

**ANNUAL REPORT OF THE SPECIAL RAPPORTEUR  
FOR FREEDOM OF EXPRESSION 2003**

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## INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights during its 97<sup>th</sup> regular session in October 1997. But the Office began its day-to-day operations one year later, when the IACHR determined what the general characteristics and functions of the Office would be and decided to appoint the first Special Rapporteur.

2. At the beginning of 2003, the Office published its fifth annual report, and in October of 2003 the Office of the Special Rapporteur for Freedom of Expression completed its fifth year of work for the protection and promotion of freedom of expression in the Americas. The Office's fifth year was a productive one. In 2003, the Office made 3 official visits, participated in more than 10 seminars on freedom of expression, and assisted the Commission in more than 10 individual cases. Additionally, the IACHR published special reports, drafted by the Office of the Special Rapporteur, on freedom of expression in Haiti and Panama. The Office also contributed the chapters on freedom of expression to the IACHR's reports on the human rights situation in Guatemala and Venezuela. These achievements were made possible through the dedication of the Office's staff, as well as the support of a talented group of interns.<sup>1</sup>

3. On this fifth anniversary of the Office's operation, it is appropriate to say some words about the view of the Office of the Special Rapporteur of the situation of freedom of expression in the hemisphere. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have long argued that freedom of expression is an indispensable requirement for the very existence of a democratic society. Historically, freedom of expression has been seen as a necessary tool to protect political freedom but the Office considers that we are at the beginning of a more complex understanding about the importance of freedom of expression: this fundamental right could also be seen as an indispensable tool to favor economic development. And economic development is an important means to strengthen democracy.

4. Given the deepening understanding of the fundamental importance of freedom of expression for political, social and economic development, it becomes all the more urgent to address the many challenges facing freedom of expression in our hemisphere. The Office has highlighted some of these challenges repeatedly in the past five years: aggression against, and murder of, journalists; the lack of laws guaranteeing access to information; and the continued existence of *desacato*, or insult, laws in many of the States in the region.

5. After five years of intense work, the Office believes that it is important today not only to highlight those problems, but also to call attention to some other threats to freedom of expression in the Americas. These are problems such as lack of diversity of the media in some parts of the hemisphere and the financial pressure on the media. Sometimes, lack of professionalism or ethical conduct in the media is mentioned as a threat to freedom of

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<sup>1</sup> The Office would like to thank all of the 2003 interns for their hard work and their important contributions to the promotion and protection of the right to freedom of expression: Megan Hagler, Maria Clara Valencia, Kathleen Daffan, Rachel Jensen, Andrea de la Fuente, and María Rosario Soraide Durán.

expression as well, because this leads to a risk that States will try to control media behavior through legal means.

6. The Declaration of Principles on Freedom of Expression, developed by the Office and approved by the IACHR in 2000, was established as an authoritative interpretation of Article 13 and an important document to help States address these problems and to defend the right to freedom of expression.

7. For example, the Office of the Special Rapporteur recalls that Principle 12 of the Declaration of Principles on Freedom of Expression states that monopolies or oligopolies in the ownership and control of the communications media affect freedom of expression.

8. Based on the language of Article 13.3, Principle 13 states that financial and other types of pressure placed on media by governments violate the right to freedom of expression. The financial pressure placed on the media has different faces: sometimes governments impose specific taxes on the media; sometimes the threat is a consequence of governmental control of the importation of ink or newsprint and sometimes the threat arises when the main source of financing of a media company is the government itself, by paying for public advertising.

9. Finally, in relation to the concern related to the lack of professionalism, the Office would like to draw attention to Principle 6, which states that "[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State." The Office notes that 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. Having said that, the Office underscores that 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. So, the media should take up the challenge of self-regulation, which will impede any threat of imposing legal sanctions for journalistic decisions that are based essentially on subjective insights or professional judgment. Such sanctions are invalid because they have the effect of inhibiting the media and preventing the dissemination of information of legitimate interest to the public.

10. Taking into account some of those threats, this Annual Report includes chapters related to access to information laws and indirect means to limit freedom of expression.

11. The General Assembly of the OAS resolved, in Paragraph 6 of Resolution 1932 (XXXIII-0/03), to "instruct the Inter-American Commission on Human Rights, through the Special Rapporteur for Freedom of Expression, to continue including in its annual report a report on access to public information in the region." Pursuant to this mandate, Chapter IV of this report will summarize the current situation of the OAS member States in relation to the right to freedom of information, in an effort to record the recent developments with respect to this issue in the region. To this end, in July 2003, an official questionnaire was issued to the permanent missions of the member States, requesting them to provide information on constitutional and legal provisions as well as facts about jurisprudence and implementation procedures regarding access to information. The information received from the States has been integrated with research done by public media sources and non-governmental organizations in order to provide an overview of the situation in each member State. In this chapter, the Special Rapporteur reports on his findings with respect to the right of access to information in the region. As is

explained in the Chapter, some States have passed laws guaranteeing this right or are currently considering similar legislation, and civil society has been vigilant in observing the States' progress.

12. This Report also explores the topic of Discriminatory Allocation of Official Publicity. Chapter V is an initial attempt to analyze the impact of government decisions about whether or not to distribute advertisements to various communications media. It is also an appeal to find ways to strengthen and provide for established guidelines and transparency in official decision-making. This Report examines the existing laws and policies throughout the Americas pertaining to distribution of government publicity, and documents allegations of discrimination in the actual allocation of advertising revenue. The multitude of alleged cases is evidence of the widespread nature of indirect violations of freedom of expression, and of the need for a region-wide approach to a solution.

13. The first part of Chapter III of this Annual Report summarizes the jurisprudence on freedom of expression of the European Court of Human Rights. The inclusion of this section responds to an attempt by the Special Rapporteur for Freedom of Expression to comply with the mandate conferred upon him by the Heads of State and Government during the Third Summit of the Americas held in Quebec, Canada, in April 2001. During the Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression, and further held 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." The Special Rapporteur for Freedom of Expression regards the European Court's extensive jurisprudence on the right to freedom of expression as a valuable source that can shed light on the interpretation of this right in the Inter-American system, and serve as a useful tool for legal practitioners and interested people.

14. The second section of Chapter III refers to States' domestic jurisprudence. In this section, the report includes certain decisions by local tribunals that were handed down during 2003 and that reflect the importance of respecting freedom of expression as protected in the American Convention. This section highlights some court decisions that have expressly or implicitly taken account of international standards protecting freedom of expression. As the Office stated last year, when it initiated the practice of disseminating domestic jurisprudence, 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.

15. The rest of the chapters in this report follow the structure of previous annual reports. 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.

16. The five years of intense work of the Office of the Special Rapporteur since the first Special Rapporteur began his activities have established the Office 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. The expectations regarding the Office of the Special Rapporteur have grown significantly. To meet a large part of them, it is

important to reinforce the Office. 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. A few States are giving voluntary contributions. So, it is important to urge, one more time, the States in the region to follow the lead taken by some 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."

17. The challenge for the Office in the coming years is to continue to build upon the hard work and successes of the past five years. The Office's dedicated staff and interns are the key actors in addressing this challenge, but they are by no means the only ones. As previously stated, it will require the political, institutional and financial support of the States of the region. It will also require the participation of journalists and civil society members, who are essential for providing information about violations of the right to freedom of expression. Through a concerted effort of all of these groups, the Americas can advance towards the consolidation of wide-ranging freedom of expression and access to information throughout the region.

## 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.<sup>1</sup>

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,<sup>2</sup> 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.<sup>3</sup> The Commission has also studied the status of freedom of expression and information through on-site visits and in its general reports.<sup>4</sup> Lastly, the Commission has requested precautionary measures for urgent action to prevent irreparable harm to individuals.<sup>5</sup> In several cases, such measures were adopted to ensure full enjoyment of freedom of expression and to protect journalists.

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

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<sup>1</sup> 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.

<sup>2</sup> See Inter-American Court on Human Rights, "The Last Temptation of Christ" Case (Olmedo Bustos et al. v. Chile). Judgment of February 5, 2001, VII Article 13: Freedom of Expression; Francisco Martorell v. Chile in the Annual Report of the IACHR (1996).

<sup>3</sup> 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).

<sup>4</sup> See, *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100 Doc.7 rev., September 24, 1998 and *Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/II. 102 Doc.9 rev.1, February 1996.

<sup>5</sup> Article 25(1) of the Statute of the Commission states that: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."



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 98<sup>th</sup> special session in March of 1998, the Commission determined what the general characteristics and functions of the Office of the Special 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. On March 22, after evaluating the applicants in a public competition, the Inter-American Commission on Human Rights (IACHR) appointed Mr. Eduardo A. Bertoni as Special Rapporteur for Freedom of Expression of the IACHR. Mr. Bertoni took office in May 2002, replacing Mr. Santiago Canton, who is currently the Executive Secretary of the IACHR.

5. In creating the Office of the Special Rapporteur, the Commission sought to stimulate awareness of the importance of the 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 Special 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 processing 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 Heads of State and 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 Heads of State and 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.<sup>6</sup>

8. At the same Summit, the Heads of State and 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.<sup>7</sup>

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.<sup>8</sup>

## **B. The Office of the Special Rapporteur's Principal Activities**

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

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<sup>6</sup> Santiago Declaration, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Process of the Summits from Miami to Santiago", Volume I, Office of the Summit Follow-up, Organization of American States.

<sup>7</sup> Action Plan, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Process of the Summits from Miami to Santiago", Volume I, Office of the Summit Follow-up, Organization of American States.

<sup>8</sup> Third Summit of the Americas, April 20-22, 2001, Quebec, Canada.

States and 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: 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; and works with the parties to achieve friendly settlements within the framework of the Inter-American Commission on Human Rights.

13. Since its creation, 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.

14. 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.

15. 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**

16. Following is a description of the main promotion and dissemination activities carried out by the Rapporteurship in 2003.

17. From January 26 to 28, 2003, the Special Rapporteurship, together with the *Universidad Autónoma de México* (UNAM), held the International Forum “Legal Liability of the Press: Civil or Criminal?” in Mexico City. The Rapporteur made a presentation on the repercussions for the freedom of expression of the abusive use of criminal laws and on the international standards in this area.

18. On February 14 and 15, 2003, the Special Rapporteur traveled to Guatemala City, where he inaugurated a training seminar for journalists on criminal justice. In addition, he participated in presenting the results of a research project on journalism and on dangers faced by journalists in Guatemala, presented by the news agency CERIGUA.

19. From March 18 to 21, the Special Rapporteur participated in the seminar “impunity in the case of threats against the press,” convened by the *Proyecto Antonio Nariño*, the *Fundación para la Libertad de Prensa*, and the Rapporteurship. The seminar was held in the city of Bogotá, Colombia. Participating in the event were the Special Rapporteur and attorney Lisa Yagel, a specialist with the Office of the Special Rapporteur. Some of the conclusions were set forth at the end of the seminar, and were as follows: 1. Threats against journalists should never be underestimated, and it is imperative that they be reported and exhaustively investigated, and that the persons affected cooperate with the justice system. 2. The media should investigate and report these cases publicly. 3. The organizations that defend freedom of expression should train journalists to handle the threats, and prevention and surveillance mechanisms to protect their work should be activated. 4. Actions should be taken to ensure that journalists are better informed of the mechanisms offered by the inter-American system for their protection. 5. Prevention is the main source of protection in the face of the risks journalists face.

20. During its stay in Colombia, the Rapporteurship also had an opportunity to meet with the Director for Human Rights and International Humanitarian Law of the Ministry of Interior and Justice, the Attorney General, the prosecutors of the Human Rights Unit of the Office of the Attorney General, journalists, and members of civil society.

21. The Special Rapporteur was invited to participate in the mid-year and annual meetings of the Inter-American Press Association. The first was held in March in San Salvador, El Salvador, and the second in October, in Chicago, United States of America.

22. On April 9, the Rapporteurship was invited to participate in the National Forum on Freedom of Expression in Nicaragua, organized by the Inter-American Institute of Human Rights in the context of the Project to Promote Freedom of Expression in Central America. Attorney Débora Benchoam, a specialist with the Rapporteurship, participated in the event; she made a presentation on the standards for freedom of expression in the inter-American system.

23. The Office of the Human Rights Ombudsman (*Defensoría del Pueblo*) of Panama, with support from the Special Rapporteurship for Freedom of Expression and the *Consejo Nacional de Periodismo*, organized the forum “Freedom of Expression and Democracy” on April 14 and 15, in Panama City. The Special Rapporteur gave the keynote address, on the topic of incorporating the standards and case-law of the inter-American system on protecting the freedom of expression into domestic law.

24. On May 3, the Special Rapporteur participated, in the city of Kingston, Jamaica, in the celebration of World Press Freedom Day in the context of a seminar organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Mr. Bertoni participated on the panel "Freedom of Expression and Development: Their Relationship." During the seminar sessions, the OAS Rapporteur met with his colleague from the United Nations, Mr. Ambeyi Ligabo. As a result of those conversations, the two rapporteurs issued a joint declaration.

25. On June 3, the Special Rapporteur was invited by the president of Columbia University, in New York, to participate in a working meeting on the challenges facing freedom of the press in Latin America. Mr. Bertoni gave the opening remarks.

26. On June 17, the Special Rapporteur gave a lecture on the activities of the Special Rapporteurship for Freedom of Expression and international standards for the protection of freedom of expression at the School of Law and Social Sciences of the Universidad de Buenos Aires, Argentina. During his stay in Argentina, Mr. Bertoni held meetings with non-governmental organizations and government officials.

27. On June 18, 2003, Lisa Yagel, attorney with the Office of the Special Rapporteur, gave a lecture on the Rapporteurship for Freedom of Expression during the "First external session of human rights education for Latin America of the International Institute of Human Rights (Strasbourg, France)," in Quito, Ecuador. The program was co-sponsored by the *Auditoría Democrática Andina*, the Embassy of France in Ecuador, the French regional delegation for cooperation for the Andean countries, the *Centro Internacional de Estudios Superiores de Comunicación para América Latina* (CIESPAL), and *Sur: Red universitaria de derechos humanos*. It was geared to journalists, journalism students, government officials, and members of civil society.

28. On July 7 and 8, the Special Rapporteur participated in the "Regional Forum on Freedom of the Press," held in Panama City, organized by the Inter-American Institute of Human Rights.

29. The Special Rapporteur participated in a seminar on freedom of expression organized together with the Special Mission of the OAS in Haiti. The seminar was for journalists in both Port-au-Prince and the interior of the country, and was held in Port-au-Prince on July 23.

30. The Special Rapporteur was also invited to the preparatory meeting for the international seminar "Partners Perú 2003: Access to information," organized by the British Council in Lima, Peru, and held on August 14 and 15, 2003. In November, he participated in the seminar as a speaker.

31. On October 9, the Special Rapporteur was invited to participate in the annual ceremony at which the Cabot journalism awards are given out by the Columbia University School of Journalism, in New York.

32. On November 10, the Rapporteurship was invited to participate in the forum "Transparency in Imparting Justice," held in Mexico City. Mr. Bertoni gave a talk on the importance of access to judicial information.

33. On November 13, the Special Rapporteur participated as a panelist in an event on freedom of expression in Latin America and the Caribbean organized by the Inter-American Dialogue in Washington, D.C.

34. The Special Rapporteur was invited to give a lecture at the Columbia University Law School, New York, sponsored by the Columbia Latin American Business Association, of the same university. On November 25, he made a presentation on "Freedom of Speech as a factor in the economic growth of Latin American countries."

## **2. Official visits to countries**

35. From March 21 to 30, the Rapporteurship participated in the visit by the IACHR to Guatemala to carry out a preliminary evaluation of the exercise of freedom of expression there.

36. The Rapporteurship visited Mexico from August 18 to 26, 2003, in order to collect information on issues relating to freedom of expression and access to information there. To that end, the Special Rapporteur met with government officials, journalists, directors of media outlets, representatives of civil society, and academics, among others. Attorney Débora Benchoam participated in the Rapporteurship's delegation.<sup>9</sup>

37. From September 3 to 5, the Rapporteurship made an official visit to Honduras. Attorney Lisa Yagel of the Office traveled with the Special Rapporteur.<sup>10</sup>

## **3. Presentation to the organs of the Organization of American States**

38. On April 2, 2003, the Special Rapporteur made a presentation to the Summits Implementation Review Group of the OAS.

39. From June 8 to 10, the Special Rapporteur was present during the Thirty-Third Regular Session of the General Assembly of the OAS held in Santiago, Chile.

40. On September 10, the Special Rapporteur submitted a document to the Permanent Council containing proposals for better implementing the mandate granted in operative paragraph 5 of Resolution AG/RES. 1932 (XXXIII-O/03). The report<sup>11</sup> is attached as an Annex.

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<sup>9</sup> See Press Release 89, in the Annex section of this report.

<sup>10</sup> See Press Release 91, in the Annex section of this report.

<sup>11</sup> OEA/Ser.G. CP/doc. 3780/03, August 29, 2003.



## CHAPTER II

### EVALUATION OF THE STATUS OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

#### A. Introduction and Methodology

1. This Chapter describes some aspects related to the situation of freedom of expression in the countries of the hemisphere. Following the tradition of previous reports, it also contains a table that reflects the number of assassinations of journalists in 2003, the circumstances and presumed motives for these assassinations, and where the investigations stand.

2. For the purpose of describing the specific situation of each country, the Rapporteurship established a classification of the different methods used to limit the right to freedom of expression and information. It should be noted that all of these acts are incompatible with the Principles on Freedom of Expression adopted by the IACHR. The classification includes assassinations as well as other types of attacks such as threats, detentions, judicial actions, acts of intimidation, censorship, and legislation contrary to freedom of expression. In addition, in some cases positive actions that have taken place are included, among them the adoption of laws to ensure access to information, the repeal of *desacato* laws in one country of the hemisphere, and the existence of legislative proposals or judicial decisions favorable to the full exercise of freedom of expression.

3. This Chapter covers information corresponding to 2003. The Special Rapporteurship for Freedom of Expression receives information from different sources<sup>1</sup> describing the situations related to freedom of expression in the States of the Hemisphere. Once the information is received, and bearing in mind the importance of the matter, it is analyzed and verified. Afterwards, it is grouped based on the categories indicated above, and the Rapporteurship, for the purposes of this Report, reduces the information to a series of paradigmatic examples that seek to reflect the situation of each country as regards respect for and the exercise of freedom of expression, also indicating the positive actions taken and any regression. In most cases cited, the sources of the information are cited. It should be noted that some States are not included because the Rapporteurship received no information about them; their omission should be strictly interpreted in this sense.

4. Finally, the Rapporteurship would like to express gratitude for the collaboration of each of the States and of civil society in the Americas, as a whole, for sending information on freedom of expression. In addition, the Rapporteurship urges these groups to continue and expand such practices in the future, to enrich the future reports.

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<sup>1</sup> The Rapporteurship receives information sent by independent human rights organizations and organizations dedicated to upholding and protecting the freedom of expression, independent journalists who are directly affected, and information requested by the Rapporteurship of the representatives of the OAS member States, among others.



## B. Evaluation

5. In 2003, the exercise of freedom of thought and expression in the hemisphere continued to experience the same kind of problems that have been mentioned by the Rapporteurship in recent years.

6. Based on the information presented in this report, once again there have been assassinations of journalists because of their work. In this regard, the Rapporteurship recalls that the Declaration of Principles on Freedom of Expression, prepared by the Special Rapporteurship on Freedom of Expression and adopted by the Inter-American Commission on Human Rights,<sup>2</sup> is very clear in this regard in Principle 9: assassinations of journalists violate the rights of persons and severely restrict freedom of expression. On three occasions the Rapporteurship noted its concern over this situation through press releases, particularly concerning cases in Colombia and Brazil. A total of seven assassinations are recounted here, though it should be noted that there were other cases of deaths of journalists in which the relationship to their activity was not sufficiently clarified so as to be able to consider them attacks on freedom of expression, without prejudice to the fact that any assassination is worthy of condemnation.

7. Physical attacks and threats also continue to limit the full exercise of freedom of expression. The above-mentioned Principle 9 also decries such situations as restrictive of this fundamental right. While in many countries one can find wide-ranging debate and criticism of government policies in the media, such legitimate activity results in attacks and threats that are unacceptable in a democratic society. Vigorous debate and criticism of government action through the press is found in several countries of the hemisphere, but in Venezuela, Haiti, and Guatemala one finds attacks on critical journalists and media that appear to be motivated by such positions.

8. This year there were social demonstrations, in public places, in several countries of the Hemisphere. Many of them ended in acts of violence, in which the victims included journalists, cameramen, and employees of media who were covering these events. Such situations were found in Venezuela, Guatemala, Peru, Argentina, and Bolivia.

9. Although such attacks may not directly involve state agents, the Rapporteurship notes that it is an obligation under the American Convention not only to respect human rights, but also to ensure their exercise. Accordingly, as the Declaration of Principles states at Principle 9, "It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." The Rapporteurship once again calls on the States to prevent and investigate such acts, and to marshal all appropriate resources needed to carry out this duty, so as to unquestionably assert their will to

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<sup>2</sup> The idea of preparing a Declaration of Principles on Freedom of Expression stemmed from recognition of the need to provide a legal framework to regulate the effective protection of freedom of expression in the hemisphere, incorporating the main doctrines recognized in various international instruments. The Inter-American Commission on Human Rights approved the Declaration prepared by the Rapporteurship during its 108th regular session in October 2000. That declaration is fundamental for interpreting Article 13 of the American Convention on Human Rights. Its approval is not only a recognition of the importance of protecting freedom of expression in the Americas, but also incorporates international standards for the more effective defense of the exercise of this right into the inter-American system. (See <<http://www.cidh.org/relatoria/Spanish/Declaracion.htm>>).

ensure the free exercise of the freedom of expression. Impunity for such acts should be eradicated from the Hemisphere.

10. In addition, judicial actions continued to be brought in the Hemisphere that may have a chilling effect on the exercise of freedom of expression. Criminal proceedings against those who criticize matters of public interest, whether based on *desacato* statutes or other offenses, such as slander, libel, or criminal defamation, persist in the Hemisphere, as reflected in the cases mentioned in Panama, Mexico, Argentina, Brazil, Chile, Costa Rica, Ecuador, Honduras, Jamaica, Paraguay, the Dominican Republic, and Venezuela.

