentified attackers opened fire outside a Gonaïves hotel while a local press freedom organization, the Association of Haitian Journalists (AJH), was meeting with a group of threatened radio correspondents and police officials to discuss how to improve security conditions for journalists. No one was killed in the attack, but it remains unclear how many people may have been injured.¹⁵⁵

161. On November 30, 2002, seven journalists from the northern town of Gonaïves fled to Port-au-Prince to seek refuge. Esdras Mondélus, head of *Radio Etincelle*; Henry Fleurimond, of *Radio Kiskeya*; Renais Noël Jeune, Jean Niton Guérino and Gédéon Présandieu, all reporters with *Radio Etincelle*; René Josué, of *Signal FM*; and Jean-Robert François, of *Radio Métropole* took refuge in Port-au-Prince after receiving threats from the "Cannibal Army," a pro-Aristide militia. According to the information received, the seven journalists, all based in Gonaïves, had been in hiding there since November 21, first at the bishop's house, which they were forced to leave on November 28 by Church officials who feared it would be attacked. The next day, the hotel they had moved to was fired at by members of the Cannibal Army, an armed group close to the country's ruling Fanmi Lavalas party. The journalists then fled to the northern city of Cap Haitien and the next day flew to Port-au-Prince with the help of the Haitian Journalists' Association (AJH).

162. They had been threatened by the leader of the Cannibal Army, Amiot Métayer, for their reporting of demonstrations calling for the resignation of President Jean-Bertrand Aristide.

¹⁵³ Amnesty International.

¹⁵⁴ Reporters Without Borders, Sept. 30, 2002.

¹⁵⁵ The Committee to Protect Journalists (CPJ), December 2, 2002.

Métayer was prosecuted for physically attacking opposition supporters in December last year. He escaped from prison in August this year and the government says it has not rearrested him so as to avoid a bloodbath. A report of the AJH informed that 64 journalists had been threatened so far this year, 62 of them by the government and two by the opposition.¹⁵⁶

163. On December 6, 2002, the Inter-American Commission on Human Rights issued precautionary measures on behalf of the seven journalists and gave the Government of Haiti 15 days to respond with information regarding the measures taken to protect the lives of the journalists and the steps adopted in order to conduct an investigation of the attacks. Up to this date, the Commission have received no answer from the State.

Kidnapping

164. On July 15, 2002, Israel Jacky Cantave, an investigative reporter for the Port-au-Prince-based station *Radio Caraïbes* was kidnapped. He and his cousin were apparently attacked as they were driving home from work. The pair were found alive in the Port-au-Prince suburb of Petite Place Cazeau on July 16, beaten and bound with duct tape. They had reportedly been seized by a group of armed men who forced their vehicle to stop before abducting them. According to local sources, Israel Jacky Cantave had received several death threats in the days preceding the attack. These were reportedly believed to be linked to his investigative work in the Cité Soleil and La Saline slum areas of the capital, areas of heavy drug trafficking and gang activity.¹⁵⁷

Arrests

165. On May 27, 2002, two reporters, Darwin Saint Julien of the weekly newspaper *Haïti Progrès* and Allan Deshommes of *Radio Atlantik*, were seriously injured and then arrested by police while covering a demonstration organized by the Workers' Struggle (*Batay Ouvriyé*) group in the northern town of Saint Raphael. Armed men, apparently sent by a major local landowner, and local officials attacked the protesters, killing two people, while seven other persons were arrested, including the journalists. The reporters were told they were being arrested "for their own protection." Despite their serious injuries, they were imprisoned. On May 29, all seven incarcerated persons were taken by helicopter to the capital, Port-au-Prince, and transferred to the National Penitentiary. The journalists have not been charged with any crime and were being held illegally, beyond the two-day period in which charges have to be made.¹⁵⁸

HONDURAS

Threats and aggression

166. On October 24, 2002, a number of journalists were attacked and some suffered injuries while covering a protest in Tegucigalpa. The protesters, members of the organizations

¹⁵⁶ Committee to Protect Journalists (CPJ), December 5, 2002.

¹⁵⁷ Reporters Without Borders (RSF), July 17, 2002.

¹⁵⁸ *Id.*, June 4, 2002.

Bloque Popular, the *Colegio de Profesores de Educación Media de Honduras* (COPEMH) and the *Sindicato de Trabajadores del Servicio Nacional de Acueductos y Alcantarillados* (SANAA), apparently destroyed part of a barrier that the police had constructed around the Congress. The police used various means to subdue the crowd, including gas grenades, a water tank, anti-riot shields, and warning gunshots. The crowd counterattacked with sticks and rocks. As a result, *Channel 11* cameraman Edwin Murillo was hit by police officers on his arms and his left shoulder. In addition, they destroyed his equipment, which was valued at more than \$18,000. Mario Fajardo, a photographer with *La Tribuna*, was injured in the mouth by a rock. The cameraman from *TN5*, Carlos Lagos, was also injured by a rock that hit him in the leg. Among the other journalists, cameramen, and photographers that were attacked were: Estalin Irías (*El Herald*); Segio Flores (*Canal 63*); Miguel Osorio (*TN5*); Aldo Enrique Romero (*TVC*); Jorge Méndez Carpio (*Canal 36*); Onan Figueroa (*66*); Jessenia Bonilla (*Canal 11*); Carlos Paz (*Radio Reloj*); Jimmy Alvarado (*Canal 63*); Jairo Amador (*Canal 13*); and Jorge Valle (*HONDURED*).¹⁵⁹

Judicial actions

167. In May 2002, the Office of the Special Rapporteur was notified of a pending legal action against journalist Sandra Maribel Sánchez of *Radio América*. Ms. Sánchez broadcast a tape that contained conversations between Vera Sofía Rubí, a former comptroller and minister of Interior and Justice, and a former president of the Supreme Court of Justice. During the conversation, Ms. Rubí promised, at the judge's request, to put pressure on her brother, a magistrate, to help resolve a case in a certain way. Ms. Rubí, in turn, asked the judge to give priority to cases of a political nature. In the course of the conversation, the two also mocked the Attorney General of the Nation. After the tape was aired, Ms. Rubí filed a judicial complaint against Ms. Sánchez for espionage.¹⁶⁰

168. Beginning in March 2002, six journalists from *La Jornada* were summoned for questioning by the Attorney General's Office (PGR) in relation to two cases being investigated by the PGR. The journalists had reported on aspects of these cases in *La Jornada* and were being asked by the PGR to reveal their sources. One of the journalists, Gustavo Castillo, was told that he could not invoke his right to maintain the confidentiality of his sources because he had been summoned as a witness. Mr. Castillo was also denied access to legal advice from an attorney during the interrogation.¹⁶¹ It is important to recall that the Declaration of Principles on Freedom of Expression establishes in Principle 8 that "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

MEXICO

Assassination

169. On January 18, 2002, Félix Alonso Fernández García, editor of the weekly *Nueva Opción* was shot dead in Miguel Alemán city, in Tamaulipas State (north-eastern Mexico). According to information gathered, the journalist had recently reported in *Nueva Opción* on

¹⁵⁹ *Comité para la Libertad de Expresión* (CLIBRE) and *Periodistas Frente a la Corrupción* (PFC), October 27, 2002.

¹⁶⁰ *Periodistas Frente a la Corrupción* (PFC), May 16, 2002.

¹⁶¹ *Sindicato de Trabajadores de La Jornada*, November 18, 2002.

alleged relations between former Mayor Raúl Rodríguez Barrera and drug traffickers. In 2001, the journalist had informed police of these relations. A few days before his death, the journalist had accused the former mayor of wanting to kill him.¹⁶²

Threats and Aggression

170. On January 10, 2002, journalist Jesús Blancornelas reported that he had received death threats by e-mail from an unknown source. Blancornelas, director of the weekly periodical *Zeta*, has been investigating and publishing articles on drug trafficking in Mexico, especially in Tijuana, a city bordering on the United States where a drug cartel is operated by the Arellano Félix brothers. On November 27, 1997, Blancornelas was violently assaulted, causing the death of his bodyguard and one of the assailants, a gunman paid by the drug cartel operated by the Arellano Félix brothers.¹⁶³

171. In February 2002, journalist Eduardo Ibarra Aguirre, the director of *Forum* magazine, reported that he had received telephone threats and that a robbery had again been attempted at his offices. According to the information provided, *Forum* magazine had been the target of harassment following the publication of articles by General Francisco Gallardo Rodríguez. On December 4, 2001, the magazine's offices were attacked, and the electronic files containing the articles published by General Gallardo were taken.¹⁶⁴

172. On March 7, 2002, Fredy Martín Pérez López, a correspondent for the newspaper *El Universal* and the Italian agency ANSA, was assaulted by police officers in San Cristóbal de las Casas, as he was covering confrontations between the police and the indigenous population.¹⁶⁵

173. On June 24, 2002, Irving Lefor Magaña, a camera technician for *Telemundo*, a local cable channel, was hospitalized after being attacked by members of the municipal police of Pachuca, capital of the state of Hidalgo (in the North). He suffered a fracture in the left leg. These events took place as the camera technician and another 20 reporters and journalists from different media organizations covered the action taken by the *Secretaría de Seguridad* against demonstrators from the Farm Workers' Union (UNTA), which minutes before had blocked the Insurgentes highway interchange. The journalist filed criminal charges.¹⁶⁶

Assaults

174. On April 3, 2002, the offices of the weekly periodical *Páginas*, in Tuxtla Gutierrez (Chiapas) was the target of gunfire. According to the information collected, a number of individuals fired on the offices of *Páginas*, which is published in the city of Tuxtla Gutierrez

¹⁶² Reporters without Borders (RSF), Paris, January 25, 2002; *Seccional Latinoamericana de Derechos Humanos de la Federación Internacional de Periodistas* (FIP), Lima December 30, 2002; Writers in Prison Committee International (PEN) January 31, 2002. Inter-American Press Association (SIP/IAPA), "Mexican Journalist Murder," January 2002.

¹⁶³ Inter-American Press Association (SIP/IAPA), January 17, 2002.

¹⁶⁴ *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, March 1, 2002.

¹⁶⁵ Reporters without Borders (RSF), April 9, 2002.

¹⁶⁶ *Id.* and *Centro Nacional de Comunicación Social* (CENCOS), 26 June 2002.

(Chiapas), and threatened the staff. According to the directors of the periodical, the attack could be linked to the periodical's critical tone in referring to the authorities.¹⁶⁷

Judicial actions

175. On April 1, 2002, Raquel Urbán Hernández, of the weekly periodical *Reporteros Informando*, published in the city of Ecatepec (state of Mexico), was arrested. The journalist was released the same day, after posting bail of 22,000 pesos (EUR2,800). The arrest took place as a result of a complaint filed in January 2002 by Alejandro Gamiño Palacios, a legislator of the party in power, the National Action Party (*Partido de Acción Nacional*, PAN), who charged the journalist with "defamation." On November 26, 2001, Raquel Urbán Hernández had reported on the alleged implication of the legislator in a case involving the rape of a minor.¹⁶⁸

176. On March 11, 2002, María Esther Martínez, of the newspaper *La Unión de Morelos*, published in the state of Morelos, was arrested in the city of Xochitepec, Morelos. According to the Independent Human Rights Commission of Morelos, a civil organization for the defense of human rights, the journalist, who was accused of defamation, was arrested after criticizing the Office of the Solicitor General of the State and the Ministerial Police. She was released that same day.¹⁶⁹

177. On May 8, 2002 Alejandro Junco de la Vega, president and publisher of the Mexico City daily *REFORMA* appeared before a public prosecutor in Mexico City to respond to criminal defamation charges brought against him by a local politician. The journalist was charged over an article alleging that Carlos Galán Domínguez, a member of the Mexico State Chamber of Deputies, had received improper payments from the Chamber. Galán filed criminal defamation charges against Junco and the two reporters. If convicted, all three journalists could face up to three years in prison.¹⁷⁰

178. In August 2002, charges were filed with the Office of the Attorney General against journalist Hermén Macías López, director of the newspaper *Lo Nuestro*, of the city of Cadereyta Jiménez in the state of Nuevo León, by Hilario Vega Zamapirra, union leader for *Petróleos Mexicanos* and alternate federal deputy for the Second District of Nuevo León. The journalist was accused of defamation and sued for US\$195,000 in damages and closure of the newspaper *Lo Nuestro*. On 22 August, *Lo Nuestro* published a report showing that the union leader's parental lineage was not as he had claimed, i.e. that his family had been engaged in the oil business for generations. *Lo Nuestro* had been following the activities of the union leader and how his personal fortune had increased as a result of corrupt practices.¹⁷¹

179. On August 19, 2002, journalist Isabel Arvide was arrested by the Chihuahua state police on charges of criminal defamation. She was detained for more than 24 hours and released after paying a bail of 100,000 Mexican pesos (US\$10,000). Judge Armando Rodríguez

¹⁶⁷ Id., April 9, 2002.

¹⁶⁸ Reporters without Borders (RSF), April 9, 2002.

¹⁶⁹ Id.

¹⁷⁰ Committee to Protect Journalists (CPJ), May 10, 2002, Inter-American Press Association (SIP/IAPA), May 8, 2002.

¹⁷¹ *Periodistas Frente a la Corrupción* (PFC), October 7, 2002.

Gaytán of the Second Penal Court in the district of Morales has charged Arvide with criminal defamation. According to Mexico's Criminal Code, Arvide faces six months to two years in prison if convicted. The charges follow a June 2 article by Arvide that appeared on the journalist's own Web site, www.isabelarvide.com, and in the daily, *Milenio*, which is published in Mexico City. In the article, Arvide accused Osvaldo Rodríguez Borunda, the executive director and publisher of the Mexican newspaper *El Diario de Chihuahua*, of involvement with drug trafficking and money laundering.¹⁷²

180. On 17 October 2002, the Office of the Solicitor General of the State of Chihuahua requested that the judge of the Fourth Criminal Chamber, Catalina Ruiz Pacheco, order the arrest of the director and seven reporters of the newspaper *Norte de Ciudad Juárez*, who were accused of defamation by the former municipal president Manuel Quevedo Reyes. The same day, according to an article published on 18 October by *Norte de de Ciudad Juárez*, Judge Catalina Ruiz Pacheco agreed to consider the possibility of issuing a warrant for the arrest of the director and seven reporters as requested by the Office of the Solicitor General. In his suit, filed in January 2002, the former municipal president asked for damages in the amount of 50 million pesos and closure of the newspaper. Quevedo Reyes filed a suit against the paper's director, Óscar Cantú, and reporters Armando Delgado, Manuel Aguirre, Guadalupe Salcido, Rosa Isela Pérez, Francisco Luján, Antonio Flores and Carlos Huerta, following the publication of an article entitled "Patricio's Invoices," and other follow-up reports revealing the alleged participation of Quevedo in the sale of 220 hectares expropriated by Governor Patricio Martínez. In response to the charges brought by the Office of the Solicitor General, the accused journalists reserved the right to file a statement, after requesting copies of the charges filed by Quevedo, which were not provided to them by the officer of the Office of the Attorney General, Sergio Villarreal Arellano, who had issued the warrant for their arrest.¹⁷³

181. Between March and November 2002, the Office of the Solicitor General of the Republic (PGR) brought charges against journalists from the newspaper *La Jornada* who had investigated cases of corruption by former president Carlos Salinas de Gortari and the diversion of millions of pesos in funds from *Petroleos Mexicanos* (PEMEX) to the presidential campaign of the *Partido Revolucionario Institucional* (PRI). Among the journalists charged were Enrique Méndez, Gustavo Castillo, Rubén Villalpando Andrea Becerril, Ciro Pérez, Roberto Garduño, and Pedro Juárez Mejía, all of *La Jornada*. According to the information received, the authorities' principal motivation for interrogating the journalists related to their investigations and sources of information.¹⁷⁴

182. On 16 December 2002, Francisco Guerrero Garro and Fabiola Escobar, director of and reporter for *La Jornada de Morelos*, respectively, were subpoenaed to testify by the Office of the Solicitor General of the State. The subpoena was issued to inquire into reports published in that newspaper as part of the preliminary investigation conducted by the Solicitor General's Office in certain criminal cases.¹⁷⁵

¹⁷² Committee to Protect Journalists (CPJ), August 19, 2002 and *Centro Nacional de Comunicación Social*, August 21, 2002.

¹⁷³ *Periodistas Frente a la Corrupción* (PFC), October 23, 2002, and *Libertad de Prensa*, October 22, 2002.

¹⁷⁴ *Sindicato de trabajadores de La Jornada* and *Centro Nacional de Comunicación Social* (CENCOS), November 18, 2002, and *Periodistas Frente a la Corrupción* (PFC), November 29, 2002.

¹⁷⁵ *Periodistas Frente a la Corrupción* (PFC), December 23, 2002.

Censorship

183. In October 2002, according to the information received, the state government of Baja California canceled official publicity in the newspaper *La Crónica* and hindered the access of journalists to public information. After publishing reports on alleged corruption involving the Governor of Baja California, Eugenio Elorduy Walther, *La Crónica*, which is part of the *Periódicos Healy* newspaper chain operating in the states of northwestern Mexico, published several complaints about irregularities in recent months compromising the Governor: irregular purchases of vehicles, nepotism, and salary increases for government officials.¹⁷⁶

Positive developments

184. On 30 April 2002, Congress approved the Federal Government Information Transparency and Access Act. The law enables citizens to gain access to state-held documents and information. The Office of the Special Rapporteur issued a press release welcoming this initiative, but will continue to monitor closely the implementation of this law.

NICARAGUA

185. During the year 2002, the Office of the Special Rapporteur received information accounting for an improvement in the overall situation of freedom of expression in Nicaragua. Nevertheless, the Office presents below other information received during the year 2002.

Aggression and threats

186. In March 2002, Arnaldo Alemán, President of the National Assembly and former President of the Republic, insulted journalists Claudia Sirias, of *Channel 2* television, and Vilma Areas, of Radio La Primerísima, during a press conference when they asked him about acts of corruption in which he was allegedly involved.¹⁷⁷

187. Also in March 2002, Mr. Alemán tried to prevent the media from covering the visit of Kofi Annan, Secretary General of the United Nations, to the Plenary of the National Assembly.¹⁷⁸

188. On March 12, 2002, Arnaldo Alemán presented a police complaint against Octavio Sacasa, the owner of *Channel 2*. Mr. Alemán claimed he had received death threats from Mr. Sacasa, although there was apparently no evidence of this. Mr. Alemán has frequently tried to intimidate the press through verbal aggression and other means.¹⁷⁹

¹⁷⁶ Inter-American Press Association (SIP/IAPA), October 18, 2002.

¹⁷⁷ *Centro Nicaragüense de Derechos Humanos* (CENIDH) in a letter dated July 26, 2002; PFC, October 25, 2002.

¹⁷⁸ *Id.*, July 26, 2002.

¹⁷⁹ *Periodistas Frente a la Corrupción* (PFC), March 18, 2002; and *Centro Nicaragüense de Derechos Humanos* (CENIDH) in a letter dated July 26, 2002.

189. The Office of the Special Rapporteur has received information regarding an alleged campaign by the hierarchy of the Catholic church to discredit media that have reported on the presumed participation of some priests in acts of corruption committed by the previous government. In this context, journalist Marianela Flores Vergara, a correspondent with *El Nuevo Diario* and *Telediario 10*, was physically attacked by Bishop Bosco César María Vivas Róbelo while she was trying to interview him.¹⁸⁰

190. On July 18, 2002, Luis Felipe Palacios, of the newspaper *La Prensa*, was summoned and interrogated by the police after he published an article that implicated a high official of the army in acts of corruption. He was asked to reveal his sources. The Chief of Police, Edwin Cordero, justified the summons and interrogation saying that the police can act without a judicial order in cases of narcotrafficking. Manuel Esquivel, a cameraman from *La Prensa*, was accompanying Mr. Palacios and took pictures during the interrogation. Police threatened to detain Mr. Esquivel for taking pictures without permission and forced him to expose the roll of film he was using.¹⁸¹

191. On October 22, 2002, Tirso Moreno stormed into the offices of the daily *La Prensa*, fired two pistols, and threatened to kill several editors. Mr. Moreno is a former member of the now defunct counter-revolutionary Resistencia Nicaragüense (Contras), that fought against the Sandinistas in the 1980s. No one was injured in the incident and after a few hours, Moreno gave himself up to police. This incident took place within the context of intimidation of the press by other former Contras and supporters of former President Arnoldo Alemán's. Mr. Alemán, members of his family, and former members of his cabinet are facing accusations of crimes corruption that were exposed by the media.¹⁸²

Indirect restrictions

192. In June 2002, a group of about one hundred journalists protested outside of the Presidential Palace to demand that the government of Enrique Bolaños address the problem of the distribution of official publicity. According to the information received, the government heavily favors the television and print media with the widest audiences when allocating official publicity funds. This is particularly detrimental to small radio stations, some of which have had to shut down for financial reasons.¹⁸³

PANAMA

Judicial actions

193. In its 2001 Annual Report, the Office of the Special Rapporteur expressed its concern about the use of defamation and libel suits in Panama to silence criticisms made by some journalists and media outlets about the activities of government officials and other public

¹⁸⁰ Centro Nicaragüense de Derechos Humanos (CENIDH) in a letter dated July 26, 2002; PFC, October 25, 2002.

¹⁸¹ *Reporteros Sin Fronteras* (RSF), July 23, 2002; PFC, October 25, 2002 and Centro Nicaragüense de Derechos Humanos (CENIDH) in a letter dated July 26, 2002.

¹⁸² *Periodistas Frente a la Corrupción* (PFC), October 29, 2002.

¹⁸³ Centro Nicaragüense de Derechos Humanos (CENIDH) in a letter dated July 26, 2002.

persons. In response to these criticisms and those of domestic and international NGOs, the Defensoría del Pueblo of Panama created a Special Delegate on Freedom of Expression with the objective of bringing Panamanian laws on freedom of expression into line with international human rights standards. As a first step toward this goal, the Special Delegate produced a report to analyze the scope of this problem. The report includes a detailed listing of criminal libel and slander proceedings instituted against journalists and others who express themselves through the media since 1995.¹⁸⁴ According to the report, there have been 90 cases for criminal defamation or libel since 1995; 78 of these were against journalists, social communicators, or media collaborators.¹⁸⁵ Of the 90 total cases, there have been guilty verdicts in 13, absolutions in 6, stays (*sobreseimientos*) in 23, and in 5 cases the complainant ceased pursuing the case (*desistimientos*). 47 of these cases were presented by public officials. In 2002, 17 cases were initiated.¹⁸⁶ These statistics show a clear pattern of the use of defamation and libel laws to silence criticism of the administration of public affairs.

194. The Office of the Special Rapporteur has been following some cases in particular, receiving information from a variety of sources.

195. On May 23, 2002, independent journalist Miguel Antonio Bernal was absolved of criminal charges of libel and slander by the Juzgado Decimo de Circuito de lo Penal del Primer Circuito Judicial de la Provincia de Panama. The case against Mr. Bernal was initiated on May 16, 2001 by José Luis Sosa, who was then the director general of the National Police. Mr. Sosa accused Mr. Bernal of having affected “the honor and dignity of a public institution, namely the National Police” when he reported on the decapitation of four prisoners who had attempted to escape from the penitentiary on Coiba island.¹⁸⁷ The State appealed the judgment absolving Mr. Bernal. On October 25, 2002, the Second Superior Tribunal of the First Judicial District (*Segundo Tribunal Superior del Primer Distrito Judicial*) affirmed the judgment of the court of first instance absolving Miguel Antonio Bernal of the crime of libel and slander.¹⁸⁸

196. On June 7, 2002, cartoonist Victor Ramos of *La Prensa* was ordered to appear in court on charges of damaging the reputation of former president Ernesto Pérez Balladares in a cartoon he had published in April. The cartoon listed a number of scandals that had been linked to Pérez Balladares throughout his political career. The case is currently in the investigation stage.¹⁸⁹

197. On July 1, 2002, Ubaldo Davis, publisher and editor of the weekly *La Cascara News*, was found guilty of criminal defamation and sentenced to 14 months in prison, which

¹⁸⁴ See *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002.

¹⁸⁵ *Id.* at *Anexos, Estadísticas Generales*.

¹⁸⁶ *Id.*

¹⁸⁷ See Office of the Special Rapporteur for Freedom of Expression Annual Report 2001, p.53-54.

¹⁸⁸ *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002, 34-37.

¹⁸⁹ Reporters without Borders (RSF), June 5, 2002; Dallas Morning News; *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002, 14.

could be substituted with a \$1,500 fine if paid within 90 days of the execution of the judgment.¹⁹⁰ This case is one that was reported by the Office of the Special Rapporteur in its 2001 Annual Report.¹⁹¹ On September 20, 2001, Ubaldo Davis and a colleague, Herbert Rattray, were arrested for publishing humorous material alluding to the private life of President Mireya Moscoso and other public officials. The next day, Joel Díaz, another journalist on the weekly, was also arrested. President Moscoso and one of the officials filed suit against the three journalists for “defamation and libel” and for “attacking the juridical security of the state.”¹⁹² The charges were dismissed against Mr. Díaz. The Office of the Special Rapporteur has received no additional information about the charges against Mr. Rattray. Mr. Davis is currently appealing the conviction against him.¹⁹³

198. On November 26, 2002, Julio César Aizprúa and Rafael Pérez, two journalists with *La Prensa*, were ordered to appear for questioning at the Fiscalía Septima del Primer Circuito Judicial in relation to an article they had published in February 2002. In the article, the journalists exposed alleged irregularities committed by the company Naves Supply in the handling of international refuse. They claimed that the company delivers large quantities of refuse from foreign sources to Panamanian ports daily. They further claimed that the refuse is mainly composed of manure, animal urine, food scraps, and rotten fruits and vegetables. On November 28, 2002, asked the Juzgado Duodécima de Circuito Penal to open judicial proceedings against the journalists for crimes against the honor of the company (solicita llamamiento a juicio).¹⁹⁴

Access to information

199. In its 2001 Annual Report, the Office of the Special Rapporteur expressed its satisfaction with the initiative taken by the Panamanian government in promulgating the Law on Transparency in the Public Administration on January 22, 2002, which guarantees the right of any person to obtain public information. In welcoming this initiative, the Office noted that access to information held by the state is a vital tool in building transparent public administrations.¹⁹⁵ Since that time, however, the Office has received information about a number of actions taken by the Panamanian State that would limit the positive effects of this law.

200. On May 21, 2002, the Executive promulgated Regulating Decree (Decreto Reglamentario) 124, which regulates the Law on Transparency in Public Administration. Many individuals and organization have expressed concern about these regulations, considering that they contravene the purpose and spirit of the Law on Transparency. On August 9, 2002, the Office of the Defensor del Pueblo presented a demand to declare null Articles 4,5,8,9, and 14 of

¹⁹⁰ *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002, 9.

¹⁹¹ IACHR, Annual Report 2001, p. 54.

¹⁹² *Id.*

¹⁹³ *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002, 59.

¹⁹⁴ *Periodistas Frente a la Corrupción (PFC)*, November 29, 2002; *Defensoría del Pueblo de la República de Panamá, Informe Especial: Democracia, Libertad de Expresión y Procesos contra el Honor*, December 2002, 9.

¹⁹⁵ IACHR, Annual Report 2001, p. 55.

the Decree.¹⁹⁶ The Special Rapporteur expressed his concern about Article in particular in a letter to the Panamanian government on July 9, 2002, in which he requested information about this and other situations affecting freedom of expression in Panama. Article 8 of the Decree interprets the phrase "interested person" as used in Article 11 of the Law on Transparency to mean "a person who has a direct relationship with the information solicited." Due to the lack of a response from the Panamanian government, the Special Rapporteur sent a second letter reiterating the request for information on November 4, 2002. The Government of Panama informed the Office of the Special Rapporteur that they are preparing a response.