11. These criminal proceedings are possible because many member States continue to have *desacato* statutes on the books. In 2003, only Peru adapted its legislation to Principle 11 of the Declaration of Principles. In the case of Chile, even though the Rapporteurship had found in December 2002 that legislation had been introduced to repeal the *desacato* provisions in its Criminal Code and Code of Military Justice, the debate in Congress was postponed repeatedly. It should be noted that in Honduras, the Attorney General brought a constitutional motion challenging the *desacato* statute. In contrast, in Venezuela, the Supreme Court upheld the *desacato* statute, thus contradicting the recommendations of the IACHR, which was a matter of concern to the Rapporteurship, as was noted in a press release. Those member States that have yet to do so need to amend their criminal laws to bring them into line with the recommendations emanating from the Declaration of Principles on Freedom of Expression.

12. Principle 8 of the Declaration clearly establishes: "Every social communicator has the right to keep his/her sources of information, notes, personal and professional archives confidential." As appears from the information collected by the Rapporteurship, in the United States, Mexico, Honduras, Guatemala, and Peru, actions by the authorities were found that were at odds with this principle. Even though one cannot speak of a widespread practice, the Rapporteurship calls for the fullest respect for this principle.

13. Access to public information, which in 2003 was described by the General Assembly in resolution AG/RES. 1932 (XXXIII-O/03) as an important element for strengthening democracy, continued to be on the agenda of many member States. Nonetheless, there have been few legislative reforms on this matter. Mexico saw auspicious progress on this front, with the entry into force of a federal law, and with at least the introduction of bills in every state of Mexico. Peru also made progress in the process of implementing laws to provide for access to public information, as did Jamaica and Nicaragua.

14. Nonetheless, 2003 was marked by a stagnation of the legislative processes in Guatemala and Argentina, as bills that had been introduced in their legislatures did not become law. In addition, the case-law has been restrictive of access to public information, as found by the Rapporteurship. In Panama, Chile, and the United States, various judges have restrictively interpreted the possibility of gaining access to public information, which is at odds with Principle 4 of the Declaration of Principles.

15. As indicated in the 2002 Annual Report, this year the Rapporteurship continued to note with concern the possibility that the media might not always act responsibly or ethically. It should be reiterated, however, that the media are mainly accountable to the public and not to

the government. It is their essential function in a democracy to inform the public, among other things, of the measures adopted by the government.

16. Self-regulation of the media is a challenge that needs to be addressed given that the threat of legal sanctions for making journalistic decisions based essentially on subjective criteria or professional judgment would also have a chilling effect on the media, hindering the dissemination of information in the legitimate public interest. Journalists and media owners should be mindful of both the need to maintain credibility in the public eye—which is essential if they are to endure—and the essential role of the press in a democratic society. In the Plan of Action adopted at the Third Summit of the Americas held in April 2001 in Quebec City, Canada, the Heads of State and Government indicated that the Governments will foster self-regulation of the media.

17. Principle 12 of the Declaration of Principles expressly indicates that monopolies or oligopolies in media ownership and control must be subject to anti-trust laws, as it is undemocratic to restrict the plurality and diversity that ensure the full exercise of citizens' right to information. The concentration of media ownership impedes the plural and diverse expression of the various sectors of society. It is a practice which, based on the reports the Rapporteurship has received, appears to be on the rise in the Hemisphere. In response, the Rapporteurship insists on compliance with the principle mentioned.

18. Finally, and as has been indicated in previous reports, the Rapporteurship continues to consider that the member States need to have a greater political will to carry out reforms in their legislation guaranteeing every society the full exercise of freedom of expression and information. Democracy requires broad freedom of expression, yet it cannot be furthered if mechanisms that impede full respect for freedom of expression remain in place in the States. The Rapporteurship reiterates the need for the States to make a stronger commitment to respect this right so as to attain the consolidation of the democracies in the Hemisphere.

### **C. Status of freedom of expression in the Member States**

#### **ARGENTINA**

##### **Threats and attacks**

19. The Rapporteurship received information on threats to and attacks on journalists, some perpetrated by official agents in the context of popular demonstrations.

20. The Rapporteurship has also found, according to the information it has received, that journalists who work in the interior of the country suffer threats, attacks, and harassment to which the authorities should give special attention.<sup>3</sup> Reported here are some of the main cases of attacks reported in 2003.

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<sup>3</sup> Towards the end of 2003, the Office of the Special Rapporteur received information on the situation of freedom of expression in the province of Santiago del Estero in a Report by the Association for the Defense of Independent Journalism (PERIODISTAS). Given the seriousness of the reported facts, the Office will continue to monitor the development of the situation in the province.

21. The Rapporteurship was informed of attacks on and threats to Clara Britos, owner and director of the newspaper *La Tapa*, in Guernica, a locality situated to the south of Buenos Aires, the capital city of Argentina. In its 2002 annual report, the Rapporteurship had reported on her situation. In 2003, at the request of the Rapporteurship, the State reported that the Ministry of Security of the Province of Buenos Aires reported that there was no formal complaint lodged in relation to a fire reported by Britos and that she was not given attention by firefighters but by the local residents. In addition, it reported that the expert study was unable to verify the cause and origin of the fire.<sup>4</sup> The journalist sought political asylum from the Spanish government, invoking humanitarian considerations in the face of the prosecution and alleging that she suffers threats from the police and the political authorities.<sup>5</sup> Since the threats have persisted, the Rapporteurship will continue observing this case.

22. On February 25, 2003, in the city of Buenos Aires, several reporters who were covering the eviction of 100 persons from the Padelaide building, considered to be in danger of collapse, were injured. The operation led to confrontations between police officers and the persons being evicted. In this context, several members of the Infantry Guard (*Guardia de Infantería*) of the Federal Police beat Julián Sequeira, a cameraman from the program *Punto Doc*, which airs on the *América TV* channel, fracturing his nose. Sequeira was detained at the 14th police station before being taken by police to the hospital, and his camera and the videotapes with coverage of the eviction disappeared. Maximiliano García Solla, also of the program *Punto Doc*, was detained and released the same day, but charges were pressed against him for resisting the authorities.<sup>6</sup> Cameraman Michael Carcachi, of *América TV*, who was clearly identified as a journalist, was also attacked with clubs by police while filming a young person who had been injured.<sup>7</sup>

23. On March 6, 2003, Christian Frolich, photographer with the daily newspaper *Crónica*, was attacked by Federal Police agents in the context of a demonstration of street vendors in the neighborhood of Once. According to the information received, he was kicked in the ankles and punched by the police when trying to photograph police efforts to repress the demonstration.<sup>8</sup>

24. On March 26, 2003, at least five journalists were attacked by members of the Argentine Federal Police in front of the national Congress. The attacks occurred as the Senate

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<sup>4</sup> Communication from the Permanent Mission of Argentina to the OAS to the Special Rapporteur for Freedom of Expression, October 29.

<sup>5</sup> Association for the Defense of Independent Journalism (Asociación por la Defensa del Periodismo Independiente, Periodistas), February 17, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm); El Mundo (Spain), "Una periodista argentina pide asilo político en España", <[www.elmundo.es](http://www.elmundo.es)>, April 13, 2003, [www.elmundo.es](http://www.elmundo.es)

<sup>6</sup> Committee to Protect Journalists (CPJ), February 28, 2003, [www.cpj.org](http://www.cpj.org) ; Association for the Defense of Independent Journalism (Asociación por la Defensa del Periodismo Independiente, Periodistas), February 26, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

<sup>7</sup> Canadian Journalists for Free Expression (CJFE), February 26, cited in International Freedom of Expression Exchange (IFEX), February 28, 2003; El Clarín (Argentina), "Agresión policial contra dos periodistas de TV," February 26, 2003, <[www.clarin.com.ar](http://www.clarin.com.ar)>; Reporters Without Borders (RSF), February 27, 2003, [www.rsf.org](http://www.rsf.org).

<sup>8</sup> Journalists against Corruption (Periodistas Frente a la Corrupción, PFC), 7 de marzo de 2003 en: [www.portal-pfc.org](http://www.portal-pfc.org), Press Workers Union of Buenos Aires, (Unión de Trabajadores de Prensa de Buenos Aires, UTPBA), March 6, 2003, [www.utpba.com.ar](http://www.utpba.com.ar), March 10, 2003; (Asociación por la Defensa del Periodismo Independiente, Periodistas), March 10, 2003 [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

was deciding whether to expel legislator Luis Barrionuevo, of the Partido Justicialista. Carlos Alberto Márquez and Arturo Núñez of *Canal 26*, Javier Caudana and Guillermo Panizza, of *Telefé*, were beaten. A producer for the program *Kaos en la Ciudad*, of *Canal 13*, reported that the police had thrown paralyzing gas in his face.<sup>9</sup>

25. On April 21, 2003, members of the Argentine Federal Police assaulted and detained press workers during incidents that occurred in front of a textile factory situated in central Buenos Aires. About 3,000 people had met in front of the factory to protest the workers' eviction from the plant. Several journalists who covered the event were detained and beaten. According to the information received, Martín Ciccio and cameraman Alfredo Guirlanda of the program *Informe Central* of the *América* channel were hit by rubber bullets. The correspondent of the U.S. network *Telemundo*, Edgar Esteban, was going to be detained by the police, but his colleagues intervened to prevent the arrest. Journalist Miguel Bonasso, of the daily *PÁGINA 12*, was surrounded for two-and-a-half hours by police and a group of people at a gas station near the factory.<sup>10</sup>

26. On May 14, 2003, Marcelo López, journalist with *América 2*, and his cameraman were attacked by some partisans of former president and then-candidate for the presidency Carlos Menem, while standing in front of a house where Menem was. Some of their equipment was damaged. According to the information received, both were expelled by the police.<sup>11</sup>

27. On August 12, 2003, in the province of San Luis, journalists Damián Cukierkorn, and Ariel Burta, both of the program *Periodistas* on *América TV*, and Mauricio Conti, a local press worker, were assaulted and intimidated by bodyguards for the governor of San Luis, Alberto Rodríguez Saá, after photographing a property allegedly owned by the governor.<sup>12</sup> According to the information received, the journalists were investigating the diversion of a river supposedly done at the behest of Rodríguez Saá for his own benefit. The journalists were invited onto the property by the personnel, but once inside they were identified as members of the program *Periodistas*. The reporters had to leave, but a few minutes later, outside the property, they realized they were being followed by a vehicle being driven by the Governor's workers, who pushed them, with their car, and forced them to stop. The persons got out of the vehicle with guns, insulted them, and roughed up Mauricio Conti. Then they let them go.<sup>13</sup>

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<sup>9</sup> International Freedom of Expression Exchange (IFEX), [www.ifex.org](http://www.ifex.org), La Asociación para la Defensa del Periodismo Independiente (Asociación por la Defensa del Periodismo Independiente, Periodistas), March 28, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm); Press Workers Union of Buenos Aires, (Unión de Trabajadores de Prensa de Buenos Aires, UTPBA), March 27, 2003, HYPERLINK "<http://www.utpba.com.ar>" [www.utpba.com.ar](http://www.utpba.com.ar).

<sup>10</sup> Association for the Defense of Independent Journalism, (Asociación por la Defensa del Periodismo Independiente, Periodistas), April 22, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm); Committee to Protect Journalists (CPJ), June 11, 2003., [www.cpj.org](http://www.cpj.org).

<sup>11</sup> Reporters Without Borders (RSF), May 15, 2003; [www.rsf.org](http://www.rsf.org), Association for the Defense of Independent Journalism (Asociación por la Defensa del Periodismo Independiente, Periodistas), May 14, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

<sup>12</sup> Argenpress, August 13, 2003, [www.argenpress.info](http://www.argenpress.info); and Journalists against corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>13</sup> Association for the Defense of Independent Journalism (*Asociación por la Defensa del Periodismo Independiente, Periodistas*), August 12 and 19, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

28. In the early morning of November 28, 2003, journalist Adriana Rivero, anchor of the program *Primer Contacto*, in *RLV1 Radio Regional*, in Las Varillas, province of Cordoba, was warned that her vehicle was on fire. The inspection report by the Cordoba Police held that the instrument that caused the fire was a Molotov cocktail. Rivero had received numerous threatening telephone calls in the two weeks before the attack. The journalist believes that the threats and attacks are related to her critical reports on local government matters.<sup>14</sup>

### Judicial actions

29. On March 6, 2003, a federal judge issued an international arrest warrant for journalist Olga Wornat, in the context of a defamation (*calumnias e injurias*) case brought by Senator Eduardo Menem for publication of the book *Menem, la vida privada*. Wornat, who resides in Mexico, did not come forward to testify as the accused.<sup>15</sup>

30. The Supreme Court of Justice confirmed, in May 2003, the judgment of the trial court favorable to José Luis Chilavert in a trial for defamation (*calumnias e injurias*) that the Paraguayan goalie had brought against the defunct magazine *Humor* in 1995. The judgment required that the magazine pay compensation totaling 10 million pesos for moral injury, set by Chamber B of the Court of Appeals for Commercial Matters. The case arose from a September 20, 1995 publication entitled "*Chilavert nunca dice lo que dice*" ("Chilavert never says what he says").<sup>16</sup>

31. On May 28, 2003, the offices of the newspaper *La Nación* were raided. The measure was ordered by the federal courts in Buenos Aires. The company made the documentation requested available to the court, but reported that it had not been requested beforehand. The measure was criticized by some local and international organizations,<sup>17</sup> given that it could be associated with pressures being brought to bear on the media.

### Legislation

32. On May 8, 2003, the Chamber of Deputies approved an access to public information bill that develops the right of access to information, which was incorporated in the Constitution in 1994.<sup>18</sup> The bill enables citizens to gain access to information from official agencies and classified information that is more than 10 years old in possession of the State. However, the bill is held up in the Senate Committee on Constitutional Affairs and Impeachment Trials.<sup>19</sup> On December 4, 2003, President Kirchner signed Decree No. 1172/2003, which allows

<sup>14</sup> Association for the Defense of Independent Journalism (*Asociación por la Defensa del Periodismo Independiente, Periodistas*), December 5, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

<sup>15</sup> *La Capital*, March 7, 2003, [www.diariolacapital.com](http://www.diariolacapital.com).

<sup>16</sup> *Futbol argentino*, May 28, 2003, [www.futbolargentino.com.ar](http://www.futbolargentino.com.ar)

<sup>17</sup> Association for the Defense of Independent Journalism (*Asociación por la Defensa del Periodismo Independiente, Periodistas*), May 29, 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm); Inter-American Press Association (IAPA), May 28, 2003, [www.sipiapa.org](http://www.sipiapa.org); *La Nación* (Argentina), "*Inquietud de la prensa internacional por el allanamiento*", June 5, 2003, [www.lanacion.com.ar](http://www.lanacion.com.ar).

<sup>18</sup> *La Nación* (Argentina), "*Diputados aprobó el acceso a la información*", May 9 2003, <[www.lanacion.com.ar](http://www.lanacion.com.ar)>; *Clarín* (Argentina), "*Contra la cultura del secreto de Estado*", May 19, 2003, [www.clarin.com](http://www.clarin.com).

<sup>19</sup> *El Clarín* (Argentina), "*Apoyan medida de Kirchner*," in <[www.clarin.com.ar](http://www.clarin.com.ar)>, October 21, 2003

any person to request access and receive information from any organ or entity under the jurisdiction of the Executive. The Decree establishes certain exceptions such as when information is reserved for reasons of safety, national defense or is protected by bank or fiscal secrecy.<sup>20</sup> Notwithstanding this decree, the Rapporteurship encourages the Senate to move forward with the previously-mentioned legislation until it is adopted and enacted.

### **Indirect violations**

33. The Office of the Special Rapporteur for Freedom of Expression has received information regarding an alleged instance of discriminatory allocation of official publicity in the province of Neuquén. Julio Rajneri, the main shareholder of the publishing firm responsible for the daily newspaper *Río Negro*, brought a claim before the Supreme Court of Argentina alleging that the Neuquén provincial government had used discriminatory allocation of official advertising when it notified the newspaper that it would no longer purchase advertising space, as it had done during the previous years, after the newspaper reported on allegations of corruption in the provincial government.<sup>21</sup>

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<sup>20</sup> *El Clarín* (Argentina), "Kirchner firma un decreto para crear transparencia y controlar lobbies", October 20, 2003, in: [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>21</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), January 9, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); *Río Negro* (Argentina), "IAPA prepares a document to adhere to the presentation", January 24, 2003., [www.rionegro.com.ar](http://www.rionegro.com.ar).

## BELIZE

### Threats

34. Investigative journalist Melvin Flores, of Honduran nationality, was forced to leave after receiving several threats. Flores received intimidating phone calls on February 7, 2003, after publishing information on alleged acts of corruption by Belizean public officials in the weekly *Amandala*. That same day, two persons approached his wife to inform her that they wanted to have a private meeting with him. Afterwards, the same persons were seen watching the house.<sup>22</sup>

## BOLIVIA

### Threats and attacks

35. On January 21, 2003, photojournalist Jorge Landaeta, of the newspaper *Los Tiempos*, and journalist Javier Alanoca, of *Radio Fides*, were victims of an attack by a police officer when they were covering a demonstration.<sup>23</sup> The next day, Bolivian press workers organized a protest against these attacks in Plaza Murillo, in La Paz, which was dispersed by the police by the use of beatings and tear gas. Due to the social situation, Plaza Murillo was considered by the state security agencies as a security area to which no individual or entity was allowed access for the purpose of any social protest. Days later, when the organizations and institutions of press workers from all over Bolivia announced a march for January 31, to protest the alleged meddling in and political pressures brought to bear on the media, government officials announced that the demonstration would be allowed.

36. On February 12, 2003, cameraman Toribio Kanki of *UNITEL* was wounded by a bullet in the right ankle while filming a public demonstration. During the same events, journalist Gonzalo Rivera, also of *UNITEL*, was beaten and kicked by civilians who tried to take away his equipment. Channels *Siete* and *Bolivisión* interrupted their broadcasts until the next day to guarantee the security of their facilities and staff.<sup>24</sup> On February 13, 2003, photographer Juan José Torrejón of *La Prensa* was injured when the lid of a tear gas canister hit his leg.<sup>25</sup>

37. In September and October, 2003, the city of El Alto, in the department of La Paz, was the scene of many demonstrations. According to the information received by the Office of the Special Rapporteur, over several weeks, several journalists who sought to cover these demonstrations were subject to attacks by demonstrators, leading the newspaper *La Razón* to decide to stop covering the demonstrations in El Alto.<sup>26</sup> The demonstrations grew more intense as of October 11, resulting in more than 70 persons killed and 200 injured. In this context, on

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<sup>22</sup> Committee to Protect Journalists (CPJ), March 14, 2003, in: [www.cpj.org](http://www.cpj.org); and International Freedom of Expression Exchange (IFEX), March 17, 2003 in, [www.ifex.org](http://www.ifex.org).

<sup>23</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), January 23, [www.pfc.or](http://www.pfc.or); *El Deber* (Bolivia) <<http://www.buscabo.net>>, February 12, 2003.

<sup>24</sup> International Freedom of Expression Exchange (IFEX), February 14, 2003, [www.ifex.org](http://www.ifex.org)

<sup>25</sup> International Freedom of Expression Exchange (IFEX), February 17, 2003. [www.ifex.org](http://www.ifex.org)

<sup>26</sup> *Instituto Prensa y Sociedad* (IPYS) September 24, 2003, [www.ipys.org](http://www.ipys.org)



October 15, the broadcast facilities of *Radio Pío XII* and *Canal 13 Universitaria de Televisión*, located in Oruro, south of La Paz, were the target of an attack using explosives that impeded both from continuing to broadcast. This incident led the Special Rapporteurship for Freedom of Expression to issue a press release.<sup>27</sup> The *Red Educación Radifónica de Bolivia (Red ERBOL)*, which includes *Radio Pío XII*, was said to have received several threats against its journalists prior to the attack.<sup>28</sup> That same day, Eduardo Pinzón, a cameraman with Radio Televisión Española, was attacked by sympathizers of the Movimiento al Socialismo (MAS), and *Canal 36-Cadena A de Televisión* and *Radio Televisión Popular* also suspended their broadcasts for several hours after having received threats.<sup>29</sup>

## BRAZIL

### Assassinations

38. Nicanor Linhares Batista was assassinated at approximately 8:00 p.m. on June 30, 2003, while taping his daily program *Encontro Político*. Linhares Batista, 42 years old, was the owner and manager of *Rádio Vale do Jaguaribe*, in the city of Limoeiro do Norte. According to the information received, the assassins suddenly entered the studio, fired several shots at point-blank range, and fled on a motorcycle. Linhares was taken to the Public Hospital of Limoeiro do Norte, but was declared dead on arrival.<sup>30</sup> According to the information received, Linhares Batista was known as a controversial journalist who was accustomed to confronting the local public administration and had previously been harassed for this reason. The Rapporteur for Freedom of Expression issued a press release condemning his assassination.<sup>31</sup>

39. The Police investigation led to the detention, in August, of five persons. Among them was an Army sergeant, Edesio de Almeida, suspected of being an intermediary in the murder. On October 10, 2003, Francisco Lindenor de Jesus Morua Juniro was detained and confessed to having been paid for killing Linhares. On October 20, 2003, the Attorney General's Office filed an accusation against José María Lucena, judge of the Federal Regional Tribunal of the fifth region, and his wife, Arivan Lucena, mayor of Limoeiro do Norte, suspected of being the intellectual authors of the murder. At this writing, three other suspects were reportedly fugitives from justice.<sup>32</sup>

40. On July 23, 2003, Brazilian photojournalist Luiz Antônio da Costa, who worked for the magazine *Epoca*, owned by *Editora Globo S.A.*, was assassinated by gunfire in São Bernardo do Campo, in the state of São Paulo, when taking photographs of a land invasion by

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<sup>27</sup> Press Release from the Special Rapporteur for Freedom of Expression 93/03 <http://www.cidh.org/Relatoria/English/PressRel03/PRelease9303.htm>.

<sup>28</sup> AMARC, October 16, 2003.

<sup>29</sup> Committee to Protect Journalists (CPJ), October 17, 2003, [www.cpj.org](http://www.cpj.org).

<sup>30</sup> International Freedom of Expression Exchange, July 3, 2003, [www.ifex.org](http://www.ifex.org); Inter-American Press Association (IAPA) July 3, 2003, [www.sipiapa.com](http://www.sipiapa.com); and International Freedom of Expression Exchange (IFEX), July 8 2003, [www.ifex.org](http://www.ifex.org)

<sup>31</sup> Press Release from the Special Rapporteur for Freedom of Expression 82/03 at: <http://www.cidh.org/Relatoria/English/PressRel03/PRelease8203.htm>.

<sup>32</sup> *Jornal do Comercio do Rio de Janeiro (Brasil)*, "Desembargador denunciado como mandante de crime", [www.jornaldocomercio.com.br](http://www.jornaldocomercio.com.br); Inter-American Press Association (IAPA), country reports, october 2003, [www.sipiapa.com](http://www.sipiapa.com).

some 7,000 persons of a lot owned by an auto company. According to the information received, some leaders of the families who entered the lot were speaking with the journalists when approximately three persons arrived and shot at da Costa. The police detained three suspects on July 30. One of them confessed to having killed the photographer accidentally when he was aiming at his camera. According to the suspect's confession, the three persons suspected that da Costa had taken photographs during a robbery they had just committed.<sup>33</sup>

### Judicial actions

41. In August, 2003, Alvanir Ferreira Avelino, publisher of the newspaper *Dois Estados*, of the city of Miracema, was detained in the city of Campos, state of Rio de Janeiro. He was convicted and sentenced to 10 months and 15 days imprisonment for the crimes of defamation and slander. The decision was affirmed on July 3, 2001, by the Second Chamber for Criminal Matters of the State of Rio de Janeiro. The accusation was based on two articles written in 1998 and 1999, in which the journalist called into question a judge's decisions.<sup>34</sup>

### Investigations

42. On September 15, 2003, a former member of the military police from the state of Mato Grosso, in central Brazil, confessed to having assassinated Domingos Sávio Brandão, owner of the newspaper *Folha do Estado*. In addition, he noted that a former member of the civilian police and entrepreneur of clandestine gambling operations had been the mastermind. Brandão was assassinated on September 30, 2002, in the city of Cuiabá. During the two years prior to the incident, Brandão's daily newspaper had published reports on organized crime in Mato Grosso.<sup>35</sup>

43. On September 27, 2003, the trial court (*Tribunal do Júri*) of Itabuna, in the state of Bahia, sentenced civilian police officer Mozart de Costa Brasil to 18 years imprisonment for having assassinated the owner and director of the weekly *A Região*, Manoel Leal de Oliveira, on January 14, 1998.<sup>36</sup> Thomaz Iraci Guedes, accused of participating in the case, was acquitted on September 25. At the time this report was being finalized, a third accused was still a fugitive.

### Access to information

44. In July 2003, a federal judge in Brasília ordered the Brazilian Army to open its archives and disseminate information on a guerrilla group that operated in the Amazon region during the military regime (1964-1985). The order led to a request submitted by the family members of 22 guerrillas considered to have disappeared. It was determined that the

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<sup>33</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), July 24, 2003, [www.portal-pfc.org](http://www.portal-pfc.org) ; Committee to Protect Journalists (CPJ), at [www.cpj.org](http://www.cpj.org).

<sup>34</sup> Inter-American Press Association (IAPA), September 5, [www.sipiapa.com](http://www.sipiapa.com); Reporters without Borders, September 4, [www.rsf.fr](http://www.rsf.fr), and decision of Criminal Appeal No. 2000.050.05015 of the Second Court for Criminal Matters of the State of Rio de Janeiro.

<sup>35</sup> Association for the Defense of Independent Journalism (Asociación por la Defensa del Periodismo Independiente, Periodistas), 19 de setiembre de 2003, [www.asociacionperiodistas.org/asociacion/asocia.htm](http://www.asociacionperiodistas.org/asociacion/asocia.htm).

<sup>36</sup> International Freedom of Expression Exchange (IFEX), September 18, 2003; and Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com)

applicants have the right to know where their family members were buried and to receive the respective death certificates.<sup>37</sup>

## CANADA

### Positive actions

45. On June 24, 2003, a Superior Court of Justice dismissed a libel suit seeking \$2.7 billion in damages, filed by the Toronto Police Association against *Toronto Star Daily Newspapers Ltd.* The lawsuit was motivated by a series of reports published in the *Toronto Star* that made reference to differences in the treatment that the police gave Afro-descendants, based on police data.<sup>38</sup>

## CHILE

### Attacks

46. On September 3, 2003, Domingo Kokisch, a member of the Supreme Court, called journalist Ximena Marré and editor Mario Ovalle, both of the newspaper *El Mercurio*, to his office to clarify information published by that newspaper regarding a case of theft of classified financial information. During that meeting, Kokisch spoke with the journalists using an aggressive tone and asked journalist Marré who her sources were for the story. The journalist refused to answer and Kokisch then expelled them from his office. As they exited, Kokisch pushed Ovalle and tried to slap him, but he moved out of the way. Several days later, Kokisch said he regretted the events in question and, in a meeting with the director of *El Mercurio*, Juan Pablo Illanes, personally apologized for the incident. On September 9, 2003, the director of the newspaper *La Nación*, Alberto Luengo, revealed that on January 7, 2003, Luis Narváez, a journalist with *La Nación Domingo*, was beaten and threatened by Kokisch for having asked him about the Supreme Court's consideration of whether to lift the immunity of four deputies of the political group Concertación, which had allegedly been tied to a case of corruption. Narváez said that he did not report the incident in a timely fashion since he assumed, given the lack of witnesses, that no one would believe his testimony.<sup>39</sup>

### Judicial actions

47. On January 13, 2003, in a divided opinion, the Second Chamber of the Court of Appeals of Santiago affirmed the seizure of all of the copies of the unauthorized biography *Cecilia, la vida en llamas*, by journalist Cristóbal Peña. The decision thus affirmed the resolution handed down December 2, 2002 by alternate judge Sandra Rojas of the First Court for Criminal Matters of the Chilean capital, who, in the context of a defamation (*injurias*) trial, issued the order to withdraw all copies of the biography from the warehouses of Editorial

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<sup>37</sup> *Diario ABC* (Paraguay) "Ordenan al Ejército brasileño informar sobre desaparecidos", July 24, 2003.

<sup>38</sup> Canadian Journalists for Free Expression (CJFE), June 24, 2003, [www.cjfe.org](http://www.cjfe.org).

<sup>39</sup> Journalists against Corruption (Periodistas Frente a la Corrupción, PFC), September 11, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); Juan Manuel Ugalde, "Dos veces este año el ministro de la Suprema ha agredido a periodistas: Los golpes de Kokisch," *La Nación*, September 7, 2003, [www.lanacion.cl](http://www.lanacion.cl).

Planeta and from the sales outlets.<sup>40</sup> In late May 2003, the First Court for Criminal Matters lifted the seizure order and closed the case, after Peña's representatives asked the court to decree that the complainant had abandoned the proceedings.<sup>41</sup>

48. On July 23, 2003, a panel of judges of the Court of Appeals of Santiago ordered *Televisión Nacional de Chile (TVN)* not to broadcast an episode of the documentary series *Enigma*, scheduled to be shown that same day. The program investigated and recreated the circumstances around the assassination of attorney Patricio Torres Reyes, who was stabbed to death and burned by two prostitutes after a sexual encounter in his office on December 17, 1999. The widow of Torres filed a *recurso de protección* before the Court of Appeals of Santiago to ban the program, arguing that it violated her constitutional right to honor, as well as the right to honor of her children. This incident was the subject of a press release by the Special Rapporteur for Freedom of Expression on July 29.<sup>42</sup> On October 1, the Fifth Chamber of the Court of Appeals denied the *recurso de protección* and lifted the censorship of the program.<sup>43</sup>

49. On April 16, 2003, the Sixth Chamber of the Court of Appeals of Santiago reported the denial of two *recursos de protección* that had been filed against the play *Prat*. The objective of the motions was to ban any performance of the play. The Sixth Chamber argued that granting the motion would be tantamount to prior censorship, which is expressly prohibited by the Constitution and by the American Convention on Human Rights.<sup>44</sup>

50. On January 31, 2003, businessman and television commentator Eduardo Yáñez was found guilty, in a trial court, of the crime of contempt (*desacato*) of the Supreme Court. The judge set a penalty of 61 days imprisonment plus a fine of 11 Monthly Taxation Units (equivalent to 321,673 pesos, or US\$460). Yáñez appealed the verdict to the Court of Appeals of Santiago, which acquitted him on April 2, 2003.<sup>45</sup>

51. In October 2003, a judge from the Second Court for Criminal Matters of Santiago decided to bring to trial the director of the daily newspaper *La Nación*, Alberto Luengo, and journalist Jazmín Jalilie, in the wake of a publication in which it was reported that there had been judicial problems between soccer player Marcel Salas and his former father-in-law Patricio

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<sup>40</sup> *Instituto Prensa y Sociedad (IPyS)*, January 14, 2003, [www.ipys.org](http://www.ipys.org)

<sup>41</sup> *Instituto Prensa y Sociedad (IPyS)*, May 30, 2003, [www.ipys.org](http://www.ipys.org).

<sup>42</sup> Press Release from the Special Rapporteur for Freedom of Expression 87/03, <http://www.cidh.org/Relatoria/Spanish/Compren2003/ComPren8703.htm>.

<sup>43</sup> Committee to Protect Journalists (CPJ), July 29, 2003, [www.cpj.org](http://www.cpj.org); Human Rights Watch, July 25, 2003; Reporters Without Borders, July 31, 2003, [www.rsf.fr](http://www.rsf.fr); Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), October 2, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); Committee for the Public Interest Advocacy (*Comité pro Defensa Ciudadana*), October 1, 2003.

<sup>44</sup> *Instituto Prensa y Sociedad (IPyS)*, April 24, 2003, [www.ipys.org](http://www.ipys.org). For more information on this issue see the Annual Report of the Special Rapporteur for Freedom of Expression, 2002, Chapter II, para. 55.

<sup>45</sup> *Instituto Prensa y Sociedad (IPyS)*, February 3, 2003 and April 3, 2003, [www.ipys.org](http://www.ipys.org); Committee to Protect Journalists (CPJ), February 6, 2003, [www.cpj.org](http://www.cpj.org). For more information on this issue, see the Annual Report of the Special Rapporteur for Freedom of Expression, 2002, Chapter II, para. 53.

Messen. The journalists were accused of committing defamation (*calumnia*) against Mr. Messen.<sup>46</sup>

## Legislation

52. In his 2002 Annual Report, the Rapporteur indicated his satisfaction at the existence of two bills to repeal the *desacato* laws. In particular, on August 26, 2002, President Lagos urgently sent the Congress Presidential Law 212-347, which would do away with the *desacato* laws that remain in Chilean legislation.

53. On March 6, 2003, in a note to the Minister of Foreign Affairs of Chile, Soledad Alvear, the Rapporteur expressed his concern over statements by President Ricardo Lagos regarding his intent to cease considering the bill a matter of “straightforward urgency” (“*urgencia simple*”). The State responded to the Rapporteur’s concern through its permanent mission to the OAS on March 25. In its response, the State indicated that the time for considering the bill had expired in January 2003. Nonetheless, the State emphasized that the Ministry of the General Secretariat of the Government (*Ministerio Secretaría General de Gobierno*) of Chile would seek to include the legislation to repeal the *desacato* laws among the urgent initiatives it would be dispatching for legislative consideration.

54. The Special Rapporteur considers that, even though the bill has not been approved more than a year-and-a-half after it was presented, it is extremely auspicious that, on December 9, 2003, the Chamber of Deputies of Chile approved, by a wide majority, the bill to repeal the *desacato* provisions from the Criminal Code and the Military Justice Code. At this writing, the proposal had been sent to the Senate for its second step in the constitutional procedure.

55. Despite these steps leading to the repeal of the *desacato* laws, the Rapporteurship was informed of the existence of another bill related to the protection of persons’ honor and privacy. The Rapporteurship encourages the deputies to take into account the international standards and the Declaration of Principles on Freedom of Expression in the discussion of this bill, so that it can be compatible with the full and uninhibited exercise of freedom of expression.

## COLOMBIA

### Assassinations

56. The assassination of journalists is the most brutal form of silencing criticism and of attacking not only the right to life, but also the right to freedom of expression. In the course of the year, the Rapporteurship for Freedom of Expression received information on ten violent deaths of journalists in Colombia. This report does not include all of these, not because they were unimportant, but because in some cases there were details that were impossible to

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<sup>46</sup> *El Mostrador*, “Rechazan procesamiento contra periodistas de La Nación,” October 7, 2003, [www.elmostrador.cl](http://www.elmostrador.cl); Luis Narváez, “Jueza desestima injurias contra Salas, pero procesa al director y periodista,” *La Nación*, October 7, 2003, [www.lanacion.cl](http://www.lanacion.cl); “Colegio de periodistas solidariza con profesionales de la Nación,” *El Mostrador*, October 8, 2003, [www.elmostrador.cl](http://www.elmostrador.cl); “Colegio de periodistas solidariza con la Nación”, *La Nación*, 8 de octubre de 2003, [www.lanacion.cl](http://www.lanacion.cl).

confirm or clarify as of the moment when this report was completed. For this reason, and mindful of the complex context of the conflict in Colombia, those cases are mentioned in which, according to the information received, the death of the journalist is clearly related to his exercise of freedom of expression. Nonetheless, the Rapporteurship hopes that the details of all the deaths are investigated and that the persons responsible are identified and punished, as the Rapporteur reminded the Colombian State in two press releases, dated March 18 and May 1, 2003, respectively.<sup>47</sup>

57. On March 18, 2003, in the department of Arauca, journalist Luis Eduardo Alfonso Parada was assassinated by unknown persons traveling on a motorcycle. They shot him three times while he waited for the watchman to open the door to the radio station *Meridiano 70*, for which he worked. Alfonso Parada had worked in Arauca for ten years, and when assassinated was a correspondent for *El Tiempo* and a co-director of the news program *Actualidad Informativa* on *Meridiano 70*. Alfonso Parada was known for denouncing corruption and for reporting on the armed conflict, for which he had received threats. He had availed himself of the Ministry of Interior's Journalist Protection Program.<sup>48</sup> In June, in Arauca, three persons suspected of being involved in Alfonso's death were detained.<sup>49</sup>

58. On the morning of April 7, 2003, the body of José Emeterio Rivas was found, along with another body, that of a student, alongside the road leading to Barrancabermeja, department of Santander. Rivas worked as a technical manager of the community radio station *Calor Estéreo 91.2*. In addition, he was director of the program *Las Fuerzas Vivas*. Days prior to his death, Rivas had denounced that he had been the victim of an assassination attempt. He had been threatened and so had availed himself of the Journalist Protection Program of the Ministry of Interior and Justice in January 2001, and had been assigned a bodyguard. Nonetheless, the week he was killed, Rivas went without protection.<sup>50</sup> On July 11, three officials of the office of the mayor of Barrancabermeja were detained: Juan Pablo Arica, Fabio Pajón Lizcano, and Abelardo Rueda Tobón.<sup>51</sup> In addition, an arrest warrant was issued for the mayor of Barrancabermeja, Julio César Ardila Torres, for his alleged participation in the assassination.<sup>52</sup> On September 17, Ardila Torres presented himself to the Attorney General of Colombia, Luis Camilo Osorio. On September 24, the Office of the Attorney General of

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<sup>47</sup> Press Releases from the Special Rapporteur for Freedom of Expression PREN 71/03 and PREN 73/03 in: <http://www.cidh.org/Relatoria/English/PressRel03/PressReleaIndex03.htm>

<sup>48</sup> Press Release 71/03 of the Special Rapporteur for Freedom of Expression <[www.cidh.org/Relatoria/Spanish/Compren2003/ComPren7103.htm](http://www.cidh.org/Relatoria/Spanish/Compren2003/ComPren7103.htm)>; Reporters without Borders (RSF), March 18, 2003, [www.rsf.org](http://www.rsf.org); *Fundación para la Libertad de Prensa* (FLIP), March 18, 2003, [www.flip.org.co](http://www.flip.org.co), and *Instituto Prensa y Sociedad* (IPyS), March 18, 2003, [www.ipys.org](http://www.ipys.org); Committee for the Protection of Journalists (CPJ), March 18, 2003, [www.cpj.org](http://www.cpj.org). *El Tiempo* (Colombia), "Asesinado el corresponsal de *El Tiempo* en Arauca," March 18, 2003, at: <http://eltiempo.terra.com.co>. Centro de Análisis de Información de ASDEH, March 18, 2003, see: [www.asdeh.org/cadi.htm](http://www.asdeh.org/cadi.htm).

<sup>49</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 2, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>50</sup> Centro de Análisis de Información de ASDEH, April 8, 2003, see: <http://www.asdeh.org/cadi.htm>; *El Tiempo*, "Muerto Periodista en Barrancabermeja," April 8, 2003 at: <http://eltiempo.terra.com.co>; *Periodistas Frente a la Corrupción* (PFC), April 10, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>51</sup> *Fundación para la Libertad de Prensa* (FLIP), July 17, 2003, [www.flip.org.co](http://www.flip.org.co).

<sup>52</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), July 11, 2003, in: [www.portal-pfc.org](http://www.portal-pfc.org).

Colombia issued an arrest warrant, without bond, for Ardila for his alleged participation in the assassination of five persons, including Rivas.<sup>53</sup> The mayor alleged his innocence.<sup>54</sup>

59. The night of April 28, 2003, in the city of Neiva, department of Huila, journalist Guillermo Bravo Vega was assassinated by a paid assassin who entered his home and shot him three times. The journalist was known for his work on economic and political issues, and had obtained many journalism awards. Bravo had denounced acts of corruption in the municipal administration and had previously been threatened.<sup>55</sup> At the time of the crime, he was working independently on the program *Hechos y Cifras*, and was a columnist for the newspaper *Tribuna del Sur*.

60. On the morning of April 29, 2003, journalist Jaime Rengifo Revero was assassinated in the city of Maicao, Guajira, in northern Colombia. According to the information received, a person shot him five times in the Hotel Venecia, where he had been living for three years, and where the assassin had stayed the night before under the name of Luis Alfredo Gómez. Rengifo was the owner of the company Casa Editorial El Guajiro, which directed the newspaper *El Guajiro* and produced the radio show *Periodistas en acción*, which was broadcast on *Radio Olímpica*.<sup>56</sup> On his radio program, Rengifo denounced crime in Maicao.<sup>57</sup> Rengifo had received threats earlier.<sup>58</sup>

### Kidnappings

61. On January 18, 2003, near the border with Panama, the *Autodefensas Unidas de Colombia* (AUC) kidnapped U.S. journalist Robert Pelton, who was on a mission for National Geographic Adventure, and his two U.S. colleagues, Mark Wedeven and Megan Smaker.<sup>59</sup> On January 23, they were released in El Chocó, to the south of the Panamanian border.<sup>60</sup>

62. On January 21, 2003, U.S. photojournalist Scott Dalton, British journalist Ruth Morris, and driver Madiel Ariza were kidnapped. They were producing a report for the *Los Angeles Times* on the public order situation in the department of Arauca, in eastern Colombia.

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<sup>53</sup> EFE (News Agency), September 24, in [www.efe.com](http://www.efe.com); International Freedom of Expression Exchange (IFEX), July 17, 2003, [www.ifex.org](http://www.ifex.org).

<sup>54</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), September 18, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>55</sup> *El País*, April 29, 2003; press release by the Special Rapporteur for Freedom of Expression 76/03, <[www.cidh.org/Relatoria/Spanish/Compren2003/Compren7603.htm](http://www.cidh.org/Relatoria/Spanish/Compren2003/Compren7603.htm)>; *Oficina de Derechos Humanos del Periodista*, cited in International Freedom of Expression Exchange (IFEX), May 13, 2003, [www.ifex.org](http://www.ifex.org).

<sup>56</sup> *El País*, April 29, 2003.

<sup>57</sup> Fundación para la Libertad de Prensa (FLIP), April 30, 2003, [www.flip.org.co](http://www.flip.org.co); press release from the Special Rapporteur for Freedom of Expression, <[www.cidh.org/Relatoria/spanish/Compren2003/Compren7603.htm](http://www.cidh.org/Relatoria/spanish/Compren2003/Compren7603.htm)>.

<sup>58</sup> Committee to Protect Journalists (CPJ), May 1, 2003, [www.cpj.org](http://www.cpj.org).

<sup>59</sup> *Instituto Prensa y Sociedad* (IPyS), January 22, [www.ipys.org](http://www.ipys.org).

<sup>60</sup> *Instituto Prensa y Sociedad* (IPyS), January 27, 2003, [www.ipys.org](http://www.ipys.org); Committee to Protect Journalists (CPJ), January 23 and 24, 2003, [www.cpj.org](http://www.cpj.org).

Ariza was released the next day. The *Ejército de Liberación Nacional* (ELN) took responsibility for the kidnapping.<sup>61</sup> The two reporters were released after 11 days in captivity.<sup>62</sup>

63. On January 26, 2003, journalist Ramón Eduardo Martínez, cameraman Duarley Rafael Guerrero, and technicians Mauricio Vega and Rubén Darío Peñuela, all of *RCN Televisión*, and free-lance photographer Carlos Julio García, were kidnapped when traveling to Pueblo Nuevo, department of Arauca. They were on their way to cover the possible release of Scott Dalton and Ruth Morris. The kidnapping was attributed to the *Fuerzas Armadas Revolucionarias de Colombia* (FARC). During their captivity they were threatened with language warning that they would have to retire from the profession "if they continued to work for government media." Their communications devices, cameras, and vehicle were stolen. They were released on January 28.<sup>63</sup>

64. On March 12, 2003, Pedro Antonio Cárdenas, director of *Noticias RCN Radio* was kidnapped in the municipality of Honda, department of Tolima, by alleged members of the *Autodefensas Unidas de Colombia* (AUC). Cárdenas was kidnapped at his home. While he was being transported in a vehicle, it was intercepted by the police, who freed him and arrested several of the persons responsible. Days before the kidnapping, Cárdenas had denounced the alleged ties between the members of the municipal council and the AUC. Cárdenas had received threats on March 2 for criticizing municipal leaders.<sup>64</sup> He left the country in April.

65. On August 18, 2003, a team of journalists from *El Tiempo* was kidnapped, including journalist Jineth Bedoya and photographer John Vizcaíno, in the town of Puerto Alvira, department of Meta. The kidnapping was attributed to the FARC. The journalists were trying to look into the fate of 70 families that had disappeared. They were released five days later.<sup>65</sup>

### Attacks and threats

66. During the year, the Rapporteurship received information on the recurrent threats to Colombian journalists and media in the context of the armed conflict. The Rapporteur is especially concerned about the situation in the region of Arauca, which, in March 2003, saw the flight of almost all the press working in the zone due to threats from the various armed groups, who demanded that they leave in 48 hours and that they not return. This occurred after March 28, 2003, when journalist Rodrigo Ávila, correspondent for *Radio Caracol*, received two lists from a deserter of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) that included the names of 16 press workers. One of the lists was from the FARC and the other was attributed to the paramilitary forces of the *Autodefensas Unidas de Colombia* (AUC), ordering him and the

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<sup>61</sup> *Fundación para la Libertad de Prensa* (FLIP), [www.flip.org.co](http://www.flip.org.co), January 24 and 28, 2003, [www.flip.org.co](http://www.flip.org.co) ; *Instituto Prensa y Sociedad* (IPyS), January 28, 2003; [www.ipys.org](http://www.ipys.org).