201. The Office of the Special Rapporteur has also received information about a number of judicial decisions in cases of appeals of denials of requests for information. According to the information received, of 65 requests for information, only 10 cases resulted in favorable decisions.¹⁹⁷ Among the decisions that were denied was a decision on October 22, 2002 in a case submitted by attorney Guillermo Cochez to the Supreme Court of Justice. Mr. Cochez had requested information relating to all trips taken by President Mireya Moscoso, a request that was rejected by a minister to the President. The Supreme Court ruled against Mr. Cochez, agreeing with the minister's argument that he had not shown that he was an "interested person" within the terms of the Law on Transparency.¹⁹⁸

Other

202. According to the information received, journalist Blas Julio has suffered more than 10 medical crises as a result of high blood pressure since his arrest and incarceration in the La Joya facility for alleged extortion against the owner of the Colón Abdul Waked Free Trade Zone on 21 de mayo de 2002. For humanitarian reasons, the former Ombudsman (defensor del pueblo), Italo Antinori-Bolaños, requested that journalist Blas Julio Rodríguez be transferred to a penitentiary such as El Renacer, which would be less dangerous to his health and safety. Without entering into the nature of the arrest, Antinori-Bolaños believed that Blas Julio should be treated with the dignity due to any person and that his physical safety needed to be protected. Also, according to the information provided, all of the country's television stations showed Blas Julio being led by the police through the streets to the Office of the Attorney General in handcuffs and shackles on the feet. The Ombudsman of Panama denounced this act of degradation as a human rights violation.¹⁹⁹

PARAGUAY

Judicial action

203. On 17 December 2002, Judge José Waldir Servín issued his judgment in a judicial case initiated in 1997 against journalist Benjamín Fernández Bogado, who was found guilty of defamation and sentenced to a fine of slightly more than a US\$1,200 and the payment of

¹⁹⁶ Information provided by the *Defensoría del Pueblo de la República de Panamá*.

¹⁹⁷ *Periodistas frente a la Corrupción*, February 5, 2003.

¹⁹⁸ *Defensoría del Pueblo de la República de Panamá*.

¹⁹⁹ *Defensoría del Pueblo*, Panama, July 25, 2002.

US\$1,400 in damages to the plaintiff in the case.²⁰⁰ The case dates back to 6 December 1996, when Fernández Bogado was the news director for *Canal 9*. During a broadcast of the news program *24 horas*, comments were made linking Adalberto Fox, an attorney and current candidate for the Senate, with the Mafia. Months before, Fox had been discharged from his judgeship for irregularities in the conduct of his office.²⁰¹

Other

204. On Wednesday, 3 July 2002, the National Telecommunications Commission (CONATEL), accompanied by a police unit, proceeded to close and impound the equipment of community radio station Ñemity FM de Capiivary, in the department of San Pedro, under a judicial warrant issued on 30 November 1999. The community radio station Ñemity FM belongs to the organization Ñemity Comunicaciones. It is a member of the Paraguayan Radio Broadcast Association (COMUNICA) and the World Community Radio Association (AMARC) and has been operating in the Capiivary community for more than four years.

205. The station was actively involved in assisting and broadcasting information about campesino organizations during recent demonstrations in the department of San Pedro. The station provided assistance to these sectors and conducted a solidarity campaign that raised a significant amount of funds for the campesinos in Santa Rasa del Aguaray. The order to execute a judicial warrant issued more than two years before suggests that these actions were in the nature of a reprisal, in violation of the right to freedom of expression, for the role played by the station in giving service and a voice to its community.

206. According to the information provided by AMARC, this conduct was in breach of *"four agreements (signed on 26 October 1999; 30 November 1999; 24 July 2000; and 26 March 2001) between COMUNICA and the national government that community radio stations would not be closed until final measures had been taken to regularize them. The Telecommunications Act 642/95 and articles 27, 30, and 45 of the National Constitution, recognize the legality of Community Radio Stations."*²⁰²

207. On 9 July 2002, according to the information provided, CONATEL and the aforementioned radio stations reached an agreement. The delegation, composed of representatives of Radio Ñemity, COMUNICA and Red de Radios Populares, and delegates of the Ombudsman and Amnesty International (Paraguay), among others, signed an agreement with Mr. Víctor Alcides Bogado of CONATEL providing for: return of the equipment belonging to Radio Ñemity de Capiibary; the establishment of an intersectoral commission to regulate the operation of community radio stations in Paraguay; and the issuance of a resolution providing that no news steps should be taken until CONATEL had officially given effect to the modifications to the Regulations for Small and Medium Coverage Radio Broadcasting, clarifying the situation of stations truly fulfilling the role of community radio.²⁰³

²⁰⁰ ABC Color, December 18, 2002.

²⁰¹ *Periodistas Frente a la Corrupción* (PFC), December 27, 2002.

²⁰² *Asociación Mundial de Radios Comunitarias* (AMARC), July 9, 2002.

²⁰³ *Programa de Legislaciones y Derecho a la Comunicación Asociación Mundial de Radios Comunitarias América Latina y el Caribe* (AMARC-ALC), July 10, 11 and 16, 2002.

208. On 25 September 2002, CONATEL issued resolutions recognizing the right of 107 community broadcasters throughout the country to continue broadcasting, directly awarding to them the frequencies for this purpose. Resolution 2002 provides that "*the measure ordering no news steps in respect of community radio stations in operation, included on the attached list presented by the associations representing them, provided that they remain in accordance with applicable regulations, until the modifications to the Regulations for Small and Medium Coverage Radio Broadcasters are implemented.*"²⁰⁴

Follow-up on the assassination of journalist Salvador Medina

209. On 16 October 2001, Milciades Mayling was sentenced by a lower court ruling to 25 years in prison, the maximum penalty allowed under the Penal Code. Mayling had been found guilty as the perpetrator of the homicide of Salvador Medina, then Chairman of the Board of *Nemity*, a people's radio station in the town of Capi'ibary, in the department of San Pedro. On 27 March 2002, the VI Criminal Chamber of the Alto Paraná y Canindeyú judicial district, upheld the ruling and Mayling's 25-year prison sentence was considered final.

Positive developments

210. On 11 December 2002, the Supreme Court of Justice of Paraguay absolved and pardoned Ricardo Canese, who had been convicted of defamation and libel. It should be recalled by way of background in this case that on 26 August 1992, as part of the political debate that took place while he was campaigning as a candidate for President of the Republic, Ricardo Canese questioned the qualifications and integrity of Mr. Juan Carlos Wasmosy, who was also a candidate for president. The remarks in question described "Wasmosy as lending his name for use by Stroessner in Itaipú" through the commercial firm CONEMPA. These statements, made in the context of an election campaign, were published in the newspapers *ABC Color* and *Noticias – el Diario* on 27 August 1992.

211. In its decision, the Supreme Court of Justice stated that "according to the new legal order, no one can be convicted of a criminal offense because of statements of this nature on matters of public interest involving public officials or persons, which is the case of a candidate for the country's highest office, even though such statements may affect their honor or reputation."

PERU

Aggression and threats

212. On 14 January 2002, the Prefect of the Department of Loreto, Joaquín Planas Morelly, assaulted journalist Darwin Paniagua, a reporter for Radio La Voz de la Selva de Iquitos, in the offices of the Prefecture. The journalist was visiting the Prefecture together with Javier Medina, a correspondent for the newspaper *El Comercio* of that city, to obtain a response from the highest political authority of the Loreto region to an accusation from a member of the

²⁰⁴ *Asociación Mundial de Radios Comunitarias (AMARC)*, September 30, 2002.

political party Perú Posible, that he had ordered the sequestration and beating of government party activists a few days prior to the assault, during a demonstration in which the Regional Department of Education had been occupied by demonstrators.²⁰⁵

213. On 5 August 2002, journalist Henry Ramírez, of Televisión Nacional del Perú (TNP), Luz Martínez of Frecuencia Latina (Canal 2), and Perla Villanueva of Canal N, were attacked by workers of the agribusiness Casa Grande, of Trujillo (north of Lima), demanding overdue back payment of their salaries. A group of demonstrators beat the reporters as they were covering the story and attempted to seize their video cameras.²⁰⁶

214. On 24 October 2002, a group of 10 journalists were attacked by members of the National Police of Peru as they were covering a story outside of the Congress of the Republic. Juan Carlos Sánchez, a reporter for the program "*La grúa radial*" of *Radio Comas*, and cameraman Juan Carlos Matías Sánchez, of *Frecuencia Latina*, suffered head injuries. In addition, a reporter for *América TV*, Elizabeth Rubianes, and her cameraman Jorge Castañeda, were affected by a tear gas bomb thrown very close to them by police officers.²⁰⁷

²⁰⁵ Id., January 14, 2002.

²⁰⁶ Id., and Association of Latin American Journalists, August 2, 2002.

²⁰⁷ Id., October 24, 2002.

Access to information

215. According to the information received, representatives of the Regional Board of Directors (CTAR) of Loreto have been denying requests for information of public interest by radio station *La Voz de la Selva* of the city of Iquitos, Loreto department, in the eastern jungles of Peru. In a letter dated 15 February 2002 to Mr. Fidel Torres Ramírez, Chairman of the CTAR, *La Voz de la Selva* requested information on the Board's current budget and payroll, with a breakdown by salary. The purpose was to inform the public on how state resources were being distributed and handled. In response to this negative response from the authorities of the CTAR, the director of *La Voz de la Selva*, Miss Julia Jáuregui Rengifo, visited the Ombudsman of Iquitos on 27 March, represented by Dr. María del Carmen Solórzano, to request that he intervene, by virtue of the powers vested in him by the Constitution, and enforce the right of citizens to have access to information of public interest. Dr. Solórzano has already filed a document with the CTAR of Loreto requiring it to turn over the information requested pending a response.²⁰⁸

Legislation

216. The Public Information Transparency and Access Act was promulgated on 3 August 2002. The law is undergoing a process of modification after members of the civil society presented observations.

URUGUAY

Aggression and threats

217. On October 18, 2002, the Special Rapporteurship received information that journalist Daniel Cancela from the program "*Subrayado*," Channel 10, had received death threats. According to the information, these threats were the result of several interviews about corruption in the prison administration that resulted in actions brought against three high-ranking officials of the prison system. In addition, the judge in the case, Pablo Egurebm, the police officer in charge of the investigation, Luisa Scelza, and two prisoners that acted as witnesses, were also threatened. One of the witnesses was physically attacked.²⁰⁹

Positive development

218. On October 2002, the House of Representatives passed by a majority a bill on access to information and "habeas data," by which all citizens are entitled, without the need of a judicial order, to the right to access to all the documents of the State and to receive and disseminate information. The proposal has to further continue its process in the Senate.

²⁰⁸ Id., April 9, 2002.

²⁰⁹ *Periodistas Frente a la Corrupción* (PFC) and *Asociación de Prensa Uruguaya*, October 18, 2002.

VENEZUELA

219. The Office of the Special Rapporteur for Freedom of Expression made two visits to the Bolivarian Republic of Venezuela in 2002 at the invitation of President Hugo Chávez Frías.

220. The Office of the Special Rapporteur has been concerned to observe an increase in the number of threats and attacks against journalists, particularly those covering political events and meetings during the course of 2002. During and after the on-site visits conducted in May 2002, the Office of the Special Rapporteur was informed that journalists had been the direct target of aggression and harassment. The general situation in Venezuela has created a climate of aggression and threats against the personal integrity of journalists, camera technicians, photographers, and other media workers. Attacks against the media include the murder of a journalist; physical attacks, including gunshot wounds, threats, and explosives. The situation has an intimidating effect on the media; journalists hesitate to identify themselves as such for fear of reprisals.

221. In response to these circumstances the IACHR has requested the Venezuelan state to take precautionary measures on seven occasions, with extensions in several of these cases, to protect the lives, personal integrity, and freedom of expression of journalists, camera technicians, and photographers under attack. The IACHR has also requested provisional measures from the Inter-American Court of Human Rights, since the efforts to protect these individuals did not produce the desired results, the attacks against them having continued over time.

222. The acts of harassment and threats against journalists in recent months attest to an atmosphere of intimidation and intolerance for the profession of journalism in Venezuela. Although journalists continue to criticize the government, the continuation of this harassment could result in a situation of media self-censorship.

223. In addition to the foregoing, the Office of the Special Rapporteur has been informed that a complete and exhaustive investigation of these attacks on journalists and the media has yet to be conducted. The Office of the Special Rapporteur takes this opportunity to point out that impunity in these investigations also contributes to an atmosphere of intimidation and fear that is detrimental to the full enjoyment of the freedom of expression in Venezuela.

224. The Commission has held that the State's failure to conduct an effective and complete investigation into homicides, disappearances, or other attacks against journalists, and to impose criminal sanctions against the material and intellectual perpetrators of such acts is especially grave, given the impact though such inaction on society. Such crimes have an intimidating effect not only on other journalists but also on citizens in general, creating fear to denounce attacks, abuses, and illicit acts of all kinds. This effect can be avoided only if the State takes decisive action to punish the perpetrators of homicide against media representatives. By taking such action, states can send a strong and direct message to society that those who commit such grave violations of the right to freedom of expression will not be tolerated.²¹⁰

²¹⁰ IACHR, Report N° 50/90, Case 11.739, Mexico, OAS/Ser/L/V/II. Doc. 57, 13 April 1999.

225. During and after the IACHR's on-site visits to Venezuela, it came to the attention of the Office of the Special Rapporteur that the Venezuelan society could not gain access to information during the events of April 2002, and that the media were in some instances used as a political tool during the Venezuelan crisis. In a press release issued in May 2002, the IACHR indicated that "although there may be various justifications to explain this lack of information, the extent to which the suppression of information resulted from politically motivated editorial decisions should be a subject of careful reflection by the Venezuelan media about the role they play under such circumstances." Although the media in Venezuela have the right to adopt the editorial position that decide, the Office of the Special Rapporteur again calls upon the media in Venezuela to initiate a process of reflection about their role in times of political crisis, when society expects to receive the most comprehensive and ample information. Although according to the information provided by several sources²¹¹, media coverage of the current crisis in Venezuela appears to be guided by politically motivated editorial decisions, the Office of the Special Rapporteur wishes to emphasize that under no circumstances can such an attitude on the part of the media, repeatedly denounced by the government, justify aggression against journalists and other media workers and facilities.

226. Some of the incidents of violence against the media reported to the Office of the Special Rapporteur in 2002 are described below. The information provided in no way constitutes an exhaustive account of the complaints received, merely a number of situations that exemplify the delicate situation in which the media has to operate in the current context of crisis in Venezuela.

Assassination

227. On 11 April 2002, Jorge Tortoza, of *Vespertino 2001*, died as the result of a gunshot to the head. Following the general strike organized by the Workers Confederation of Venezuela (CTV) and the industry association *Fedecamaras*, snipers positioned in several buildings adjacent to the Presidential Palace of Miraflores, fired machine guns and other firearms on persons in the area, resulting in the death of the journalist Tortoza and the injury of three other journalists. Jorge Tortoza, who had been working for the paper since the age of 16, was taken to Vargas Hospital, where he died following surgery. According to the information received, the Criminal Investigations Unit (CIPC) of the Venezuelan police, continues to investigate the case.²¹²

Gun shot victims

228. On 11 April 2002 Luis Hernández, of the official agency *Venpres* and Jonathan Freitas, of the newspaper *Tal Cual* were wounded by gunshots after covering the general strike

²¹¹ The Washington Post: A Split Screen In Strike-Torn Venezuela, January 12, 2003; New York Times: Venezuelan News Outlets Line Up with the Foes of Chavez, December 21, 2002. *Comité para la Protección de Periodistas*: Venezuela Special Report: Cannon Fodder, In the current battle between the Venezuelan media and President Hugo Chavez Frias, journalist are being used as ammunition. *Instituto Prensa y Sociedad (IpyS)*, *Boletín Semanal: Contrapunto entre corresponsales extranjeros y medios venezolanos*, January 29, 2003. *Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA)*: Annual Report October 2001/September 2002, *Sesgo político de medios publicos y privados*. Caracas, November 2002, pag. 449.

²¹² Inter-American Press Association (SIP/IAPA), April 12, 2002, Committee to Protect Journalists (CPJ), April 11, 2002 and *Instituto Prensa y Sociedad (IPyS)*, July 26, 2002.

organized by the Workers Confederation of Venezuela (CTV), and the industry association *Fedecamaras*.²¹³

229. In August 2002, Antonio José Monroy, a camera technician for RCTV, was hit by a bullet in the right calf as he covered a disturbance near the Supreme Tribunal of Justice, when the court's decision acquitting four military officers of charges in connection with a coup d'etat in April 2002.²¹⁴

230. On 4 November 2002, Salvadoran journalist Mauricio Muñoz Amaya, a correspondent for Associated Press Television News (APTN), was hit by a bullet while on the job in the Venezuelan capital. The incident took place as the reporter was recording images of a disturbance near the National Electoral Council (CNE), in the center of Caracas. Muñoz was wounded by a bullet from a 9mm pistol, which hit him in the right portion of his chest. The injury was not serious because the cameraman was wearing a bulletproof vest.²¹⁵

231. On 12 November 2002, the reporter Armando Amaya, camera assistant for *Radio Caracas Televisión*, was wounded as he covered a demonstration in the center of Caracas, which culminated in acts of violence. A bullet grazed his right leg, causing a slight injury. According to the information provided, the cameraman was assisted by Caracas firefighters, who took him to the municipal infirmary for medical attention.²¹⁶

I.

232. On 3 December 2002, Fernando Malavé, a reporter for *Diario 2001*, was hit by a rubber bullet as he, together with journalist Félix Azuaje, were covering a demonstration by a group of government opponents, outside the headquarters of the state company *Petrómeros de Venezuela*, located in Chuao, to the east of Caracas. Malavé was taken to Domingo Luciani Hospital in Caracas. Other media representatives covering the events were also affected. The microwave technician for the television station *CMT*, José Antonio Dávila, was wounded by shotgun pellets in the neck and chest. Journalist Rafael Fuenmayor of *CMT*, was kicked and affected by a tear gas bomb that fell at his feet as he was reporting live from the scene.²¹⁷

Attacks

233. On 31 January, a homemade bomb was thrown from a moving motorcycle in front of the offices of the newspaper "*Así es la Noticia*." The bomb destroyed the glass entrance and forced 200 employees to evacuate the building.²¹⁸

234. On 9 July 2002 four firebombs were thrown at the offices of the regional television station *Promar TV*, located in the city of Barquisimeto, in the state of Lara.²¹⁹

²¹³ IPyS, July 26, 2002.

²¹⁴ *El Nacional*, August 15, 2002.

²¹⁵ Committee to Protect Journalists, November 18, 2002 and *Instituto Prensa y Sociedad*, November 6, 2002.

²¹⁶ *Instituto Prensa y Sociedad*, November 12, 2002.

²¹⁷ *Id.*, December 5, 2002.

²¹⁸ *Asociación Nacional de Periodistas*, February 1, 2002.

²¹⁹ *Instituto Prensa y Sociedad*, September 13, 2002.

235. On 9 July 2002, a small bomb exploded at the headquarters of the private television station *Globovisión*, in La Florida, a settlement located northeast of Caracas.²²⁰

236. On 31 July 2002 the Venezuelan channel *Globovisión* was hit by a second attack by unknown persons. According to the information received, a tear gas bomb was thrown from a car passing in front of the channel's headquarters.²²¹

237. On 22 September 2002 unidentified persons fired gunshots at the residence of Carlos Barrios, director of the regional radio station *Astro 97.7 FM*, located in the state of Portuguesa in western Venezuela. Barrios indicated that after the attack he received a call on his cell phone telling him that the next shots would be fired at him.²²²

238. On 19 October 2002 unidentified persons threw an explosive device into the offices of *Unión Radio*, located in the municipality of Chacao, in Caracas. The explosion damaged the station's external structure and the facade of an adjacent family residence. The news director for *Unión Radio*, Inés Scudellari, told the press that prior to the incident she and other employees of the station had received threats at the station by fax, telephone, and the Internet.²²³

239. On 17 November 2002 an explosive device was thrown at the headquarters of the private television channel *Globovisión*, outside of Caracas. The device, probably a Molotov cocktail according to the firefighters, caused a fire that destroyed three vehicles.²²⁴

Other threats and aggression warranting the adoption of precautionary measures by the IACHR

240. Given the large amount of information received by the Office of the Special Rapporteur concerning aggression and attacks against journalists and the media in general in 2002, this section, without prejudice to the cases indicated earlier, refers to a number of examples of situations warranting that the IACHR take some kind of action, such as precautionary measures or press releases, to promote the full observance and exercise of the freedom of expression in Venezuela.

The newspaper “*El Nacional*”

241. On 7 January 2002, a group of citizens identifying themselves as members of the *Movimiento Bolivariano 2000* and *Círculos Bolivarianos* gathered at the headquarters of the newspaper “*El Nacional*.” The citizens supposedly gathered there to demonstrate against the newspaper's editorial positions.

²²⁰ Reporters without Borders, July 10, 2002.

²²¹ *Instituto Prensa y Sociedad*, August 2, 2002.

²²² *Id.*, September 24, 2002.

²²³ *Id.*, October 22, 2002.

²²⁴ *Id.*, and Reporters without Borders, November 18, 2002.

242. The aggressive posture assumed by these demonstrators included “brandishing objects that could serve as makeshift weapons (sticks, tubes, large pieces of metal), taking pictures of journalists arriving at the *El Nacional* to signal identification, shouting obscene and insolent phrases, and impeding the arrival and departure of the newspaper’s employees, whose physical integrity and even lives were threatened by these acts.”

243. In response to the foregoing, on 11 January 2002, the IACHR decided to request the following precautionary measures on behalf of the journalists, workers and managers of the newspaper *El Nacional*:

- 1) Provide such protection as may be requested by the representatives of the newspaper *El Nacional*, to safeguard the safety and personal integrity of the newspaper’s journalists, workers, and managers.
- 2) Conduct an exhaustive investigation to identify, prosecute and punish those responsible for the acts designed to intimidate the newspaper *El Nacional* on 7 January 2002.
- 3) Adopt such measures as may be necessary to protect the exercise of the freedom of expression, safeguarding the right of Venezuelan society as a whole to have access to information.

244. On 10 July 2002, the IACHR extended the precautionary measures based on the information provided by the petitioners alleging further threats to kill the newspaper’s journalists.

Andrés Mata Osorio, the *El Universal* newspaper

245. According to the information received, Mr. Mata, editor and owner of the newspaper *El Universal* indicated that “at the two press conferences held last September [2001], mentioned earlier, the President of the Republic warned that: ‘*No one is going to save you, Andrés Mata*’; adding that ‘*The newspaper El Universal owned by Andrés Mata, the oligarch, runs roughshod over the people.*’ In addition, according to the information provided, on 17 December [2001], in a public act, the president said: ‘*To El Universal, that is, to Andrés Mata Osorio, for having fomented a conspiracy, I say that 2002 will be the year for a great offensive ... marked by a series of events that are going to occur.*’ On 13 January 2002, President Hugo Chávez Frías showed a photograph of Mr. Mata on television so that “his followers could recognize him as an oligarch and a suppressor of the people, etc.” Since this public identification, Mata says that he has received telephone death threats against him and his family.

246. Based on this information, on 27 January 2002, the IACHR requested the following precautionary measures on behalf of Andrés Mata Osorio:

- 1) Provide the protection requested by Andrés Mata Osorio, editor and owner of the newspaper *El Universal*, to safeguard his life and personal integrity and that of his family.
- 2) Adopt such measures as may be necessary to protect the full and free exercise of the freedom of expression by Andrés Mata Osorio, editor and owner of the newspaper *El Universal*.

247. On 25 June 2002, the IACHR requested information concerning the situation of journalist Alicia La Rotta Morán, within the context of the precautionary measures granted to Mr. Mata of the newspaper *el Universal* on 27 January 2002. According to the information received,

Miss Rotta Moran, a journalist for the newspaper *El Universal*, had been assaulted on 20 June 2002.

248. On 23 July 2001, the IACHR granted a request for an extension of the precautionary measures inasmuch as the State had not fully complied with the original measures. The extension is subject to the following terms:

- 1) Provide the protection requested by Andrés Mata Osorio, editor and owner of the newspaper *El Universal*, to safeguard his life and personal integrity and that of his family, and provide the protective measures requested by the journalist Alicia de la Rotta Morán.
- 2) Adopt such measures as may be necessary to protect the full and free exercise of the freedom of expression by Andrés Mata Osorio and the journalist Alicia de la Rotta Morán.

249. This extension is based on information sent by the representative of Mata and la Rotta indicating that on 20 June 2002 the journalist La Rotta Moran had been the victim of physical aggression by a military intelligence officer of the Government of the Republic. On 28 January 2003, the IACHR decided to grant a further extension of the precautionary measures taken on behalf of Mr. Mata and the journalist La Rotta based on information concerning further aggression against them.

Globovision and RCTV

250. According to the information provided, on 20 January 2002 journalists Luisiana Ríos, of RCTV, and Mayela León, of GLOBOVISION, and their technical teams, arrived to cover the program of President Hugo Chávez "*Aló Presidente*" in the Observatorio Cajigal, situated on a hill in Parroquia 23 de enero, west of Caracas. When the vehicles arrived, showing the logos of their respective channels, a group of approximately 50 persons surrounded them, rocking them from side to side, and striking and kicking the vehicles as they shouted: "we will lynch you if you get out." According to the information provided, members of the military escorted the vehicles out of the area.

251. On 30 January 2002, in view of the above information, the IACHR requested the following precautionary measures on behalf of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, Eduardo Sapene Granier of *Radio Caracas Televisión* and Mayela León Rodríguez, Jorge Manuel Paz Paz and María Fernanda Flores of *Globovisión*:

- 1) That the necessary measures be taken to protect the lives and personal integrity of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, Eduardo Sapene Granier of *Radio Caracas Televisión* and Mayela León Rodríguez, Jorge Manuel Paz Paz and María Fernanda Flores of *Globovisión*.
- 2) Refrain from any action that could have an intimidating effect on journalists and other workers for *Globovisión* and *Radio Caracas Televisión*.
- 3) Conduct an exhaustive investigation of the actions taken on 20 January 2002 against journalists Luisiana Ríos and Mayela León Rodríguez, of RCTV and *Globovisión* respectively and the technical teams accompanying them.

252. On 29 July 2002 the IACHR approved the request for an extension, requesting that the State:

- 1) Take such necessary measures to protect life and personal integrity as may be requested by the representatives of *Globovisión* and *Radio Caracas Televisión* in order to protect the lives and personal integrity of the workers for both channels and to safeguard the security of their property and installations.
- 2) Refrain from any action that could have an intimidating effect on the exercise of their profession by journalists and other workers for *Globovisión* and *Radio Caracas Televisión*.
- 3) Conduct an exhaustive investigation into all acts of intimidation and attacks against the journalists and other workers of RCTV and *Globovisión* or against their facilities or vehicles reported by the two channels.

253. The extension was based on the fact that the situation giving rise to the original measures had persisted. In addition, on 19 April 2002, the IACHR requested information on the situation of *Globovisión* reporter Orlando Rafael Urdaneta within the context of precautionary measures adopted by the Commission.