<sup>62</sup> *El Espectador*, "ELN Libera Periodistas Extranjeros", February 2, 2003, [www.elespectador.com](http://www.elespectador.com); Committee to Protect Journalists (CPJ), January 23, 2003, [www.cpj.org](http://www.cpj.org).

<sup>63</sup> *Instituto Prensa y Sociedad* (IPyS), January 28, 2003, [www.ipys.org](http://www.ipys.org) and FLIP, January 28, [www.flip.org.co](http://www.flip.org.co) , 2003; Committee to Protect Journalists (CPJ) [www.cpj.org](http://www.cpj.org) , January 29, 2003.

<sup>64</sup> *Centro de Análisis de Información de ASDEH*, March 13, 2003, [www.asdeh.org/cadi.htm](http://www.asdeh.org/cadi.htm); Committee to Protect Journalists (CPJ), March 18, 2003, [www.cpj.org](http://www.cpj.org).

<sup>65</sup> Inter-American Press Association (IAPA), October reports, 2003; [www.sipiapa.com](http://www.sipiapa.com).



other 15 journalists to leave the city or else be assassinated. The second “black list” included the names of Efraín Varela and Luis Eduardo Alfonso, assassinated in June 2002 and March 2003, respectively. Thirteen journalists returned four months later, under strict security measures.<sup>66</sup>

67. The threatened journalists are: Luis Gedez, of the radio station *Voz del Cinaruco*; Liz Neira Roncacio and Hernán Morales, of *Canal 4*; Angel María León and Narda Guerrero, of *Radio DIC*; Jineth Pinilla, of *Colombia Stereo*; José Antonio Hurtado, Chief of Press of the Office of the Governor; Henry Colmenares, director of the newspaper *Nueva Frontera*; Rodrigo Ávila, correspondent for *Canal Caracol*; Carlos Pérez, correspondent for *Canal RCN*; Miguel Ángel Rojas, of *Meridiano 70*; Emiro Goyeneche, of *Saravena Stereo*; Carlos Báez, of *88.9 Tame*; Soraida Ariza, correspondent for *Cinaruco*; William Reyes, deputy for Arauca; and Álvaro Báez, who at the time was out of the country.<sup>67</sup> Some of the journalists had previously received threats.<sup>68</sup>

68. The threats to the journalists in Arauca were a matter of profound concern to the Rapporteurship due to the obvious danger to their lives and physical integrity, and because these threats and the exodus of journalists constituted clear restrictions on society’s freedom of expression.

69. On May 6, 2003, in the department of Meta, two persons shot three times at José Iván Aguilar, the director and owner of *Noticias Ya* of the radio station *Calor Estéreo* and correspondent of *Noticias Uno*. He survived the attack with only a superficial wound in the chest. The next day, he fled to Bogotá with his wife and three children. Aguilar had not been threatened previously.<sup>69</sup>

70. In Neiva, journalist Diógenes Cadena, known as *Albatros Moro*, was forced to flee Huila after receiving death threats. Cadena worked for the radio station *Huila Estéreo*. On April 29, 2003, the day after his colleague Guillermo Bravo Vega was assassinated, Cadena received an anonymous telephone call in which he was warned that he had three days to leave Neiva. On May 3, he received another telephone call at home that threatened: “Time has run out, three days. You’re a dead man.”<sup>70</sup> Cadena left the city. He had directed the program *Hechos y cifras*, and often accused departmental and municipal officials of mismanaging public funds.<sup>71</sup>

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<sup>66</sup> Inter-American Press Association (IAPA), October reports 2003, [www.sipiapa.com](http://www.sipiapa.com); Reporters Without Borders, March 31, 2003, [www.rsf.fr](http://www.rsf.fr); “Amenazan de muerte a periodistas en Arauca,” *Nuevo Herald* (United States), <[www.miami.com/mld/elnuevo/news/world/americas/5514392.htm](http://www.miami.com/mld/elnuevo/news/world/americas/5514392.htm)>, March 30.

<sup>67</sup> *Centro de Análisis de Información* (CADI), March 29, 2003, [www.adeh.org/cadi](http://www.adeh.org/cadi).

<sup>68</sup> *El Tiempo* (Colombia), March 20, 2003, [www.eltiempo.com/hoy](http://www.eltiempo.com/hoy).

<sup>69</sup> *Centro de Análisis de Información* (CADI), May 6, 2003; Committee to Protect Journalists (CPJ), May 12, 2003; *El Tiempo* (Colombia), “Nuevos ataques a periodistas en Neiva y Villavicencio,” May 7, 2003, <[www.eltiempo.terra.com.bo](http://www.eltiempo.terra.com.bo)>; *El Espectador* (Colombia), “Periodista sale ileso de atentado en Villavicencio,” May 7, 2003; Reporters Without Borders, May 9, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>70</sup> *El Tiempo* (Colombia), “Nuevos ataques a periodistas en Neiva y Villavicencio”, <http://www.eltiempo.terra.com.co>, 7 de mayo de 2003.

<sup>71</sup> Committee to Protect Journalists (CPJ), May 12, 2003, [www.cpj.org](http://www.cpj.org).

71. Journalist Adonai Cárdenas, correspondent for the daily newspaper *El País* of Cali, in the city of Buenaventura in western Colombia, was a victim of threats after publishing an article on April 2, 2003, on the situation in Cali since the *Autodefensas Unidas de Colombia* (AUC) had arrived in the region, and describing the relationship between this group and groups engaged in common crime in Buenaventura. Cárdenas also directs the program *Buenos días Buenaventura* on the local radio station *Radio Buenaventura* and writes a column in the local daily *Marea viva*. Cárdenas had been receiving repeated death threats since 2000.<sup>72</sup>

72. On September 23, 2003, guerrillas of the FARC dynamited the repeater antenna of Inravisión in the upland area of Las Domínguez, by the border of El Cerrito and Palmira (Valle). The structure, 170 meters tall, fell on the booth in which the broadcast equipment of the regional channel *Telepacífico* was located, leading to a total suspension of its broadcasts. In addition, broadcasts of channels *Uno*, *A*, and *Señal Colombia* were impaired. As a result of the attack, a large part of Valle, Cauca, Nariño, and Chocó had no public television for several days. The attack caused US\$5 million in damages.<sup>73</sup>

73. Journalist Pedro Javier Galvis, of the weekly *La Noticia*, of Barrancabermeja, was threatened on October 15, 2003, when two persons on motorcycles approached him on a downtown street.<sup>74</sup> They told him he had one week to leave the city, so he left immediately.

74. On October 24, the news program *Noticolombia* of the local cable channel CNC in the city of Popayán, in southern Colombia, received an envelope addressed to the journalists of that program containing a threat. The message exalted one candidate while calling for the death of his enemies. On October 23, the news program had issued a news item on the improper use of the fax of a public entity for purposes of political propaganda favorable to one of the mayoral candidates.<sup>75</sup>

75. Journalist Yaneth Montoya Martínez, correspondent for the daily newspaper *Vanguardia Liberal* in Barrancabermeja, department of Santander, in northeastern Colombia, was threatened on October 22, 2003. The Office of the Human Rights Ombudsman received an anonymous telephone call warning that journalist Montoya was included on a list of persons who the *Autodefensas Unidas de Colombia* (AUC) were going to kill. On October 24, she received a new threat at her home.<sup>76</sup> Due to the death threats she received, she fled Barrancabermeja in December of 2003.<sup>77</sup>

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<sup>72</sup> International Freedom of Expression Exchange, May 21, 2003, [www.ifex.org](http://www.ifex.org).

<sup>73</sup> *El Tiempo* (Colombia), "Suroccidente sin TV pública," September 25, 2003, en: <http://tiempo.terra.com.co>; *Instituto Prensa y Sociedad* (IPyS), September 25, 2003, [www.ipys.org](http://www.ipys.org).

<sup>74</sup> *Instituto Prensa y Sociedad* (IPyS), October 30, 2003, [www.ipys.org](http://www.ipys.org).

<sup>75</sup> *Fundación para la Libertad de Prensa* (FLIP), October 28, 2003, [www.flip.org.co](http://www.flip.org.co), and International Freedom of Expression Exchange (IFEX), October 29, 2003; [www.ifex.org](http://www.ifex.org).

<sup>76</sup> *Fundación para la Libertad de Prensa* (FLIP), October 30, 2003, [www.flip.org.co](http://www.flip.org.co); *El Herald* (Colombia), "Debate en Congreso por amenazas a periodistas", October 30, 2003 and *Instituto Prensa y Sociedad* (IPyS), October 30, 2003, [www.ipys.org](http://www.ipys.org).

<sup>77</sup> *Radio Caracol* (Colombia), "Periodista amenazada abandona Barrancabermeja", December 4, 2003, [www.radiocaracol.com](http://www.radiocaracol.com),

## **COSTA RICA**

### **Investigation into the assassination of Parmenio Medina Pérez**

76. The Public Ministry continued the investigation into the assassination of the director of the radio program *La Patada*, Parmenio Medina Pérez, which occurred on July 7, 2001. Between December 2002 and January 2003, charges were brought against Luis Aguirre Jaime, the alleged perpetrator of the crime; Andrés Chávez Matarrita, suspected of having aided the murderers; and John Gutiérrez Ramírez, who allegedly served as a go-between for the direct perpetrators and the mastermind. Another alleged direct perpetrator is thought to have been César Murillo, who died on May 17, 2002, during a confrontation with the police, who responded to a bank robbery.<sup>78</sup> On December 26, 2003, the Office of the Attorney General detained the businessman Omar Luis Chaves. Early in the morning of the next day Mínor Calvo, a Catholic priest, was also arrested. The Office of the Attorney General is investigating Calvo and Chaves as the alleged masterminds of the assassination of Medina.<sup>79</sup> A criminal judge filed an order of preventive detention for six months against Chaves and Calvo.<sup>80</sup>

### **Judicial actions**

77. On June 17, 2003, Karla Herera Masís, co-director of the news program *Telenorte*, broadcast in northern Costa Rica, was acquitted in a defamation trial. The lawsuit was filed in response to a series of reports broadcast from May 27 to June 1, 2003, related to the irregular handling of a low-income housing project.

### **Legislation**

78. The Rapporteurship has received a steady flow of information on the consideration in various committees and on the floor of the Legislative Assembly of several bills related to freedom of expression and access to information. In particular, it has received information concerning a *Bill on Freedom of Expression and Press* that seeks to amend some aspects of the current legislation on crimes against honor, and to include professional secrecy. The Office has also received information about a bill on general reforms to the Criminal Code.

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<sup>78</sup> *La Nación* of Costa Rica, [www.nacion.com](http://www.nacion.com), and the Inter-American Press Association (IAPA), [www.sipiapa.com](http://www.sipiapa.com).

<sup>79</sup> *La Nación* (Costa Rica), "Padre Mínor y Empresario presos por crimen de Parmenio", December 28, 2003 [www.nacion.com](http://www.nacion.com).

<sup>80</sup> *La Nación* (Costa Rica), "Seis meses de cárcel a Padre Mínor y a empresario", December 29, 2003; [www.nacion.com](http://www.nacion.com).

### **Access to information**

79. The Rapporteurship received information on several jurisprudential advances in relation to access to information.

80. On March 4, 2003, the Constitutional Chamber of the Supreme Court of Justice demanded of the Costa Rican Social Security Fund (*Caja Costarricense del Seguro Social*) that it provide a database with information on pensions to the newspaper *La Nación*.

81. On May 2, 2003, the same constitutional court, in opinion 2003-03489, ruled that the bank accounts of private juridical persons, when they have received transfers of contributions to the campaigns of political parties, are not covered by bank secrecy, for in such cases, the information on the accounts is no longer private and becomes a matter of public interest.<sup>81</sup>

82. On October 1, 2003, the Constitutional Chamber ruled that the Banco Hipotecario de la Vivienda should provide the newspaper *La Nación* with a database of the information on persons who had received subsidies for the construction of low-income housing.<sup>82</sup>

### **CUBA**

83. In 2003, the situation of freedom of expression in Cuba deteriorated significantly due to the repression of dissident voices by the government of Fidel Castro.

84. The Rapporteurship has repeatedly expressed its concern, in its reports and press releases, over the systematic violation of freedom of expression due to the lack of a pluralistic democracy in the country.

85. The Cuban authorities continue using practices of intimidation and harassment aimed at independent journalists to muzzle criticism of the government. The year 2003 was far from being an exception. To the contrary, the government's repressive practices were deployed to a greater extent than in other years.

### **Detentions**

86. In March 2003, there was a wave of detentions in Cuba of persons who had expressed their opposition to the policies of the Cuban government, in particular in relation to the right to freedom of expression and respect for human rights.

87. Some 80 Cuban dissidents were convicted, in very summary trials, and sentenced to prison terms ranging from six to 28 years. These convictions were handed down under the Law to Protect the National Independence and Economy of Cuba and the Law to

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<sup>81</sup> Judgment 2003-03489 of the Constitutional Chamber, Supreme Court of Justice of Costa Rica.

<sup>82</sup> Inter-Amecian Press Association (IAPA), October report, 2003, [www.sipiapa.com](http://www.sipiapa.com).

Reaffirm Cuban Dignity and Sovereignty.<sup>83</sup> Some of the convictions were affirmed on appeal in June by the Supreme People's Tribunal.<sup>84</sup>

88. On March 18, 2003, State Security raided the homes and seized material and equipment from independent journalists in Havana.<sup>85</sup> That same day, the government announced the detention of at least 12 journalists who worked for press agencies not recognized by the authorities and who the government labeled "traitors" and "salaried employees" of James Cason, chief of the U.S. Interests Section in Havana.<sup>86</sup>

89. That week, 28 journalists were detained, including: Jorge Olivera, Ricardo González Alfonso, Raúl Rivero, José Luis García Paneque, Omar Rodríguez Saludes, Pedro Argüelles Morán, Edel José García, José Gabriel Ramón Castillo, Julio César Gálvez, Víctor Rolando Arroyo, Manuel Vázquez Portal, Héctor Maseda, Oscar Espinosa Chepe, Adolfo Fernández Saínz, Mario Enrique Mayo, Fabio Prieto Llorente, Pablo Pacheco, Normando Hernández, Carmelo Díaz Fernández, Miguel Galván, Léster Luis González Pentón, Alejandro González Raga, Juan Carlos Herrera, José Ubaldo Izquierdo, Mijaíl Barzaga Lugo, Omar Ruiz, Iván Hernández Carrillo, and Alfredo Pulido.<sup>87</sup>

90. Between April 3 and 4, 2003, the journalists were tried in proceedings that lasted one day, and which were conducted behind closed doors. On April 7, they were given prison sentences that ranged from 14 to 27 years. According to information received by the Rapporteurship, in several trials, the defense counsel had no access to the defendants, and had only a few hours to prepare their cases.<sup>88</sup>

91. The Rapporteurship condemned these events in two press releases, one dated March 20, 2003,<sup>89</sup> the other April 4, 2003.<sup>90</sup> This situation also led to the Rapporteur for Freedom of Expression of the Organization of American States and the United Nations Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo, to state their concern in a joint press release on May 3, in Kingston, Jamaica, on World Press Freedom Day.<sup>91</sup>

92. The health of some of the detained journalists, as well as the conditions in which they had been imprisoned, was a matter of concern to various international organizations.

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<sup>83</sup> *Los Amigos de las Bibliotecas Cubanas*, <[www.friendshipofcubanlibraries.org](http://www.friendshipofcubanlibraries.org)>; Reporters Without Borders, April 7, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>84</sup> International Freedom of Expression Exchange (IFEX), June 6, 2003, [www.ifex.org](http://www.ifex.org).

<sup>85</sup> Committee to Protect Journalists (CPJ), March 19, 2003, [www.cpj.org](http://www.cpj.org).

<sup>86</sup> Reporters Without Borders, March 19, 2003, [www.rsf.fr](http://www.rsf.fr) ; Inter-American Press Association (IAPA), March 19, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>87</sup> Committee to Protect Journalists (CPJ), April 2, 2003, [www.cpj.org](http://www.cpj.org).

<sup>88</sup> Committee to Protect Journalists (CPJ), April 9, 2003, [www.cpj.org](http://www.cpj.org).

<sup>89</sup> Press Release of the Special Rapporteur for Freedom of Expression, 72/03, <<http://www.cidh.org/Relatoria/Spanish/Compre2003/ComPren7203.htm>>.

<sup>90</sup> Press Release of the Special Rapporteur for Freedom of Expression, 74/03, <<http://www.cidh.org/Relatoria/Spanish/Compre2003/ComPren7403.htm>>.

<sup>91</sup> Press Release of the Special Rapporteur for Freedom of Expression, 77/03, <<http://www.cidh.org/Relatoria/Spanish/Compre2003/ComPren7703.htm>>.

According to the information received, some family members had had problems visiting the detainees, who in some cases were being held in maximum security facilities.<sup>92</sup> On April 26, State Security informed a dozen families of the detained journalists that their relatives were going to be transferred to provincial prisons, in some cases more than 900 kilometers from the capital. The families protested in view of the difficulties getting around the island.<sup>93</sup>

93. Some of the journalists organized strikes to protest their detention. In August, Manuel Vázquez Portal, Juan Carlos Herrera Acosta, and Normando Hernández González, who were being held at the prison in Boniatico,<sup>94</sup> declared a hunger strike. Mario Enrique Mayo, Adolfo Fernández Sainz, and Iván Hernández Carrillo, imprisoned at the penitentiary in Holguín, did likewise.<sup>95</sup> In October, Fernández Sainz and Mario Enrique Mayo initiated a hunger strike once again. This time they were joined by dissidents Antonio Díaz Sánchez, Alfredo Domínguez Batista, Angel Moya Acosta, and Arnaldo Ramos Lauzurique, all being held at the penitentiary at Holguín.

94. On Monday, February 10, 2003, Argentine journalist and researcher Fernando Ruiz Parra, a professor at the Universidad Austral, was detained and held incommunicado while on his way to Matanzas to interview a dissident reporter as part of a journalistic investigation on the growth of independent journalism on the island. He had entered the country with a tourist visa on February 3. He was released on February 12.<sup>96</sup>

95. On March 4, 2002, independent journalist Carlos Brizuela Yera, 29 years of age, was jailed in the provincial prison of Holguín. As of March 2003, the authorities had yet to set a trial date. He informed *Noticiero Cubanet* that he was beaten, offended, and threatened.<sup>97</sup>

96. On May 4, 2003, Bernard Briançon, in charge of the private French production company *Mediasens*, was detained at the Havana international airport when going through customs. He was taken to a room situated in the basement level of the airport, and his baggage was searched. Eight videotapes containing interviews with dissidents were seized. The customs authorities did not give any explanation, and made him sign an "act of retention and rectification."<sup>98</sup>

97. On October 30, 2003, independent journalist Claudia Márquez Linares, vice-president of the magazine *De Cuba*, was detained for two hours in Havana.<sup>99</sup>

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<sup>92</sup> Reporters Without Borders, August 8, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>93</sup> Reporters Without Borders, April 26, 2003, [www.rsf.fr](http://www.rsf.fr) ; International Freedom of Expression Exchange (IFEX), September 4, 2003, [www.ifex.org](http://www.ifex.org).

<sup>94</sup> Reporters Without Borders, September 3, 2003, [www.rsf.fr](http://www.rsf.fr) ; International Freedom of Expression Exchange (IFEX), September 3, 2003, [www.ifex.org](http://www.ifex.org) ; Committee to Protect Journalists (CPJ), September 3, 2003; [www.cpj.org](http://www.cpj.org).

<sup>95</sup> Reporters Without Borders, August 25, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>96</sup> *La Nación* (Argentina), February 13, 2003.

<sup>97</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), [www.portal-pfc.org](http://www.portal-pfc.org), *Noticiero Cubanet*, March 3, 2003.

<sup>98</sup> Reporters Without Borders, May 4, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>99</sup> Inter-American Press Association (IAPA), October 30, 2003, and Montero, Rosa, "De Cuba", *El País* (Spain), [www.elpais.es](http://www.elpais.es), December 9, 2003.

98. On October 29, 2003, independent journalist Abel Escobar Ramírez was detained near Morón (350 km east of Havana) for violating the Law for Protection of Cuba's National Independence and Economy. His tape recorder and four cassettes were seized. He was released on November 1, after signing a statement in which he pledged to end his activity as a journalist.<sup>100</sup>

### Other

99. Bernardo Rogelio Arévalo Padrón was released on November 13, 2003, after spending six years in prison. Arévalo is a founder of the news agency *Línea Sur*. In 1997, he was given a six-year prison term for disrespecting President Fidel Castro during interviews he gave to radio stations based in Miami, United States. According to the information received, Padrón said he had been subjected to physical and psychological torture by the prison authorities.<sup>101</sup>

## ECUADOR

100. In the course of the year, the Rapporteurship received information on extremely tense relations between the Presidency of Ecuador and the press. The Rapporteurship understands that the relationship between the independent press and those who hold public office presupposes, on certain occasions, a considerable degree of discrepancy. The Rapporteurship also understands the efforts of the government officials to respond to the criticisms. Nonetheless, the Rapporteurship is concerned that on several occasions this year, information was received about announcements by the president related to intentions to undertake legal reforms or invoke legislation that would make it possible to limit freedom of expression. The Rapporteurship views positively the fact that the State did not carry out these measures.

### Attacks and threats

101. On September 21, 2003, a condolence card was sent to the daily newspaper *El Comercio* in the form of a death notice announcing the death of Kintto Lucas, of the alternative newspaper *Tintají*; Pablo Dávalos, an analyst who works with several radio stations and newspapers; and Marlon Carrión, Marlene Toro, and Mauricio Ortiz, all journalists with the alternative press agency *Pachacámac*.<sup>102</sup> The condolence note was signed Fernando María Buendía, one of the names used in previous threats attributed to the clandestine group Legión Blanca.<sup>103</sup> The text of the notice was not published, but the newspaper reported the threat to the journalists. According to the information received, Kintto Lucas had received threats before that time.

<sup>100</sup> Reporters Without Borders, October 31, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>101</sup> Committee to Protect Journalists (CPJ), November 18, 2003, [www.cpj.org](http://www.cpj.org).

<sup>102</sup> Hoy, "Cedhy denuncia intimidación a periodistas y académicos", September 25, 2003, [www.hoy.com.ec](http://www.hoy.com.ec). ; and International Freedom of Expression Exchange, September 24, 2003, [www.ifex.org](http://www.ifex.org).

<sup>103</sup> *Comisión Ecuménica de Derechos Humanos* (CEDHU), September 23, 2003.

### Judicial actions

102. On May 29, 2003, former health minister of Ecuador Rodrigo Fierro, who is also a columnist in the daily paper *El Comercio*, wrote an article entitled “*Febres Cordero en su sitio*,” in which he criticized León Febres Cordero, former president of Ecuador and current deputy for the Partido Socialcristiano, for his alleged political meddling in the judiciary, and accused him of being one of those who caused Ecuador’s bankruptcy. Later, Febres Cordero filed a suit against Fierro for defamation (*injurias calumniosas y no calumniosas graves*). On September 19, Judge Luis Mora found Fierro guilty and sentenced him to a prison term of six months for defamation (*injurias calumniosas*). On September 22, 2003, Fierro filed an appeal, the hearing on which was held on November 28. At the time this report was drafted, no ruling had been handed down. At Fierro’s request, the Supreme Court decided to investigate the actions of Judge Mora, whose impartiality was questioned by Fierro, given his ties to the Partido Socialcristiano. The four magistrates who were to study the irregularities allegedly committed by the Judge determined that Mora had not committed any illegal act during the trial. According to the report by these magistrates, Mora participated in the trial as a result of a ruling of the National Judicial Council, whose authorities put him in charge of the proceedings of the Third Criminal Court.<sup>104</sup>

### Access to information

103. In January 2003, the Rapporteurship received information on complaints by media workers who were covering the Presidency of the Republic, who had difficulties gaining access to certain information and certain government officials. Among other problems, it was difficult for them to learn with proper lead time the daily schedule of President Lucio Gutiérrez, and to obtain information related to the decrees signed by him and the appointments of several government officials.<sup>105</sup> During that same month, the press office (*Secretaría de Comunicación*) of the Presidency made the first decisions to expedite the delivery of official information on the activities of the Executive.<sup>106</sup>

## UNITED STATES

### Judicial Actions

104. On October 10, 2003, Judge Thomas Penfield Jackson, of the Federal District Court for the District of Columbia, ordered reporters Jeff Gerth and James Risen (*New York Times*), Robert Drogin (*Los Angeles Times*), H. Josef Hebert (*The Associated Press*) and Pierre Thomas (*CNN*, now moved to *ABC*) to disclose the confidential sources they used for writing their articles about Dr. Wen Ho Lee, former scientist at the weapons laboratory in Los Alamos, New Mexico. The judge also ordered the journalists to provide Dr. Lee’s lawyers with notes and other materials they had gathered when preparing the articles, ruling that the First Amendment

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<sup>104</sup> Hoy, “*Articulista se defiende de querrela planteada por LFC*”, September 9, 2003, [www.hoy.com.ec](http://www.hoy.com.ec); *Instituto Prensa y Sociedad* (IPyS), September 22, 2003, [www.ipys.org](http://www.ipys.org); *El Universo*, October 8 and 9, 2003.

<sup>105</sup> Hoy, “*No hay un canal abierto con la Presidencia*”, January 27, 2003, [www.hoy.com.ec](http://www.hoy.com.ec).

<sup>106</sup> *Expreso*, January 30, 2003.



protections to journalists against government intervention were outweighed in this case by the need of Dr. Lee's lawyers to provide evidence of government leaks. At the time of this writing, the *New York Times* and the *Associated Press* were planning to appeal and the other news media were studying the judge's decision.<sup>107</sup> The Special Rapporteur highlights Principle 8 of the Declaration of Principles on Freedom of Expression, which states that "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

105. On May 27, 2003, the U.S. Supreme Court denied a request to review the decision of the Third Circuit Court of Appeals in the case of *North Jersey Media Group, Inc. v. Ashcroft*.<sup>108</sup> The Third Circuit had ruled that there was no constitutional right of public access to deportation hearings. This ruling conflicted with a ruling issued by the Sixth Circuit Court of Appeals in the similar case of *Detroit Free Press v. Ashcroft*, in which the court found that such a right did exist. The Supreme Court did not disclose the reasons for declining the request for review.<sup>109</sup>

106. In June 2003, the U.S. Court of Appeals for the D.C. Circuit ruled in the case of *Center for National Security Studies v. Department of Justice*,<sup>110</sup> finding that the government can withhold on national security grounds information about more than 1,100 non-U.S. citizens detained since September 11.<sup>111</sup> The decision overruled, in part, a lower court decision ordering some of the information requested to be made public. A request for review is currently pending before the Supreme Court.

## Legislation

107. In June 2003, the Federal Communications Commission (FCC) approved reforms to its rules, including a relaxation of rules regarding cross-ownership of newspapers and television or radio stations in the same city, a relaxation of national limits on TV ownership, and a relaxation of rules regarding multiple ownership of local TV stations.<sup>112</sup> Many public officials, civil society groups and individual members of civil society have expressed concern about these changes, believing that they will increase concentration of media ownership and decrease the diversity of viewpoints expressed in the media. A coalition of media watchdog groups filed a case in federal court challenging the rules and on September 3, the day before the rules were scheduled to take effect, the Third U.S. Circuit Court of Appeals in Philadelphia issued an

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<sup>107</sup> Christopher Marquis, "Name Sources, Judge Orders Five Reporters," *New York Times*, October 15, 2003; Reporters Without Borders, [www.rsf.org](http://www.rsf.org), October 16, 2003.

<sup>108</sup> For a discussion of *North Jersey Media Group, Inc. v. Ashcroft* and *Detroit Free Press v. Ashcroft*, see the 2002 Annual Report of the Office of the Special Rapporteur for Freedom of Expression, chapter II, para. 128.

<sup>109</sup> Reporters Committee for Freedom of the Press, *Homefront Confidential*, Fourth edition, September 2003, available at <http://www.rcfp.org/homefrontconfidential>

<sup>110</sup> For a discussion of *National Security Studies v. Department of Justice*, see the 2002 Annual Report of the Office of the Special Rapporteur for Freedom of Expression, chapter II, para. 127.

<sup>111</sup> Reporters Committee for Freedom of the Press, *Homefront Confidential*, Fourth edition, September 2003, available at <http://www.rcfp.org/homefrontconfidential>; Linda Greenhouse, "Justices Face Decision on Accepting 9/11 Cases," *New York Times*, November 3, 2003.

<sup>112</sup> FCC News, June 2, 2003.

emergency stay pending a full review.<sup>113</sup> The hearing in this case is currently scheduled for February 2004.<sup>114</sup> Both the Senate and the House of Representatives have also been considering legislative proposals that would overturn the new rules.<sup>115</sup> Both houses of Congress included riders in their appropriations bills that allot no funding for the FCC for the implementation of the change in the national ownership limits.<sup>116</sup> However, in December, these provisions were deleted during the final congressional negotiations.<sup>117</sup>

### **Access to Information**

108. In March 2003, the Pentagon issued a directive to U.S. military bases prohibiting arrival ceremonies and media coverage of deceased military personnel being returned to the U.S. The policy previously existed, but was not strongly enforced until after the March directive. Many critics have alleged that the reason for the current enforcement of the policy is to prevent negative public opinion regarding U.S. military activities.<sup>118</sup>

109. In 2003, the U.S. government continued to restrict journalists from obtaining and publishing information about the identities and the situation of prisoners held at the U.S. base in Guantanamo, Cuba. Journalists visiting the base are not permitted to communicate with or identify prisoners, take pictures based upon which detainees can be identified, record their remarks or cover the prisoners' transfer between different parts of the base. Authorities have taken measures to ensure that such information is not obtained. For example, on June 20, 2003, equipment was taken from a *BBC* crew working for "Panorama", a current affairs TV program. Recordings in which prisoners could be heard shouting questions to the journalists visiting Camp Delta detention center in Guantanamo were erased. Vivian White, a reporter who responded to the prisoners' questions about them being journalists, was confined to a building at some distance from the camp. Journalists have also been prohibited from asking officials questions about ongoing and/or future investigations or operations at Guantanamo. Journalists were warned that those who violated this policy could have their access to the base restricted, be removed from the base and/or have their Department of Defense press credentials revoked. In mid-October, the policy was modified; reporters are no longer banned from asking these questions, however, authorities have an official policy not to answer them.<sup>119</sup>

### **Positive Developments**

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<sup>113</sup> Reporters Committee for Freedom of the Press, September 5, 2003; Capitol Broadcasting Company, September 5, 2003.

<sup>114</sup> Capitol Broadcasting Company, October 27, 2003.

<sup>115</sup> "The politics of big media," *The Economist*, September 13, 2003; William Safire, "The Senate Says No," *New York Times*, September 17, 2003.

<sup>116</sup> Eric Pianin and Marc Kaufman, "Lawmakers Defy Bush on Media Rules," *Washington Post*, Thursday, Nov. 20, 2003.

<sup>117</sup> Dan Morgan, "House Passes \$328 Billion Spending Bill," *Washington Post*, Tuesday, December 9, 2003.

<sup>118</sup> "Curtains Ordered for Media Coverage of Returning Coffins," *Washington Post*, October 21, 2003; "EEUU oculta a sus soldados muertos" ("U.S. hides its dead soldiers"), *El Pais*, October 29, 2003.

<sup>119</sup> Reporters Without Borders, [www.rsf.org](http://www.rsf.org), October 10 and 14, 2003.

110. Jonathan Walters and Robert Steiner, two former firefighters, and Joseph Locurto, a former New York City Police officer, were fired by request of Rudolph Giuliani after they wore blackface in a 1998 Labor Day parade in Broad Channel, Queens (Giuliani was Mayor at the time). In June 2003, Judge John E. Sprizzo of Federal District Court concluded that their actions, no matter how inappropriate, "constituted speech on a matter of public concern." Giuliani testified that he had called for their firing because he feared civil unrest. Judge Sprizzo found that they were fired "in response to the content of their speech, and for reasons of public perception and the political impact expected to flow from it." The Judge asked the parties to file briefs on whether punitive damages would be appropriate in the case (unlike compensatory damages, punitive damages are intended to punish wrongdoing and deter misconduct). Walters, Steiner, and Locurto's lawyers are seeking punitive damages only against Mr. Giuliani, not his codefendants, Howard Safir (former police commissioner) and Thomas Von Essen (former fire commissioner).<sup>120</sup>

111. On August 7, 2003, a Federal Judge in Manhattan (Charles S. Haight Jr., of Federal District Court) criticized police officials for the way they interrogated demonstrators against the war in Iraq in early 2003, and made it clear that civil liberties lawyers could seek to hold the city in contempt of court in the future if the police violate people's rights. The Judge's comments were expressed after evidence that the police had interrogated the demonstrators about their view on the war, had asked them if they hated Bush, if they had traveled to Africa or to the Middle East, and what might be different if Gore were president. Haight said that these events revealed a "display of operational ignorance on the part of the NYPD's highest officials." In February, Haight modified a longstanding court order that had restricted NYPD's ability to supervise political groups, after police officials had said they needed more flexibility in investigating terrorism. On August 7, the Judge did not impose new restrictions on the police, nor did he decide whether or not the interrogations had violated the protesters' constitutional rights. However, he said he would incorporate the recently eased rules into a judicial decree that would make it clear that lawyers could hold the city in contempt if they believed that a violation of the rules also violated an individual's constitutional rights.<sup>121</sup>

### Other

112. In March of 2003, United States attorney J. Strom Thurmond, Jr. brought federal charges against Brett Bursey under a seldom-used statute that allows the Secret Service to restrict access to areas the president is visiting. The charges stemmed from Mr. Bursey's attendance at a speech given by President Bush at the Columbia Metropolitan Airport in Columbia, South Carolina on October 24, 2002, where he carried a sign protesting the Iraq war. Mr. Bursey was in a crowd of thousands of people who had gathered to welcome the president. Police singled out Mr. Bursey because of the content of his sign and told him he had to go to the designated protest area, located about a half-mile from where the speech was to be given. When he did not obey, he was arrested for trespassing. After the local trespassing charges were dropped, the U.S. attorney filed the federal charges, which are still pending. If convicted,

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<sup>120</sup> Benjamin Weiser, "Lawyers Seek Damages from Giuliani in Parade Case," *New York Times*, August 12, 2003.

<sup>121</sup> Benjamin Weiser, "Judge Criticizes Police Methods of Questioning War Protesters," *New York Times*, August 8, 2003.

Mr. Bursey faces a maximum \$5,000 fine and up to six months in prison.<sup>122</sup> In June 2003, a group of eleven members of the U.S. House of Representatives wrote a letter to Attorney General John Ashcroft asking him to drop the case and questioning the practice of establishing "free speech zones" for protesters at presidential appearances.<sup>123</sup>

113. In September 2003, the American Civil Liberties Union filed a lawsuit on behalf of four progressive political groups against the Bush Administration, charging that the Secret Service is systematically keeping protesters away from President Bush's public appearances. In many cases, critics have been restricted in "protest zones" during the U.S. president's appearances. These protest zones are often located far from where the president appears and in places where they are not likely to be seen and heard by the president or many members of the public.<sup>124</sup>

114. Throughout 2003, the Special Rapporteur received information complaining of the actions of the U.S. military towards journalists in war zones. Critics allege that U.S. troops have failed to take adequate precautions to prevent injuries to or death of journalists and that troops have harassed journalists in the course of their work.<sup>125</sup> The Special Rapporteur is concerned that these actions may impede the flow of information about U.S. military activities to the public.

## GUATEMALA

115. The Special Rapporteur for Freedom of Expression participated in the on-site visit by the Inter-American Commission on Human Rights to Guatemala in March 2003.

116. On concluding its visit, the Commission stated its concern over the stepped-up threats to and acts of harassment of journalists, especially those who cover investigations of acts of corruption and human rights violations. In addition, the IACHR stated its concern over the lack of any regulation of television and radio broadcasting concessions that take into account democratic criteria guaranteeing equal opportunity of access to such media, particularly in relation to including indigenous peoples, peasant farmers, women, and youth.<sup>126</sup>

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<sup>122</sup> Leslie Eaton, "A Flashback to the 60s for an Antiwar Protester", *New York Times*, April 27, 2003; Eunice Moscoso, "Suit claims Secret Service violates protesters' rights", *Atlanta Journal-Constitution*, September 24, 2003; Henry Eichel, "Speech Zone Case Pulls Eyes To South Carolina", *Charlotte Observer*, August 31, 2003.

<sup>123</sup> Henry Eichel, "Speech Zone Case Pulls Eyes To South Carolina", *Charlotte Observer*, August 31, 2003; All Things Considered, National Public Radio, July 25, 2003, transcript available at <http://www.scpronet.com/nprtranscript.html>; "Congressmen ask Ashcroft to drop Bursey prosecution," Associated Press, posted May 27, 2003 at <http://www.thestate.com/mld/thestate/news/local/5955253.htm>.

<sup>124</sup> Editorial, "The Presidential Bubble," *New York Times*, September 25, 2003; [www.aclu.org](http://www.aclu.org); Eunice Moscoso, "Suit claims Secret Service violates protesters' rights", *Atlanta Journal-Constitution*, September 24, 2003.

<sup>125</sup> Committee to Protect Journalists, [www.cpj.org](http://www.cpj.org); Reporters without Borders, [www.rsf.org](http://www.rsf.org), Human Rights Watch, December 2003, <http://hrw.org/reports/2003/usa1203>.

<sup>126</sup> Press Release from the Inter-American Commission of Human Rights 08/03, <http://www.cidh.org/Comunicados/Spanish/2003/8.03.htm>.

117. In late November 2003, the IACHR adopted a Report on the Administration of Justice and Rule of Law in Guatemala. It includes a chapter on the situation of freedom of expression prepared by the Rapporteurship at the request of the Commission.

118. The report indicates that the Commission, through the Rapporteurship, has received information in recent years indicating that in Guatemala exercising the freedom of expression has resulted in assassinations and intimidation of journalists, with a worrisome increase in 2003, to the detriment mainly of investigative journalists and human rights defenders. These attacks are aimed at silencing reports and investigations regarding past violations or concerning politically sensitive matters.

119. This section refers to certain events of 2003 described in that report, provides updated information on some of them, and includes others.

120. Various sectors of civil society called for a visit by the Special Rapporteur. On April 11, the Rapporteur sent the State a proposal for dates for such a visit in July. Nonetheless, no response was received from the State.

### **Kidnapping**

121. On October 26, 2003, in Huehuetenango, four journalists from the daily paper *La Prensa* and pilot Hilario Guerra, of the Secretariat of Administrative and Security Matters of the Presidency (SAAS, by its Spanish acronym), were detained by a group of former members of the Civil Defense Patrols (*Patrullas de Auto Defensa Civil*, known as exPAC) to force the State to pay compensation for having helped the army during the war of the 1980s. The Rapporteur issued a press release condemning the kidnapping of the journalists and demanded their immediate release.<sup>127</sup> That day, Fredy López and Emerson Díaz were on their way to cover a political rally for the *Frente Republicano Guatemalteco* (FRG) candidate, Efraín Ríos Montt, in La Libertad, capital of Huehuetenango, when they found that a group of former patrol members had blocked the highway to demand the payment. The reporters were held by the protesters. After learning of the incident, Alberto Ramírez and Mario Linares went to the place accompanied by two representatives of the Office of the Human Rights Ombudsperson (*Procuraduría de Derechos Humanos*, or PDH), Thelma Schaub and Henry Hernández, who went to negotiate their release. The reporters were detained, while the PDH officials were able to get away. The protesters agreed to release the hostages after 51 hours of captivity in exchange for allowing them to enter a compensation program that the government offered the exPAC.<sup>128</sup>

### **Attacks and threats**

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<sup>127</sup> Press Release from the Inter-American Commission of Human Rights PREN/94/03 <<http://www.cidh.org/Relatoria/Spanish/Compren2003/IndexComPren03.htm>>.

<sup>128</sup> *Prensa Libre* (Guatemala), October 27, 28, 29, and 30, 2003; Committee to Protect Journalists (CPJ), October 28, 2003, [www.cpj.org](http://www.cpj.org); *Centro de Reportes Informativos de Guatemala* (Cerigua), October 27 and 28, 2003.

122. In the course of the year, on two occasions the Rapporteurship expressed its profound concern over the threats to and attacks on journalists in Guatemala, the number of which increased in the months of June and July of 2003.<sup>129</sup>

123. As the Commission indicated, the information received regarding the lack of significant progress in the investigation and punishment of the persons responsible for these attacks and acts of intimidation is worrisome. Impunity in the investigation of these acts helps create a climate of intimidation that hinders the full exercise of freedom of expression and investigation in Guatemala, as it discourages reports of violations of human rights. At the same time, it has a direct effect on freedom of expression by sending an encouraging message to those who perpetrate such crimes, who find themselves protected by a pattern of impunity that allows them to continue to carry out such acts.

124. During its on-site visit, the Commission was informed of the submission of 75 reports of threats to journalists to the Specialized Prosecutor for Crimes against Journalists and Trade Unionists. Some of the paradigmatic cases are reported here.

125. On January 24, 2003, unknown persons cut the high-tension cable that provided power to the broadcast facility of the radio station *Pop 95.1 F.M.* in Chimaltenango. The radio station was off the air for four days. According to its director, Concepción Cojón Morales, this incident may have been related to reports by the anchormen regarding acts of corruption, violations of the Peace Accords, and the resurgence of the Civil Defense Patrols (PAC, by its Spanish acronym).

126. On March 2, 2003, several men entered the home of *Prensa Libre* columnist and radio host Marielos Monzón Paredes and searched her belongings, but did not take objects of value.<sup>130</sup> Later, she received seven threatening telephone calls on her cellular phone. Previously, Monzón had received other threats apparently related to her publications on the events that beset the Azmitia Dorantes family, whose case is before the IACHR. In addition, she reported having received intimidating phone calls after the publication of a column related to the assassination of indigenous leader Antonio Pop. The callers threatened that she would meet the same fate. On March 18, 2003, the IACHR asked the Guatemalan State to adopt precautionary measures to protect her life and personal integrity.<sup>131</sup>

127. In May 2003, the director of the radio news program *La Noticia*, Pablo Rax, in Cobán, Alta Verapaz, received threats by telephone from unknown persons urging him to refrain from engaging in journalistic investigations, and who warned him to “be careful” since they were “marking his steps” and that he should stop saying “things that are of no concern to you.” Rax, who is also a correspondent for *Guatevisión*, had prepared some reports on drug-trafficking in Alta Verapaz and had reported acts of corruption.<sup>132</sup>

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<sup>129</sup> Press Release from the Special Rapporteur for Freedom of Expression, PREN/83/03 h<<http://www.cidh.org/Relatoria/Spanish/Compren2003/IndexComPren03.htm>>.

<sup>130</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), March 3, 2003; [www.portal-pfc.org](http://www.portal-pfc.org); *Centro de Reportes Informativos de Guatemala* (Cerigua), August 21, 2003.

<sup>131</sup> Inter-American Commission of Human Rights (IACHR), Report on the Administration of Justice and the Rule of Law in Guatemala.

<sup>132</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), June 11, 2003 and August 21, 2003.

128. Journalist and anchorman Edgar René Sáenz, of the program *Somos de Hoy*, broadcast on *Radio Xocomil Stéreo* in Sololá, reported that since June 4, 2003, he had received telephone calls with death threats, and that he had even been personally intimidated when a group of unknown persons showed up at his place of work to warn him to stop reporting “on the matter.” Sáenz has reported acts of corruption by the government, drug-trafficking, and anomalies in the public health centers. The Office of the Human Rights Ombudsperson asked the National Civilian Police to take protective measures.<sup>133</sup>

129. José Rubén Zamora, journalist and president of *El Periódico*, and his family were attacked and threatened by 12 heavily-armed persons, who broke into their residence on June 24, 2003 at 8:30 a.m. Zamora, his wife, his three children (13, 18, and 26 years of age) and a domestic worker were bound, intimidated, and assaulted for more than two hours. On leaving their home, the persons warned him: “don’t mess with those at the top.”<sup>134</sup> Two days later, Zamora reported that three vehicles with polarized glass had followed him when he was headed from his home to the offices of *El Periódico*. In addition, several members of the staff received threats by phone in which they were warned: “soon your death notices will be published along with those of José Rubén Zamora.”<sup>135</sup> On June 27, he reported that due to the intimidation and pressures, he had to get his family out of the country.<sup>136</sup> The Rapporteur, Eduardo Bertoni, expressed his grave concern over the threats received by Zamora in a press release issued July 7, 2003.<sup>137</sup> The Human Rights Ombudsperson sought precautionary measures from the IACHR on behalf of Zamora. The State was asked to provide information.