Radio Caracas Televisión (Request for precautionary measures to the Inter-American Court of Human Rights)

254. On 27 November 2002, the Inter-American Commission decided to file a request with the Inter-American Court of Human Rights for precautionary measures on behalf of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellano and Argenis Uribe. On the same day, 27 November 2002, the Inter-American Court of Human Rights granted the measures requested and resolved to:

- 1) Request that the State take the necessary measures, without delay, to protect the life and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellano and Argenis Uribe, employees of *Radio Caracas Televisión* (RCTV).
- 2) Request that the State allow the petitioners to participate in the planning and implementation of the protective measures and in general keep them informed on progress in implementing the measures ordered by the Inter-American Court of Human Rights.
- 3) Request that the State investigate the reported incidents that gave rise to these measures for the purpose of finding and punishing those responsible.
- 4) Request that the State report to the Inter-American Court of Human Rights on the measures taken in pursuance of this resolution, by no later than 12 December 2002.
- 5) Request that the Inter-American Commission on Human Rights, within one week of the notification of the State's report, submit such observations as it may consider appropriate to the Inter-American Court of Human Rights.
- 6) Request that the State, subsequent to its first communication (see paragraph 4 above), continue to report every two months to the Inter-American Court of Human Rights on the provisional measures taken and to request that the Inter-American Commission on Human Rights present its observations on these reports within six weeks of their receipt.

Venevisión

255. According to the information received, on 3 February 2002, reporters for *Venevisión* were asked to cover a tour by the President of the Bolivarian Republic of Venezuela, Mr. Hugo Chávez Frías, departing from San Carlos airport to the state of Aragua. When they arrived at the airport, they found themselves among people “wearing logos of the political party *V República*, who verbally attacked the reporters for *Venevisión*.” When they reached Aragua the camera technician Mauro Acosta Padrón indicated that he had received a blow on the back left side of the head. They also indicated that on 7 February 2002, during their coverage of a public event, two buses moving at high speed charged into an area where journalists and camera technicians were gathered.

256. The information provided indicates that Mauro Acosta Padrón was hit by one of these buses, seriously threatening his life and causing injury and trauma warranting his hospitalization in the *La Viña* Clinic in the city of Valencia. On 21 February 2002, at Ciudad Universitaria de Caracas, a group of persons allegedly broke the windows and a mobile unit belonging to the press department of *Venevisión*.

257. Based on this information, the IACHR requested on 28 February 2002 that the state of Venezuela take precautionary measures to protect Laorwins José Rodríguez Henríquez, Mauro Acosta Padrón, Randolpho Blanco, Sol Vargas Arnaz, and other workers and/or journalists for the television station VENEVISION as follows:

- 1) Provide the protection requested by the representatives of television station *Venevisión*, to safeguard the right to life and personal integrity of the station's journalists and workers.
- 2) Conduct an exhaustive investigation of the events of 3, 7 and 21 February 2002, victimizing *Venevisión* employees Mauro Acosta Padrón, Randolpho Blanco and Laorwins José Rodríguez Henríquez.
- 3) Take the necessary measures to protect the full exercise of the freedom of expression by media representatives, in accordance with article 13 of the Convention.
- 4) That the illustrious Government of Venezuela, through its highest authority, categorically denounce the attacks being perpetrated on media workers.

258. In addition, on 19 April 2002, the IACHR requested information from the State on measures taken to protect the *Venevisión* journalists, singling out in particular journalists Luis Alfonso Fernández and Julio Gregorio Rodríguez García, who had received threats following the coverage of the events of 11 April.

259. During the Commission's on-site visit to Venezuela (6-10 May 2002) Dr. Pedro Nikken and Carlos Ayala, attorneys for the *Venevisión* journalists, hand delivered a request for precautionary measures on behalf of *Venevisión* journalists Julio Gregorio Rodríguez García, Mauricio Cabal Zamorano, Randolpho Blanco, Graciliano Esteban Leal Hernandez, Nelson Torres Flores, and Ray Carlos Avilez Luna. On 22 May 2002, the IACHR transmitted to the state this additional request for precautionary measures on behalf of the aforementioned journalists.

260. On 20 June 2002, the IACHR granted the request for an extension of the precautionary measures. On 1 August 2002, in view of information received about a further attack on journalist Ray Carlos Avilez Luna, the IACHR sent a request for information to the

State. On 30 August 2002 the IACHR notified the State that the precautionary measures requested by *Venevisión* had been extended.

Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar

261. Information received on 1 February, and 5 and 8 March 2002 indicated, inter alia, that "a report by journalist Ibéyise Pacheco, on 30 January 2002 [sic], together with journalists Marta Colomina, Patricia Poleo and Marianella Salazar, divulged a videotape showing conversations between the Venezuelan army and guerrilla forces in Colombia, revealing that a permanent and continuous relationship existed between them and that they had collaborated, for instance, in the supply of food by Venezuelan Armed Forces to members of the Colombian revolutionary forces (FARC). Subsequently, Ibéyise Pacheco began to receive a series of telephone calls warning her not to publish news or opinions that "might affect the course of the Bolivarian revolution." According to the information provided, in the first communication on 1 February 2002, after the telephone calls, "an explosive device" was placed at the door of the newspaper "*Así es la Noticia*" and "exploded, destroying the main door to the newspaper building."

262. The communications provided to this Commission on 5 and 8 March 2002 reveal that after the explosion, the journalist Pacheco received threats against her person over the telephone, in flyers, and publications that the journalist indicates she received prior to 7 March 2002.

263. Based on the information described above, on 12 March 2002 the IACHR requested that precautionary measures be taken on behalf of Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar. The IACHR requested that the Venezuelan state:

- 1) Provide the protection requested by journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar, to safeguard their right to life and personal integrity in accordance with articles 4 and 5 of the American Convention.
- 2) Conduct an exhaustive investigation into the events of 31 January 2002, at the headquarters of the newspaper *Así es la Noticia* and the threats received by journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar.
- 3) Take the necessary measures to protect the full exercise of the freedom of expression by media representatives, in accordance with article 13 of the Convention.
- 4) Refrain from any action that could have an intimidating effect on journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianella Salazar.

Dubraska Romero, *Tal Cual* newspaper

264. Information received on 23 May 2002 indicated inter alia that journalist Dubraska Romero of the Venezuelan morning newspaper *Tal Cual* had been "covering the military front for four years [and that] fifteen days before the events of 11 April 2002 a National Guard official gave the journalist Romero a coup d'etat manual that was circulating in the regiment. The newspaper *Tal Cual* published this document in March 2002." According to the information provided, starting 7 May of this year the journalist Romero had been receiving telephone calls that she could identify as "from the National Guard." It is of relevance that according to the

information received, "during the morning of May 9, Dubraska Romero received a call from Coronel Alexis Maneiro, who in turn transferred her to General Belisario Landis, Comandante General of the National Guard, who asked about her situation and said "they had already identified the officers who had been bothering her and that they wouldn't be bothering her anymore." According to the information provided, after this call, the journalist Romero received another call telling her that "she was taking things very lightly, she seemed to think that everything was a lie and that they knew everything about her and her family."

265. The IACHR requested the adoption of precautionary measures to protect the life of the journalist and her family as follows:

- 1) Provide the protection requested by journalist Dubraska Romero, to safeguard her right to life and personal integrity and that of her family, in accordance with articles 4 and 5 of the American Convention.
- 2) Conduct an exhaustive investigation of the facts in the case.
- 3) Refrain from any act that could have an intimidating effect on journalist Dubraska Romero and her family.

266. On 1 October 2002 the IACHR sent new information about the journalist's situation to the State. The information indicated that personal protection was being provided to the journalist by the municipal police of Chacao. Despite this protection, Romero continued to receive death threats electronically and by telephone, and noticed that unidentified persons were following her in automobiles without license plates.

José Ángel Ocanto, news director for the newspaper *El Impulso de Barquisimeto*

267. On 5 August 2002, journalist José Ángel Ocanto, news director for the newspaper *El Impulso de Barquisimeto*, reported that he had received telephone calls threatening him and his family and had been personally harassed as a result of his newspaper articles and opinion columns on the subject of the corruption in government. He reported that on July 6, 2002 unknown persons sprayed his car with gasoline and set it on fire. He reported that the police authorities refused to act in his defense. The information received indicates that the Media Affairs Committee of the Regional Legislative Council and the Subcommittee on Media Affairs of the National Assembly were also unresponsive to his complaint, and that on the same night of the attack, individuals in a red van began circling his home. He also reported that both the Governor of the state of Lara, and the Director of Public Security and Order told the public that the car had "caught fire by itself" or that the incident had been "provoked" with "obscure intentions." The telephone threats warned him that if he continued writing his articles, he would be murdered and his wife and daughters would be raped. During one of the calls, specific information about him and his family was mentioned. The petitioner also reported that he had been criminally prosecuted for slander after reporting on a denunciation in the Venezuelan Parliament.

268. With respect to the burning of his car, the journalist reported that police authorities did not respond to his complaint or collect evidence. In view of this response, the journalist reported the burning of his car and the telephone threats to the Superior Public

Prosecutor's Office in the Office of the Attorney General, the Police Criminological Science Unit, and the Media Affairs Committee of the Regional Legislative Council.

269. On 5 November 2002, the IACHR requested the Venezuelan state to take the following precautionary measures on behalf of Mr. Ocanto, in view of the fact that it had not received responses to two requests for information on Mr. Ocanto's situation:

1. That the appropriate authorities provide such protection as may be requested by Mr. José Ángel Ocanto and his family, to protect their lives and personal integrity, in accordance with articles 4 and 5 of the American Convention on Human Rights.
2. That an exhaustive investigation be conducted into the acts of intimidation and threats received by the beneficiaries of this precautionary measure.

OTHER

270. During the two visits made by the IACHR to Venezuela in 2002, the Office of the Special Rapporteur received information about the concerns of numerous sectors of society over the large number of the state national chains in the media. The national chains require media outlets to cancel their regular programming to transmit information imposed by the government. The Office of the Special Rapporteur was able to verify that the duration and frequency with which national chains were being used could be considered abusive in light of the information communicated by them, which might not always be serving the public interest. The IACHR issued a timely press release denouncing the abusive and unnecessary use of this mechanism, which if used on a discretionary basis for purposes not in the public interest could constitute a form of censorship. Following the visits, the Office of the Special Rapporteur was pleased to receive information indicating a significant reduction in the use of this mechanism.

E. Murders of media personnel

MEDIA PERSONNEL ASSASSINATED IN 2002				
INFORMATION REGARDING THE JOURNALIST	PLACE AND DATE	FACTS OF THE CASE	BACKGROUND	STATUS OF THE INVESTIGATION
Tim Lopes , reporter for TV Globo	Vila do Cruzeiro, Rio de Janeiro BRAZIL, June 2, 2002	Tim Lopes disappeared and was later found murdered. According to news reports, he was last seen on assignment in the suburbs of Rio de Janeiro, at an impoverished community (<i>favela</i>). On June 12, police found badly decomposed human remains, along with Lopes' camera and watch,	Lopes was an investigative reporter who conducted investigations into drug trafficking. Shortly before his death, Lopes received calls from the favela of Villa Cruzeiro that some drug dealers were forcing minors to perform explicit sex shows. Armed with a hidden camera, Lopes	On September 19, 2002, Brazilian police captured a local drug trafficker who was the leading suspect in the disappearance and murder of Tim Lopes. Elias Pereira da Silva, also known as Elias the Madman, was apprehended in one of Rio de Janeiro's favelas. According to the Rio de

		in a clandestine cemetery in Favela da Grota. After DNA tests, the police confirmed on July 5 that the remains belonged to Lopes	was abducted while reporting on the story.	Janeiro Civil Police, two suspects, both members of the gang headed by Pereira da Silva, were arrested on the morning of June 9. Both men claimed that they heard how Lopes was murdered but denied any involvement in his killing.
Domingos Sávio Brandão Lima Júnior , owner, publisher, and a columnist of the daily Folha	City of Cuiabá, in the central Brazilian state of Mato Grosso. BRAZIL September 30, 2002	Brandão was shot at least 5 times by two unidentified men on a motorcycle.	Brandão's death relates to the paper's extensive coverage of drug trafficking, illegal gambling, and acts of corruption involving public officials. The journalist was also a businessman who owned construction and publishing companies	On October 1, 2002, Hércules Araújo Coutinho, a corporal in the military police and Célio Alves de Souza, a former military policeman, were arrested for their alleged participation in the crime. Hércules Araújo Coutinho was recognized by eye witnesses as one of the murderers. Incriminating ballistic evidence against him was produced, along with finger prints associating him with five other murders occurring in the region that year.
Félix Alonso Fernández García , editor of the weekly "Nueva Opción"	Miguel Alemán city, in Tamaulipas State (north-eastern Mexico). MEXICO January 18, 2002.	The journalist was hit by a bullet fired from a vehicle. The bullet entered the left side of the thorax, and passed through the abdomen. He was also hit by another bullet in his right arm.	The journalist had recently reported in "Nueva Opción" on alleged relations between the former mayor of Miguel Alemán, Raúl Rodríguez Barrera, and drug traffickers. In 2001, the journalist had informed police of these relations. A few days before his death, the journalist had accused the former mayor of wanting to kill him.	As of publication of this report, the Rapporteur had not received any information on the status of inquiries into the murder of journalist Alonso Fernández García.

<p>Orlando Sierra Hernández, assistant editor (Deputy Director) of the daily <i>La Patria</i></p>	<p>Manizales, departament of Caldas. COLOMBIA. January 30, 2002.</p>	<p>Hernandez was shot in front of the newspaper's offices. He died two days later.</p>	<p>Hernández wrote a column called <i>Punto de encuentro</i>, in which he critically analyzed issues of national and regional concern, including cases of corruption. In his weekly columns, Mr. Sierra also criticized leftist rebels and a right-wing paramilitary group. Although the journalist had previously received threats as the result of statements in <i>Punto de encuentro</i>, he was not considered to be at risk at the time of the shooting.</p>	<p>Luis Fernando Soto ultimately pleaded guilty to the murder and was sentenced by a Special Judge of Manizales (Juez Especializado de Manizales) to 19 ½ years in prison. In May 2002, authorities also arrested Luis Arley Ortiz Orozco, on suspicion of having been the intermediary between those who ordered the crime and those who carried it out. The Attorney General's Office is also investigating Francisco Antonio Quintero Torres upon suspicion that he heads the gang of assassins to which Mr. Soto belonged. The intellectual authors of the crime have not been apprehended.</p>
<p>Héctor Sandoval, cameraman and Wálter López, the crew's driver, both of the <i>RCN Televisión</i> news crew.</p>	<p>Cali, COLOMBIA April 11, 2002.</p>	<p>Sandoval and Lopez were shot while covering fighting between the Colombian army and leftist rebels.</p>	<p>According to a witness from another media organization, the journalists had decided to turn back when an army helicopter hovering above opened fire on their vehicle, hitting López. The witness stated that the letters "RCN" were marked in large, bright colors on the roof and both sides of the vehicle. The journalists tried to signal the helicopter for help by waving white T-shirts in the air. Fifteen minutes after López was shot, a bullet from the helicopter hit Sandoval.</p>	<p>The army has opened an investigation into the killings, said an army spokesman in Bogotá, who asked to remain anonymous. The head of the anti-abduction squad, Colonel Carlos Arévzlo denies that the army was responsible and asserts that the journalists were attacked by the FARC.</p>
<p>Efraín Varela Noriega, owner of <i>Radio Meridiano 70</i>.</p>	<p>Arauca, COLOMBIA June 28, 2002</p>	<p>Varela Noriega was driving home from a university graduation in Arauca Department, along with his sister and brother-in-law, when their car was intercepted by a white truck. Several heavily armed men forced the journalist to get out of his</p>	<p>Mr. Varela was the host of two news and opinion programs at <i>Radio Meridiano 70</i> in which he frequently criticized all sides fighting in Colombia's 38-year civil conflict. In addition to being a journalist, Mr. Varela was an attorney,</p>	<p>The Human Rights Unit of the Attorney General's Office (La Unidad de Derechos Humanos de la Fiscalía de la Nación) has taken up the investigation of the case.²²⁵</p>

²²⁵ IPyS, June 29, 2002; RSF, July 1, 2002; CPJ, July 1, 2002; SIP/IAPA, July 2, 2002.

		<p>car, which was marked with the insignia of <i>Radio Meridiano 70</i>, and shot him in the face and chest. The assassins put Mr. Varela in the truck and dumped his lifeless body further up the road. Mr. Varela's sister and brother-in-law were unharmed.</p>	<p>teacher, and social leader with a particular interest in peace and conflict resolution and human rights. Mr. Varela's professional activities had made him a frequent object of threats from both the paramilitaries and the guerillas. His name had appeared in a list of people declared "military objectives" by the paramilitaries of the AUC. According to his widow, Mr. Varela had received threats as recently as two days before his death.</p>	
<p>Mario Prada Díaz, the founder and director of the monthly newspaper <i>Horizonte Sabanero</i> (later renamed <i>Horizonte del Magdalena Medio</i>).</p>	<p>Santander Department in Northeastern COLOMBIA July 11, 2002.</p>	<p>Prada Diaz was abducted from his house in the municipality of Sabana de Torres. The next morning, his body was found riddled with gunshots not far from his home. The motives for the killing and the possible perpetrators are unknown.</p>	<p>Prada's newspaper is dedicated to covering cultural, social, and community development issues. The paper had written about financial irregularities involving the municipal administration of Sabana de Torres just a week earlier. Additionally, just a week before Prada's murder, the head of a right-wing paramilitary force in the region had warned that his group would begin killing journalists. The place where his body was found is located in a zone that has been constantly fought over by Frente 22 of the Revolutionary Armed Forces of Colombia (FARC), the Frente Vásquez Chacón of the Ejército de Liberación (ELN), and the Bloque Central of the Autodefensas Unidas de Colombia (AUC)</p>	<p>As of publication of this report, the Rapporteur had not received any information on the status of inquiries into the murder of journalist Mario Prada Díaz.</p>
<p>Elizabeth Obando, who was responsible for the distribution of the regional newspaper <i>El Nuevo Dia</i></p>	<p>Roncesvalles municipality, in the department of Tolima. COLOMBIA July 11, 2002,</p>	<p>Obando was travelling on a bus in Playarrica, department of Tolima, when unknown armed men intercepted the vehicle, forced her to get out and minutes later shot her several times. She died two days later from the</p>	<p>Ms. Obando had previously been threatened by "Donald", leader of the FARC's 21st division, because of a September 21, 2001 article published in <i>El Nuevo Día</i> criticizing the FARC.</p>	<p>As of publication of this report, the Rapporteur had not received any information on the status of inquiries into the murder of the distributor of the newspaper <i>El Nuevo Dia</i>.</p>

		<u>injuries.</u>		
Jorge Tortoza , photographer for <i>Vespertino 2001</i> .	Caracas, VENEZUELA April 11, 2002.	Tortoza died from a bullet wound to the head while covering clashes between opponents and supporters of President Hugo Chávez.	Tortoza had worked for <i>2001</i> for 17 years.	The Venezuelan investigative police (Cuerpo de Investigaciones Penales y Criminalísticas - CIPC), is continuing its inquiries into this case.

CHAPTER III

JURISPRUDENCE

A. Summary of the jurisprudence of the inter-American system on freedom of expression²²⁶

1. Introduction

1. The jurisprudence of the inter-American human rights system began to be developed in 1965, with the authorization for the Inter-American Commission on Human Rights to examine complaints or petitions regarding specific cases of human rights violations. Complaints were decided based on the provisions of the American Declaration of the Rights and Duties of Man. In 1969, the American Convention on Human Rights was adopted.²²⁷ It entered into force in 1978, further defining the scope of the human rights protected by the regional system. The Convention also creates the Inter-American Court of Human Rights and defines the functions and procedures of both the Commission and the Court.

2. The following sections summarize the jurisprudence on freedom of expression of the IACHR and the Court.²²⁸ This chapter has been included for several reasons. First, it will be helpful to attorneys and others bringing petitions before the Commission and the Court to have all the jurisprudence on freedom of expression cited in a concise format. Secondly, it serves to demonstrate the development that has occurred in the jurisprudence of the inter-American system since the beginning of the case system in terms of the level of legal analysis carried out in each case. Earlier cases provide very little information about the reasons for a particular decision. More recent cases are characterized by a high level of legal analysis that serves to assist not only in the particular case at hand, but also in future cases with similar facts. Finally, this chapter shows the development of the importance the system has placed on freedom of expression. The Court and the Commission have increasingly highlighted the importance of freedom of expression in a democratic society and the particular emphasis placed on this right in the inter-American system, in contrast with the European human rights system and the universal system.²²⁹ This focus on freedom of expression led to the establishment by the Commission of the Office of the Special Rapporteur for Freedom of Expression in 1997.

²²⁶ This chapter was made possible through the assistance of Megan Hagler, a third-year law student at American University's Washington College of Law, who provided the research and the preliminary drafting of this report.

²²⁷ The American Convention has been ratified by the following 25 countries: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

²²⁸ This section complements and updates a section of the Office of the Special Rapporteur's 1998 Annual Report, p. 15.

²²⁹ See, e.g., Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights), Advisory Opinion OC 5/85 of November 13, 1985 (on the relative importance of freedom of expression).

2. Cases under the American Declaration of the Rights and Duties of Man

3. As previously noted, petitions received before the entry into force of the American Convention on Human Rights were evaluated according to the American Declaration of the Rights and Duties of Man. To this day, petitions from member States that have not yet ratified the American Convention are decided under the terms of the Declaration. With respect to freedom of expression the Declaration provides in Article IV:

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

4. The following cases were the earliest cases decided by the Commission with respect to freedom of expression. As is characteristic of earlier cases, these opinions do not contain a great deal of explanation about the basis for the Commission's findings.

5. The Commission first addressed an alleged violation of the right to freedom of expression in a group of cases from Guatemala.²³⁰ The petitioners alleged that the State was responsible for the disappearances, deaths, and arbitrary detentions of hundreds of individuals in the context of a "state of seige." ("*estado de sitio*"). They claimed that the State violated Article IV of the American Declaration, among other articles. The Commission's report does not detail the reasoning the petitioners provided. The petitioners also alleged violations of Articles I (right to life, liberty, and personal security), II (right to equality before the law), III (right to religious freedom), XVIII (right to a fair trial), and XXV (right to protection from arbitrary arrest). The Commission did not find a violation of Article IV, and did not provide its reasoning for this specific decision. The Commission found that the State had violated Articles I, XVIII, and XXV, and XXVI (right to due process).

6. The Commission again considered the application of Article IV of the Declaration in a 1987 case from Paraguay.²³¹ The petitioners in that case alleged²³² that the radio station "Radio Ñanduti" suffered ongoing harassment over a period of several years. The station was temporarily shut down on several occasions by governmental agencies, a program was terminated, and the director of the radio, Humberto Rubín, was detained and threatened with deportation if he would not change his editorial position. Mr. Rubín, his family, and workers of the radio also received death threats, which the petitioners alleged were reported to the police with no response. Additionally, businesses were pressured not to advertise on the station. The Commission found a violation of Articles IV and XXIII of the Declaration. In addressing the violation of Article IV, the Commission reasoned that it is not acceptable to restrict the right to expression through indirect methods, referring to the language of Article 13 of the American Convention.²³² The Commission also stated that freedom of expression is one of the most solid guarantees of modern democracy and development and that this freedom requires not only that individuals be free to transmit ideas and information, but also that all people can receive information without interference. The Commission recommended that the government investigate and sanction those responsible, and indemnify the business and its employees for economic loss.

230 Case 1702, 1748, and 1755, Guatemala, 1975.

231 Case 9642, Report N° 14/87, Paraguay, March 28, 1987.

232 The Convention had entered into force at that point. Paraguay had signed, but not ratified the Convention. Paraguay eventually ratified the Convention in 1989.

3. Cases under the American Convention on Human Rights

7. The following section summarizes cases decided by the Commission and the Court under the more detailed provisions of Article 13 of the American Convention. Cases in this section are divided into the following categories: Violence Against or Murder of Journalists²³³; Intimidation, Threats, and Harassment in Retaliation for Expressions; Prior Censorship; Subsequent Liability for Expressions; Mandatory Membership in a Professional Association for the Practice of Journalism; Indirect Restrictions on Freedom of Expression; the Right to the Truth; and the Right to Reply.

a. Violence against or murder of journalists

8. The Commission has repeatedly emphasized that violence against or murder of journalists or others in retaliation for their exercise of the right to freedom of expression violates not only the right to life and physical integrity, but also the right to freedom of expression.

9. This issue was first addressed in a 1996 case from El Salvador.²³⁴ In that case, agents of the Government of El Salvador were alleged to have committed violent attacks, torture, and persecution against the *Comadres* Committee, a support group for families of disappeared persons. The Commission found a violation of Articles 5, 7, 11, 16, and 25. The Commission did not find a violation of Article 13, which was alleged by the petitioners. The Commission provided no specific reasoning as to why it did not find a violation of Article 13.²³⁵

10. In another 1996 case,²³⁶ Petitioner Carlos Gómez, an active member of labor organizations, alleged that he was the victim of an attempt on his life by members of the Guatemalan military and that he had been denied legal protection by the State. Mr. Gómez was shot, left for dead, and robbed of photos and the camera and equipment with which he had documented the situations of persons displaced by the armed conflict and their mistreatment by the Guatemalan army. The Commission concluded that because the attackers took Mr. Gómez's photos and equipment and because they attempted to kill him to prevent the distribution of the photos, they interfered with Mr. Gómez's right to freedom of expression, among other rights.

11. In 1997, the Commission considered the issue of the murder of the journalist Hugo Bustíos Saavedra.²³⁷ Mr. Saavedra was murdered in 1988, allegedly by members of the Peruvian military patrol while he and another journalist were investigating two murders. Eduardo Rojas Arce, Mr. Saavedra's colleague, received gunshot wounds from the incident. The two journalists had been investigating murders in the context of the state of internal armed conflict in Peru at the time. The Commission found that the State was responsible for violating Article 13 of the Convention, as well as Articles 4, 5, and 25 of the Convention and common

²³³ It should be noted that for purposes of simplification in this chapter the word "journalist" is often used when referring to any person exercising his or her right to freedom of expression.

²³⁴ Case 10.948, Report N° 13/96, El Salvador, March 1, 1996.

²³⁵ In many cases in which a violation of the right to freedom of association is found, it may simply seem redundant to find a violation of the right to freedom of expression as well.

²³⁶ Case 11.303, Report N° 29/96, Guatemala, Carlos Ranferi Gomez Lopez, October 16, 1996.

²³⁷ Case 10.548, Report N° 38/97, Peru, Hugo Bustios Saavedra, October 16, 1997.

Article 3 of the Geneva Conventions. The Commission held that the State was responsible for violating the individuals' right to freedom of expression, as the government knew that journalists were in an area of armed conflict and did not provide protection for them. Further, the Commission found that claims that the Shining Path had carried out the attacks were not viable. The Commission maintained that the murder of Mr. Bustíos and the injury to Mr. Rojas interfered with their right to conduct their journalistic activities and intimidated other journalists from reporting on issues related to the armed conflict. The Commission further concluded that the State violated society's right to information by perpetrating violence against the two journalists. The Commission asserted that journalists play an important role in reporting on armed conflicts by providing an independent source of information to the public, and that journalists working in these situations should be accorded the highest level of protection available.

12. The Commission again addressed the issue of violence carried out by state agents in retaliation for the exercise of freedom of expression in the case of Tarcisio Medina Charry of Colombia.²³⁸ Mr. Medina, a university student, was abducted in 1988 by agents of the National Police. According to a witness, on the night Mr. Medina was taken, an official said he was going to take Mr. Medina after seeing copies of the Communist Party newspaper in Mr. Medina's backpack, suggesting that Mr. Medina was a "subversive." Another witness observed the officials chastise Mr. Medina for selling the newspapers. Mr. Medina was disappeared. The Commission held that the State violated Article 13 because the State agents disappeared Mr. Medina in part as a consequence of his decision to exercise his right to freedom of thought and expression.

13. In 1999, the Commission took the analysis of this type of case a step further in the case of Héctor Félix Miranda.²³⁹ Mr. Miranda, a journalist, frequently included gossip and sarcastic remarks about government officials in a column he wrote. He was assassinated in 1988 in apparent retaliation for his writings. The main perpetrators of the crime were arrested and sentenced, but the intellectual author of the crime was never apprehended. Although the petitioners did not allege a violation of Article 13, the Commission found that the State had violated Article 13, among others, of the Convention. The Commission considered that aggression against journalists and the State's failure to conduct a full investigation of such aggression creates an incentive for violators of human rights and causes a chilling effect among journalists and others who fear denouncing abuses or other illegal acts. The Commission followed that these effects can be avoided only by "swift action" on the part of the State to prosecute and punish perpetrators. In supporting its reasoning, the Commission cited its "General Report on the Situation of Human Rights in Mexico," in which the Commission stated, "Attacks on journalists are specifically intended to silence them, and so they also constitute violations of the right of society to have free access to information."²⁴⁰ The Commission concluded that it is the obligation of the State to prevent, investigate, and punish the perpetrators of assassinations and other acts of violence perpetrated with the objective of silencing the exercise of freedom of expression and that the State of Mexico did not meet its obligation in the case of the assassination of Mr. Miranda.

238 Case 11.221, Report N° 3/98, Colombia, Tarcisio Medina Charry, April 7, 1998.

239 Case 11.739, Report N° 5/99, Mexico, Hector Felix Miranda, il 13, 1999.

240 Id. para. 41, citing Report on the Situation of Human Rights in Mexico, OEA/Ser. L/V/II.100, Doc. 7 rev. 1, September 24, 1998 at par. 649, p. 142.

14. The same year, the Commission decided the case of Victor Manuel Oropeza.²⁴¹ Victor Manuel Oropeza, a journalist, was assassinated in 1991, apparently in retribution for articles he had published that criticized Mexican authorities. The petitioners alleged that the State did not carry out a good faith investigation of the murder. As in the Miranda case, the Commission did not conclude that the State was responsible for the killing of Mr. Oropeza, but it did confirm that Mr. Oropeza was the target of threats because of his journalistic activity. Therefore, the Commission concluded that the State's failure to investigate violated Mr. Oropeza's right to freedom of expression. The Commission also concluded that because attacks on journalists constitute "aggression against all citizens inclined to denounce arbitrary acts and abuses to society," the State's failure to investigate the assassination violated society's right to freedom of expression, right to receive information, and right to learn the truth about what occurred.²⁴²

b. Intimidation, threats, and harassment in retaliation for expressions

15. This section refers to cases addressing arbitrary or unlawful acts, other than violence or murder, undertaken by state agents in order to stifle freedom of expression.

16. In a 1990 case against Mexico,²⁴³ the petitioners, members of the National Action Party (PAN) who were running for office in Chihuahua, alleged that members of the Institutional Revolutionary Party (PRI), the party in power in Mexico at the time, were responsible for manipulating various elements of the election in question, causing electoral fraud. Specifically, the petitioners alleged that the PRI implemented legal procedures aimed at amending electoral legislation to give greater control to the government party, used funds and other public resources for their benefit, exerted "pressures to undermine freedom of expression," eliminated people from the list of voters, registered non-existent persons, created and cancelled polling places arbitrarily, stuffed ballot boxes, refused to recognize representatives of opposition political parties, benefited from the heavy presence of police and the military during election day. The petitioners alleged violations of Article 13 as well as Articles 5, (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 15 (right of assembly), 16 (freedom of association), 23 (right to political participation), 24 (right to equal protection), and 25 (right to judicial protection) as a result of the de facto irregularities that allegedly occurred during the election. The Commission held that it could not confirm nor deny the veracity of the petitioner's evidence of the irregularities that occurred and therefore did not rule on these issues.

17. In the case of Brigadier General José Francisco Gallardo Rodríguez,²⁴⁴ also in Mexico, the petitioner alleged that he had been threatened, harassed, and intimidated by State agents in retaliation for criticizing the human rights record of the military. The victim was also subject to arbitrary detention and imprisonment based on false accusations, and had been the victim of a defamation campaign. He was the subject of criminal proceedings, and was later released. The Commission did not find a violation of Article 13. The Commission considered

²⁴¹ Case 11.740, Report N° 130/99, Mexico, Victor Manuel Oropeza, November 19, 1999.

²⁴² Id. para. 61.

²⁴³ Cases 9768, 9780 and 9828, N° 01/90, Mexico, May 17, 1990.

²⁴⁴ Case 11.430, Report N° 43/96, Mexico, Jose Francisco Gallardo Rodriguez, October 15, 1996.

that the primary objective for the State's campaign against General Gallardo was not to prevent from expressing his opinions about the military's human rights record, based on the timing of the incidents. Additionally, the Commission found that because the State dropped charges against General Gallardo, the issue had been resolved within the domestic jurisdiction.

18. In 1999, in another case against Mexico, the petitioners alleged that three priests were abducted and taken at gun point to a destination identified in two cases as the Chiapas State Judicial Police Station, were stripped, and were forced to undergo medical examinations.²⁴⁵ They were flown, in a government plane, to Mexico City, where they were interrogated by immigration officers. They were then flown to Miami. Petitioners allege the priests were deported for their human rights activism in Chiapas. The State contended that the three priests were deported because they were encouraging the people to act against the authorities. The petitioners alleged that the State was in violation of several provisions of the Convention, including Article 13. The Commission held that the State was in violation of Articles 5, 8, 11, 12, 16, 22, and 25 of the Convention. The Commission did not find that the State was in violation of Article 13, and did not provide its reasoning with regard to the petitioners' allegation of the State's violation of the priests' freedom of expression.

c. Prior censorship

19. Article 13 of the Convention prohibits prior censorship, except in the case of regulating access to public entertainments for "the moral protection of childhood and adolescence."²⁴⁶ The Commission and the Court have strictly interpreted this provision in contentious cases.²⁴⁷

20. The Commission first addressed the issue of prior censorship in a 1996 case from Grenada.²⁴⁸ In that case, the State confiscated four boxes of books at the airport in Grenada upon the petitioners' entry from the United States. The Commission noted that by seizing and banning the books, the State imposed prior censorship. The Commission further noted that the State had not provided any arguments that would justify this censorship. Therefore, it found that the State had violated Article 13. In issuing its opinion, the Commission emphasized the dual nature of Article 13 in considering that this action inhibited the petitioners' right to freedom of expression as well as that of others, who could not receive the information and ideas contained in the books.

21. The Commission further developed its jurisprudence on prior censorship in the 1996 case of Francisco Martorell.²⁴⁹ In that case, a Chilean court had issued an injunction preventing the publication of a book the night before it was to be released. The book addressed the circumstances leading to the departure of a former Argentine ambassador to Chile. Francisco Martorell, the author of the book, appealed the decision to the Supreme Court, which denied the

²⁴⁵ Case 11.610, Report N° 49/99, Mexico, Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Rodolfo Izal Elorz, April 13, 1999.

²⁴⁶ American Convention on Human Rights, Article 13.4.

²⁴⁷ See OC-5/85, *supra*, para. 54, noting that the violation of the right to freedom of expression is particularly extreme in the case of prior censorship because it not only "violates the right of each individual to express himself, but also because it impairs the right of each person to be well informed, and thus affects one of the fundamental prerequisites of a democratic society."

²⁴⁸ Case 10.325, Report N° 2/96, Grenada, Steve Clark et al., March 1, 1996

²⁴⁹ Case 11.230, Report N° 11/96, Chile, Francisco Martorell, May 3, 1996

appeal and banned the circulation of the book. Charges were also filed against Mr. Martorell for criminal defamation and slander. The Commission found a violation of Article 13, reasoning that the injunction against the book constituted prior censorship. The Commission noted:

The prohibition of prior censorship, with the exception present in paragraph 4 of Article 13, is absolute and is unique to the American Convention, as neither the European Convention nor the Covenant on Civil and Political Rights contains similar provisions. The fact that no other exception to this provision is provided is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas.²⁵⁰

22. The Commission acknowledged the State's observation that Article 11 of the Convention guarantees the right to honor and dignity, but rejected the argument that this right would justify prior censorship. The Commission stated that "the organs of the State cannot interpret the provisions of Article 11 in a manner that violates Article 13, which prohibits prior censorship."²⁵¹ The Commission continued noting that "any potential conflict in the application of Articles 11 and 13 of the Convention can be resolved by resorting to the language of Article 13 itself[.]"²⁵²

23. In the "Last Temptation of Christ" Case,²⁵³ the Inter-American Court had the opportunity to address fully the scope of the prohibition on prior censorship in Article 13. The case involved the prohibition in Chile of the exhibition of the film "The Last Temptation of Christ." The Court noted that Article 13 does not allow prior censorship, with the exception of prior censorship of public entertainments "for the sole purpose of regulating access to them for the moral protection of childhood and adolescence."²⁵⁴ As the ban on the film applied to adults as well as to children and adolescents, it violated the Article 13 prohibition of prior censorship.

d. Subsequent liability for expressions

24. Article 13(2) of the American Convention, while explicitly prohibiting prior censorship, allows for subsequent penalties to be applied under limited circumstances. Such penalties must 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."

25. The appropriate application of the subsequent liability principle was the issue in the 1994 case of Horacio Verbitsky from Argentina.²⁵⁵ Mr. Verbitsky published an article in which he referred to a minister of the Supreme Court as "disgusting." As a result of this comment, Mr. Verbitsky was convicted of the crime of "*desacato*," or using language that offends, insults or threatens a public official in the performance of his or her official duties. The parties in the case

²⁵⁰ Id. para.56.

²⁵¹ Id. para. 72.

²⁵² Id. para. 75. In other words, subsequent liability is the means by which the State should address issues of protection of honor and dignity. The Commission did not address in this opinion the compatibility of criminal libel and slander laws with Article 13. See section 3(d) of this chapter and Chapter V of this Report for a discussion of the jurisprudence on this issue.

²⁵³ Inter-American Court of Human Rights, Case of the Last Temptation of Christ (Olmedo Bustos *et al.* vs. Chile), Judgment of February 5, 2001.

²⁵⁴ American Convention on Human Rights, Article 13.4.

²⁵⁵ Case 11.012, Report N° 22/94, Argentina, Horacio Verbitsky, September 20, 1994 (Friendly Settlement).

reached a friendly settlement, one of the terms of which provided that the Commission would prepare a report on the compatibility or incompatibility of the *desacato* law in the Argentine Criminal Code with the provisions of the Pact of San Jose, Costa Rica, including an opinion on whether States Parties to that instrument must harmonize domestic legislation in accordance with the Convention's Article 2.

26. The resulting report provides important guidelines for the application of subsequent liability for expressions in the inter-American system.²⁵⁶ The Commission found that *desacato* laws were not compatible with the Convention because they lend themselves "to abuse, as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions."²⁵⁷ The Commission further stated that *desacato* laws give a higher level of protection to public officials than is offered to private citizens. This is in direct contravention to the "fundamental principle in a democratic system that holds the government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers."²⁵⁸ Citizens must, therefore, have the right "to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office."²⁵⁹ *Desacato* laws ultimately deter critical speech because individuals will not want to subject themselves to imprisonment or monetary sanctions. Even those laws providing a defense if the accused can prove that the statements were true improperly restrict speech because they do not allow for the fact that much criticism is opinion and therefore not susceptible to proof. *Desacato* laws cannot be justified by saying that their purpose is to protect "public order" (a permissible purpose for regulation of speech under Article 13), as this is in contravention of the principle that "a properly functioning democracy is indeed the greatest guarantee of public order."²⁶⁰ Moreover, there are other, less-restrictive means besides criminal contempt laws by which governmental officials can defend their reputations from unwarranted attacks, such as replying through the media or bringing a civil action against individuals for libel or slander. For all of these reasons, the Commission concluded that *desacato* laws are incompatible with the Convention and called upon states to repeal these laws.

27. The Commission's report also presents certain implications for the reform of criminal libel, slander and defamation laws. Recognition of the fact that public officials are subject to a lesser, rather than greater, degree of protection from public scrutiny and criticism means that the distinction between public and private persons must be made in the ordinary libel, slander and defamation laws as well. The possibility of abuse of such laws by public officials to silence critical opinions is as great with this type of law as with *desacato* laws. The Commission has stated:

[P]articularly in the political arena, the threshold of State intervention with respect to freedom of information is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the

256 See, IACHR, Report on the Compatibility of Desacato Laws with the American Convention on Human Rights, OAS/Ser. L/V/II.88, Doc. 9 rev., February 17, 1995, 197-212.

257 Id. at 212.

258 Id. at 207.

259 Id.

260 Id. at 209.

consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence . . .

The Commission considers that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's [sic] privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.²⁶¹

28. The Commission considered the issue of subsequent liability in a contentious case in a 1999 case against Peru.²⁶² General Robles suffered numerous repercussions against himself and his family because he denounced abuses committed by the Peruvian army and intelligence services in the context of fighting terrorism. In particular, Court Martial proceedings were initiated against him for various crimes, including insubordination, insulting a superior, undermining the Nation and the Armed Forces, abusing his authority, making false statements, and dereliction of duty. The Inter-American Commission found that these legal actions constituted a violation of General Robles' right to freedom of expression. The Commission noted that "undermining the Armed Forces or insulting a superior are appropriate terms when applied to the crimes for which they were created, in order to maintain a level of discipline suitable to the vertical command structure needed in a military environment, but that they are totally inappropriate when used to cover up allegations of crimes within the Armed Forces."²⁶³ The Commission further noted that the right to freedom of expression, although it may be subject to reasonable subsequent penalties in accordance with the terms of the Convention, is broader when the "statements made by a person deal with alleged violations of human rights."²⁶⁴ Thus, the requirement of proportionality of the penalty was not met.

- e. Mandatory membership in a professional association for the practice of journalism

29. Many states in the Americas have historically had a national journalists' association, of which one must be a member in order to practice journalism professionally. Many argue that such associations are important because they allow the practice of journalism to be regulated, promoting professionalism and higher-quality journalism. At the same time, the practice of allowing states to control who practices journalism may be subject to abuse and may lead to the curtailment of freedom of expression.

30. In a 1984 case against Costa Rica, the Commission considered the issue of whether a requirement of membership in a professional association for the practice of journalism violated the right to freedom of expression.²⁶⁵ Petitioner Stephen Schmidt worked as a technical adviser, translator, editor, and writer for *The Tico Times*, an English-language weekly in Costa Rica. At the time, Costa Rica had a law requiring that the practice of journalism was limited to

²⁶¹ Id. at 211.

²⁶² Case 11.317, Report N° 20/99, Peru, Rodolfo Robles Espinoza and sons, February 23, 1999.

²⁶³ Id. para. 151.

²⁶⁴ Id. para. 148.

²⁶⁵ Case 9178, Report N° 17/84, Costa Rica, Stephen Schmidt, October 3, 1984.

those licensed by the *Colegio de Periodistas*, the national journalists' association, with criminal penalties for those practicing without a license. Mr. Schmidt was convicted of illegally practicing the profession of journalism due to the fact that he was not licensed by the *Colgeio* and was sentenced to three months of prison. The Commission determined that the State did not violate Article 13 of the American Convention. The Commission reasoned that journalists' associations like the *Colegio* protect the right to seek and impart information without controlling the dissemination of information and that they serve to regulate journalists' activities, rather than restrict them. Further, the Commission considered that journalists' associations protect freedom of expression by providing services to members of the profession, such as regulation of journalistic ethics and discipline and encouragement of the professional and social development of its members. The Commission pointed out that just as the State enforces the regulations of other professional organizations, the State should be free to enforce the regulations of the journalists' association in ensuring that the profession is practiced responsibly and ethically.²⁶⁶

31. As a result of this opinion, the State of Costa Rica requested an advisory opinion from the Inter-American Court of Human Rights on the issue of mandatory membership in a professional organization for the practice of journalism.²⁶⁷ The Court concluded the opposite of what the Commission had held, namely that laws mandating membership in a professional association for the practice of journalism do violate Article 13. The Court reasoned that "journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional 'colegio.'"²⁶⁸ It considered, rather, that "the professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner."²⁶⁹

32. The Court rejected arguments that the compulsory licensing of journalists can be justified as a legitimate restriction on freedom of expression because it is essential to guarantee public order²⁷⁰ or as a just demand of the general welfare in a democratic society.²⁷¹ With respect to the issue of public order, the Court noted:

If the notion of public order . . . is thought of . . . as the conditions that assure the normal and harmonious functioning of the institutions on the basis of a coherent system of values and

²⁶⁶ One member of the Commission dissented in the Schmidt case, arguing that regulation through the use of journalists' associations does improperly threaten journalists' freedom of expression. The dissent warned that the regulation in question is a subtle restriction on the right of freedom of expression that has the potential to weaken the scope of the right. Additionally, the dissent argued that because the profession of journalism is so closely interrelated with the right to freedom of expression, regulation of the profession of journalism is fundamentally different from that of other professions, as any restriction on journalists' ability to disseminate information may seriously limit the inalienable right to freedom of expression. To the contrary, the dissent argued, the professional activities of lawyers, doctors, or engineers do not concern basic human rights such as freedom of expression and information. Finally, the dissent added that the best manner in which to promote responsibility among journalists is to allow the free interchange of ideas without restriction. Consequently, journalists should enjoy full protection of their international right to freedom of expression without being subject to any other hierarchical structure designed to regulate their dissemination of information.

²⁶⁷ OC 5/85, *supra*. It is interesting to note that the Schmidt case might have been submitted to the court as a contentious case, but the question was instead submitted as a request for an advisory opinion. Under Article 61 of the American Convention, only the Commission or a State party has the right to bring a case to the Inter-American Court. In this case there was no legal advantage to the State in submitting the case to the Commission, as the decision had been favorable to it. However, recognizing the importance of the issue due to the high incidence of similar laws in other Latin American countries, Costa Rica decided that an advisory opinion on the issue would be useful. Unlike a decision by the Court in a contentious case, advisory opinions are not binding, final, and enforceable. See *id.* paras. 16-28.

²⁶⁸ *Id.* para. 71.

²⁶⁹ *Id.* para. 74.

²⁷⁰ American Convention on Human Rights, Article 13.2.b.

²⁷¹ American Convention on Human Rights, Article 32.2.

principles, it is possible to conclude that the organization of the practice of professions is included in that order.

The Court also believes, however, that the same concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.²⁷²

33. Therefore, the Court concluded:

[T]hat reasons of public order that may be valid to justify compulsory licensing of other professions cannot be invoked in the case of journalism because they would have the effect of permanently depriving those who are not members of the rights that Article 13 of the Convention grants to each individual. Hence it would violate the basic principles of a democratic public order on which the Convention itself is based.²⁷³

34. The Court also considered arguments that mandatory licensing of journalists is justified based on considerations of general welfare because it is a means of guaranteeing society objective and truthful information through codes of professional responsibility and ethics and because it is a means of guaranteeing the freedom and independence of journalists by strengthening the guild of professional journalists. With respect the first rationale, the Court noted that:

[I]n truth, as has been shown, general welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large. A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.²⁷⁴

35. With respect to the rationale that mandatory licensing is a means to guarantee the freedom and independence of journalists, the Court recognized that this needed to be guaranteed. However, it recalled that even legitimately-aimed restrictions on freedom of expression must also be “necessary to ensure”²⁷⁵ that legitimate aim. This entails that there is no means to achieve that aim that would be less restrictive of freedom of expression. The Court found that the mandatory licensing requirement did not satisfy this requisite “because the establishment of a law that protects the freedom and independence of anyone who practices journalism is perfectly conceivable without the necessity of restricting that practice only to a limited group of the community.”²⁷⁶

36. This advisory opinion has become the prevailing standard on this issue in the inter-American system and the opinion is also frequently cited for its thorough analysis of the nature and scope of the right to freedom of expression in general.

272 OC 5/85, *supra*, paras. 68-69.

273 *Id.* para. 76.

274 *Id.* para. 77.

275 See *Id.* para.79. See also American Convention on Human Rights, Article 13.2.

276 *Id.* para. 79.

f. Indirect restrictions

37. Article 13 of the American Convention states that "freedom 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."²⁷⁷ Indirect methods of restriction frequently involve the use of legitimate regulatory and other mechanisms in a discriminatory or abusive manner to reward or punish journalists or others for what they express.

38. The earliest case addressing this type of problem was the 1982 case of Bishop Juan Gerardi.²⁷⁸ Bishop Gerardi, a Guatemalan citizen, was denied reentry into Guatemala after attending a function of the Catholic Church in Rome, where he presented a report about the situation of the Church in Guatemala. The Commission found that the act of denying reentry to Bishop Gerardi constituted a violation of Article 13 of the American Convention, although it did not provide the specific legal reasoning for this decision.

39. In a 1988 case, the Commission considered a similar situation.²⁷⁹ The petitioner in the case was Nicolas Estiverne, a Haitian who became a naturalized U.S. citizen and then later returned to Haiti to live and regain his Haitian citizenship. In 1986, the petitioner launched a campaign for the presidency of Haiti. During his presidential campaign, the petitioner denounced on television and radio a general's alleged plan to assume power. The Haitian government ordered that the petitioner be expelled from the country because the petitioner's acts had allegedly compromised the public order. The Commission found that the order of expulsion against Mr. Estiverne was motivated by political considerations, in order to silence his criticisms of the general. Therefore, the order of expulsion violated Article 13 of the American Convention.

40. A more explicit condemnation of the use of indirect restrictions on freedom of expression can be found in the Ivcher Bronstein Case decided by the Inter-America Court in 2001.²⁸⁰ The petitioner in this case, Baruch Ivcher Bronstein, was a naturalized citizen of Peru and was the majority shareholder in the company that operated the Peruvian television Channel 2. As majority shareholder, Mr. Ivcher Bronstein exercised editorial control over the channel's programs. One of the channel's programs, *Contrapunto*, reported various news stories about abuses, including torture and acts of corruption, committed by the Peruvian Intelligence Services. As a result of these reports, Mr. Ivcher Bronstein was subject to a number of intimidating actions, culminating in a decree to revoke Mr. Ivcher Bronstein's Peruvian citizenship. The Court found that "the resolution that revoked the citizenship of Mr. Ivcher constituted an indirect means of restricting his freedom of expression, as well as that of the journalists who work and investigate for the program *Contrapunto* on Peruvian television Channel 2."²⁸¹ Additionally, the Court concluded that "by separating Mr. Ivcher from the control

²⁷⁷ American Convention on Human Rights, Article 13.3

²⁷⁸ Case 7778, Resolution No. 16/82, Guatemala, Obispo Juan Gerardi, March 9, 1982.

²⁷⁹ Case 9855, Resolution No. 20/88, Haiti, Nicolas Estiverne, March 24, 1988.

²⁸⁰ Inter-American Court of Human Rights, Ivcher Bronstein Case, Series C, No. 74, Judgment of February 6, 2001.

²⁸¹ Id. para. 162.

of Channel 2, and excluding the journalists from the program *Contrapunto*, the State not only restricted the right of these individuals to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, limiting their right to exercise political opinions and develop themselves fully in a democratic society.”²⁸²

g. Right to the truth

41. The group of cases in the following section deal with the "right to truth," a concept that has been developing in the inter-American system in recent years. The Commission first began to understand this right as the right of families to know the fate of their loved ones, a right that flows from the States' obligation under Article 25 to provide victims or their next-of-kin simple and prompt legal recourse for violations of fundamental rights.²⁸³ The understanding of this right has evolved, and it is now considered, at least by the Commission, that the right to the truth is a right that belongs both to victims and family members and to society as a whole. Under this current understanding, the right to the truth is based not only in Article 25, but also in Articles 1(1), 8, and 13 of the Convention.²⁸⁴

42. The Commission's 1998 report in a group of cases from Chile marks the first time the Commission considered Article 13 in the context of the right to the truth, as well as the first time the Commission recognized that the right to truth belongs to members of society at large as well as to the families of victims of human rights violations.²⁸⁵ In this group of cases, the petitioners asserted that the continued application of the amnesty law in Chile violated the rights of victims of the repression during the Pinochet regime. According to the law, crimes committed between 1973 and 1978 were pardoned, hindering the investigation and punishment of crimes and allowing perpetrators to go unpunished. Among other rights, the Commission found that the State had violated the right of the victims' families and of society to know the truth about what occurred in Chile. The Commission noted that this obligation stems from Articles 1(1), 8, 25, and 13 of the Convention. Additionally, the Commission stated that when amnesties are enforced, States must adopt the measures necessary to establish the facts and identify those responsible. The Commission also maintained that "[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant

²⁸² *Id.*, para. 163.

²⁸³ See Case 10.580, Report N° 10/95, Ecuador, Manuel Bolaños, September 12, 1995. The first case in which the Commission addressed the right to truth was the 1995 case of the disappearance of Manuel Bolaños in Ecuador. The Ecuadorian Marines allegedly took Manuel Bolaños into custody to review his identification documents. Mr. Bolaños was never seen or heard from again. After Mr. Bolaños' disappearance, his family presented habeas corpus petitions before the appropriate courts. The habeas corpus petitions were rejected. Nearly two years after Mr. Bolaños disappeared, his family received news that he had died while in the custody of the Marines and that an investigation into his death was under way. However, the government never established the responsibility of those who allegedly tortured and killed Mr. Bolaños. The Commission found a number of violations in the case, among these the violation of the family's right to the truth about what happened to Manuel Bolaños, the circumstances of his detention and death, and the location of his remains. This right, the Commission stated, arises from the State's obligation to "use all means at its disposal to carry out a serious investigation of violations committed within its jurisdiction to identify those responsible." *Id.* at "Analysis", Section II, at para. 45, citing Velásquez Rodríguez, Judgment of July 29, 1988 at para. 166. The Commission asserted that because the courts initially failed to investigate into the disappearance of Mr. Bolaños, because the State failed to inform Mr. Bolaños' family of his death or the location of his remains, and because of the delay in the investigation that finally did occur, the State violated the family's right to justice and right to know the truth.

²⁸⁴ In some cases, the Commission has not addressed Article 13 in the context of right to truth cases. See, eg. Case 10.258, Report N° 1/97, Ecuador, Manuel García Franco, March 12, 1997; Case 10.606, Report N° 11/98, Guatemala, Samuel de la Cruz Gómez, April 7, 1998; Case 11.275, Report N° 140/99, Guatemala, Francisco Guarcas Cipriano, December 21, 1999; Cases 10.588 (Isabela Velásquez and Francisco Velásquez), 10.608 (Ronal Homero Nota *et al.*), 10.796 (Eleodoro Polanco Arévalo), 10.856 (Adolfo René and Luis Pacheco del Cid), and 10.921 (Nicolás Matoj *et al.*), Report N° 40/00, Guatemala, April 13, 2000. An examination of the facts of all of the various right to truth cases seems to indicate that the Commission considers Article 13 to be particularly important in cases dealing with amnesty laws. This is due to the fact that when an amnesty law is in effect, there is no opportunity for judicial action against the perpetrators of the crime and information becomes the sole means by which family members can achieve some degree of reparation. Moreover, information is essential in these cases because members of society must be aware of the abuses that have taken place in order to monitor and prevent similar abuses in the future.