130. Luis Barillas, director of the news program *La Voz de la Parroquia*, of *Radio San Pablo*, correspondent for *Prensa Libre* in Rabinal, Baja Verapaz, and journalist for *Nuestro Diario* reported having received, the night of June 23, 2003, a telephone call in which he was warned: “This is the first peaceful warning, and it’s time that you shut up.” The next day, he received another telephone call in which he was told: “You’re going to die, it may be weeks or months, but you’re going to die.” He has indicated that the intimidation is likely related to a political rally in Rabinal in which stones were thrown at Efraín Ríos Montt, candidate for the *Frente Republicano Guatemalteco* (FRG); the rally was held the same day as the remains of 70 victims of the internal armed conflict were being laid to rest.<sup>138</sup> The journalist reported the intimidating acts to the Public Ministry and the Office of the Human Rights Ombudsperson. On

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<sup>133</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), July 21, 2003 and July 14, 2003. Report of the Human Rights Ombudsperson of Guatemala to the IACHR, October 2003.

<sup>134</sup> *Prensa Libre* (Guatemala), “Repudian ataque a periodista Rubén Zamora”, June 25, 2003, [www.prensalibre.com.gt](http://www.prensalibre.com.gt) ; Centro de Reportes Informativos de Guatemala (Cerigua), June 24, 2003; Inter-American Press Association (IAPA), June 24, 2003, [www.sipiapa.com](http://www.sipiapa.com) ; Asociación para el Estudio y Promoción de la Seguridad en Democracia, SEDEM, June 25, 2003; Reporters Without Borders, June 25, 2003, [www.rsf.fr](http://www.rsf.fr); Siglo XXI, “Zamora denuncia que persisten amenazas”, June 27, 2003, [www.sigloxxi.com](http://www.sigloxxi.com) ; BBC News, <[www.news.bbc.co.uk](http://www.news.bbc.co.uk)>, June 28, 2003.

<sup>135</sup> Siglo XXI (Guatemala), June 27, 2003, [www.sigloxxi.com](http://www.sigloxxi.com) ; *Prensa Libre*, June 27, 2003, [www.prensalibre.com.gt](http://www.prensalibre.com.gt); *El Periódico*, June 27, [www.elperiodico.com.gt](http://www.elperiodico.com.gt).

<sup>136</sup> Reporte Guatemala Hoy, June 28, 2003.

<sup>137</sup> See Press Release from the Special Rapporteur for Freedom of Expression PREN/83/03, <[www.cidh.org/Relatoria/Spanish/Compren2003/ComPren8303.htm](http://www.cidh.org/Relatoria/Spanish/Compren2003/ComPren8303.htm)>.

<sup>138</sup> *Prensa Libre* (Guatemala), June 27, 2003, [www.prensalibre.com.gt](http://www.prensalibre.com.gt) ; Committee for the Protection of Journalists (CPJ), July 8, 2003, [www.cpj.org](http://www.cpj.org).

July 4, unknown persons threw a homemade bomb at his home. No one was injured nor was there material damage. The next day, his sister received an anonymous message containing threats.<sup>139</sup>

131. The correspondent of the *Centro de Reportes Informativos sobre Guatemala (Cerigua)* in Baja Verapaz, Carmen Judith Morán Cruz, received death threats the night of June 29, 2003, when she received two telephone calls at home. An unknown person warned her: "I give you 24 hours to resign from Cerigua, because you've exhausted my patience because of your publications there. If you don't comply, you and your family will suffer the consequences."<sup>140</sup> Ten minutes later she received another call in the same terms.<sup>141</sup> On Thursday, July 3, she received another telephone call in which the intimidation was repeated<sup>142</sup> by a person who stated that her movements were being closely monitored. The intimidation was related to her coverage of exhumations in clandestine cemeteries containing the remains of civilians massacred in 1981, during Guatemala's civil war, and of a political rally at which *Frente Republicano Guatemalteco* (FRG) candidate Ríos Montt had been stoned and heckled.<sup>143</sup>

132. On July 3, 2003, unknown persons forcibly entered the residence of investigative journalist Luis Eduardo De León, of *El Periódico*. The unknown persons took the computer, several diskettes with information related to his work, and documents belonging to his wife, who had worked for several years at the Human Rights Office of the Archdiocese of Guatemala City (ODHA, by its Spanish acronym).<sup>144</sup>

133. On July 8, 2003, Angel Martín Tax, reporter for *Radio Sonora* and correspondent for *Prensa Libre* and *Nuestro Diario* in Alta Verapaz, found a receptacle with flowers by the door of his home, which in Guatemala is considered a funereal symbol. Previously, in May and June, Tax had received four death threats. He reported the incident to the Office of the Human Rights Ombudsman, the Public Ministry, and the United Nations Verification Mission in Guatemala (MINUGUA).<sup>145</sup>

134. On July 11, 2003, journalist Claudia Méndez Arriaza received a telephone call in which a threat was transmitted that was directed against the director of *El Periódico*, Juan Luis Font.<sup>146</sup> On July 23, the IACHR asked the Guatemalan State to issue precautionary measures to protect Font's life and personal integrity.

<sup>139</sup> *Centro de Reportes Informativos de Guatemala (Cerigua)*, August 21, 2003; Committee to Protect Journalists (CPJ), July 8, 2003, www.cpj.org.

<sup>140</sup> *Centro de Reportes Informativos de Guatemala (Cerigua)*, June 30, 2003; *Prensa Libre (Guatemala)*, July 2, 2003, www.prensalibre.com.gt.

<sup>141</sup> *Alianza contra la impunidad*, July 2, 2003.

<sup>142</sup> *Centro de Reportes Informativos de Guatemala (Cerigua)*, August 21, 2003.

<sup>143</sup> Committee to Protect Journalists (CPJ), July 8, 2003, www.cpj.org.

<sup>144</sup> *Id.*

<sup>145</sup> Reuters. In: *Periodistas Frente a la Corrupción (PFC)*, July 9, 2003; *Cerigua*, August 21, 2003; *Informe del Procurador de Derechos Humanos a la CIDH*, October 2003.

<sup>146</sup> Inter-American Commission of Human Rights (IACHR), Report on the Administration of Justice and the Rule of Law in Guatemala; *Prensa Libre (Guatemala)*, July 12, 2003, www.prensalibre.com.gt; *Siglo XXI (Guatemala)*, July 12, www.sigloxxi.com, 2003; *Centro de Reportes Informativos de Guatemala (Cerigua)*, August 21, 2003; Committee on Freedom of the Press of the Asociación de Periodistas de Guatemala (APG), July 14, 2003.



135. On July 11, 2003, armed men forced their way into the production plant of *Nuestro Diario*. After asking about several employees, they fired their weapons several times. Directors of this newspaper also reported that they were being followed by unidentified vehicles.

136. On July 24, 2003, demonstrators with their faces covered, bearing firearms, sticks, and machetes, surrounded the Constitutional Court, the Supreme Court, the Supreme Electoral Tribunal, and the Office of the Human Rights Ombudsperson, protesting the suspension of the process of registering *Frente Republicano Guatemalteco* (FRG) candidate Efraín Ríos Montt. During the protests, journalist Héctor Ramírez, 62 years of age, who worked for *Radio Sonora* and *Noti 7*, died after suffering a heart attack when trying to flee a mob of protesters.<sup>147</sup> Juan Carlos Torres, a photographer with the morning paper *El Periódico*, and Héctor Estrada, cameraman with the television station *Guatevisión*, fled after the demonstrators sprayed them with gasoline in an effort to burn both journalists.<sup>148</sup> On July 25, 2003, the Commission issued a press release condemning the acts of violence and urging the State to adopt all measures necessary to ensure the physical integrity of all Guatemalans and to ensure the rule of law.<sup>149</sup>

137. In the days following the events of July 24, 2003, several journalists reported threats. The director of the news program *Guatevisión*, Haroldo Sánchez, reported having received death threats by telephone and email. Reporters and cameramen from *Guatevisión* were also the target of verbal attacks.<sup>150</sup>

138. In July 2003, information was received about the intimidation of several journalists in the country. In Zacapa, journalists Juan Carlos Aquino, host of the news program *Punto Informativo*, and Nehemías Castro, director of the television program *Personajes*, reported new attacks against them after they reported on the mobilization of *Frente Republicano Guatemalteco* (FRG) sympathizers, and after they denounced the alleged political manipulation of several peasants and teachers to support violent actions on behalf of the official party.<sup>151</sup>

139. On August 18, 2003, journalist Juan Carlos Aquino, host of the radio news program *Punto Informativo*, of *Radio Novedad*, in Zacapa, and correspondent of *Radio Punto*, once again reported having received threats by telephone.<sup>152</sup> He attributed the threats to his coverage of the FRG demonstrations in Guatemala City.<sup>153</sup>

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<sup>147</sup> *Prensa Libre* (Guatemala), "Jueves Negro: turbas del FRG causan terror en la capital", July 25, 2003, [www.prensalibre.com.gt](http://www.prensalibre.com.gt).

<sup>148</sup> Committee to Protect Journalists (CPJ), July 24, 2003, [www.cpj.org](http://www.cpj.org).

<sup>149</sup> Press Release from the Inter-American Commission on Human Rights, 18/03, <<http://www.cidh.org/Comunicados/Spanish/2003/18.03.htm>>.

<sup>150</sup> *Centro de Reportes Informativos de Guatemala*, (Cerigua), August 1; *Prensa Libre* "Director de Guatevisión denuncia amenazas", August 1, 2003, [www.prensalibre.com.gt](http://www.prensalibre.com.gt).

<sup>151</sup> Inter-American Commission of Human Rights (IACHR), Report on the Administration of Justice and the Rule of Law in Guatemala.

<sup>152</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), August 18, 2003.

<sup>153</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), August 4, 2003.

140. On July 30, 2003, journalist Edwin Perdomo, correspondent of *Prensa Libre* and *Radio Punto* in Puerto Barrios, Izabal, reported having received telephone calls in which he was warned that he should stop putting out news about the FRG or else he would meet with the same fate as journalist Mynor Alegría, who was assassinated in September 2001. Perdomo's news program had previously denounced alleged anomalies committed by public officials.<sup>154</sup> He requested protection from the National Civilian Police.

141. Journalist Carlos René Torres, host of the television program *Diálogo*, reported to the Office of the Auxiliary Ombudsperson for Human Rights (PDH, by its Spanish acronym) of Chiquimula that unknown persons had been harassing him by telephone, demanding that he change the format of his program, and that if he did not do so he or one of his family members could die. Torres also reported that on the night of August 10, 2003, after leaving his job and getting on his motorcycle, a dark sedan with polarized glass followed him for several blocks and tried to run him down. Accordingly, he demanded that the authorities provide him protection. The office of the PDH in Chiquimula filed a *recurso de exhibición personal* on his behalf and sought accompaniment by the United Nations Verification Mission in Guatemala (MINUGUA).<sup>155</sup>

142. On September 26, 2003, during a political rally in Ixcán, Quiché, opponents of candidate Ríos Montt clashed with his supporters. The journalists who covered the incident were assaulted.

143. In October 2003, the following Suchitepéquez-based journalists reported to the Public Ministry that they had been threatened after denouncing acts of corruption: Cristian Soto, of *Radio Punto*; Luis Ortiz, of *Canal TV Imagen*; Julio Rodas, of *Nuestro Diario*; Fredy Rodas, of *Prensa Libre*; Saúl de León, of *Radio Santa Bárbara*; and Nery Morales, of the cable channel *Canal Optimo*, of the *Intercable* network.<sup>156</sup>

144. On November 9, 2003, the day of the first round of presidential elections, reporters Ramiro Sandoval and Nery Gallardo of the news program *Video Noticias*, were attacked while covering the elections in the municipality of Asunción Mita, Jutiapa. They reported to the Public Ministry that supporters of the FRG robbed part of their equipment and tried to beat them.<sup>157</sup>

### **Access to information**

145. On January 15, 2003, the president ordered that press access to the act of distributing dividends at the state-owned enterprise Portuaria Quetzal, in Escuintla, be prohibited. There, armed guards were keeping watch over the entrance to the facilities to keep reporters from entering.<sup>158</sup>

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<sup>154</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC) July 31, 2003.

<sup>155</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), August 15, 2003.

<sup>156</sup> Report Guatemala Hoy, *Prensa Libre*, October 30, 2003.

<sup>157</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), November 9, 2003.

<sup>158</sup> Siglo XXI (Guatemala), January 20, 2003, [www.sigloxxi.com](http://www.sigloxxi.com)

146. On January 20, 2003, the security staff of President Alfonso Portillo kept a group of journalists from entering a public act in a school in Zacapa.<sup>159</sup> On January 21, the Congress unanimously approved an operative point condemning this as a violation of Article 35 of the Constitution by the president for denying access to the press.<sup>160</sup>

147. On January 28, 2003, journalists were barred from access to the Foreign Ministry when they sought to cover the unveiling of a bust of Benito Juárez by the president.

148. On April 9, 2003, then-president of the Congress, Efraín Ríos Montt, told journalists who were asking for documents related to budgetary execution in 2001 and 2002 that any such information must be requested in writing from the officers (*Junta Directiva*) of the legislative body. Members of the press and human rights communities condemned this attitude, considering it to constitute an obstacle to access to information.<sup>161</sup> This information was reiterated to the Rapporteur during the Commission's visit.

149. The Rapporteurship received information about the consideration by the Congress of various bills related to freedom of expression and access to information. As of this writing, they had not been approved.

### **Others**

150. During the on-site visit, the Rapporteurship also received information concerning an increase in the number of times that journalists have been called to the Public Ministry to reveal their sources. These include one time when representatives of *El Periódico* who were summonsed refused to respond to ensure that their sources would be protected.

151. The director of *El Periódico*, José Rubén Zamora, was summonsed by León Argueta, Attorney General of the Republic, to provide evidence that was in his possession in relation to a report linking Argueta to a company that had breached a public works contract. He was told that if he did not provide the evidence, he would be taken by the authorities to the Office of the Anti-Corruption Prosecutor. Finally, Zamora had to send, in writing, the documents on which the report relied.<sup>162</sup>

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<sup>159</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), January 22, 2003.

<sup>160</sup> *Guatemala Hoy*, January 22, 2003.

<sup>161</sup> *Centro de Reportes Informativos de Guatemala* (Cerigua), April 11, 2003, *Informe del Procurador de los Derechos Humanos de Guatemala a la Comisión Interamericana de Derechos Humanos*, October 2003.

<sup>162</sup> Report on the Administration of Justice and the Rule of Law in Guatemala.

## HAITI

152. On July 23, the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, released the Report on Freedom of Thought and Expression in Haiti, which was prepared by the Rapporteurship and approved by the IACHR.<sup>163</sup>

153. The report established that in Haiti, freedom of expression does not enjoy all the guarantees necessary for its full exercise. Impunity in cases of assassinations of journalists, as well as the constant possibility of receiving threats because of what one investigates or disseminates, creates a climate of self-censorship. In addition, the report established that the State has breached its obligation to identify, prosecute, and punish the persons responsible for the assassinations and acts of harassment of journalists.

### Attacks and threats

154. Attacks on and threats to the press in Haiti led the Special Rapporteur for Freedom of Expression to issue two press releases, one in February and the other in October 2003. Nonetheless, throughout the year the Rapporteurship received information on threats, attacks, and intimidation of journalists.<sup>164</sup>

155. On February 14, 2003, Jean-Robert François, of *Radio Métropole*, Henry Fleurimond, of *Radio Kiskeyah*, and Jeaniton Guerino and Gedeon Presendien of *Radio Étincelles*, crossed the border at Jimaní, from Haiti to the Dominican Republic, seeking refuge. They had apparently been taken from Gonaïves to Port-au-Prince with the help of the Police and the *Association des Journalistes Haitiens*. The four were part of a group of seven persons who were being sought by the *Armée Cannibale* (“Cannibal Army”) to be assassinated because of reports on its actions and on the precarious conditions in Haiti. The others being sought by that group are Joué Rene, of *Radio Signal FM*, and René Noel-Jeune and Esdras Mondelus, of *Radio Étincelles*. The first traveled to France, the second went to the United States, and the third is operating the radio station from an undisclosed location.<sup>165</sup>

156. In early February 2003, unidentified persons entered the studios of *Radio Shekinah*, on the outskirts of Port-au-Prince, and severely beat the director, Manés Blanc, who had to be hospitalized. The assailants said that the action against him was due to his commentaries on the political situation in Haiti.<sup>166</sup>

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<sup>163</sup> See Report on the Situation on the Right to Freedom of Thought and Expression in Haiti, in: <<http://www.cidh.org/Relatoria/Spanish/InfPaíses/Haiti/indice.htm>>.

<sup>164</sup> See Press Releases of the Special Rapporteur for Freedom of Expression PREN/69/03 and PREN/95/03 in: <<http://www.cidh.org/Relatoria/Spanish/Compren2003/IndexComPren03.htm>>.

<sup>165</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 18, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); Hoy (Dominican Republic) <<http://www.hoy.com.do>>.

<sup>166</sup> Inter-Amecian Press Association (IAPA), March 24, 2003, [www.sipiapa.com](http://www.sipiapa.com).

157. On February 14, 2003, alleged followers of the governing party attempted to set fire to the home of *Radio Métropole* reporter Jean-Numa Goudou, located in Carrefour. He had been threatened before.<sup>167</sup>

158. In February and December 2003, reports were received concerning intimidation of and threats to *Radio Métropole* journalist Nancy Roc. A similar incident had occurred in December 2002.<sup>168</sup>

159. On February 18, 2003, *Radio Métropole* decided to suspend its broadcasts for one day, in protest over the intimidation of and threats to its journalists.<sup>169</sup>

160. Michèle Montas, director of *Radio Haiti Inter* and widow of journalist Jean Dominique, assassinated in 2000, stated that she continued receiving threats that put her staff in imminent danger. Accordingly, on Saturday, February 22, 2003, *Radio Haiti Inter* interrupted its broadcasts indefinitely.<sup>170</sup>

161. On April 30, 2003, Lilianne Pierre-Paul, director of *Radio Kiskeyah*, was intimidated by members of the popular organizations. An unknown person entered the radio station and threw a letter at her that contained a message to the president of France, Jacques Chirac, dated April 25. Pierre-Paul was given four days to read the letter and respond, and was told that if she failed to do so she would pay the consequences on May 6. The letter also contained a bullet for a 12-caliber pistol.<sup>171</sup>

162. On Wednesday, August 27, 2003, two armed persons abducted *Radio Vision 2000* and *Radio Pasion* journalist Peterson Milord, who was found two days later, unharmed but naked and tied to sugar cane 30 kilometers from Port-au-Prince.<sup>172</sup> Days earlier, during a mass in Santa Rosa de Lima, in Léogane, attended by President Jean Bertrand Aristide, priest Fritz Sauvaget ordered him to leave. The Association of Haitian Journalists (AJH, by its French acronym) stated that during his detention Milord had been threatened that he would have more problems if he continued to criticize Father Sauvaget.<sup>173</sup>

163. On the occasion of the anniversary of the September 30, 1991 coup, information came out on attacks scheduled for the following day against several radio stations.<sup>174</sup> Secretary of Public Safety Jean Gérard Dubreuil and Mario Dupuy, Secretary of Communication, reported that police protection would be given the media that were under threat.

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<sup>167</sup> Inter-Amecian Press Association (IAPA), March 24, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>168</sup> International Freedom of Expression Exchange (IFEX), February 27, 2003 and Radio Métropole (Haiti), "La journaliste Nancy Roc gravement menacée par des individus armés," <<http://www.metropolehaiti.com/metropole/frameset.html>>, December 9, 2003.

<sup>169</sup> Inter-Amecian Press Association (IAPA), March 24, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>170</sup> Reporters Without Borders (RSF), February 20, 2003, [www.rsf.org](http://www.rsf.org)

<sup>171</sup> National Coalition on Haitian Rights (NCHR), report on March-April, 2003.

<sup>172</sup> International Freedom of Expression Exchange (IFEX), September 2, 2003, [www.ifex.org](http://www.ifex.org); Inter-American Press Association (IAPA), October 14, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>173</sup> Knight Center for Journalism in the Americas and Association de Journalistes Haïtiens, August 29, 2003.

<sup>174</sup> *Radio Métropole*, September 29, 2003.

164. Cyrus Sibert, a journalist with *Radio Maxima*, reported that on October 25, 2003, unknown persons opened fire on the radio station's offices. The staff had been targets of recurrent threats.<sup>175</sup>

165. On October 27, 2003, Patrick Tavien, reporter for *Radio Maxima*, said he had been followed by armed men.<sup>176</sup>

166. On Tuesday, October 28, 2003, at night, unknown persons opened fire on the offices of *Radio Caraïbes* in Port-au-Prince. No one was wounded. The next day, the station suspended its broadcasts to evaluate the situation and ensure the journalists' security. The programming resumed on November 3.<sup>177</sup>

167. On November 12, 2003, at approximately 1:30 p.m., partisans of the opposition arrived at the offices of *Radio Pyramide* in Saint Marc and destroyed the station's equipment. According to information received by the Rapporteurship, the police had to intervene to rescue the director, Fritzon Orius, and about ten journalists who work there. Finally, the offices were set ablaze, and so it stopped broadcasting.<sup>178</sup>

### Investigations

168. On March 21, 2003, a formal indictment was handed down against six persons suspected of being the direct perpetrators of the assassination of Jean Léopold Dominique, journalist and founder of *Radio Haiti Inter*, who was assassinated on April 3, 2000.<sup>179</sup> On August 4 the Court of Appeals of Port-au-Prince ordered a new investigation to determine the masterminds of that crime.<sup>180</sup> Subsequently, the Court also ordered the release of three of the suspects for lack of sufficient evidence to keep them in prison.<sup>181</sup>

169. In September 2003, Nappla Saintil was designated the new investigative judge in the case looking into the assassination of Jean Léopold Dominique.<sup>182</sup>

### HONDURAS

170. The Special Rapporteur for Freedom of Expression traveled to Honduras from September 2 to 5, 2003, at the invitation of the government of President Ricardo Maduro, for the

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<sup>175</sup> Alter Presse, October 28, 2003.

<sup>176</sup> *Id.*

<sup>177</sup> Committee to Protect Journalists (CPJ), October 30, [www.cpj.org](http://www.cpj.org); RSF, October 30, Reporters Without Borders (RSF), [www.rsf.org](http://www.rsf.org).

<sup>178</sup> Association de Journalistes Haïtiens.

<sup>179</sup> Committee to Protect Journalists (CPJ), March 25, 2003, [www.cpj.org](http://www.cpj.org).