²⁸⁵ Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.595, 11.657, 11.705, Report N° 25/98, Chile, Alfonso René Chanfeau Orayce, April 7, 1998.

crimes came to be committed, in order to prevent repetitions of such acts in the future.”²⁸⁶ Further, the Commission stated that “[t]he interpretation of the generic obligations established in Article 1.1 made by the Court in the Castillo Paéz Case ... allows for the conclusion that the ‘right to truth’ is a basic and indispensable consequence for every State Party.”²⁸⁷

43. The Commission again addressed in the context of amnesty laws in a 1999 case from El Salvador.²⁸⁸ The petitioners alleged that several farmers were arrested and tortured by units of the Salvadoran Army in the context of a period of domestic armed conflict. Two of the detainees allegedly died as a result of the torture. After a peace agreement was signed in 1992, a Truth Commission was established to investigate serious acts of violence that occurred in the context of the armed conflict and to report these findings to the public. In 1993, the State approved an amnesty law, which nullified the recommendations of the Truth Commission, and eliminated the possibility of investigations and legal sanctions against the perpetrators of unlawful violence. The Commission found that the State had violated the petitioners' and the right of society at large to know the truth about the human rights violations that occurred in El Salvador and the identity of those who perpetrated them. As in the previous case, the Commission stated that the right to know the truth arises out of Articles 1(1), 8, 25, and 13 of the Convention, although it did not expressly find a violation of Article 13. Moreover, the Commission maintained that the right to truth is a “collective right which allows a society to gain access to information essential to the development of democratic systems, and also an individual right for the relatives of the victims, allowing for a form of reparation, especially in cases where the Amnesty Law is enforced. The American Convention protects the right to gain access to and obtain information, especially in the cases of the disappeared, in regard to which the Court and the Commission have established that the State is obligated to determine the person’s whereabouts.”²⁸⁹

44. The Commission found a violation of Article 13 based on the right to the truth in another 1999 case from El Salvador.²⁹⁰ In that case, six Jesuit priests, their cook, and her daughter were extra-judicially executed by military personnel. The murders were blamed on an armed dissident group, however, a report by the Truth Commission indicated that members of the armed forces were responsible for the killings. The State convicted two members of the armed forces, but later released them after the passage of an amnesty law. In finding a violation of the right to the truth, the Commission noted the State's duty to the victims' relatives and to society as a whole to provide information regarding the circumstances that gave rise to the serious human rights violations and the identities of the perpetrators and further stating that this right arises under Articles 1(1), 8(1), 25, and 13. For the first time in this type of case, the Commission expressly stated that the State had violated Article 13, noting that "Article 13 protects the right of access to information."²⁹¹

286 Id. para. 92, citing IACHR, Annual Report, 1985-86 at p. 193.

287 Id. para. 87, citing Castillo Paéz, Judgment of November 3, 1997 at para. 86.

288 Case 10.480, Report N° 1/99, El Salvador, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez y Carlos Antonio Martínez, January 27, 1999.

289 Id. para. 151.

290 Case 10.488, Report N° 136/99, El Salvador, Ignacio Ellacuría, December 22, 1999.

291 Id. para 224.

45. In the 2000 case of the extra-judicial execution of Monsignor Oscar Romero in El Salvador, the Commission reiterated its position that the right to the truth stems in part from Article 13.²⁹² Monsignor Oscar Romero was allegedly murdered by state agents operating as part of death squads. The State subsequently failed to investigate the circumstances surrounding his death and bring the perpetrators to justice. The Commission held that the State was responsible for violating its duty to provide society and the victim's family with the truth about the scope of the violations as well as the identities of those who participated in them. As in previous cases, the Commission recognized that the State's obligations to the victims' direct relatives and society at large stem from Articles 1(1), 8, 25, and 13 of the Convention. Although the Commission did not directly find a violation of Article 13, it drew from Article 13 in its analysis of the State's duty to reveal the truth. The Commission asserted that Article 13 protects society's right to seek and receive information. The Commission further maintained that the right to the truth is part of the family's right to reparation.

46. The issue of the right to the truth has subsequently arisen in two cases considered by the Inter-American Court.²⁹³ The *Bámaca Velásquez Case* dealt with the disappearance of Efraín Bámaca Velásquez, a leader of a guerrilla group in Guatemala at the hands of the Guatemalan Army. The *Barrios Altos Case* involved a shooting ambush in a Lima, Peru apartment building that left 15 dead and four wounded. The shootings were allegedly perpetrated by members of the "Colina Group," a "death squadron" of the Peruvian Army's intelligence services. In both cases, the Court found that the right of the victims or their next-of-kin to know the truth about the alleged human rights violations had been violated, but that it was unnecessary to consider this as a separate issue since in both cases the issue was addressed as part of the violation of Articles 8 and 25.

h. Right to reply

47. Under Article 14 of the American Convention, any individual who is "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." This right is linked to the right of freedom of expression, providing a means to address injuries to persons caused by the exercise of freedom of expression that does not unduly interfere with the right to freedom of expression.

48. The government of Costa Rica requested an advisory opinion from the Inter-American Court with respect to the State's obligation to enforce this right.²⁹⁴ The Court found that the right to reply is an internationally protected right and that the States Parties have an obligation "to respect and to ensure the free and full exercise thereof to all persons subject to their jurisdiction."²⁹⁵ If this right is not enforceable under the domestic law of a State Party, the State "has the obligation, under Article 2 of the Convention, to adopt, in accordance with its

²⁹² Case 11.481, Report N° 37/00, El Salvador, Monsignor Oscar Arnulfo Romero y Galdámez, April 13, 2000.

²⁹³ *Bámaca Velásquez Case*, Judgment of November 25, 2000; *Barrios Altos Case*, Judgment of March 14, 2001.

²⁹⁴ See Inter-American Court of Human Rights, *Enforceability of the Right to Reply or Correction (Articles 14(1), 1(1) and 2 American Convention on Human Rights)*, Advisory Opinion OC-7/86, Series A N° 7, August 29, 1986, para. 25.

²⁹⁵ *Id.* at para. 35.

constitutional processes and the provisions of the Convention, the legislative or other measures that may be necessary to give effect to this right.”²⁹⁶

4. Admissibility reports

49. The Commission has declared admissible many cases in which petitioners have alleged that the right to freedom of expression has been violated. The opinions cited in this section include those that were issued by the Commission in 2002 and others that merit special mention. These opinions are included in this report for two reasons. First, knowledge of the opinions regarding the admissibility is essential for lawyers and others who want to present petitions to the Commission. Additionally, the summary of the cases that follows will provide a glimpse of the issues that the Commission will decide in years to come.

50. In October 2002, the Commission approved the report on admissibility in the case of Alejandra Marcela Matus Acuña of Chile.²⁹⁷ The petitioners allege that the State has violated their right to freedom of expression for having prohibited the distribution of *El Libro Negro de la Justicia Chilena* (*The Black Book of Chilean Justice*), written by the journalist Alejandra Marcela Matus Acuña and published in April 1999. The journalist was charged with *desacato* (disrespect) according to the *Ley de Seguridad Interior del Estado* (State Security Law). The journalist Matus Acuña traveled out of the country, considering that she would be detained pursuant to a procedure contrary to Chilean norms and the American Convention. On October 19, 2001, the Chilean courts lifted the prohibition of the book's circulation, after more than two years of censorship. The resolution was based on the repeal of Article 6.b of the State Security Law in May 2001 and the enactment of the new Press Law. Additionally, the resolution of the magistrate definitively dropped the charges against the general manager of Editorial Planeta, Bartolo Ortiz, and editor Carlos Orellana, who were charged together with the journalist Matus with the offenses of defamation and libel. In the same resolution, the case against Alejandra Matus for bribery and *desacato* was temporarily dismissed. Moreover, the return of more than two thousand seized copies was ordered, allowing the free circulation of the book in Chilean bookstores.

51. In January 2001, the IACHR declared admissible the case of Ana Elena Townsend Diez-Canseco *et al.* of Peru.²⁹⁸ The petitioners, a group of journalists and politicians opposed to the government of Alberto Fujimori, reported that in 1997 the National Intelligence Service of the State ("SIN") was systematically intercepting their telephone communications and that they were victims of other forms of intimidation and coercion by SIN, including being followed, espionage of journalistic activities, harassment, and physical injury.

52. In March 2001, the Commission declared admissible the case of Julia Gomes Lund *et al.* of Brazil.²⁹⁹ The petition makes reference to the disappearance of members of the Guerrilla of Araguaia between 1972 and 1975 as well as the lack of a State investigation since that period. The petition alleges that the State violated the right of the petitioners and Brazilian

²⁹⁶ *Id.*

²⁹⁷ Case 12,142, Report No 55/00, Chile, Alejandra Marcela Matus Acuña *et al.*, October 2, 2002 (Admissibility).

²⁹⁸ Case 12,085, Report No 1/01, Peru, Ana Elena Townsend Diez-Canseco *et al.*, January 19, 2001 (Admissibility).

²⁹⁹ Case 11,552, Report No 33/01, Brazil, Julia Gomes Lund *et al.*, March 6, 2001 (Admissibility).

society in general, under Articles 8, 13, and 25 of the Convention, to have truthful information about the denounced facts. According to the petitioners, this violation stems from two actions of the State. On one hand, the mentioned amnesty law presents an impediment to access to the Judiciary and, as a result, to access by the petitioners and society as a whole to complete information about the facts of the case and the responsible parties. On the other hand, the difficulties of access to military documentation about the facts, based on arguments about national security, the lack of documentation and other reasons, creates an obstacle to the exercise of the right to access to information and the possibility of giving an adequate burial for the victims.

53. In October 2001, the Commission declared admissible the case of Humberto Antonio Palamara Iribarne.³⁰⁰ According to the petition, Mr. Palamara Iribarne wrote and attempted to publish a book entitled *Ética y Servicios de Inteligencia (Ethics and Intelligence Services)*, in which the author addressed aspects of military intelligence and the need to bring it into line with certain ethical standards. At that time, Mr. Palamara Iribarne, a retired official of the Chilean Navy, worked as a civil functionary contracted by the Navy of Chile in Puntas Arenas. The publication of the book was prohibited by Navy authorities, who considered that the book's contents threatened national security and national defense, and that consequently all existing copies should be recalled. Copies of the book and the original text were seized, as were a disk that contained the entire text and the galleys of the publication. Humberto Palamara Iribarne convened a press conference in his residence, during which he criticized the acts of the Office of the Naval Prosecutor in the proceedings against him. In reaction to this, a criminal case was initiated against him for *desacato* (contempt or disrespect of authority), which concluded with a sentence confirmed by the Supreme Court of Chile.

54. In October 2001, the Commission declared admissible the case of *Radyo Koulibwi* of Saint Lucia.³⁰¹ The petitioner alleged a violation of Article IV of the American Declaration because the State informed the station in November 1995 that it would not give the petitioner a permanent radio transmission license, and that the transmissions over the 105.1 FM frequency were therefore illegal and should cease immediately. According to the petitioner, the letter informing the petitioner of this decision did not provide any basis for the decision. The petitioner had been the legal owner and operator of the radio station, known as "*Radio Koulibwi 105.1 FM*," since November 1990, possessing a "test license," which was given to the petitioner by the State of Saint Lucia.

55. In October 2001, the Commission approved the report on admissibility in the case of Tomás Eduardo Cirio of Uruguay.³⁰² The petition denounces that, since 1972, the petitioner, a retired Army major, has been the object of reprisals for expressing his opinions about the need for respect for human rights in the context of the counter-insurgency struggle by the Armed Forces of Uruguay. The petitioner alleges that as a result of a decision against him by an Army Honor Tribunal, his honor and reputation were affected, as were his rights to compensation and to health care. Additionally, he states that he was expelled from the cooperative of the Armed Forces, he was prohibited from occupying positions in the Ministry of

300 Case 11.571, Report Nº 77/01, Chile, Humberto Antonio Palamara Iribarne, October 10, 2001 (Admissibility).

301 Case 11.870, Report Nº 87/01, Saint Lucia, Radyo Koulibwi, October 10, 2001 (Admissibility).

302 Case 11.500, Report Nº 119/01, Uruguay, Tomás Eduardo Cirio, October 16, 2001 (Admissibility).

Defense, he was prevented from applying for credit, he was stripped of his military status and rank, he lost the right to wear his uniform, and he was humiliated as a result of being publicly exposed as a person without honor. In 1994, by resolution of the Ministry of Defense, his rights were partially restored. In December 1997, by a new resolution of the Ministry that partially recognized the responsibility of the State, the petitioner was reinstated to his status of as a military retiree and the "situation of reform" was set aside, but without the right to retroactivity or indemnity for the moral damages he suffered during 25 years of the situation of reform.

56. In December 2001, the Commission approved the admissibility report in the case of the daily *La Nación* of Costa Rica.³⁰³ Mr. Mauricio Herrera Ulloa and *La Nación*, represented by Fernán Vargas Rohrmoser, were convicted of defamation for publishing stories about the diplomat Félix Przedborski, in which the journalist alleged that Mr. Przedborski had conducted various illicit acts while out of the country.

57. In February 2002, the Commission declared admissible the case of Bruce Campbell Harris Lloyd.³⁰⁴ The petitioner in the case was accused of libel and slander by a notary public after he publicly accused the notary of being involved in illegal adoptions. Mr. Harris alleges that his right to freedom of expression was violated by the State of Guatemala when the Supreme Court made its final decision to open a criminal case against him. The Commission will decide if the mere existence of laws that criminalize libel and slander, as well as subjecting someone to a criminal proceeding pursuant to such laws, constitute a *per se* violation of Article 13 of the American Convention, independently of whether the proceeding results in a conviction.

58. In October 2002, the Commission published a report on the case of Santander Tristán Donoso of Panama.³⁰⁵ The lawyer Santander Tristán Donoso was accused of libel and slander after a press conference during which he accused the Attorney General of Panama of intercepting and taping telephone conversations between Mr. Donoso and one of his clients and of publishing the contents of these conversations. Through a constitutional action before the Supreme Court, Mr. Donoso asked that the Court declare the unconstitutionality of the offenses of libel and slander. The constitutional action was rejected, permitting the process to continue. In his petition to the Commission, the petitioner set forth two arguments regarding the fulfillment of the requirement of exhaustion of domestic remedies. On one hand, he argued that it is illogical and legally anomalous to require a person to exhaust domestic remedies in a proceeding to which the person objects *ab initio* and in its totality. In this sense, the petitioner considers that an action for libel and slander brought by public functionaries represents in its totality a violation of freedom of expression of Panamanian citizens, being derived from a law contrary to the Convention, as in the case of *desacato* laws. Consequently, he considers that he does not have to pursue a remedy against a *procedure that by nature is illegal* and that constitutes a generalized violation of freedom of expression. Further, the petitioner added that the constitutional action presented by him before the Supreme Court, which was refused, represented the only real opportunity for questioning the process, and as a result, this remedy

303 Case 12.367, Report No. 128/01, Costa Rica, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the daily "*La Nación*," December 3, 2001 (Admissibility). See section 5 of this chapter for more information about the case of "*La Nación*."

304 Case 12.352, Report No. 14/02, Guatemala, Bruce Campbell Harris Lloyd, February 28, 2002 (Admissibility).

305 Case 12.360, Report No. 71/02, Panama, Santander Tristán Donoso, October 24, 2002 (Admissibility).

has been exhausted according to the requirements of Article 46(1)(a) of the American Convention. The petitioner's second argument is substantially different: it considers that the exceptions enumerated in article 46(a)(2) of the Convention must be applied, and that the petitioner should be exempted from the necessity of exhausting domestic remedies that, in practice, cannot reach their object, for reasons set forth in the petition. The State maintained that the case was inadmissible for the lack of exhaustion of domestic remedies, as an open criminal case still existed against the accused. The Commission, however, declared the case admissible. The Commission contended that a State that alleges the lack of exhaustion of domestic remedies has the burden of showing what internal procedures should be exhausted and of the effectiveness of those procedures. The Commission considered that in this case the State had not shown why the criminal process that is in effect against Mr. Tristán Donoso for the crimes of libel and slander is the adequate and effective procedure to remedy the alleged violation of Article 13 of the Convention. In this case, the adequate procedure was the constitutional action, and therefore, the Commission maintained that the petitioners had fulfilled the requirement of exhaustion of domestic remedies. Additionally, the Commission decided that the alleged facts tend to characterize a violation of Article 13 and declared the case admissible.

5. Precautionary and provisional measures

59. Precautionary measures are provided for in Article 25 of the Commission's Rules of Procedure, which grants the Commission the following powers: (1) In serious and urgent cases, and whenever necessary, according to the information available, the Commission may, on its own initiative or upon request by a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons; (2) If the Commission is not in session, the President, or, in his or her absence, one of the Vice-presidents, shall consult with the other members, through the Executive Secretariat, on the application of the provision in the previous paragraph. If it is not possible to consult within a reasonable period of time under the circumstances, the President shall make the decision on behalf of the Commission and shall promptly inform its members; (3) The Commission may request information from the interested parties on any matter related to the adoption and observance of the precautionary measures; (4) The request for such measures and their adoption shall not prejudice the final decision.

60. According to these dispositions, the Commission has on various occasions asked certain states to adopt precautionary measures in cases in which journalists or other persons find themselves at serious risk of suffering irreparable harm, such as threats against their physical integrity, as a result of the exercise of their right to freedom of expression. The following paragraphs summarize the measures that the Commission requested in favor of journalists in 2002, as well some noteworthy examples of measures from previous years, to demonstrate how this mechanism has been used.

61. On February 7, 2001, the Commission requested that the State of Venezuela adopt precautionary measures in favor of the journalist Pablo López Ulacio, editor and owner of the weekly *La Razón*. According to information provided in November 1999, Tobías Carrero Nacar, the president of the business Multinacional de Seguros and owner of the principal insurance company of the State, filed a complaint against López Ulacio after the weekly indicated that Carrero was the financier of the presidential campaign of Hugo Chávez Frías and accused him of benefiting from insurance contracts of the State. As a result, the trial judge of Caracas ordered the prohibition of any reference to the businessman and ordered the

journalist's detention. The IACHR requested the following precautionary measures in favor of Pablo López Ulacio: 1) Lift the measure of prior censorship against Mr. López Ulacio and the weekly *La Razón*; 2) Guarantee the full exercise of Mr. López Ulacio's right to defense; 3) Ensure that Mr. López Ulacio can exercise personal liberty, freedom of expression, and the right to judicial guarantees. The State has informed that on July 26, 2001, the judge of first instance dictated a resolution confirming the order of detention against the alleged victim, in an opinion stating that "the measures dictated by the IACHR correspond to what was related by [Mr. López Ulacio] before that organ, ignoring the procedural reality that led to the measure restricting his freedom." The State alleged that, to date, the file has been reviewed by 35 judges, and that the figure of trial *in absentia* does not exist in Venezuela. Therefore, it claimed that the breach of the precautionary measures was not due to the lack of diligence of the Venezuelan State, but to procedural delays, most of them caused by Mr. López Ulacio, which have hindered the fulfillment of the processes. Additionally, the judge mentioned that the precautionary measure regarding deprivation of liberty was given to Mr. López Ulacio for his failure to appear in court on seven occasions, a measure which is provided for in Article 271 of the Organic Procedural Code. It is worth mentioning that the Venezuelan State, in a communication of March 11, 2002, informed the IACHR of the replacement of the "Measure of Judicial Preventive Deprivation of Liberty," dictated January 23, 2001 by the Fourteenth Judge of the Circuit Criminal Court of the Metropolitan Area of Caracas, with a "Conditional Release Precautionary Measure," which requires Mr. López Ulacio to present himself periodically before the Tribunal every 30 days from the date is notified of this decision.

62. On February 22, 2002, the Commission requested precautionary measures from the State on Colombia in favor of several media correspondents. María Luisa Murillo López, correspondent for the daily *El Tiempo*, and Alfonso Altamar, Manuel Tabora and Francis Paul Altamar, correspondents of *CMI Televisión* and *Noticias Uno* in San Vicente del Caguán, had received death threats from the Revolutionary Armed Forces of Colombia (FARC). In response, the State provided information about a study being carried out to assess the levels of risk faced by the correspondents and the provision of humanitarian aid.

63. On July 25, 2002, the Commission requested precautionary measures from the State of Colombia in favor of the journalists Alveiro Echavarría, Alvaro Miguel Mima, Luis Eduardo Reyéz (o Reyes), Hugo Mario Palomari (o Palomar), Humberto Briñez, Wilson Barco, and Mario Fernando Prado. The information received by the Office of the Special Rapporteur for Freedom of Expression indicates that on July 19, 2002, the newscast *RCN* of the city of Cali, department of Valle de Cauca, received a pamphlet from the Manuel Cepeda Vargas Front of the Revolutionary Armed Forces of Colombia (FARC) which indicated that "in view of the tendentious information of various media outlets and people who call themselves journalists, but that are nothing other than puppets of the military regime of President Pastrana, our organization has decided to convene the following journalists so that they abandon the city of Cali in a period of 72 hours or they will become military targets of our organization . . ." The information provided by the petitioners indicates that the Program for the Protection of Journalists and Social Communicators of the Ministry of the Interior took measures for the protection of the above-mentioned journalist for a period of only five days. The State provided information about the realization of police patrols, the provision of permanent police escorts, and the assignment of a prosecutor from the Unit on Crimes against Individual Liberty and Other Guarantees to the investigation of the threats.

64. On December 6, 2002, the Commission requested precautionary measures from the State of Haiti in favor of journalists Esdras Mondélus, Renet Noel-Jeune, Guérino Jeaniton, and Gédéon Presendieu, the journalists of *Radio Étincelles* in Gonaïves, as well as for the correspondents Henry Fleurimond, Jean Robert François, and Josué René. According to the information given to the IACHR, these individuals were informed on November 21 that the members of the organization *Armée Cannibale* were preparing to burn the building of *Radio Étincelles* in Gonaïves. The seven journalists claimed that they abandoned the building of *Radio Étincelles* and that they took refuge in the Diocesan headquarters between November 21 and 28, 2002. The buildings of *Radio Étincelles*, in Gonaïves, were allegedly burned, at least in part, during the night from November 24-25, 2002. Further, according to the information received, two of the seven journalists were the objects of telephone threats between November 21 and 28, 2002. Between November 29 and 30, the seven journalists were evacuated from the Diocesan headquarters of Gonaïves with the collaboration of the Association of Haitian Journalists and the High Command of the National Police of Haiti, and have remained hidden in an undisclosed location. The Commission arranged the following precautionary measures in relation to Esdras Mondélus, Renet Noel-Jeune, Guérino Jeaniton, Gédéon Presendieu, Henry Fleurimond, Jean Robert François, and Josué René: (1) The immediate adoption, in accordance with the representatives of seven journalists, of all the necessary measures for the protection of the life and integrity of Henry Fleurimond, Jean Robert François, Josué René, Esdras Mondélus, Renet Noel-Jeune, Guérino Jeaniton, and Gédéon Presendieu; (2) The immediate adoption of all necessary measures to guarantee an investigation relating to the individuals responsible for the previously mentioned acts. At the time of publication of this report, the IACHR has not received any information regarding the measures adopted by the State.

65. In addition, the Court granted precautionary measures in various cases in Venezuela, which have been summarized previously in this report.³⁰⁶

66. Article 63(2) of the American Convention on Human Rights provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Inter-American 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. The Court has issued provisional measures, at the request of the Commission, in several cases related to threats to the exercise of the right to freedom of expression in recent years. The following cases are the provisional measures issued in 2002 and one important case from 2000.

67. On November 21, 2000, the Inter-American Court granted provisional measures in favor of Mr. Baruch Ivcher Bronstein and his family, requesting that the government of Peru "adopt, without delay, as many measures as necessary to protect their physical, psychological, and moral integrity and the right to judicial guarantees."³⁰⁷ The Court granted equal measures in favor of Rosario Lam Torres, Julio Sotelo Casanova, José Arrieta Matos, Emilio Rodríguez Larraín, and Fernando Viaña Villa. On November 23, the measures were extended to Menachem Ivcher Bronstein, the brother of Mr. Baruch Ivcher Bronstein, and Roger González,

³⁰⁶ See chapter II of this report, paragraphs 240-269.

³⁰⁷ Inter-American Court of Human Rights, Order of the Inter-American Court of Human Rights of November 21, 2000, Provisional Measures in the Matter of the State of Peru, Ivcher Bronstein Case. See also, paragraph 42 of this chapter for information about the judgment on the merits by the Inter-American Court.

an officer in his businesses.³⁰⁸ On February 7, 2001, the State informed that it had annulled the resolution by which it had invalidated Mr. Ivcher's the Peruvian nationality; that it had accepted the recommendation of Report 94/98 of December 9, 1998, emitted by the Commission; that Mr. Ivcher, his family, and others were benefiting from the protection of their physical, psychological, and moral integrity, and judicial guarantees; that Mr. Ivcher had recuperated his position as shareholder of the channel *Frecuencia Latina*; and that the Peruvian State was disposed to reach a friendly settlement according to Article 53 of the Rules of Procedure of the Commission. on March 14, 2001, considering that the violations that had given rise to the issuance of provisional measures had ceased, the Court dictated a resolution by which it decided to lift the provisional measures.³⁰⁹

68. On September 7, 2001 the Court granted provisional measures against the State of Costa Rica in favor of Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser, of the daily *La Nación*.³¹⁰ Mr. Herrera faced the application of a sentence against him arising out of criminal procedure for defamation of the diplomat Félix Przedborski. The judgment, which was confirmed on January 24, 2002 by the Supreme Court of Justice, declared Mauricio Herrera Ulloa to be responsible for four counts of publication of offenses characterizing defamation, giving him 120 days' fine (300,000 colones), and, jointly, sentenced the newspaper *La Nación*, represented by Fernán Vargas Rohrmoser, to pay seventy thousand colones for the moral damage caused by the 1995 publications, in addition to one thousand colones for court costs, and three thousand eight hundred ten colones for personal costs. Additionally, the sentence orders that the links between the last name Przedborski and the impugned articles be removed from the electronic version of the paper *La Nación*; that a link be established between these and the dispositive part of the sentence; and that the judgement be published by the journalist Mauricio Herrera Ulloa. The Tribunal additionally suggested that Mr. Rohrmoser should comply with the judgment under threat of being found liable for disobedience of authority and subject, as a consequence, to a penalty of detention. Additionally, the inscription of Mr. Herrera in the Judicial Register of Delinquents was later ordered. In support of the provisional measures, the Court requested that the State of Costa Rica adopt without delay the necessary measures by which it would exclude Mr. Mauricio Herrera Ulloa from the Judicial Register of Delinquents until the case was definitively resolved by the organs of the inter-American system of human rights. The Court also requested that the State suspend the order of publication in *La Nación* of the dispositive part of the November 12, 1999 judgment of the Criminal Tribunal of the First Judicial Circuit of San Jose that declared him guilty, and the order requiring the establishment of a link, in the Internet version of *La Nación*, between the articles cited in the complaint and the dispositive part of the judgment.

69. On November 27, 2002, the Court issued provisional measures against the government of Venezuela in favor of a group of journalists, Luisiana Rios, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe.³¹¹ The journalists had been the

³⁰⁸ Inter-American Court of Human Rights, Order of the Inter-American Court of Human Rights of November 23, 2000, Expansion of Provisional Measures in the Matter of the Republic of Peru, Ivcher Bronstein Case.

³⁰⁹ Inter-American Court of Human Rights, Order of the Inter-American Court of Human Rights of March 14, 2001, Provisional Measures Ordered by the Court in the Ivcher Bronstein Case.

³¹⁰ Inter-American Court of Human Rights, Order of the Inter-American Court of Human Rights of September 7, 2001, Request for Provisional Measures of the Inter-American Commission on Human Rights in the Matter of the Republic of Costa Rica, the *La Nación* Newspaper Case.

³¹¹ Inter-American Court of Human Rights, Order of the Inter-American Court of Human Rights of November 27, 2002, Request for Provisional Measures of the Inter-American Commission on Human Rights in the Matter of the Republic of Venezuela, Luisiana Rios et al. vs. Venezuela.

victims of various acts of aggression and intimidation in the context of a significant and progressive increase in incidents of threats and attacks against journalists throughout 2002, particularly those who cover political issues. The Inter-American Court ordered the State to adopt the necessary measures to protect the life and personal integrity of the five journalists, to allow them to participate in the planning and implementation and to keep them informed about the progress of the measures of protection, and to investigate the denounced facts that gave rise to the measures, with the aim of identifying those responsible and sanctioning them.

B. Domestic jurisprudence of the member states

1. Introduction

70. This section includes certain decisions by local tribunals that were handed down during 2002 and that reflect the importance of respecting freedom of expression as protected in the Convention. The Special Rapporteur for Freedom of Expression believes that publicizing comparative case law from countries of the hemisphere will be useful for judges who are called to decide similar cases in their own jurisdictions.

71. It is appropriate to note that States have the obligation to respect the rights and freedoms recognized in the Convention and to ensure their full and free exercise for all persons subject to their jurisdiction³¹². It has been mistakenly assumed at times that acts restricting freedom of expression, for example, acts of prior censorship, emanate solely from the executive or legislative branches. Yet under the inter-American system, judgments issued by the courts can also violate Article 13 of the Convention. On this point, the Inter-American Court has said:

This Court understands that the international responsibility of the State may be engaged by acts or omissions of any power or organ of the State, whatsoever its rank, that violate the American Convention³¹³

72. The Court has also declared that “the obligation to ensure the free and full exercise of Human Rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation—it also requires the government to conduct itself so as to effectively ensure the free and full exercise of Human Rights.”³¹⁴ In this sense, it is clear that judicial decisions take on a fundamental importance. If those decisions are not consistent with international standards protecting human rights, it matters little whether the legislation itself is consistent. States must avoid “a dialogue of the deaf between constituents and judges. While constituents will undoubtedly opt for the benefit of international pressure, judges on the contrary are limited to the strict framework of legislation of national origin.”³¹⁵

312 American Convention, Article 1(1).

313 “The Last Temptation of Christ” case (Olmedo Bustos *et al.* vs. Chile), judgment of February 5, 2001. Moreover, case law in the Inter-American system is clear as to the obligation to enforce respect of all the rights enshrined in the Convention, by all organs of the State: “Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention...[A] State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.” See Inter-American Court of Human Rights, Velásquez Rodríguez case, judgment of July 29, 1988, Series C., No. 4, para 170.

314 See Inter-American Court of Human Rights, Velásquez Rodríguez case, judgment of July 29, 1988, Series C., No. 4, paras 167 and 168.

315 Ariel E. Dulitzky, “La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales: un Estudio Comparado”, Various Author, Publication of the Centro de Estudios Comparados Legales y Sociales, Argentina. Editores Del Puerto, 1997. (Free translation).

73. The Commission has held that:

Among democratic institutions it is the role of the judiciary to look out for the proper enforcement of both the law and the administration of justice. Nothing can undermine respect for the courts and their authority more than their own indifference or impotence in the face of grave injustices, which may result from blind adherence to legal formulas. Democratic nations respectful of the human rights of their people commit themselves, both to their own citizens and to the international community at large, to guarantee respect for fundamental human rights.³¹⁶

74. It is for this reason that judicial decisions must ensure enforcement in the domestic sphere of international rules for the protection of human rights, especially in light of the subsidiary nature of international protection mechanisms.³¹⁷

75. This section highlights some court decisions that have expressly or implicitly taken account of international standards protecting freedom of expression. In other words, this section is not a critique of judicial decisions, but rather an attempt to show that in many cases those standards are indeed considered. The Rapporteur hopes that this attitude will prevail among other judges in the hemisphere.

76. As a final thought, it will be clear that not all arguments in the decisions quoted are shared by the Office of the Special Rapporteur for Freedom of Expression, but that Office agrees with the fundamentals of the decisions. As a second point, there is no doubt that there are many other cases that could have been summarized in this report. The selection has been somewhat arbitrary, both for reasons of space and for lack of sufficient information. The Rapporteur's Office urges States to provide it in the future with more judicial decisions enforcing the inter-American system of protection of freedom of expression, so that this section can be expanded in subsequent annual reports.

77. The organization of this section takes account, as it must, of the standards arising from interpretation of Article 13 of the Convention, which declares that:

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

³¹⁶ Report 74/90, Case 9850 (Argentina), Annual Report of the IACHR, 90-91.

³¹⁷ See Dulitsky, *op. cit.*

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.

78. The standards referred to have been further developed by the jurisprudence of both the Commission and the Court. Many of those standards have been included in the Declaration of Principles on Freedom of Expression.³¹⁸ For these reasons, the categories described below are related to the various principles of that Declaration. In this report, the categories selected are: a) the protection of journalistic sources, in Principle 8; b) the importance of information in a democratic society, in Principle 2; and the incompatibility of subsequent criminal penalties in certain cases, in Principle 11.

79. This report covers case law from Argentina, Costa Rica, Colombia, Panama and Paraguay. In each of the categories, the relevant principle is quoted from the Declaration, followed by a short summary of the facts of the case, and extracts from the decision of the domestic court.

a. Protection of journalistic sources

80. Declaration of Principles on Freedom of Expression. Principle 8: “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

81. Case decided by: Federal Court of Appeals in Criminal and Correctional Matters of the Federal Capital, Argentina, Buenos Aires, October 28, 2002. Chamber II. Registry No. 20,377.

82. The Facts of the Case. In September 2002, a Federal Judge ordered the State Intelligence Service (SIDE) to prepare a list of all incoming and outgoing telephone calls of the journalist Thomas Catan, a correspondent for the *Financial Times* in Argentina, as part of an investigation of corruption in the Senate. In August, the journalist had published an article mentioning a complaint that a group of foreign bankers had sent to the embassies of Great

318 See "IACHR Annual Report, 2000", Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter II (OAS/Ser.L/V/II.111 Doc 20 rev April 16, 2001).

Britain and the United States alleging demands for kickbacks by Argentine legislators. Upon being summoned to appear on September 17, the journalist testified before the court and provided the information requested, but he refused to identify his sources of information. As a result of the decision of the Federal Judge, the journalist brought an appeal for constitutional protection (*amparo*) before the Federal Chamber, to have that decision overturned. In his brief to the Court, the journalist argued that the order of the Judge violated the constitutional protection of information sources established in Articles 43 and 18 of the national Constitution, which guarantees the privacy of individuals' homes, correspondence and private papers. Finally, the Federal Chamber overturned the lower court decision and ordered that the telephone lists be destroyed in the presence of the journalist and his attorneys.

83. The Decision (pertinent paragraphs)

...

III. We must remember, to begin with, the importance that this court has historically assigned to freedom of expression (see case No. 9373, Reg. No. 10,318 of November 8, 1993, case No. 12,439, Reg. No. 13,999 of March 4, 1997, and case No. 17,771, Reg. No. 18,835, of July 17, 2001, among others).

The Inter-American Court of Human Rights has observed that "when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to 'receive' information and ideas. The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others" (Advisory Opinion OC-5/85 of November 13, 1985, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, paragraph 30).

Among the fundamental aspects of freedom of expression is free access to sources of information, the ability to gather news, to transmit and disseminate it, and to maintain reasonable secrecy about the source of such news. (German J. Bidart Campos, "*Manual de la Constitución Reformada*," Ediar, Buenos Aires, 1996, Volume II, page 15).

In this respect, we also note that Article 4 of the American Declaration on the Rights and Duties of Man, Article 19 of the Universal Declaration of Human Rights, Article 13.1 of the American Convention on Human Rights, and Article 19.2 of the International Covenant on Civil and Political Rights, provide that freedom of expression includes the freedom to seek, receive and disseminate information.

In relation to this last aspect, we must note the role that information sources play in the investigative work of journalists, and its link to the effective exercise of freedom of the press. "It is frequently true that the ability of people of the press to obtain information legitimately is conditional on not disclosing the source of that information. This is one of the basic rules of the art of journalism, and any credibility that the journalist may have in the eyes of people supplying information will be conditional on observing that rule, as will be his ability to continue to count on a flow of significant and interesting new information" (Gregorio Badeni, "*Secreto profesional y fuentes de la información periodística*," LL 1990-E-43).

Similarly, this court has ruled that "it is precisely this ability of the press to dig up information that gives the public one of its means for exerting control over public officials, and for bringing their concerns and complaints to the judiciary, which alone is empowered to clarify the issues posed." (Case No. 11,585 "Gostanian," Reg. No. 12,677 of December 21, 1995).

In conclusion, there is no need here to compromise the secrecy of Mr. Catan's sources of information in order to compile evidence for the case, because there are alternative routes to the same end. In this situation, the challenged judgment constitutes an unreasonable and therefore illegitimate restriction on the freedom of expression, for which reason this court declares that judgment null and void, as violating the constitutional guarantees indicated (Article 14 of the National Constitution, Article 4 of the American Declaration on the Rights and Duties of Man, Article 19 of the Universal Declaration of Human Rights, Article 13.1 of the American Convention on Human Rights, Article 19.2 of the International Covenant on Civil and Political Rights, and Articles 168 (2) and 172 of the Code of Criminal Procedure of Argentina).

Moreover, in order to terminate the effects of that judgment, the judge must retrieve the files with the lists of phone calls in question, which are currently in the power of the Directorate of Judicial Observations of the State Intelligence Service, and must proceed to destroy them in the presence of the plaintiff and his attorneys, together with any other element relating to this measure that is still held by that service or by that court.

b. The importance of information in a democratic society

84. Declaration of Principles on Freedom of Expression. Principle 2. "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights."

85. Case decided by: Full Chamber of the Constitutional Court of Colombia, Judgment C-1024/02, Reference RE 123, Control of Constitutionality Legislative Decree No. 2002 of 2002, "adopting measures for the control of public order and defining rehabilitation and consolidation zones," presiding magistrate: Dr. Alfredo Beltran Sierra, Bogota, November 26, 2002.

86. Facts of the case. The Colombian Court examined the constitutionality of Article 22 of Legislative Decree 2002 of September 9, 2002. That decree contains many provisions relating to the struggle against terrorism. With respect to the freedom of expression, the court examined that article because it could be interpreted as meaning that there were zones where foreign journalists were not allowed to enter. The article on "Travel and Stay of Foreigners" says that "before entering a rehabilitation and consolidation zone, foreigners must inform the Governor of their intention to travel or remain in this zone. The Governor, within eight days, and with due regard to the special conditions of public order, may refuse or authorize the requested travel or stay. Foreigners who are now in a rehabilitation and consolidation zone, and who wish to stay or travel there, must inform the Governor of their intention within eight days after Declaration of the rehabilitation and consolidation zone. Foreigners who violate the provisions of this Article may be expelled from the country in accordance with existing legal procedures."

87. Decision (pertinent paragraphs)

...

This rule requires foreigners to provide advance notification to the Governor of their intention to travel or remain in those areas, and the Governor may refuse or authorize such travel or stay within eight days, taking into account special conditions of public order. Moreover, it provides that foreigners already in such zones and seeking to remain there or travel through them, must advise the Governor of their intention within eight days after Declaration of a rehabilitation and

consolidation zone. In its final paragraph, it allows for the expulsion of foreigners who violate the foregoing provisions, in accordance with existing legal procedures.

Having examined this rule, the court finds that the national Constitution guarantees the right to report and receive truthful and impartial information as one form of freedom of expression, for which reason it also provides that there shall be no censorship and that the mass communications media are free, with social responsibility.

It is clear that a democracy requires freedom of the press as a means for keeping it informed of events and of the work of its authorities, and the acts and omissions of persons in public office, thereby opening the way for the citizens to exert control over political power and at the same time guaranteeing that their fundamental rights will be respected, and any violations of those rights will be publicized, precisely in order to prevent the cover-up of such violations. It is axiomatic in the civilized world today that when freedom of expression is threatened, all other liberties are threatened.

In this order of ideas, Article 25 of the Charter bears closely on Article 73 thereof, which provides that "journalists shall enjoy protection for their freedom and their professional independence," while Article 74 adds that professional secrecy may not be violated.

There is no doubt that limitations on freedom of the press, whether to restrict or impede access to information or to the scene of events that might be of interest to journalistic investigation and publication, either domestic or international, cannot be established by law under normal conditions, since to do so would violate the above-mentioned constitutional guarantees.

While it is true that Article 22 of the decree in question does not impose direct restrictions on freedom of the press, it is no less true that in the case of foreign journalists this rule could be used to require them to provide notice of their intent to travel or remain in the rehabilitation or consolidation zones to be established, and to obtain a permit to enter such zones, which may be issued within eight days: this clearly constitutes a restriction on that freedom, which is inadmissible according to the Constitution.

We must conclude, then, that in the case of foreign or national journalists working for duly accredited foreign media and those who pursue journalism for any of the communications media in Colombia, the rule contained in Article 22 of Legislative Decree 2002 of 2002 cannot be applied to them as a prerequisite for entering, traveling through or remaining in any portion of the country in the course of their work. The only thing that can be required of them is to demonstrate their quality as journalists, and nothing more.

Similarly, permission to enter, travel through or remain in the so-called rehabilitation and consolidation zones cannot be limited in the case of foreigners engaged or intending to engage in humanitarian, health or religious work in those zones, since any such limitation would violate the rules of international humanitarian law which are binding on Colombia.

c. Incompatibility of criminal penalties

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

89. Case decided by: Second High Court of the First Judicial District, appeals judgment No. 227, Panama, Oct. 25, 2002.

90. Facts of the case. The Tenth Criminal Court of the First Judicial Circuit of the Province of Panama acquitted Mr. Miguel Antonio Bernal of charges of alleged crimes of insults

and slander against Mr. Jose Luis Sosa, who served as Director General of the National Police. According to the decision, TVN Channel 2 carried a report on the national police, which was neither clarified nor retracted in a story in the newspaper La Prensa, where Dr. Miguel Antonio Bernal said "it was the police or the guards who decapitated the prisoners in Coiba. We all know that the authorities break the law by act or omission." Nevertheless, the defendant confirmed in that same column, "I have said, and I stand by this, that the only ones who have decapitated people in this country are the gentlemen of the National Police, the National Guard, the defense forces, and many of those who participated, by act or omission, occupy very high positions." The representative of the Attorney General's Office appealed the acquittal ruling.

91. Decision (pertinent paragraphs)

...

The foregoing means that the authorities have responsibilities in the exercise of their functions, and these may arise through act or omission.

This principal in turn is related to the indirect and immediate effects of the crimes: the first are indicators of the way the crime affects the community in general, as a violation of the common good, solidarity, subsidiary, human dignity, normal coexistence, and breakdown of public order (this means violation of the laws and disrespect of the authorities), while the second represents the psychological, moral, economic and social effects on the victim, his relatives and friends.

For these reasons, when crimes are committed, and especially when these are significant or a cause of public concern, society will ask questions and will demand that security be enforced. For the public, it is as if the ordinary citizen were demanding enforcement of the principle of legal security, and this will bring with it criticism, suggestions, questions about the conduct of public officials, in various forums, meetings, demonstrations or through the social communication media, since these are information vehicles that provide academic, cultural, social and political guidance to the community in general.

...

5. Starting from this context, the comments made by Dr. Miguel Antonio Bernal are consistent with the criticism allowed by Article 178 of the criminal code, which does not apply the definition of offenses against honor to any discussion, criticism or opinion about the acts or omissions of public officials in the exercise of their duties, or to literary, artistic, scientific or professional criticisms. As the defendant's attorney has demonstrated, this thesis is unquestionable and leads to the conclusion that there was no criminal intent; therefore, one of the elements of crime is missing, i.e., culpability, and consequently there can be no question of the rationale of the challenged decision, in asserting that there is no punishable act. The issuing of a judgment does not constitute a declaration of culpability. That is inadmissible, because that aspect has to be debated by the court in full.

6. There is no doubt that the honor of an individual must be respected, and this includes his moral condition, his ideas, his family, his dignity, his prestige, his condition as an exemplary citizen, the exercise of his profession, but it does not exclude the right of the general public to question those who are entrusted, directly or indirectly, with the management of public affairs, because public officials are the servants of the nation and we are subject to questioning by members of the general public about our suitability in the exercise of our respective functions.

7. These arguments also apply to the crime of slander, since there is no criminal intent, which means that culpability has not been demonstrated. This crime represents conduct that is premeditated, at least momentarily, involving intent, willingness and the commission of acts designed to offend the dignity, honor or prestige of a person, either in writing or through any of the media that civilized people use to communicate.

We maintain the foregoing, as we have explained that the opinions published by Dr. Miguel Antonio Bernal represent criticisms about opinions on official acts or omissions of public servants, about a concrete fact that cannot be evaded, for which criminal proceedings were launched in one of the Republic's jurisdictions, although only with respect to the acts, while the omissions were not discussed, but this latter aspect is immaterial to the motive of the appeal submitted.

92. Case decided by: Supreme Court of Justice of Paraguay, Judgment No. 1360, Asuncion, December 11, 2002

93. Facts of the case. On March 22, 1994, the criminal court of first instance convicted Ricardo Canese of the crimes of defamation and slander and sentenced him to a fine and to four months in prison. The background to this sentence was that on August 26, 1992, when Ricardo Canese was a candidate for Presidency of the Republic, in the midst of the election campaign, and during a political debate, he questioned the suitability and integrity of Mr. Juan Carlos Wasmosy, who was also running for President. Those questions included the suggestion that "Wasmosy was a stand-in (*prestanombre*) for Stroessner in Itaipu," through the business firm CONEMPA. Those statements, issued in the context of an electoral campaign, were published in the newspapers ABC Color and Noticias—El Diario on Aug. 27, 1992. On the basis of those statements, the partners in this firm, who had not been named by the Canese, brought a criminal action against him in October 23, 1992, for the alleged crimes of defamation and slander. The case was heard, after several appeals, by the Court of Appeals and by the Supreme Court. The latter tribunal examined the case again after the Inter-American Commission on Human Rights lodged a complaint against the State of Paraguay before the Inter-American Court. The argument here was that the complaint constituted a new factor that merited a further review.

94. Decision (pertinent paragraphs)

...What must be analyzed is the definition of the crime of defamation. We must necessarily start with the Constitution, noting that Article 26 protects the freedom of expression. This constitutional rule makes Article 13 of the American Convention Human Rights a valid rule of the Paraguayan criminal code.

...

From the foregoing we may state that: in accordance with the new positive legislation, no one can be convicted for statements of this nature, on issues of public interest, that involve public officials or personalities -- such as a candidate to the highest office in the land -- even though such statements may affect the honor or reputation of such persons.

...

If the Court were to admit a solution under Article 151 (5) of the criminal code, this would be a severe violation of Article 13 of the American Convention on Human Rights.

95. Case decided by: The Third Chamber of the Supreme Court of Justice of Costa Rica, San Jose, Oct. 28, 2002. Exp.00-2000032-0288-PE, Res. 2002-01050.

96. Facts of the case. The Supreme Court was presented with the following evidence: a) because of complaints from local residents about the misuse of public property and in particular referring to vehicles parked in front of establishments selling liquor, the manager of the television channel Noti-Catorce decided to do a story on the problem. b) Prior to October 7, 1999, Noti-Catorce received complaints from neighbors in Cedral, who claimed that a vehicle of

the Ministry of Public Works and Transport was parked in front of the bar “Las Cañitas” and so, on October 7, the TV channel manager sent a cameraman, William Murillo Cordero, to take photos at the scene. Those photos confirmed that a vehicle of that ministry, bearing license plate 202-463, was parked beside the bar, which was open; subsequently it was learned that this vehicle was assigned to the plaintiff. c) After the photos were taken, and prior to November 1 and 2 1999, the defendants Jimenez Gonzalez, Herrera Masis and Luna Salas attempted to obtain testimony from Rene Quiroz Alpizar, chief engineer of zone 2-3 of the headquarters of the Ministry of Public Works and Transportation in San Carlos, and from the plaintiff Jose Francisco Vargas Nuñez; while they were unable to contact the latter person, they did speak with the first person, who said that the vehicle in question was assigned to Vargas. d) On Monday November 1, and Wednesday November 3, 1999, in introducing the defendants Jimenez Gonzalez and Herrera Masis, Noti-Catorce broadcast the pictures that had been taken on October 7, on its news program that is shown Monday to Friday between 7 PM and 8 PM, over television channels 14 and 16; these pictures, which show the ministry vehicle parked in front of the bar, were broadcast to illustrate the news story, which reported that, acting on complaints from neighbors of Cedral, Noti-Catorce had gone to record the scene and found a vehicle belonging to the ministry parked in that locale. On one of those two days, it was said that there were regulations governing the use of automobiles, and that on one occasion, after complaints by neighbors, two officials of the Ministry of Environment and Energy, who had been seen in the bar, were dismissed. e) Vargas Nuñez could not be found, despite a search, before November 3, 1999, at which time the issue was aired a second time by Noti-Catorce, but on November 4 he appeared at the TV channel offices to exercise his right of reply; he gave his version, maintaining that on the day the photos were taken he was conducting an inspection of a water tank that had backed up and was flooding a road, but he did not deny the location of the vehicle. f) On December 2, 1999, Noti-Catorce reported that the plaintiff was about to be fired from the Ministry of Public Works and Transport, and it illustrated this story with the photos taken on October 7.

97. Decision (pertinent paragraphs)

...

According to the facts submitted in evidence to the Court (summarized above), this Court considers that the *a-quo* [or court from which the case has been removed] is right in deciding that no crime has been committed to the prejudice of the plaintiff Jose Francisco Vargas Nuñez, and therefore the acquittal is proper according to law. The conflict between the right to honor and the freedom of information and the press is one of the most difficult to resolve, because it involves fundamental rights of the individual, and obliges us to define very carefully when one of those rights should take precedence over the others. The problem cannot be resolved by simply applying the criminal code; instead we must look to the Constitution directly, and to international rules on human rights, in order to understand the scope of the criminal legislation. In this respect, the first thing that we must say is that honor is included as one of the moral interests referred to in Article 41 of the Constitution, and expressly mentioned in Article 11 of the American Convention on Human Rights, which declares that everyone has the right to have his honor respected. This is obviously a legal good that is essential to the human condition, and therefore its protection through the criminal code is consistent with legal principles. However, the freedoms of information and of the press, the latter emanating from the former, are equally fundamental to human beings. Both of these freedoms are recognized in the Constitution, specifically in Article 29, which recognizes the possibility of every person to communicate his thoughts by word or in writing, and to make them public. Moreover, they are included in Article 19 of the Universal Declaration of Human Rights, in Article 13 of the American Convention on Human Rights, and in Article 19 of the International Covenant on Civil and Political Rights. These are clearly legal goods that deserve equal protection by the legal system.

The problem to be addressed in this case, then, is to determine when the right to honor takes precedence over those freedoms. Consistent with constitutional and international humanitarian provisions, this conflict between fundamental rights can only be resolved in favor of the right to honor when it is clear that the freedoms of information and the press have been abused. This flows from the fact that Costa Rican legislation makes it a general rule (enshrined in Article 22 of the Civil Code) not to protect the abuse or antisocial use of that right. This is because a person who abuses that right has gone beyond the limits to which that right is protected. On the other hand, if there is no abuse, and if the freedoms of information and the press are exercised legitimately, then there is no possibility whatever of imposing criminal punishment on the communicator, because he has committed no crime against honor. This is explained in the rationale for the acquittal in this case.

...

As will be seen, the Fundamental Law (as applied to the concrete case) clearly establishes that public servants are subject to the law, because they are simply "depositories of authority," in other words they are not above the law. We see from the Constitution (as amended in 2000) that public officials are bound both by permissive and prohibitive rules, and that they may do only what the law expressly authorizes. Therefore, in Costa Rica any public official (whether elected or appointed by a collegial body or through a competition, whether confirmed in his position or acting on an interim basis, whether appointed permanently or for a term, whether he enjoys tenure or holds office at pleasure, whether he is a career employee or not, etc.) is exposed, from the moment he takes office, to scrutiny of his acts in the performance in his duty. This flows from the fact that everything he does as a result of his public position is of interest to all inhabitants of the country, and therefore it must be ensured that he acts, as a servant, in strict compliance with the law. This constant scrutiny of his acts is one of the consequences of being a public servant, and anyone who accepts such position must accept implicitly that his actions will be subject to public examination. By the fact of his appointment, a public official is subject to the principle of legality, according to which he is authorized to do only what the law--in its broad sense, and consistent with the normative scale--expressly allows, and he is prohibited from doing anything else. Therefore, holding a public position means being subject to controls, which have been designed to ensure that the powers flowing from a position are properly exercised, and to avoid any failure to fulfill the duties inherent in the position. These controls include not only institutionalized controls (both administrative and judicial); in a democratic state (the Constitution defines Costa Rica as such in Article 1), but we must also consider the role of communicators. If every human being has the right to be informed, if there is also freedom to communicate thoughts and opinions, and to publish them, and if a communicator's profession is considered to be that of gathering information on issues of interest, analyzing it, and reporting it to others, then it is clear that the practice of journalism is a perfect manifestation of the freedoms of information and the press. It is therefore beyond argument that the collective communications media, journalists and other communicators have the right to inform the public, by disclosing the information they hold. This is the premise that must prevail in a democratic society. The foregoing requires certain clarifications when we are dealing with a matter of public interest concerning the activity of a public servant. The first is that any matter that may reasonably be assumed to involve the individual interest of the governed (Article 113(1) of the Public Administration Act) is a matter of public interest; note that in speaking of "the governed" we are speaking of issues relating to the conduct of the State (in its broad sense, i.e., the government of the Republic, as described in Article 9 of the Constitution, and other public entities) and the handling of its resources, aspects that may validly be assumed to interest all residents of the country, since it is they who must pay taxes to cover the expenses of the State. The second point is that, in cases of public interest, the rule normally applies to the activities of State officials, but it is also possible (as will be seen at the end of this *considerandum*) that there will be people not invested as public servants who perform a task that in itself is public, and so they will also be subject to scrutiny of their activities in the performance of that public function. Thus, in matters of public interest, the freedoms of information and of the press that protect communicators [are] so important, as constituting a means of control over public management in a democratic state, that if they conflict with the right to honor of persons fulfilling a public function they must take precedence over that right, as it relates to the public aspect of those persons' conduct. Consistent with this reasoning, it is only when a communicator is abusive in his reporting that the official can make his right to honor prevail over the freedoms of information and the press that protect the communicator, and over the right of all persons to be informed.

In summary, both the political Constitution and the international human rights instruments applicable in Costa Rica contain rules to affirm that public officials (but not private persons, except where they are fulfilling a public function) are subject to public scrutiny of their activities in the exercise of their duty, which means that the freedom to publish information about their acts in matters of public interest takes precedence over their right to honor, and therefore no communicator can be held criminally liable for information of this kind, unless he has acted abusively.