<sup>180</sup> Agence France Presse (AFP), « Nouvelle instruction pour l'assassinat en 2000 du journaliste Jean Dominique », August 4, 2003.

<sup>181</sup> Haiti Press Network, August 5, 2003.

<sup>182</sup> *Radio Métropole*, September 24, 2003.

purpose of collecting information on the situation of freedom of expression and to promote the relevant standards established by the inter-American system for the protection of human rights.

171. The Rapporteur met with Honduran authorities. He also received information and testimony from journalists and civil society organizations. In the context of the visit, the Rapporteurship gave a seminar for Honduran journalists on freedom of expression and the press and the inter-American system for the protection of human rights.

172. Like other rapporteurships of the IACHR, upon concluding his visit and in order to contribute to the goal of greater protection of freedom of expression, the Rapporteur issued a press release<sup>183</sup> setting forth a series of preliminary observations that have been taken into account for analyzing the situation of Honduras in this report. During the 118th regular session of the IACHR, the Rapporteur informed the Commission of his visit to Honduras and of some of the events included in this report.

### **Assassinations**

173. On November 26, 2003, journalist Germán Antonio Rivas, managing director of *Corporación Maya Visión (Canal 7)* was assassinated as he arrived at the station's regional offices in Santa Rosa de Copán, in western Honduras. At the time this report was drafted, there had been no official statement as to the possible motives for the crime. One of the hypotheses is that it may have had to do with investigations and reports by Rivas in his news program. On February 24, 2003, Rivas had emerged unscathed from another attack, when an unknown person shot at him as he arrived at his place of residence.<sup>184</sup> The Office of the Special Rapporteur was informed that the Honduran Attorney General's Office has begun an investigation of the incident and has carried out the preliminary procedural steps.

### **Legislation and judicial actions**

174. The Rapporteurship observed during its visit that despite some legislative reforms, in Honduran legislation it continues to be compulsory to be a member of a professional association in order to engage in journalism, even though in 1985, the Inter-American Court of Human Rights, on analyzing the issue in its advisory opinion OC-5/85, clearly determined that having compulsory membership in a professional organization as a condition for engaging in journalism is a violation of the right to freedom of expression. In his press release, issued at the end of the visit, the Rapporteur urged the Honduran State to repeal any law that might require the compulsory membership of journalists in professional organizations.

175. The Rapporteurship has received information on some journalists who have been sued for crimes of *desacato*<sup>185</sup> or crimes against honor,<sup>186</sup> invoking the provisions of the Criminal

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<sup>183</sup> Press Release by the Office of the Rapporteur for Freedom of Expression, PREN 91/03, <<http://www.cidh.org/Relatoria/Spanish/Compren2003/ComPren9103.htm>>.

<sup>184</sup> Committee for Freedom of Expression, (*Comité por la Libre Expresión, C-Libre*), November 27, 2003; Committee to Protect Journalists (CPJ), February 24, 2003, [www.cpj.org](http://www.cpj.org).

<sup>185</sup> Article 345 of the Criminal Code provides: "One who threatens, defames (*injuria o calumnia*), insults, or by any other means offends the dignity of a public authority in relation to the performance of his or her duties, by act, word, or in writing, shall be punished by imprisonment of two (2) to four (4) years.

Code that define such crimes. Among the cases the Commission learned of, journalist Renato Álvarez, in charge of the television talk show *Frente a Frente*, of the television news station TVC of *Corporación Televicentro*, which is broadcast on channels 3, 5, and 7, is facing two complaints for crimes of defamation (*calumnia e injuria*) for disseminating a report in which he revealed the names of persons allegedly implicated in drug-trafficking. The complainants, a lawyer and a former legislator and politician, demanded that Álvarez reveal the identity of the source who had provided him the document; the journalist did not agree.<sup>187</sup> As of this writing, the case was in the production of evidence stage. A third complaint was dropped after a conciliation hearing.<sup>188</sup>

176. Journalist Rossana Guevara, director of the news program *TN5*, which appears on channel 5, of the *Corporación Televicentro*, was the subject of a criminal complaint on August 7, 2003 for the crime of defamation (*calumnia*) for disseminating an informational note about corruption and bankruptcies of Honduran banks on May 20, 2003. The lawsuit was filed by Víctor Bendeck, a member of the Central American Parliament, owner of news media, and a former banker, who at present is a fugitive from the justice system for alleged responsibility in the multi-million dollar bankruptcy of the Banco Corporativo (Bancorp). Bendeck, along with other partners of the bank, is considered by the Office of the Attorney General to be one of the masterminds behind what is considered to be one of the biggest financial scandals to the detriment of the State. The bankruptcy of Bancorp is estimated to have cost US\$52 million.<sup>189</sup> Charges were also filed against Sandra Moreno.<sup>190</sup>

177. The Rapporteur was pleased to receive information according to which on October 23, 2003, the Attorney General filed a constitutional motion before the Supreme Court to repeal Article 345 of the Criminal Code, on the crime of *desacato*, for being at odds with the free dissemination of thought established in Article 72 of the Honduran Constitution.<sup>191</sup> In a communication directed to the Minister of Foreign Relations of Honduras, Leonidas Rosa Bautista, dated October 30, the Rapporteur informed the State that he was pleased to see this initiative. On December 1, the State forwarded a copy of the constitutional motion. The Rapporteurship will continue to monitor this auspicious process, but recalls that so long as the *desacato* law is on the books, it is at odds with the Declaration of Principles on Freedom of Expression.

## Access to information

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If the person offended is the President of the Republic, or any of the high-level officials referred to in Article 325 of this Code, the prison term shall be two (2) to five (5) years.

<sup>186</sup> Title III of the Criminal Code of Honduras.

<sup>187</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003. [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>188</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), September 25, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>189</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 11, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>190</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>191</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), October 27, 2003; *La Prensa* (Honduras), "Buscan eliminar censura", October 25, 2003, [www.laprensahn.com](http://www.laprensahn.com); *Tiempo Digital* (Honduras), October 25, 2003, [www.tiempo.hn](http://www.tiempo.hn); *El Heraldo* (Honduras), "Fiscalía pide anular ley que impone censura a periodistas", October 25, 2003, [www.elheraldo.hn](http://www.elheraldo.hn).



178. The Rapporteurship received information, both during the visit and afterwards, of growing interest in several sectors, both governmental and civil society, in pushing legislation on the right to access to information in the possession of the State, and regarding the *habeas data* action. On November 5, 2003, the organization Committee for Freedom of Expression (*Comité por la Libre Expresión*, C-Libre) presented a proposal for a Law on Access to Public Information within the context of the Third National Dialogue, which brought together more than 130 persons, including journalists, deputies, justice workers, humanitarian groups, and civil society representatives. The objective of the presentation was to “promote a wide-ranging and participatory debate on the law, prior to submitting it to the Legislative Chamber.”<sup>192</sup> In addition, the National Anti-Corruption Council has developed a preliminary draft law on access to information.

### **Indirect means of restricting freedom of expression**

179. During its visit, the Rapporteurship was informed that official advertising was being assigned in a discretionary manner, without clear parameters and with some indicia of arbitrariness.

180. In addition, it received information according to which the government suspended the official advertising for the magazine *Hablamos Claro* and the news program *Abriendo Brecha*, both owned by journalist Rodrigo Wong Arévalo, after *Hablamos Claro* published an article alleging that the first lady, Aguas Ocaña, had demanded that the president remove the Minister of Culture, Arts, and Sports, Mireya Bates.<sup>193</sup>

181. The Rapporteurship will continue monitoring the events underlying such allegations, and at the same time will urge Honduran public institutions to ensure that official advertising is distributed in keeping with fair, clear, and objective criteria.

### **Media ethics**

182. The Rapporteurship received information on the use of some media as instruments for upholding personal or economic interests or to discredit the honor of persons to the detriment of the Honduran people's right to information. During his visit, the Special Rapporteur perceived the discontent in some sectors of society over what they characterized as unethical practices of journalists or the abusive exercise of freedom of expression.

183. Given the seriousness with which such accusations should be considered, the Rapporteurship recalled in its press conference upon concluding the visit to Honduras that Honduran journalists and media owners should be mindful of both the need to maintain their credibility with the public, which is essential if they are to survive, and the important role of the press in a democratic society, as it is the main means by which the members of society exercise their right to express and receive information and ideas. The press should foster its ethical self-regulation through codes of ethics, style manuals, editorial rules, ombudspersons, and

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<sup>192</sup> Committee for Freedom of Expression, (*Comité por la Libre Expresión*, C-Libre), November 6, 2003.

<sup>193</sup> Committee for Freedom of Expression, (*Comité por la Libre Expresión*, C-Libre), First report on the situation on Freedom of Expression in Honduras (*Primer informe trimestral sobre la situación de la libertad de expresión y derecho a la información en Honduras*), 2003.

information councils, among other possible mechanisms. It should be clear, however, that it is not the State that should impose the rules of ethical conduct, which are essential for the work of journalists. The Rapporteur recalled during the press conference what was stated in the joint declaration by the three rapporteurs for freedom of expression in December 2002, when they reminded media owners of their responsibility to respect freedom of expression, and in particular editorial independence.

### **Other**

184. In relation to the ownership of media, the Rapporteurship found that many persons active in politics are buying up media outlets. In November 2001, in a joint declaration by the three international rapporteurs for freedom of expression—the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), and the Special Rapporteur for Freedom of Expression of the OAS—it was said that those who hold elective and government positions and are owners of media should keep their political activities separate from their interests in those media.

## **JAMAICA**

### **Judicial actions**

185. On July 14, 2003, the Judicial Committee of the Privy Council of the United Kingdom affirmed the decision handed down by the Court of Appeals in Jamaica two years ago that required the payment of compensation totaling J\$35 million (approximately US\$750,000) in a defamation case brought by television talk show host Eric Anthony Abrahams against Gleaner Company Limited in 1987. Abrahams's accusation referred to a cable by *Associated Press* that was published by the newspaper the *Gleaner* and its evening edition, *The Star*. The Gleaner Company Limited appealed the judgment hoping to reduce the figure, based on the argument that the amount would have a chilling effect on journalism and would inhibit the constitutional right to freedom of expression. Nonetheless, the Privy Council considered that the news item had been published with malice and that there was not sufficient information to support it, and, therefore, it found that a large damages award was in order. The Privy Council considered that the award was not excessive considering the financial losses and personal harm suffered. The Privy Council added: "This is not a case in which freedom to publish is an issue." The damages award is the highest in Jamaica's legal history.<sup>194</sup>

186. On May 29, 2003, the Supreme Court of Jamaica ordered the television station *CVM* to pay compensatory damages for defamation amounting to J\$20 million (approximately US\$334,000) to a detective corporal by the last name of Tewari. The compensation was ordered in relation to the content of two news broadcasts by *CVM-TV* on November 12, 1998, related to the channel's coverage of a demonstration on May 11, 1998, in Braeton, to the south of Santa Catalina, in which there was a controversial exchange of gunfire involving the police. Tewari alleged that his reputation had been harmed by statements contained in those programs,

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<sup>194</sup> The Jamaica Observer, July 15, 2003, [www.jamaicaobserver.com](http://www.jamaicaobserver.com); Caribbean Media Network, July 14, 2003; International Press Institute: 2001 World Press Freedom Review; Committee to Protect Journalists (CPJ), 1996, [www.cpj.org](http://www.cpj.org); Inter-American Press Association, October 14, 2003, [www.sipiapa.com](http://www.sipiapa.com).

and testified that he was not present during the exchange of gunfire. The court ruled in his favor. The television station decided to appeal the ruling.<sup>195</sup>

### **Access to information**

187. An Access to Information Act, approved by the Senate on June 28, 2002, is in the process of being implemented in Jamaica. The Act provides for the release of government documents but exempts the "opinions, advice or recommendations (and) a record of consultation or deliberations" of civil servants, including Cabinet members, from disclosure. As part of the Act, an Access to Information Unit within the Prime Minister's Office has been established to guide the implementation process, and establish a framework for citizens to effectively use the Act.<sup>196</sup> The implementation of the first phase of the Act was originally scheduled to begin in August 2003, but was later postponed until October 2003. On September 2003, the government announced that the Senate would not be debating the amendment to the Access to Information Act until the regulations governing its long-awaited implementation have been presented, to ensure that final consideration of the Bill and the regulations take place together.<sup>197</sup>

### **MEXICO**

188. The Special Rapporteur for Freedom of Expression visited the Republic of Mexico from August 18 to 26, 2003. During the visit, he met with federal authorities from the three branches of government, and local authorities from various states. In addition, he received information and testimony from journalists, human rights defenders, representatives and owners of media, and representatives of journalists' trade unions. He also met with other representatives of civil society, both national and local.

189. Mexico has made some strides in carrying out the recommendations related to freedom of expression proposed by the IACHR in its 1998 Report on the Situation of Human Rights in Mexico. Nonetheless, important aspects remain to be addressed to fully implement those recommendations. Many of these aspects are within the purview of the local authorities. Accordingly, the full exercise of the freedom of expression faces greater obstacles in the interior of the country than in Mexico City.

190. On concluding its visit, the Rapporteurship issued a press release<sup>198</sup> setting forth a series of preliminary observations and thoughts. The Rapporteur informed the Commission of his visit to Mexico during the 118th regular session of the IACHR. What follows is a summary of

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<sup>195</sup> The Jamaica Observer, June 1, 2003, [www.jamaicaobserver.com](http://www.jamaicaobserver.com) ; Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>196</sup> David Banisar, The [www.freedominfo.org](http://www.freedominfo.org) Global Survey, *Freedom of Information and Access to Government Record Laws around the world*, 28 September 2003, available at <http://www.freedominfo.org/survey/survey2003.pdf>; International Press Institute: 2002 World Press Freedom Review, available at: <http://www.freemedia.at/wpfr/world.html>, The Jamaica Observer, September 13, 2003 at: [www.jamaicaobserver.com](http://www.jamaicaobserver.com).

<sup>197</sup> Jamaica Gleaner, 4 October 2003, available at: <http://www.jamaica-gleaner.com/gleaner/20031004/news/news1.html>.

<sup>198</sup> Office of the Rapporteur for Freedom of Expression, Press Release PREN/89/03, <<http://www.cidh.org/Relatoria/Spanish/Compren2003/ComPren8903.htm>>.

some of the information received before, during, and after the visit, and some recommendations are made.

191. In addition, the Rapporteurship notes that some of the observations highlighted below have already been noted in the *Diagnóstico sobre la situación de los derechos humanos en México* produced by the Office of the United Nations High Commissioner for Human Rights in Mexico in 2003.

### Threats and attacks

192. Threats and attacks aimed at silencing journalists critical of the public administration have diminished compared to previous years. Despite this encouraging sign, information was received during the visit indicating that some incidents involving acts of intimidation and threats persist.<sup>199</sup> This situation is all the more worrisome in the interior of the country, where one continues to find threats, acts of intimidation, and indirect means of restricting the freedom of expression of journalists, photographers, human rights defenders<sup>200</sup> and media outlets.

193. In the states of Guerrero<sup>201</sup> and Chihuahua, acts of aggression and threats appear to be aimed at silencing reports and investigations related to violations of fundamental rights. In Chihuahua in particular, information was received about forms of intimidation in response to reports related to the homicides of women in Ciudad Juárez, and investigations related to drug-trafficking or politically sensitive matters.

194. The Rapporteurship also received worrisome information on some of the acts of intimidation, which include assaults on investigative journalists and photographers in areas near

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<sup>199</sup> The National Human Rights Commission delivered a document to the Rapporteurship indicating that as of August 2003, there were 36 reports of actions against journalists. The breakdown is as follows: intimidation (12), injuries (8), threats (4), censorship (2), homicides (1), robberies (2), arbitrary detentions (3), unwarranted dismissals (2), unlawful exercise of public functions (1), harm to the property of others (0), searches and visits (0), and disappearances (1).

<sup>200</sup> Examples: The organization Christian Action Against Torture (ACAT) reported that since October 2002 attorney Samuel Castellanos Piñón and a legal intern formally assumed the defense of the detainees in the Agua Fría case after having received testimony of torture and arbitrary detentions. On February 26, 2003, attorney Castellanos told the local press that the trials of 10 prisoners were marked by many irregularities and violations of individual guarantees. On March 1, 2003, anonymous mail was received at the offices of ACAT-Oaxaca threatening to kill Castellanos if he didn't withdraw from the defense of the detainees in the Agua Fría case. On March 31, a second mail was received at the offices of ACAT-Oaxaca directed to Castellanos and his team, warning them to withdraw from the defense of the detainees from Tejomulco within one month, and naming other persons. The organization mentions having presented a complaint for harassment to the Office of the Attorney General. On April 8, 2003, the IACHR decided to grant precautionary measures. Information provided by CMDPDH, August 2003.

Amnesty International reported threats and harassment aimed at silencing Mrs. Evangelina Arce, a member of the Comité Independiente de Derechos Humanos and the mother of Silvia Arce, who was disappeared March 11, 1998 in Ciudad Juárez. According to the information, Mrs. Arce has been receiving anonymous threats since early 2003 for having made a statement to the National Human Rights Commission, reporting on the "failure of the authorities to carry out an effective investigation into the disappearance of her daughter." The CMDPDH noted that the victims' family members as well as human rights defenders in Ciudad Juárez and the city of Chihuahua have been harassed for their public statements. Information provided by the CMDPDH, August 2003.

<sup>201</sup> The Commission for the Defense of Human Rights of the State of Guerrero reported that since the creation of its program to uphold journalists' rights in 2001, 57 complaints have been lodged, 25 of which correspond to threats, harassment, and intimidation. In the state of Guerrero information was received related to the labor situation of communication workers who allegedly have been dismissed as a result of government pressures on media owners. They reported that these pressures worked as indirect means of restricting the freedom of expression of such workers. Information provided by the Asociación de Periodistas del Estado de Guerrero, August 20, 2003.

military checkpoints in Guerrero, when the communication workers sought to document irregular actions by Army personnel. The information describes the existence of Army checkpoints with mixed operational brigades that include the participation of different police corps and the Public Ministry, in order to implement the federal law on firearms and explosives and to fight terrorism. It was reported that during such operations persons who appear to become uncomfortable during the check are intimidated, and no one is allowed to photograph or film such operations. According to the reports, these agents argue with their weapons in hand that it is prohibited to film or report on their work or actions. Any reporter or cameraman who does so runs the risk of being detained or having his or her camera taken away. Even though complaints have been lodged with the competent authorities as to the existence of the checkpoints that are operating without any legal basis, as of the publication of this report, no action had been taken to determine their legality or to investigate the abuses reported.

195. The Rapporteurship recommends that the persons responsible for the acts of intimidation noted here and those reported to the competent entities by the persons whose right to freedom of expression is affected be investigated and punished. The failure to investigate acts of intimidation helps to create a climate of fear of exercising the freedom of expression and investigation in the states indicated, discouraging reports on violations of human rights, or leading to self-censorship. At the same time, it has a direct effect on freedom of expression, sending a message of encouragement to the perpetrators of such crimes, who are protected by the failure to investigate or the sluggish pace of investigations, enabling them to continue these acts.

196. The Rapporteur is also concerned to see that investigations related to the assassination of journalists continue to be held up. Nonetheless, he values the fact that during a hearing before the IACHR held in October at the request of the Inter-American Press Association (IAPA), the State expressed its openness to going forward with the judicial investigations into the deaths of journalists Héctor Félix Miranda and Víctor Manuel Oropeza, assassinated in 1988 and 1991, respectively.

### **Judicial actions**

197. While the physical attacks have diminished, it is worrisome to see harassment, through the arbitrary or abusive use of legitimately enacted laws and regulations, such as laws on criminal defamation, or laws that permit subpoenas of journalists to demand that they reveal their sources.

198. Practically all the criminal codes of the states of Mexico include criminal defamation laws (statutes on *difamación*, *calumnia*, and *injuria*). The Rapporteur was concerned by information according to which in some states these laws are used to persecute, harass, and/or jail journalists for expressing their opinions on matters of public interest or for criticizing the public administration.

199. The Rapporteurship considers that to ensure the adequate defense of freedom of expression, the Mexican State, at both the federal and local levels, should amend its defamation laws such that only civil penalties could be applied in cases of insults of public officials related to the performance of their functions, public figures, or private figures involved voluntarily in matters of public interest. In this regard, the Rapporteurship recommends that the State review

and modify the Press Law (*Ley de Imprenta*), which dates from 1917, and the criminal legislation, bearing in mind the relevant international standards. The Rapporteurship was encouraged to hear from federal officials that they intend to study initiatives along these lines, thus the Rapporteurship will continue to encourage and observe this process.

200. In the course of this year, the Rapporteurship twice spoke out, through press releases,<sup>202</sup> to condemn the detention of Mexican journalists due to criminal actions initiated against them for the crime of defamation. According to testimony provided to the Rapporteurship, this situation is more intense in local jurisdictions, i.e. in the states of the interior of the country.

201. The following are among the cases of defamation brought against journalists and reported to the Rapporteurship: Ángel Mario Ksheratto Flores, columnist with the newspaper *Cuarto Poder* of Chiapas;<sup>203</sup> Luciano Campos Garzam, correspondent for the magazine *Proceso* in Monterrey, Nuevo León; Humberto Pacheco Guardado<sup>204</sup> and Humberto Pacheco Gómez, both of the newspaper *Última Hora* of Aguascalientes; Juan Lozano Trejo director of the Hidalgo-based newspaper *El Huarache*; journalists Alejandro Gutiérrez and Jesusa Cervantes, correspondents for *Proceso* magazine in Chihuahua; Oscar Cantú Murguía, director of the newspaper *El Norte* of Ciudad Juárez, Chihuahua; Armando Delgado, Manuel Aguirre, Guadalupe Salcido, Rosa Icela Pérez, Francisco Lujan, Antonio Flores Schroeder, and Carlos Huerta, reporters with the newspaper *El Norte*, of Ciudad Juárez,<sup>205</sup> Francisco Barradas, of the

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<sup>202</sup> Press Releases from the Office of the Special Rapporteur for Freedom of Expression PREN/70/03 and PREN/75/03, at <[www.cidh.org/relatoria](http://www.cidh.org/relatoria)>.