CHAPTER IV

FREEDOM OF EXPRESSION AND POVERTY³¹⁹

A. Introduction

1. The poverty and social marginalization endured by large sectors of society in the Americas affect the freedom of expression of the hemisphere's citizens, in that their voices are ignored and consequently left out of any debate.³²⁰

2. Poverty³²¹ can lead to violations of different human rights. The preamble to the American Convention states that "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." Likewise, the Inter-American Commission on Human Rights (IACHR) has said that, "certainly the requirements of the human right to a dignified life go beyond the equally fundamental contents of the right to life (understood in its strictest sense), the right to humane treatment, the right to personal liberty, the rights related to the system of representative democracy, and all other civil and political rights."³²²

3. Similarly, in the preamble to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights ("the Protocol of San Salvador"), the IACHR explicitly acknowledged "the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified."

4. A World Bank document—*Can Anyone Hear Us? (Voices of the Poor series)*³²³—described the low levels of participation enjoyed by the poor of the world and, in particular, of Latin America. Historically, the poor have been denied access to information and the ability to

³¹⁹ The Rapporteur's Office is grateful for the cooperation of Maria Seoane, a journalist who, as a consultant with the Office of the Special Rapporteur for Freedom of Expression and with assistance from the journalist Hector Pavón, conducted a field research project into poverty and freedom of expression in the Americas that they presented in July 2002. Their research was used as groundwork for this chapter.

³²⁰ Santiago Canton, then Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, OAS, statement to the United Nations: Report for the United Nations Commission on Human Rights, 56th Session, March 20 to April 28, 2000.

³²¹ According to a report from the Economic Commission for Latin America and the Caribbean (ECLAC), Latin America has 200 million poor people (44% of its total population). The poorest countries are Honduras (79.1%), Nicaragua (67.4%), Paraguay (61.8%), Bolivia (61.2%), Ecuador (60.2%), Guatemala (60.4%), Colombia (54.9%), and El Salvador (49.9%). High levels are also found in Peru (49%), Venezuela (48.5%), and Mexico (42.3%). These nations are followed by Brazil (36.9%), Panama (30.8%), Argentina (30.3%), the Dominican Republic (29.2%), Costa Rica (21.7%), Chile (20%), and Uruguay (11.4%).³²¹ In 1998 the Inter-American Development Bank (IDB) calculated that 150 million people in Latin America and the Caribbean lived in poverty, meaning that one out of every three of the region's inhabitants was poor. In Lustig, Nora and Ruthanne Deutsch, *The Inter-American Development Bank and Poverty Reduction: An Overview*. p. 2. IDB, Washington, March 1998.

³²² IACHR, Second Report on the Situation of Human Rights in Peru, 2000, Chapter VI, paragraphs 1 and 2.

³²³ Narayan, Deepa, *Can Anyone Hear Us? (Voices of the Poor series)*, World Bank, 2000.

influence decisions with a profound impact on their everyday lives, and as a result, they are denied their right to actively participate in the daily business of their countries.³²⁴

5. The Inter-American Commission has stated on many occasions that poverty is a fundamental denial of human rights:

Extreme poverty [constitutes] a generalized violation of all human rights, civil and political, as well as social, economic, and cultural. The requirements of the human right to a dignified life transcend the equally fundamental contents of the right not to be subject to arbitrary execution, the right to personal integrity, the right to personal liberty, the rights related to the system of representative democracy, and the other civil and political rights. In addition to earmarking public resources in sufficient quantity for social and economic rights, the States should see to the appropriate use of those resources. Experience shows that extreme poverty has the potential to seriously erode the democratic institutional framework, as it tends to thwart democracy and render illusory citizen participation, access to justice, and the effective enjoyment of human rights.³²⁵

6. In his report for the year 2000, the Special Rapporteur for Freedom of Expression described the effect that discrimination against certain sectors of the population has on the strengthening of democracies:

The lack of equal participation makes it impossible for democratic, pluralistic societies to prosper, thereby exacerbating intolerance and discrimination. Including all sectors of society in communication, decision-making and development processes is essential to ensure that their needs, opinions and interests are taken into account in policy-making and decision-making.³²⁶

It is precisely through active, peaceful participation in the democratic institutions of the State that the exercise of freedom of expression and information by all sectors of society is manifest and enables historically marginalized sectors to improve their conditions.³²⁷

7. Thus, effective respect for freedom of expression is a basic tool for the incorporation of those who, because of poverty, are marginalized from information and all dialogue. Within this frame of reference, it is the state's duty to guarantee equal opportunities for all for with respect to the discrimination-free receiving, seeking out, and sharing of information through any communication channel whatsoever, eliminating all measures that discriminate against the equal and full participation of individuals or groups in their countries' political, economic, and social life.³²⁸ This right guarantees an informed voice for all people, which is an indispensable requirement for the subsistence of democracy.

8. In light of the complexity of the matter at hand, this chapter does not aspire to offer an exhaustive analysis of the factors that give rise to poverty or of the different alternatives available for combating it. The report merely attempts to identify certain aspects relating to different forms of exercising freedom of

³²⁴ Public Hearing at the Committee on Foreign Affairs, Sub-Committee on Human Rights in Brussels, presentation by Frances D'Souza, "Article 19: Freedom of Expression: The First Freedom?", April 25, 1996.

³²⁵ Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Paraguay, 2001, Chapter V, paragraph 17.

³²⁶ IACHR, Annual Report, year 2000, Volume III, Report of the Special Rapporteur for Freedom of Expression, p. 18.

³²⁷ IACHR, Annual Report, year 2000, Volume III, Report of the Special Rapporteur for Freedom of Expression, p. 19.

³²⁸ See: IACHR, Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/ser.L/V/II92/rev. 3, May 3, 1996.

expression that, in the opinion of the Special Rapporteur for Freedom of Expression, could help improve the lot of the hemisphere's poor.

9. Consequently, the following paragraphs examine issues related to the need for guaranteeing the discrimination-free exercise of this right; they also address the importance of establishing mechanisms to allow the poor access to public information as part of their freedom of expression. Finally, they set forth a broad framework for the exercise of freedom of expression and the right of assembly in public forums and the use of community media channels for making those rights a reality. The conclusion offers some final remarks.

B. Enjoyment of freedom of expression without discrimination on the grounds of social origin or economic position

10. One of the basic pillars of democratic systems is respect toward individuals' basic rights in accordance with the principles of equality and nondiscrimination. The history of the hemisphere shows that one of the main challenges of consolidating democracy is to increase participation by all social sectors in the political, social, economic, and cultural life of each nation. Thus, Article 1 of the American Convention states the need for the member states to "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 [...] social origin, economic status [...] or any other social condition."

11. The inter-American human rights system establishes and defines a set of basic rights, rules, and obligatory behaviors for promoting and protecting those rights, which include the right of free expression.

12. The right to freedom of expression, and the respect enjoyed by that right, serves as an instrument for the free exchange of ideas, strengthens democratic processes, and offers citizens an indispensable tool for informed participation. The Inter-American Court of Human Rights has said that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion [...] It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. Freedom of expression, therefore, is not just a right of individuals, but of society as a whole.³²⁹

13. In this context, the Special Rapporteur for Freedom of Expression has stated that the member states must work to eliminate all measures that discriminate against individuals and prevent them from fully participating in their countries' political, economic, public, and social life. The American Convention on Human Rights protects the right of nondiscrimination as a basic

³²⁹ See: Inter-Am.Ct.H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 Series A, N° 5, para. 70.

pillar in strengthening and upholding the hemisphere's democratic systems.³³⁰ Articles 33 and 44 of the OAS Charter provide that:

Equality of opportunity, [...] equitable distribution of wealth and income, and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. [They encourage] the incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system.

14. The lack of equal participation makes it impossible for democratic, pluralistic societies to prosper, thereby exacerbating intolerance and discrimination. Including all sectors of society in communication, decision-making, and development processes is essential to ensure that their needs, opinions, and interests are taken into account in making policies and decisions. In this regard, the Inter-American Court has stated that:

A democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole [...] It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.³³¹

15. The Special Rapporteur believes that it is through the active and peaceful participation of society as a whole in the state's democratic institutions that the exercise of freedom of expression manifests itself in full, allowing the lot of historically marginalized sectors to be improved. The Rapporteur's office thus understands that to guarantee poor people full and nondiscriminatory enjoyment of freedom of expression, states must work for conditions that encourage the active participation of the poor in their countries' political, social, economic, and cultural lives. In pursuing these conditions, efforts must be made to avoid establishing practices that, *de facto* or *de jure*, discriminate against those sectors and that deny them the right to exercise their freedom of thought and expression.

C. Access to public information as an exercise of the freedom of expression of the poor

16. The Rapporteur's office has on countless occasions emphasized the importance of the right of access to information as an indispensable requirement for the very functioning of democracy. In a representative and participatory democratic system, the citizenry exercises its constitutional rights and, *inter alia*, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information.

³³⁰ See: American Convention on Human Rights, Chapter I, General Obligations, Article 1, Obligation to Respect Rights; and Chapter II, Civil and Political Rights, Article 13, Freedom of Thought and Expression.

³³¹ Inter-Am.Ct.H.R., Advisory Opinion OC-5/85 Series A, N° 5, para. 69.

Public disclosure of information enables citizens to monitor public administration, not only confirming its adherence to the law, which government officials have sworn to obey and uphold, but also by exercising the right of petition and the right to obtain transparent accountability.³³²

17. Access to information, in addition to being an important aspect of freedom of expression, is a right that encourages people's autonomy and allows them *to pursue a life plan that is in accordance with their own free decisions*.³³³

18. Consequently, the failure of one sector to participate in understanding information that will affect them directly limits basic freedoms, denies people dignity,³³⁴ and hinders the broad development of democratic societies, exacerbating the potential for corrupt behavior within the government and promoting policies of intolerance and discrimination.

19. The UNDP's Human Development Report notes that, in general, it is the poor who are least able to obtain information about the decisions and public policies that affect them directly, thus denying them information that is vital to their lives, such as information about free services, awareness of their rights, access to justice, etc. In turn these sectors enjoy only limited access to traditional information sources for expressing their opinions or making public allegations about violations of their basic rights.³³⁵

20. Without this information, the right of free expression cannot be fully exercised as an effective mechanism for citizen participation or for democratic oversight of governance. These controls are even more necessary, because one of the main obstacles that stand in the way of strengthening our democracies is corruption involving public officials. The absence of effective control can "imply activity utterly inimical to a democratic State and opens the door to unacceptable transgressions and abuse."³³⁶ Guaranteeing access to official information helps to increase transparency in government affairs and thus serves to reduce government corruption.

21. State corruption directly affects the poor when, for example, budgets earmarked to public works projects are involved. The report *Can Anyone Hear Us? (Voices of the Poor series)* states that:³³⁷ "The poor have widespread and intimate experience with the adverse effects of corruption in health, education, water, forestry, government-provided relief, and, where it is available, everyday social assistance." The phenomenon of corruption has to do not only with the legitimacy of public institutions, society, the integral development of peoples, and all other more general aspects mentioned *supra*, but also has a specific impact on the effective enjoyment of human rights in society in general and among the poor in particular.³³⁸ The

³³² OAS, Model Law on Access to Administrative Information for the Prevention of Corruption. Regional Technical Workshop: Guatemala, November 2000.

³³³ Abramovich, Víctor and Christian Courtis: *El Acceso a la Información como Derecho en Igualdad, Libertad de Expresión e Interés Público*, Felipe González y Felipe Viveros, ed. *Cuaderno de Análisis Jurídico, Escuela de Derecho* Diego Portales, p. 198. In this article Abramovich and Courtis identify the right of access to information as an instrument of other rights: (1) Information as a mechanism for oversight of the government; (2) information as a mechanism for participation, and (3) information as a way of demanding social, economic, and cultural rights.

³³⁴ UNDP, Human Development Report 2000: Chapter 4: Rights empowering people in the fight against poverty, p. 73.

³³⁵ UNDP, Human Development Report 2000: Chapter 4: Rights empowering people in the fight against poverty, p. 78.

³³⁶ See: Pierini *et al.*, p. 31, citing Habeas Data, *Editorial Universidad*, Buenos Aires 1999, p. 21.

³³⁷ Narayan, Deepa, *Can Anyone Hear Us? (Voices of the Poor series)*, World Bank, 2000, p. 83.

³³⁸ IACHR, Third Report on the Situation of Human Rights in Paraguay, 2001, Chapter II, paragraph 45.

Commission has also stated that corruption has an adverse impact on the protection of economic, social, and cultural rights in the following terms:

[Corruption] is one of the factors that can stand in the way of the state adopting “the necessary measures [...] to the extent allowed by their available resources [...] for the purpose of achieving progressively [...] the full observance of such rights. In this regard, it has been noted that the maximum available resources are not utilized as effectively as possible towards the realization of economic, social and cultural rights when a substantial portion of the national resources are diverted into the private bank account of a head of state, or when development aid is mismanaged, misused or misappropriated.”³³⁹

22. The report *Can Anyone Hear Us? (Voices of the Poor series)* also claims that the poor encounter endless obstacles in attempting to access the services offered by the government. In general, these sectors of the population have little information about the decisions of governments and private agencies that profoundly impact their lives. As the report goes on to say, “when state institutions deteriorate, services such as health and education become privileges accessed primarily by those who already have resources and power.”³⁴⁰ There is thus an urgent need, on the one hand, to guarantee the necessary channels so the poor can strengthen their own organizations, both within their own communities and in intercommunity networks, and thereby exercise their right to information and to full accountability, without fear of negative personal repercussions. On the other hand, there is a need for states to develop laws and rules governing access to information that are nondiscriminatory and easy to use. Lack of access to information clearly places the neediest sectors of society in a vulnerable situation vis-à-vis potential abuses by private citizens and acts of corruption on the part of state agencies and their officers.³⁴¹

23. As the Rapporteur stated in his report for the year 2001, the Plan of Action of the Third Summit of the Americas underscores the need to support initiatives to improve transparency and thus ensure the protection of public interests and the effective use of resources by governments in pursuit of collective interests.³⁴² Within this context, the Special Rapporteur considers that corruption could be combated effectively through a combination of efforts designed to raise the level of transparency in respect of government activities.³⁴³ Accordingly, any policy designed to obstruct access to information with respect to government activities poses the risk of promoting corruption within the institutions of the state, and thus weakening democracies. Access to information represents a means of preventing such illegal practices, which inflict great harm on the countries of the hemisphere.³⁴⁴ Transparency in government can be increased by creating a legal framework that enables society to gain broad access to information. In this context, the rule should be public disclosure of information on government activities as a public good, rather than the manipulation and concealment of government actions.

³³⁹ *Ibid.*, paragraph 48.

³⁴⁰ World Bank, *supra* 22.

³⁴¹ Narayan, Deepa, *Can Anyone Hear Us? (Voices of the Poor series)*, World Bank, 2000, p. 104.

³⁴² See: Third Summit of the Americas, Declaration and Plan of Action. Quebec City, Canada, April 20-22, 2001.

³⁴³ See: Inter-American Convention against Corruption, Inter-American System of Juridical Information, OAS.

³⁴⁴ Chirino Sánchez, Alfredo, *Ley Modelo de Acceso a Información Administrativa para la Prevención de la Corrupción*, Department of Legal Cooperation and Information, Regional Technical Workshop: Antigua, Guatemala, OAS, November 2000, p. 3.

24. To summarize, the right of access to information constitutes a legal tool for securing transparency in government undertakings and for assuring oversight and effective participation by all sectors of society on a nondiscriminatory basis.³⁴⁵ Encouraging and promoting information access among the poorest sectors of the hemisphere's societies will enable their active and informed participation regarding the design of public policies and measures that directly affect their lives.

D. Exercising freedom of expression and the right of assembly

25. The inability to have an impact on policy planning or to be heard are factors that also influence poor people's increased feelings of vulnerability and inability to protect themselves against possible violations of their rights.

26. The UNDP's Human Development Report 2000 highlights the willingness to participate of the peoples of the world: "People do not want to be passive participants, merely casting votes in elections. They want to have an active part in the decisions and events that shape their lives."³⁴⁶

27. As the Inter-American Commission has said:

The concept of representative democracy is founded upon the principle that it is the people who have political sovereignty; exercising that sovereignty, they elect their representatives—in indirect democracies—to exercise political power. These representatives, moreover, are elected by the citizens to apply certain policy measures, which in turn means that the nature of the policies to be applied has been widely debated—freedom of thought—among organized political groups—freedom of association—that have had an opportunity to voice their opinions and assemble publicly—right of assembly. Moreover, the observance of these rights and freedoms calls for a legal and institutional order wherein the law take precedence over the will of the governing and where certain institutions exercise control over others so as to preserve the integrity of the expression of the will of the people—a constitutional state or a state in which the rule of law prevails.³⁴⁷

28. It is therefore important to overturn the conception of poor people as objects requiring attention and to convert them into an active subjects of opinion, action, and decision-making.³⁴⁸ It can be said that one fundamental element in strengthening democracies is the establishment of a legal framework that protects the rights of participation and free expression with respect to all sectors of the population.

29. However, that is not a reality at the present. Our hemisphere's most impoverished sectors encounter discriminatory policies and actions, their access to information about the planning and execution of measures affecting their daily lives is nascent at best, and,

³⁴⁵ Chirino Sánchez, Alfredo, *Ley Modelo de Acceso a Información Administrativa para la Prevención de la Corrupción*, Department of Legal Cooperation and Information, Regional Technical Workshop: Antigua, Guatemala, OAS, November 2000, p. 11.

³⁴⁶ UNDP, Human Development Report 2000, p. 38.

³⁴⁷ IACHR, Annual Report 1990-1991, Chapter V, Section III, "Human rights, political rights, and representative democracy in the Inter-American system."

³⁴⁸ Acosta, Blanca. *Participación y Calidad de Vida*, 1999, Uruguay.

in general, the traditional channels of participation for publicizing their complaints are frequently blocked off to them. Faced with this, in many countries around the hemisphere, protests and social mobilizations have become a tool for petitioning the authorities and a channel for publicly denouncing human rights abuses and violations.

30. Article 15 of the American Convention protects the right of peaceful, unarmed assembly and states that it may 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.” The exchange of ideas and social demands as a form of expression presupposes the exercise of related rights, such as the right of citizens to assemble and demonstrate and the right to a free flow of opinions and information. The rights enshrined in Articles 13 and 15 of the American Convention are vital elements for the correct functioning of a democratic system that embraces all sectors of society.

31. The Rapporteur’s office points out that in spite of the importance of both freedom of expression and the right of peaceful assembly for the functioning of a democratic society, this does not make them absolute rights. Accordingly, both Article 13 and Article 15 of the Convention identify the restrictions that can be placed on them, and require that those restrictions be expressly established in law and necessary to ensure respect for the rights of others or to protect national security, public order, or public health or morals.

32. With respect to the word “necessary,” the Inter-American Court of Human Rights has ruled that while it does not mean “indispensable,” it does imply the existence of a “pressing social need” and that for a restriction to be “necessary” it is not enough to show that it is “useful,” “reasonable” or “desirable.” The Court has further stated that “the legality of restrictions [...] depend upon showing that the restrictions are required by a compelling governmental interest. That is, the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it.”³⁴⁹

33. With respect to the right of assembly as a way for society to express its participation and the state’s authority for regulating it, the Rapporteur’s office points out that under the parameters set in the previous paragraph, this regulating of the right of assembly cannot be intended as the basis for banning any meeting or demonstration. On the contrary, regulations requiring, for example, prior notifications or warnings are intended to inform the authorities so they can take the steps necessary to allow the right to be exercised without significantly hindering the normal activities of the rest of the community.³⁵⁰

34. The Rapporteur’s office points out that the participation of society through demonstrations is important for consolidating the democratic existence of those societies and that, in general, as a way of exercising freedom of expression, it is of keen social interest; consequently, states have very narrow margins for restricting that form of free expression.³⁵¹ The Rapporteur’s office understands that restrictions on the right of assembly must be intended

³⁴⁹ OC-5/85, para. 46. See: Eur. Court H. R., “The Sunday Times Case,” Series A, N° 30, para. 59.

³⁵⁰ Ruling by the Constitutional Court of Colombia. See: Judgment No. T-456: Right of assembly / Right to demonstrate: Comments by the Court, a. The protected right, July 14, 1992.

³⁵¹ See: “Feldek v. Slovakia,” European Court of Human Rights, Judgment of July 12, 2001, paragraph 59.

exclusively to prevent serious and imminent dangers. A future, generic danger would be insufficient, since the right of assembly cannot be taken as synonymous with public disorder and, hence, subjected to restrictions *per se*.³⁵²

35. Moreover, and within the limits set by the previous paragraphs, the *per se* criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and the right of assembly. In other words: the question is whether the application of criminal sanctions is justified under the Inter-American Court's stance whereby such a restriction (i.e., criminalization) must be shown to satisfy an imperative public interest that is necessary for the functioning of a democratic society. Another question is whether the imposition of criminal sanctions is the least harmful way of restricting the freedom of expression and right of assembly exercised through a demonstration in the streets or other public space. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from which the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticisms of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.

36. Consequently, before placing restrictions on this form of expression, member states must conduct a rigorous analysis of the interests they seek to protect with those restrictions, while at the same time bearing in mind the high level of protection warranted by freedom of expression as a right that guarantees citizen participation and oversight of the state's actions in the public arena.

E. The exercise of freedom of expression through community media channels

37. The freedom of individuals to debate openly and criticize policies and institutions guards against abuses of human rights. Openness of the media not only advances civil and political liberties—it often contributes to economic, social, and cultural rights. In some instances, the use of the mass media has helped drive public awareness and bring pressure to bear for the adoption of measures for improving the quality of life of the population's most vulnerable or marginalized sectors.³⁵³

38. However, the traditional mass media are not always accessible for disseminating the needs and claims of society's most impoverished or vulnerable sectors. Thus, community media outlets have for some time been insisting that strategies and programs that address their needs be included on national agendas.

39. Radio stations that style themselves as community, educational, participatory, rural, insurgent, interactive, alternative, and citizen-led are, in many instances and when they act within the law, the ones that fill the gaps left by the mass media; they serve as outlets for

³⁵² Constitutional Court of Colombia, Judgment No. T-456, *supra* 35.

³⁵³ UNDP, Human Development Report 2000: Chapter 3: Inclusive democracy secures rights, p. 58.

expression that generally offer the poor better opportunities for access and participation than they would find in the traditional media.

40. UNESCO defines community radio in terms of the word “community,” which designates “the basic unit for horizontal social organization.” Thus, community radio “is usually considered complementary to traditional media operations and as a participatory model for media management and production.”³⁵⁴

41. The Office of the Special Rapporteur understands that community radio stations, which must act within a legal framework set by an facilitated by the state, frequently respond to the needs, interests, problems, and hopes of the often, discriminated, and impoverished sectors of civil society. The growing need for expression felt by majorities and minorities that lack media access, and their claims on the right to communication, to the free expression of ideas, and to the dissemination of information makes it necessary to seek access to goods and services that will ensure basic conditions of dignity, security, subsistence, and development.

42. In many instances, acting in accordance with the law, these stations can facilitate the free flow of information, fueling freedom of expression and dialogue within communities and thus encouraging participation. “Equitable, respectful, and imaginative access to the media, as a contemporary synthesis of the public sphere, is a fundamental way of breaking down the ‘individualized’ and insular reading of poverty, provided that we supersede the view that holds that more media coverage, more news items or programs about poverty and poor, and more chronicles (from outside) truly represent the empowerment of marginalized sectors and are preferred over democratic communications.”³⁵⁵

43. Given the potential importance of these community channels for freedom of expression, the establishment of discriminatory legal frameworks that hinder the allocation of frequencies to community radio stations is unacceptable. Equally worrisome are those practices that, even when the legal framework is being respected, pose unjustified threats of closure or arbitrary seizures of equipment.

44. Having said this, there is a technological question that should not be ignored: to ensure optimal use of the radio spectrum by radio and television stations, the International Telecommunication Union (ITU) allocates countries groups of frequencies which they then administer within their territories, thereby, *inter alia*, preventing interference between different telecommunications services.

45. With this, the Office of the Special Rapporteur understands that states, in administering the frequencies of the radio spectrum, must assign them in accordance with democratic guidelines that guarantee equal opportunity of access to all individuals. That is precisely the thrust of Principle 12 of the Declaration of Principles on Freedom of Expression.³⁵⁶

³⁵⁴ UNESCO: World Communication Report 1998, p. 148.

³⁵⁵ Reguillo Cruz, Rossana, Interview with the journalist Maria Seoane, October 2001.

³⁵⁶ See: Declaration of Principles on Freedom of Expression, in the appendix to this report. Principle 13 is also of particular relevance.

F. Final comments

46. The Special Rapporteur for Freedom of Expression understands that there is a close relationship between full enjoyment of the right of free expression—or, rather, the absence thereof—and poverty. One of the goals of democracies is to increase political participation and decision-making at all levels and to develop policies that facilitate the population's access to issues that affect them directly. In this way, democracies empower societies for active participation through access to information, the creation of forums for participation, and tolerance toward dissent.

47. This report has merely been a first attempt at analyzing the different ways in which those sectors of Latin America's population with unsatisfied basic need exercise their right of free expression.

48. The Special Rapporteur for Freedom of Expression recommends that the member states adopt the measures necessary to guarantee this right in accordance with the statements made in the body of this chapter.

CHAPTER V

“*DESACATO*” LAWS AND CRIMINAL DEFAMATION

A. Introduction

1. The Reports of the Rapporteur for Freedom of Expression for 1998 and 2000 included the issue of “*desacato*” laws in force in the Hemisphere.³⁵⁷ The Rapporteur considers it important to follow up on the recommendations made in the two reports, principally with respect to the need to abolish such laws in order to bring domestic legislation into line with the standards recognized by the inter-American system regarding the exercise of the right to freedom of expression. The Office of the Special Rapporteur intends to continue this follow-up every two years, since that is a prudent time to allow the member states to move ahead with the necessary legislative procedures to make the recommended abolitions or adjustments of their laws.

2. Regrettably, the Office of the Special Rapporteur finds that there has been no significant progress since the publication of the last report on the matter, as very few countries have abolished their *desacato* laws, notwithstanding the fact that there are some initiatives underway in other countries that are in the process of doing so.

3. It is also a source of concern for the Office of the Special Rapporteur that laws on broadly termed “offenses against honor”, which include slander and libel, are used for the same purposes as *desacato* laws. Deficient regulation in this area or arbitrary enforcement could result in the recommended abolition of *desacato* laws being of little use. This affirmation was made in the above-mentioned Reports of the Rapporteur, and yet no progress has been recorded in that connection.

4. On this occasion, the Office of the Special Rapporteur reiterates and updates the arguments in favor of the abolition of *desacato* laws. Following, this report looks closely at a number of considerations to do with offenses against honor, and the importance of legislative reform in that respect, or, at least, the need for judicial reinterpretation as regards their enforcement. Finally, the report lists the countries that have made progress in the abolition of *desacato* laws and describes other initiatives aimed both at the abolition and the amendment of the laws on offenses against honor in each country.

B. *Desacato* laws are incompatible with Article 13 of the Convention.

5. The statement in the title of this section dates back a long way. As the Office of the Special Rapporteur mentioned in past reports, the Inter-American Commission on Human Rights undertook an analysis of the compatibility of *desacato* laws with the American Convention on Human Rights in a 1995 report.³⁵⁸ The Commission found that such laws were not compatible with the Convention because they lend themselves “to abuse, as a means to

³⁵⁷ See Annual Report of the IACHR, 1998 Volume III, Chapter IV A. –OEA/Ser.L/V/II.102 Doc.6 rev. 16 April 1999; and Annual Report of the IACHR, 2000 Volume III, Chapter III A.2. –OEA/Ser.L/V/II.111 Doc.20 rev. 16 April 2001.

³⁵⁸ IACHR, Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, doc. 9 rev., 17 February 1995, 197-212.

silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions.”³⁵⁹ The Commission further stated that *desacato* laws give a higher level of protection to public officials than is offered to private citizens. This is in direct contravention of the “fundamental principle in a democratic system that holds the government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers.”³⁶⁰ Citizens must, therefore, have the right “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”³⁶¹ *Desacato* laws ultimately deter critical speech because individuals will not want to subject themselves to imprisonment or monetary sanctions. Even those laws providing a defense if the accused can prove that the statements were true improperly restrict speech because they do not allow for the fact that much criticism is opinion and therefore not susceptible to proof. *Desacato* laws cannot be justified by saying that their purpose is to protect “public order” (a permissible purpose for regulation of speech under Article 13), as this is in contravention of the principle that “a properly functioning democracy is indeed the greatest guarantee of public order.”³⁶² Moreover, there are other, less-restrictive means besides criminal contempt laws by which governmental officials can defend their reputations from unwarranted attacks, such as replying through the media or bringing a civil action against individuals for libel or slander. For all of these reasons, the Commission concluded that *desacato* laws are incompatible with the Convention and called upon states to repeal these laws.

6. At the same time as, and in the wake of this fundamental opinion of the IACHR, international organizations and NGOs around the world have uniformly expressed the need to abolish such laws, which limit free speech by punishing speech that shows disrespect towards public officials. Many of these expressions have been cited in past reports of the Office of the Special Rapporteur. To summarize:

7. In March 1994, the Inter-American Press Association (IAPA) held a hemispheric conference on freedom of the press at Chapultepec Castle in Mexico City. The Declaration of Chapultepec has been signed by the Heads of State of 21 of the region’s States and is widely regarded as a model standard for freedom of expression³⁶³. On the matter of *desacato* laws, Principle 10 of the Declaration provides that, “No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.”

8. On November 26, 2000, Abid Hussain, the then UN Special Rapporteur on Freedom of Opinion and Expression, Freimut Duve, OSCE Representative on Freedom of the Media, and Santiago Canton, the then Rapporteur for Freedom of Expression of the IACHR, issued a joint declaration that included the following statement: “In many countries laws are in place, such as criminal defamation laws, which unduly restrict the right to freedom of expression. We urge states to review these laws with a view to bringing them in line with their international

³⁵⁹ *Id.* at 212.

³⁶⁰ *Id.* at 207.

³⁶¹ *Id.*

³⁶² *Id.* at 209.

³⁶³ The Heads of State of the following governments have signed the Declaration of Chapultepec, pledging themselves to abide by its terms: Argentina, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Puerto Rico, United States, Uruguay.

obligations.” At another joint meeting in November of 2000, the Rapporteurs adopted another joint declaration, which elaborated on the problem of *desacato* and criminal defamation laws. In this Declaration, the Rapporteurs advocated the replacement of criminal defamation laws with civil laws and stated that the State, objects such as flags or symbols, government bodies and public authorities should be banned from bringing defamation actions.

9. In July 2000, Article XIX, the global nongovernmental organization which takes its name from the Universal Declaration of Human Rights’ article protecting freedom of expression, promulgated a set of Principles on Freedom of Expression and Protection of Reputation.³⁶⁴ Principle 4(a) states that all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.³⁶⁵ Principle 8, regarding public officials, states that, “Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status.”

10. In October 2000, the IACHR approved the Declaration of Principles on Freedom of Expression,³⁶⁶ promulgated by the Office of the Special Rapporteur for Freedom of Expression. The Declaration is meant to be a definitive interpretation of Article 13 of the Convention. Principle 11 deals with *desacato* laws.³⁶⁷

11. In his January 2000 report, the UN Special Rapporteur on Freedom Opinion and Expression also spoke out against criminal defamation laws and, in particular, laws providing special protection for public officials.³⁶⁸

12. As mentioned, these positions were summarized in past reports of the Office of the Special Rapporteur. In this report, the Rapporteur underscores that the near-universal agreement on the need to repeal *desacato* laws remains in effect, as can be observed from the following examples:

13. The World Bank’s World Development Report 2002³⁶⁹ devotes a chapter to the importance of the media in this area. On the specific issue of *desacato* laws, the report says, “*Particularly restrictive are insult laws, protecting select groups such as royalty, politicians, and government officials from criticism. Usually, insult laws make it a criminal offense to injure the “honor and dignity” or reputation of these selected individuals and institutions, regardless of truth. A study of 87 countries found such laws to be surprisingly prevalent, particularly in defamation suit. In Germany and the United States are rarely, if ever, invoked. Yet in many developing countries, they are the primary means of harassing journalists.*

³⁶⁴ “Defining Defamation: Principles on Freedom of Expression and Protection of Reputation”, Article 19, London, July 2000.

³⁶⁵ *Id.*, Principio 4(a).

³⁶⁶ See “Annual Report of the IACHR, 2000”, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (OEA/Ser.L/V/II.111 Doc.20 rev. 16 April 2001).

³⁶⁷ “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as *desacato* laws, restrict freedom of expression and the right to information.”

³⁶⁸ *Civil and Political Rights Including the Question of Freedom Of Expression*, UN Doc. No. E/CN.4/2000/63, January 18, 2000.

³⁶⁹ The World Development Report 2002 at: www.wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details& eid =000094946_01092204010635.

14. The Tenth General Meeting of the International Freedom of Expression Exchange was held on September 13, in Dakar, Senegal³⁷⁰. The declaration signed by the organizations taking part³⁷¹ says that laws designed to give special protection from public criticism and press scrutiny to national leaders, high officials, state symbols and nationhood are anachronisms in democracies, and threats to all citizens' rights to full and free access to information about their governments. The declaration urges governments to remove these outmoded laws from their statute books. Finally, it says, "*Normal, reasonable libel, slander and defamation legislation equally available to all members of society is sufficient protection against any unfair attacks. Such laws should be civil, not criminal, in nature and should provide for demonstrable damages only. Public officials are due less--not more--protection from criticism than private citizens. Public bodies, categories of officials, institutions, national symbols and countries should not be immune to spirited comment and criticism within democracies that honor freedom of expression and freedom of the press.*"

15. On December 9, 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo, the OSCE Representative on Freedom of the Media, Freimut Duve, and the Special Rapporteur of the IACHR on Freedom of Expression, Eduardo Bertoni, issued a joint declaration in which they said they were, "*Mindful of the ongoing abuse of criminal defamation laws, including by politicians and other public figures*". They added that, "*Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.*"

16. Despite the near-universal condemnation of these laws, they continue to exist in one form or another in the majority of states in the Americas. In addition, many of these states continue to have criminal libel, slander and defamation laws, which are frequently used in the same manner as *desacato* laws to silence governmental critics. The Rapporteur makes a number of observations on this matter in the section below.

C. Criminal defamation offenses (slander, libel, etc.)

17. The Office of the Special Rapporteur for Freedom of Expression mentioned in the abovementioned annual reports that the opinion of the IACHR on *desacato* laws also presents certain implications for the reform of criminal libel, slander, and defamation laws. Recognition of the fact that public officials are subject to a lesser, rather than greater, degree of protection from public scrutiny and criticism means that the distinction between public and private persons must

³⁷⁰ IFEX <http://www.ifex.org>, "The International Freedom of Expression Exchange" an NGO based in Toronto, Canada.

³⁷¹ Attending that meeting were, inter alia: Alliance of Independent Journalists, Indonesia; ARTICLE 19, South Africa; Association de Journalistes du Burkina; Canadian Journalists for Free Expression, Canada; Center for Human Rights and Democratic Studies, Nepal; Center for Media Freedom and Responsibility, Philippines; Centro Nacional de Comunicación Social, Mexico; Committee to Protect Journalists, USA; Ethiopian Free Press Journalists' Association, Ethiopia; Fédération professionnelle des journalistes du Québec, Canada; Free Media Movement, Sri Lanka; Freedom House, USA; Freedom of Expression Institute, South Africa; Independent Journalism Center, Moldova; Independent Journalism Centre, Nigeria; Index on Censorship, United Kingdom; Instituto Prensa y Sociedad, Peru; International Federation of Journalists, Belgium; International Federation of Library Associations and Institutions (IFLA) – Free Access to Information and Freedom of Expression (FAIFE), International Press Institute, Austria; Journaliste en Danger, Democratic Republic of Congo; Media Institute of Southern Africa, Namibia; Pacific Islands News Association, Fiji Islands; PERIODISTAS, Asociación para la Defensa del Periodismo Independiente, Argentina; Press Union of Liberia; Thai Journalists Association, Thailand; Timor Lorosa'e Journalists Association; West African Journalists Association, Senegal; World Press Freedom Committee, USA.

be made in the ordinary libel, slander and defamation laws as well. The possibility of abuse of such laws by public officials to silence critical opinions is as great with this type of law as with *desacato* laws. The Commission has stated:

[P]articularly in the political arena, the threshold of State intervention with respect to freedom of information is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence.

The Commission considers that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's [sic] privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.³⁷²

18. In order to ensure that freedom of expression is properly defended, states should reform their criminal libel, slander, and defamation laws so that only civil penalties may be applied in the case of offenses against public officials. In such cases, liability for offenses against public officials should only occur in cases of "actual malice." "Actual malice" means that the author of the statement in question acted with the intention to cause harm, was aware that the statement was false, or acted with reckless disregard for the truth or falsity of the statement. These ideas were welcomed by the IACHR when it

approved the Principles on Freedom of Expression, in particular Principle 10.³⁷³ The foregoing raises the need to revise laws created to protect individuals' reputations (commonly known as libel and slander laws). The kind of political debate encouraged by freedom of expression and information inevitably will generate some speech critical of, or even offensive to, those who hold public posts or are intimately involved in public policymaking. Rather than protecting people's reputations, libel or slander laws are often used to attack, or rather to stifle, speech considered critical of public administration.

19. This reasoning was recently shared by judges and journalists in El Salvador and Costa Rica, who concluded that libel committed in the news media should not be a criminal offense punishable by imprisonment but should be dealt with in the civil courts so as not to curtail press freedom and the people's right to know and to prevent self-censorship. This and other conclusions emerged from national legal forums on press freedom organized by the Inter American Press Association (IAPA) in November 2002 in El Salvador and Costa Rica, within the framework of the Declaration of Chapultepec.³⁷⁴ While there were opposing views on the role of

³⁷² *Id.*, 211

³⁷³ 10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

³⁷⁴ See IAPA press release at: <http://www.sipiapa.com/pressreleases/chronologicaldetail.cfm?PressReleaseID=839>

the press on respecting a person's good name and privacy, there was agreement that libel should not be a criminal offense punishable by imprisonment of journalists when it refers to issues of public interest. A number of experts referred to how the law views certain offenses, attenuating circumstances and liabilities when the information at issue is not published with intent to offend or to the differing treatments when the information is true or false.

20. In the Plan of Action of the Third Summit of the Americas held in April 2001, in Quebec City, Canada, the Heads of State and Government expressed the need for the States to ensure that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws.

21. The above conclusions are valid in that, from the point of view of a purely dogmatic analysis of criminal behavior, *desacato* is simply a special type of libel or slander in which the victim is special (a public official). In offenses against honor no such special condition exists. Therefore, the number of individuals against whom it may be directed is larger, which is not to say that that number cannot be restricted, as is explained below, by excluding state officials, public figures, or, in general, where matters of public interest are concerned.

22. Whether we are dealing with the imposition of a punishment as a result of libel, slander, defamation, or *desacato* is irrelevant. One of the key determinants in the conclusions of the organs of the inter-American system that led them to declare *desacato* laws contrary to the Convention has to do with the nature of the criminal penalty, that is, the effects that a repressive punishment has on freedom of expression. Punishments resulting from the application of ordinary criminal law can also have such an effect. In other words, according to the doctrine of the organs of the inter-American system for protection of human rights, it is necessary to decriminalize speech that criticizes state officials, public figures, or, in general, matters of public interest; the foregoing is so because of the paralyzing effect or the possibility of self-censorship³⁷⁵ caused by the mere existence of laws that provide criminal penalties for those who exercise the right to freedom of expression in such a context.

³⁷⁵ This idea has, in part, been explained in a concrete and concise manner by Germán Bidart Campos in an old article entitled "*La autocensura en la libertad de expresión*" [Self-censorship in freedom of expression] (*El Derecho* magazine Vol. 83 p.895, Buenos Aires, Argentina): "Constitutional law has gone to great lengths to eradicate measures that are restrictive of freedom of expression. In the case of Argentina, the Constitution took the precaution of prohibiting prior censorship [...]. In spite of that, today we believe that in many contemporary societies we are witnessing a phenomenon that is much more difficult to control with laws because it occurs spontaneously, and, in most cases, it is not possible to detect an individual culprit on whom personally to impose a duty to take action. We refer to self-censorship. There are societies that at certain times pass through a critical period in which, for different reasons, people suppress the desire to express ideas freely through the media. In some cases, this may be prompted by prudence, and in others cowardice, satisfaction with the government, or fear of repression. In a nutshell, the phenomenon has to do with the fact that people prefer to keep quiet, dissemble their opinion, silence a criticism, not to voice a doctrine or an opinion. Privately, these people would like to express themselves, but they contain or postpone their expressions for one of the reasons mentioned above. It is not so much out of apathy or indifference [...] but because there are diffuse or direct social pressures that compel people to choose the alternative of silence. And that is pathological; it denotes social sickness, insofar as the stimuli that induce people not to express themselves come from the social milieu [...] We said that generally speaking the person responsible for this situation is not discovered. But sometimes the culprit is the government. If, for instance, journalists become victims of coercion, persecution, obstacles that prevent them from performing their function, repression, or other forms of restrictive conduct, the collective atmosphere dramatically suppresses the possibility of people expressing themselves. The climate is not propitious, and people choose the safety of avoiding exposure to probable injury, over challenge by publicly airing an opinion. Things can go "ill" for those who choose the path of bold expression, and it is unlikely that their response capacity will enable them to overcome the pressure of a hostile environment. Therefore, shut up. There has not been any censorship in the strict sense, but there has been coercion. It can take the form of threat, risk, fear, or a host of other things. And that is what is pathological."

23. Generally speaking, the criminal classifications of slander, libel and defamation refer to the false imputation of criminal offences or of expressions that damage the honor of a person. Undoubtedly, it would be fair to say that these classifications tend to protect rights guaranteed by the Convention. The right to have one's honor respected is protected in Article 11,³⁷⁶ so it could scarcely be said that the criminal classifications of slander and libel, in abstract, violate the Convention. However, when the criminal punishment sought through the application of these classifications targets statements regarding matters of public interest, it would be fair to say, for the reasons described, that the right enshrined in Article 13 is violated, either because there is no pressing social interest to justify criminal punishment, or because the restriction is out of proportion or constitutes an indirect restriction.

24. Offenses against honor emerged as an "expropriation" by the government of conflicts between private individuals: an infringement on the honor or dignity of a person was traditionally settled by a duel between the persons involved. However, this practice began to be regarded negatively, to the point where it was made a punishable criminal act. However, at the same time, so as not to leave besmirched honor "unprotected," it was made a matter for criminal law. That is why the abolition, plain and simple, of offences against honor may not be acceptable at our cultural stage.

25. However, if the argument were used that for the same reasons why the abolition of *desacato* laws is sought, it is necessary to create a mechanism whereby the use of libel or slander laws may not be used in their stead, then, it might be possible, without entirely abolishing offences against honor, to incorporate an absolute excuse in criminal laws that "lifts" punishability when the injured party is a state official or a public figure,³⁷⁷ or a private citizen involved in a matter of public interest. The systematic place given to impunity rules of this type is of no concern; however, it is quite common for countries in the region to have criminal policy reasons to decide not to penalize certain deeds. And it is not a question simply of nullifying crimes against honor; it merely means that in certain specific cases, the deed is not punishable. It should be recalled that grounds for punishment are grounds that give substance to the criminal policy of States. Societies choose when, in certain cases, given values make it preferable not to impose criminal punishment, even though rights are potentially injured. When a criminal code provides that perpetrators of crimes against property are not liable for punishment by reason of kinship,³⁷⁸ it does not mean that the larceny, robbery or fraud is

³⁷⁶ With respect to the right to have one's honor respected, it has always been a complicated matter to determine precisely what that entails. Cesare Beccaria, in the mid-1700s, included a chapter on "Honor" in his work "Of Crimes and Punishments". He says, "Honour is a term which has been the foundation of many long and brilliant reasonings, without annexing to it any precise or fixed idea." (Translated from the French by Edward D. Ingraham. Second American edition). At all events it is not relevant in this case to develop this issue.

³⁷⁷ This could also be proposed as a condition for non-punishability or non-prosecutability. The main thing would be, in the eventuality of a lawsuit, for the foregoing to be examined as a prior objection in order to avoid the criminal trial procedure. On this dogmatic category, see for all, Claus Roxin, *Derecho Penal, Parte General*, Tomo 1, Fundamentos. Editorial Civitas, S.A., Madrid, Section 6.

³⁷⁸ See, Argentine Criminal Code, Title IV: Crimes against Property, Ch. VIII – General Provisions, Art. 185.- Without prejudice to imposition of civil liability, the following are exempt from criminal liability for larceny, fraud or reciprocal damage caused: 1) spouses, ascendants, descendants and direct lineal blood relatives ...; Criminal Code of Uruguay, Volume I, Titles II, Chapter III: Grounds for impunity, Article 41 (Kinship in crimes against property) "Perpetrators of crimes against property, other than the crimes of violent robbery, extortion, abduction, interruption of possession and any other crimes committed with violence, are exempt from punishment in the following circumstances: 1°. When the crime is committed by one spouse to the detriment of the other, provided they are not permanently or provisionally separated in accordance with the law. 2°. By the legitimate descendants to the detriment of ascendants, or by an illegitimate child legally acknowledged or declared as offspring against his or her parents, or vice versa, or by lineal blood relatives, or adoptive parents or children. 3° By siblings living together as a family. Criminal Code of Nicaragua, Chapter

annulled; rather it is merely affirmed that it is not appropriate to apply criminal punishment in response to such offenses when they are committed within a family group. In the opinion of the Office of the Special Rapporteur, statements concerning matters of public interest should be made non-punishable.

26. Finally, another common argument is that a clause such as the one proposed, means, quite simply, that certain people have no honor. This line of reasoning is flawed: officials or public figures have honor but its possible injury is outweighed by another right to which society, in this case, gives precedence. That other right is freedom of expression in both its dimensions: social and individual. An example removed from this debate sheds light on the problem: if, when a fire breaks out, an individual catches fire and the only way to put it out is to use a valuable rug to cover him, no one would say that the rug held no value for its owner before it was scorched by the operation. Quite the opposite: indubitably, the right of possession of the rug's owner will have been infringed, but this right is prevailed over by another, higher right.

27. In cases that involve the application of the laws on offenses against honor, the IACHR, when it argued in favor of the abolition of the crime of *descatao*, considered that the status of freedom of expression outranked opinions on issues of public interest. Furthermore, since state officials and public figures have, generally, easy access to the media to reply to attacks on their honor and reputation, that too is reason to provide less legal protection for their honor.³⁷⁹ Finally, it should be recalled that the IACHR has found that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. Whatever the case, it should be borne in mind that if civil penalties lacked precise limits and could be excessive, they could also be disproportionate under the terms of the Convention.

28. Accordingly, there is no valid objection to decriminalization, albeit partial, of offenses against honor.

D. Final observations: Slim progress in the repeal of *desacato* laws and in legislative reform bills on the offences of libel and slander

29. As mentioned in the introduction to this chapter, the Office of the Special Rapporteur considers that no significant progress has been made in the hemisphere toward the repeal of *desacato* laws. Barring the exceptions detailed below, this offense remains in the criminal codes of all the countries mentioned in the 2000 Report. It is not necessary to repeat the comments on domestic legislations made on that occasion, comments to which the Office of

IX, Common Provisions to Preceding Chapters, Art. 296.- The following are exempt from imposition of criminal liability and subject only to civil liability if they are in default of debt or commit usurpation, robbery, fraud, stellionate, unlawful entry, larceny, theft of livestock, or reciprocal injury: 1) Legitimate ascendants and descendants, adoptive parents or children. 2) Legitimate lineal blood relatives. 3) Spouses. 4) Parents and natural children. 5) Legitimate collateral relatives, to the second degree of consanguinity, inclusive. 6) Parents and publicly acknowledged illegitimate children; Criminal Code of the Republic of Paraguay, Law No. 1.160, Title II, Chapter 1: Punishable Crimes against Property, Art. 175 provides that a relative who lives with the author may be exempted from punishment.

³⁷⁹ See the Draft law to modify the provisions of the National Civil and Criminal Codes of Argentina related to crimes of slander and libel, published in the 1999 Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

the Special Rapporteur refers in this report. All that remains is to explain that the countries mentioned in this section are implementing legislative reform processes in accordance with the recommendations of the Commission and of the Office of the Special Rapporteur, for which reason the states that have not yet embarked on such processes are urged to emulate those initiatives.

30. In 2001 Chile abolished the crime of *desacato* provided in Article 6(b) of the State Security Act. The amendment was introduced by the “Freedom of Opinion and Information and Exercise of Journalism Act” (Act No. 19.733) published in the official gazette on June 4, 2001. Apart from Article 6(b), the Act also repealed other articles of the State Security Act, which dates from 1958; among them, Article 16, which authorized the interruption of publications and broadcasts and the immediate confiscation of publications considered offensive; and Article 17, that extended liability to criminal prosecution to encompass the editors and the printers of the accused publication. Under the new laws, civilian, not military, courts shall hear cases of defamation brought by military personnel against civilians. Furthermore, the 1967 Abusive Publicity Act was abolished. Under this Act a court could prohibit journalistic coverage of a judicial proceeding. The law also guarantees professional confidentiality and protection of sources.

31. Notwithstanding, *desacato* is still recognized as an offense in both the Criminal Code and the Code of Military Justice. The Office of the Special Rapporteur received information that the Executive sent a bill to the Congress design to modify these codes in the matter of *desacato*. The Office of the Special Rapporteur reiterates the observations mentioned in its press release³⁸⁰ when it concluded its visit to that country: The bill represents further progress but the State is urged rapidly to pass it into law. The Office of the Special Rapporteur also received information that there is a bill in the Congress to reform the criminal classifications of offenses against honor and privacy. That initiative is welcome if it meets the parameters set out hereinabove; it would be advisable for it not to delay the discussion and adoption of the bill that abolishes the offense of *desacato*.

32. Costa Rica abolished the offense of *desacato* in March 2002 (Act 8224), by amendment of Article 309 of the Criminal Code. The amended article reads:

Article 309.—**Threatening a state official.** Anyone who personally or publicly, by written, telegraphic, or telephone communication, or through the hierarchical order, threatens a state official based on the performance of his duties shall be punished with one month to two years of imprisonment.

33. Furthermore, the Office of the Special Rapporteur received information that there is a bill before the Congress of this country to reform the Criminal Code insofar as offenses against honor are concerned. The Office of the Special Rapporteur urges the State to press forward with the necessary amendments in accordance with the considerations mentioned in this report.

34. Finally, the Office of the Special Rapporteur received information also that in Peru several bills to abolish the offense of *desacato* have been presented to the Justice Committee in the Congress. It would seem also that there is a bill to decriminalize slander and defamation, if it

³⁸⁰ N° 66/2002

concerns falsehoods or opinions in the press regarding a public official, albeit under certain circumstances.

35. As mentioned at the beginning of this chapter, one can see that little progress has been made since the publication of the 2000 Report. It is encouraging that in the above countries changes have been made or are under consideration. It is hoped that, even taking into account domestic lawmaking processes in each country, these discussions are not delayed and that the bills are rapidly enacted into law. Finally, the Office of the Special Rapporteur urges all the member states to bring their laws into line with the standards to guarantee freedom of expression recognized by the inter-American system for protection of human rights.

CHAPTER VI

FINAL CONSIDERATIONS AND RECOMMENDATIONS

1. The Special Rapporteur for Freedom of Expression points out that, judging by this report, freedom of expression in the Americas remains curtailed in many countries and in a number of different ways.

2. Under the authoritarian regimes that used to hold sway in the Americas, freedom of the press was controlled by brute force, through the confiscation of publications, censorship, arrests, forced disappearances, restrictive laws, and assassinations. Today, many of these old practices have fallen into disuse and yet, at the same time, subtle and sophisticated ways of curtailing freedom of the press have arisen. Nevertheless, it is disturbing to note that assassinations of practicing journalists and other media personnel continue.

3. Most countries in the Hemisphere still have laws prohibiting insults against public officials (*leyes de desacato*). Although these laws are used to start legal proceedings, they rarely conclude with prison sentences, since they have been almost universally condemned by different international human rights organizations. Nevertheless, there is clearly an intent to intimidate journalists by taking them to court in numerous countries in the Hemisphere. Nowadays, many government officials or public figures also resort to more surreptitious ways of silencing their critics. The use of calumny, libel, and slander laws in much the same way as *leyes de desacato* frequently has the same effect of gagging journalists reporting critically on matters of public concern.

4. Many countries also allow no real access to information held by the government, when access of that kind is vital if the right to freedom of expression is to be meaningful. In places where laws allowing access to information have been implemented, they have helped to bring out into the open cases in which government officials have abused the authority vested in them or are guilty of misconduct and to insist on accountability. Nevertheless, in many countries of the region, there are no clear and straightforward procedures through which the press or members of the public can elicit information.

5. Additionally, the Office of the Special Rapporteur, would like to emphasize the need that Member States continue to advance in the promulgation of laws and in the development of policies and practices that guarantee the protection for freedom of expression and opinion. To this effect, the Rapporteurship celebrates the positive actions highlight in Chapter II of this Report, with reference to the abolition of the *desacato* laws in one country of the hemisphere and the promulgation of laws of access to information and/or *habeas data* actions in three counties of the region. The Rapporteurship hopes that these efforts will multiply in the future so as to reflect them in other reports of this Office.

6. The problematic issues mentioned in this report—the safety of journalists, the existence and enforcement of restrictive legislation, the dearth of effective procedures for obtaining access to information, and the lack of effective channels for participation by socially excluded or vulnerable sectors—have been the prime concern of the Office of the Special Rapporteur for Freedom of Expression since its inception. Thus, with a view to safeguarding and strengthening freedom of expression in the Hemisphere, the Rapporteur for Freedom of Expression would like to make the following recommendations to States:

- a. Conduct serious, impartial, and effective investigations into murders, kidnappings, threats, and acts of intimidation against journalists and other media personnel.
- b. Bring those responsible for the murder of, or acts of aggression against, reporters and other media personnel to trial by independent and impartial courts.
- c. Publicly condemn such acts in order to prevent actions that might encourage these crimes.
- d. Promote the repeal of laws defining contempt (*desacato*) as a crime, since they limit public debate, which is essential to the workings of democracy, and are not in keeping with the American Convention on Human Rights.
- e. Promote the amendment of libel and criminal slander laws to prevent them being used in the same way as the *desacato* laws and incorporate into domestic legislation the dual protection system with respect to public and private persons, which in practice means accepting the "actual malice" doctrine.
- f. Enact laws allowing access to information and complementary rules governing their implementation in line with international standards.
- g. Promote policies and practices that effectively permit freedom of opinion and access to information, along with equal participation by all segments of society in such a way that their needs, views, and interests are incorporated in the design of, and decisions on, public policies.
- h. Finally, the Special Rapporteur recommends that the states bring their domestic law into line with the parameters established in the American Convention on Human Rights and that Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression be fully implemented.

7. The Rapporteur thanks all the states that have worked with it this year, as well as the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support. Lastly, the Rapporteur offers a vote of thanks to all those independent journalists and other media personnel who, day after day, fulfill their important function of keeping society informed.