<sup>203</sup> In January 2003, journalist Ángel Mario Ksheratto, author of the column "Fichero Político," published daily in the newspaper *Cuarto Poder*, was criminally indicted for the crime of defamation by the press officer of that state agency, María del Pilar Fernández, presumably for having denounced acts of corruption in the School Construction Committee of Chiapas. Ksheratto also reported having received phone calls with death threats, and that on several occasions vehicles without license plates have followed him. In October 2003 the Attorney General for the state of Chiapas provided a document to the Rapporteur at the headquarters of the IACHR summarizing the status of the cases of journalists in his office. With respect to journalist Ksheratto, in the defamation case brought by Edgar Valente de León Gallegos on September 11, 2003, the preliminary inquiry was assigned to the Bureau of Special and Important Matters. With respect to the defamation case brought by Jorge Cruz Pineda, it was reported that official notes were sent to have the complainants present witnesses, but to date none has come forward. With respect to the defamation case brought by Guilmar Sarmiento Gutiérrez, the Office of the Attorney General has only the complaint and the publication. On the defamation case brought by Ramiro de la Rosa Bejarano, it was proposed that the criminal action not be brought; it is currently before the Office of the Deputy Attorney General for Criminal Proceedings, for study and decision.

The document provided by the Attorney General for the state of Chiapas documents, in addition to the defamation cases against journalist Ksheratto, 13 other cases against journalists for crimes of defamation from the following media: *Diario de Chiapas*, *Cuarto Poder*, *La República de Chiapas*, *El Orbe*, *Diario del Sur*, and *Record*. Most of these cases are in the preliminary inquiry stage. In the cases against journalists Rosario González Chay and Ida Guizar García of the newspaper *El Sur* and journalists Álvaro Islas Hernández and Enrique Zamora Cruz of the newspaper *El Orbe*, the Rapporteur was informed of the proposal that no criminal action be brought.

<sup>204</sup> According to the information received, Humberto Pacheco Guardado, director of the newspaper *Última Hora* of the city of Aguascalientes, faced criminal defamation charges related to a report published February 2 and March 1, 2003, revealing acts of corruption that allegedly involved a federal judge and the governor of Aguascalientes. Information provided by the CMDPDH.

<sup>205</sup> In September 2002 the editorial director and seven reporters from the newspaper *El Norte* of Ciudad Juárez appeared before the Office of the Deputy Attorney General of the state in relation to criminal defamation charges. The complaint was lodged by former mayor Manuel Quevedo Reyes, after a series of publications on alleged acts of corruption in recent years in the state of Chihuahua. In October 2002 Judge Catalina Ruiz placed the preliminary inquiry under criminal case 425/02, and called for the detention of editor Oscar Cantú and the seven reporters of *El Norte*. In late October 2002, the National Human Rights Commission sent an inspector from the Program on Attacks on Journalists and Civil Defenders to document and analyze the causes of action brought against the reporters from *El Norte*.

newspaper *Imagen* of the state of Zacatecas;<sup>206</sup> Silvia Venegas, María del Refugio Hernández, and Dinora Bañuelos, all of the newspaper *Imagen* of Zacatecas; Irma Mejía and Genaro Romo, of the magazine *Bi* of Zacatecas; Diana Villagrama, of *Página 24* of Zacatecas; Diana Ponce and Hermelio Camarillo, of *El Sol* of Zacatecas;<sup>207</sup> Alejandro Humberto López Lena Cruz, director general of the *Corporación radiofónica* of Oaxaca;<sup>208</sup> Eduardo López Betancourt;<sup>209</sup> Isabel Arvide Limón;<sup>210</sup> Javier Hernández Alpízar, reporter and columnist and political cartoonist Marcos Cruz, both of Xalapa, Veracruz.<sup>211</sup>

202. In the state of Chihuahua, journalists critical of the government administration who work in the Federal District and in the state of Chihuahua have been subject to criminal actions or detained under defamation charges brought by public officials, political leaders, or private persons involved in public matters. In particular, the Rapporteur has noted with concern that it may be that the criminal action for defamation is being used in the state of Chiapas to muzzle and intimidate critical and investigative journalism, which is to be found mostly in Ciudad Juárez. It is also of concern that in connection with the criminal investigations, the state Attorney General's office uses wide discretion when carrying out arrest warrants, which could give rise to self-censorship on the part of journalists, who cannot know with any degree of

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<sup>206</sup> On September 2, 2003, journalist Francisco Barradas, director of the magazine *Bi* of Zacatecas, was notified of an arrest warrant for him issued by the fourth judge for criminal matters in the city of Zacatecas. In addition, his political rights were suspended, and he was required to come forward each week to sign the registry of persons accused. Barradas is being tried for the crime of *calumnia* allegedly committed to the detriment of the municipal comptroller (*síndico municipal*), Rafael Medina Briones. He had already been detained for five hours by administrative order on August 26, 2003, for the same case. That day he was released on bond, and remained free on bond until, on November 25, the Superior Court of Justice of Zacatecas revoked the resolution ordering preventive detention. The resolution confirmed that the facts described in the published information that led to the cause of action was not false. Information submitted by the Inter-American Press Association.

<sup>207</sup> The newspaper *La Jornada* reported on August 31, 2003, that seven reporters and one editor from Zacatecas were facing criminal defamation charges or have been called as witnesses. Among the reporters called to appear before the Public Ministry of Zacatecas are: Silvia Venegas, María del Refugio Hernández, and Dinora Bañuelos, of the newspaper *Imagen*; Irma Mejía and Genaro Romo, of the *Revista Bi*; Diana Villagrama of *Página 24*; Diana Ponce Morales, reporter with *El Sol* and president of the *Asociación de Mujeres Periodistas de Zacatecas* (Association of Women Journalists of Zacatecas); and Hermelio Camarillo of *El Sol*.

<sup>208</sup> On April 4, 2003, agents of the Judicial Police of the state of Oaxaca detained the director of the newspaper *Expresión*, Humberto López Lena, as the result of a suit against him for *calumnia* and defamation brought by Juan Díaz Pimentel, president of the Chamber of Deputies of the state of Oaxaca. Pimentel accuses López Lena of publishing allegedly "inflammatory" accusations against him.

<sup>209</sup> Law professor Eduardo López Betancourt of the *Universidad Autónoma de México* reported having been the subject of 17 defamation complaints for which he could be given prison terms of up to two years each. In addition, he reported having received several death threats. During his visit to Mexico the Rapporteur met with Betancourt's wife.

<sup>210</sup> Journalist Isabel Arvide Limón was detained for the second time on March 5, 2003, in the state of Chihuahua, accused of defamation to the detriment of the state attorney general, Jesús José Solís Silva. She was jailed in the San Guillermo prison, where she remained until last night. She was detained by some 15 agents, and they put her in a vehicle with "rifles, machine-guns, and goats' horns." Attorney Bernardo Pérez said that Isabel Arvide Limón was detained because of the accusations published in an article referring to the attorney general, who was accused of maintaining ties with drug-traffickers. She was released after posting bond. *El Norte*, March 3, 2003.

<sup>211</sup> In August 2003, reporter and columnist Javier Hernández Alpízar was criminally sued for the crime of *calumnia* and cartoonist Marcos Cruz was criminally sued for inciting violence by the mayor of Xalapa, Veracruz. According to the information received, the article published in the newspaper *Política* on June 24, 2003, and the caricature in question were related to protests by the population in Chiltoyac, municipality of Veracruz, over the dump that the official ordered be installed in the cloud forest that surrounds the town, without the town's consent. It was reported that on April 28, the Office of the Federal Prosecutor for Environmental Protection had shut down the El Tronconal sanitary landfill, which was kept operating under a supposed *amparo* granted by a federal court. Later, it was learned that the suit against the cartoonist was withdrawn. Information provided to the Rapporteur in August 2003.

certainty when they may be detained. The practices related to the criminalization of defamation in certain cases may represent a clear limit on freedom of expression.

### **Access to information**

203. Among the positive developments in Mexico in relation to freedom of expression is the process to bring into existence tools for public access to information at the federal level and in some states.

204. In Mexico, as of the promulgation of the Federal Law on Transparency and Access to Public Government Information, an interesting process has been initiated in some sectors of society acknowledging the importance of guaranteeing this right as a tool needed to attain greater transparency of government acts, and to fight corruption.

205. The Federal Institute of Access to Public Information (IFAI), an entity which, among other functions, renders administrative interpretations of the Transparency Law and reviews criteria for classifying and declassifying secret and confidential information, indicated that in July and August approximately 12,000 requests were lodged with the various branches of the federal government, approximately 130 of which were being reviewed by the IFAI at the time of the visit. On August 18, 2003, the General Guidelines for Classifying and Declassifying Information of the Offices and Entities of the Federal Public Administration were published in the *Diario Oficial*. In drawing up these guidelines, IFAI held a consultation and workshops with officials from various federal government offices.

206. It is important to highlight that Article 14 of the Transparency Law excludes from the classification of “reserved” (“*reservado*”) any information on investigations related to gross violations of fundamental rights or crimes against humanity.

207. Caring for and preserving information contained in government archives are also important for guaranteeing the right to information. Accordingly, it is recommended that all necessary actions be taken to preserve the documentation in the hands of the State.<sup>212</sup>

208. On concluding its visit, the Rapporteurship expressed its concern over the policy of secrecy in relation to providing public information that persists in some entities of the public administration, at both the federal and local levels.

209. According to the information received by the Rapporteurship during the visit, in the legislative branch, the judicial branch, and certain autonomous constitutional organs such as the National Human Rights Commission, access to information for those who request it is being hindered, even though, pursuant to Article 61 of the Law on Transparency and Access to Public Information, it is up to the federal legislature and the federal judiciary, through the Supreme Court, and the autonomous constitutional organs, to establish, by their own regulations, “the institutional criteria and procedures for providing private persons access to information, in keeping with the principles and time periods established by law.”

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<sup>212</sup> IACHR, 1999 Annual Report, Volume III, Report of the Special Rapporteur for Freedom of Expression, Annex 6: Article XIX: The Public’s Right to Know: Principles on Freedom of Information Legislation.



210. In the judiciary, by decision No. 9/2003 of the Supreme Court, certain provisions were established to regulate access to information. During and after the visit, the Rapporteurship received information according to which a culture of secrecy persists in the Supreme Court that has impaired access to public information.<sup>213</sup> One of the main objectives when promulgating access-to-information laws and their regulations has been to eliminate the secrecy and obscurity in the administration of justice. Secrecy during the investigations, the failure to publicize judgments and other judicial actions, among other practices and regulations, have blocked the democratization of the justice system, which results in the isolation of the institution and its members from the rest of society.

211. The failure to produce information directed to the population—and the sectors that specifically demand such information—significantly impacts not only the judicial systems (which continue operating behind closed doors), but also the perception of the population that the administration of justice is not a public service from which one can demand information and results, with the consequent possible impact on its legitimacy. In other words, the changes made within the judiciary are not perceived by the citizenry, and there is little in the way of incentives to keep tabs on the functioning of the judiciary. Accordingly, the Rapporteurship encourages all actions aimed at doing away with the culture of secrecy that still exists in the judiciary.

212. In terms of the legislative branch, it has been found that there are different regulations for the Chamber of Deputies and for the Senate. Each chamber issued its own regulations.

213. It should be noted that Article 13 of the Regulation for Transparency and Access to Public Information of the Chamber of Deputies establishes that the failure to respond to a request is to be understood as a positive response, authorizing access to the requested information. Nonetheless, the Rapporteurship is concerned that the Regulation decreed on April 30, 2003 does not clearly stipulate the guidelines concerning what type of information is considered classified, reserved, or confidential. In the 2001 Annual Report, the Rapporteurship for Freedom of Expression indicated that the criteria for keeping information under seal should be established in clear and precise terms to make it possible for judicial entities to review both the legality and the reasonableness of negative resolutions in light of the interests affected.<sup>214</sup>

214. As regards the autonomous constitutional organs, the Rapporteurship learned of a dispute in relation to the refusal of the National Human Rights Commission (CNDH) to provide

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<sup>213</sup> “*Transparencia: Restringen en la Corte el acceso a la información*,” in *La Jornada*, September 24, 2003. The Rapporteur received expressions of concern on one of the regulatory provisions for access to information in the Supreme Court that establishes a 12-year period before one can have access to the records in criminal trials. Miguel Carbonell, an academic with the Instituto de Investigaciones Jurídicas of the UNAM, states: “If a trial lasts three years, one must add to those three another 12 years (the period during which the record is under seal), we’re talking about 15 years to find out the information. What happens with this case? This is a negative feature that is hardly reasonable.” See “*Transparencia: Obstruyen juzgados apertura informativa*,” November 10, 2003, visited at <[www.atlatl.com.mx/articulo.php?a=20699](http://www.atlatl.com.mx/articulo.php?a=20699)>, on November 17, 2003.

<sup>214</sup> In the Public Interest: Security Services in a Constitutional Democracy. Helsinki Foundation for Human Rights and Center for Security Studies, Bulletin 1, June 1998. *And*: A Model Freedom of Information Law. Article XIX, London, July 2001, in: Annual Report of the Inter-American Commission on Human Rights 2001, Volume II Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.114, Doc. 5 rev. 1, April 16, 2002, p. 80, para. 24.

information.<sup>215</sup> The Rapporteurship is concerned that this organ for the protection of human rights might be interpreting the law in such a manner as to ignore the very principles of the Federal Law on Transparency in force in Mexico and the international instruments related to the matter.<sup>216</sup> Even if that is the case, the Regulation on Transparency and Access to Information of the CNDH establishes, in Article 10, that the 12-year period for keeping information under seal would not apply in the case of gross human rights violations, but would be published once the respective Recommendation or report is published.

215. In view of the foregoing, it is recommended that the restrictions imposed by the autonomous constitutional organs must be expressly defined by law and must “be 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.”<sup>217</sup> This means that the restriction must not only be related to one of these objectives, but also that a showing must be made that disclosure threatens “threatens to cause substantial harm to that aim”<sup>218</sup> and that “the harm to the aim must be greater than the public interest in having the information.”<sup>219</sup> This is essentially the test of proportionality. Whenever information is refused on the basis of the foregoing analysis, there should be an opportunity for independent review of the decision.<sup>220</sup>

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<sup>215</sup> The Rapporteurship learned that a *recurso de amparo* was filed by Mr. Miguel Sarre Iguíñez before the Administrative Court of the Federal District in which it is noted that pursuant to Articles 4 and 48 of the Law on the National Human Rights Commission and Articles 9 and 10 of the Regulation on Transparency and Access to Information of that same organ, information was withheld. In the *amparo* motion it is argued that Articles 4 and 48 of the Law on the CNDH violate Articles 6, 14, 16, and 133 of the Constitution, insofar as, among other things, Article 4 “does not distinguish between information contained in concluded and continuing matters” and Article 48 “restricts access to information on conferring on the organ established for the protection of human rights broad powers to refuse access to its evidence, even when allowing such access would not affect the rights of third persons, national security, public order, and other similar values.” In addition, the motion filed pursuant to Article 10 of the Regulation on Transparency and Access to Information of the CNDH “provides that all information regarding matters under the purview of the National Human Rights Commission is reserved, independent of the characteristics of that information; and therefore, the governors’ access to it is prohibited, the sole exception being in the event that the information has been under seal for 12 years. The above-cited articles read:

Law on the CNDH:

Article 4: ... The staff of the National Commission shall keep confidential the information or documentation regarding the matters under its purview.

Article 48: The National Commission shall not be required to provide any of its evidence to the authority to which it has directed a Recommendation or to any private person. If such evidence is requested, it will determine, within its discretion, whether to provide it.

Regulation on Transparency and Access to Information of the CNDH

Article 9: In keeping with Article 4 of the Law on the National Human Rights Commission, and in keeping with the provision in section I of Article 14 of the law, reserved information is considered to be that information or documentation in the records of complaints, orientations, remittances, monitoring of recommendations, and challenges being processed in the Commission.

Article 10: Information that is reserved in terms of the foregoing article shall be such for a period of 12 years counted from the date on which the Commission resolves the respective matter.

<sup>216</sup> Article 133 of the Constitution provides: “This Constitution, the statutes of the Congress of the Union that emanate from it, and all International Treaties that are in agreement with it, entered into and that may be entered into by the president of the Republic, with the approval of the Senate, shall be the Supreme Law of the Union....”.

<sup>217</sup> American Convention on Human Rights, Article 13(2).

<sup>218</sup> Principles on Freedom of Information, note 212 *supra*, Principle 4.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*, Principle 5.

216. In relation to the situation of the various states of the union, while laws on access to information have not been promulgated, bills have been introduced in their legislatures. It is recommended that progress be made in promulgating and implementing these laws and complementary provisions that regulate access to public information in all states of the Republic, mindful of the relevant international standards, and with broad citizen consultation. In addition, and in relation to the situation in the Federal District, it was found that due to a political clash, the law on access to information has yet to be enacted. It is recommended that the Federal District overcome these disputes so that it can quickly have an expeditious and effective tool.

217. Another aspect of access to information is press access to public events. On several occasions journalists in Guerrero have been denied access to public events or have had their cameras taken away to prevent them from providing coverage.<sup>221</sup> For example, the newspaper *El Sur* of Guerrero reported that since September 2002, it had been excluded from the list of newspapers invited to the official activities of the governor, with no explanation whatsoever. In addition, it said it had stopped receiving the bulletins distributed by the Office of Communication. During the Rapporteur's visit to Chihuahua, information was received according to which several offices of the state government have refused to provide public information, without giving any justification.<sup>222</sup> In both states, concern was expressed over the existence, in the various state offices, of a culture of secrecy with respect to information related to human rights violations.

218. The Rapporteurship considers that the culture of secrecy that persists in certain sectors of the states' organs should be forcefully rejected to guarantee real transparency of the public administration, both federal and local.

219. Finally, during the visit, both state officials and sectors of civil society expressed the need to guarantee the protection of personal information in public and private records, through a regulation on *habeas data* that is more precise than the Federal Law on Transparency

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<sup>221</sup> On February 11, 2003, reporter Zacarías Cervantes of *El Sur* and other reporters trying to cover a public act related to fighting forest fires, to which the media had been invited by the National Forestry Commission of the federal government, were denied access to the official residence of the governor of Guerrero.

On July 2, 2003, a group of soldiers took away the photographic gear of Jesús Guerrero, correspondent of the newspaper *Reforma* at the main entry to Military Zone 35 of Chilpancingo to prevent him from photographing the arrival of the state comptroller to verify the health of the president of the Committee on Governmental Affairs of the state congress, who had been in an accident. That same day a group of officials from the government physically assaulted journalists Abel Miranda Atala, photojournalist with the newspaper *El Sur*, and Alejandro González Reyes, photographer with the agency *Notimex* when they attempted to photograph the chairman of the Committee on Government of the state congress as he was being taken to a hospital.

On June 18, 2003, the Third Judge for Criminal Matters of Chilpancingo kept reporters Rogelio Agustín of *El Sol* of Acapulco, Jesús Guerrero, correspondent for *Reforma*, Alejandrino González Reyes of the news agency *Notimex*, Elizabeth Patrón of the radio news program *Al Tanto*, and Jaime Irra of the agency *IRZA* from covering a public hearing taking place in that court. The judge ordered state police to remove the correspondent of *El Sol* of Acapulco. Information provided by the Asociación de Periodistas del Estado de Guerrero, August 20, 2003.

<sup>222</sup> Red Ciudadana of Chihuahua has indicated that they have forwarded to Congress 70 requests for information, for the Congress to demand of the various offices of the State and of the Office of the Attorney General access to public information. It was indicated that less than 50% of those requests have been answered, most of them denials without justification. The Network indicated that among the information that has not been provided is the information on the use of state resources, especially on the state government's project to remodel the historic downtown area, in which the Red says millions of pesos have been invested, without any official information being provided on the scope of the works or the cost. In addition, information has been requested on the investigations related to the homicides of women in Ciudad Juárez.

and Access to Governmental Public Information. This right to access and control of personal information is a fundamental right in many areas of life, as the lack of judicial mechanisms to rectify, update, or expunge information would impact on the right to privacy, honor, personal identity, property, and oversight of the compilation of the data obtained. Given the importance for individuals of protecting their personal information in public and private records, the Rapporteurship recommends that the initiatives of which it was informed to promulgate a statute that provides for and regulates the right of *habeas data* be continued.

### **On the journalists' right to protect the confidentiality of their sources**

220. Freedom of expression is understood to encompass journalists' right to keep their sources confidential. It is the journalist's right not to reveal information or documentation that has been received in confidence or in the course of an investigation. The main foundation of the right to confidentiality is that within the scope of their work, and in order to provide the public with the information needed to satisfy the right to information, journalists are performing an important public service when collecting and disseminating information that would not be divulged were the confidentiality of sources not protected. This journalistic privilege involves providing legal guarantees to ensure anonymity and to avoid possible reprisals for disseminating certain information. Confidentiality, therefore, is essential to journalists' work, and to the role that society has conferred upon them to report on matters of public interest.<sup>223</sup>

221. In Mexico, the Rapporteurship observed a wide-ranging debate on the need to guarantee and protect journalists' right to protect the confidentiality of their sources. In the press release published at the end of his visit, the Rapporteur voiced concern over information received according to which, since 2002, investigative journalists had been subpoenaed to appear before the Public Ministry to reveal their sources of information. At the time, the Rapporteur indicated that such actions could have a harmful impact on investigative journalism, which in some cases leads to disclosure of matters related to administrative corruption or illegal activities that are of great public interest. The Rapporteurship verified the existence of such subpoenas, both federal and local. The persons so subpoenaed include: journalist Adriana Varillas<sup>224</sup> of Cancún; Maribel Gutiérrez,<sup>225</sup> reporter and editor of the Guerrero section of the

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<sup>223</sup> IACHR, Annual Report 2000, Vol. III, Report of the Office of the Special Rapporteur on Freedom of Expression [hereinafter Report of the Special Rapporteur 2000], OEA/Ser.L/V/II.114, Doc. 20 rev., p. 24. See also Felipe Fierro Alvidez, *El derecho y la libertad de expresión en México, debates y reflexiones*. REVISTA LATINA DE COMUNICACIÓN SOCIAL, DEC. 2000, available at: <<http://www.ull.es/publicaciones/latina/04fierro.htm>>.

<sup>224</sup> On March 10, 2003, the Judicial Police of the state of Quintana Roo brought journalist Adriana Varillas of the newspaper *La Voz del Caribe*, of Cancún, before the Public Ministry to reveal her sources of information regarding a published report in which she described alleged irregularities and the complicity of a municipal official of Cancún with local and foreign investors. Information provided by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH).

<sup>225</sup> On June 12, 2002, Maribel Gutiérrez, reporter and editor of the Guerrero section of the newspaper *El Sur*, published in the city of Acapulco, Guerrero, was questioned by an agent from the Public Ministry of Acapulco in the context of an investigation related to the Digna Ochoa case. The journalist has covered issues related to human rights since 1996. The cases she has covered include the massacre of indigenous peasant farmers on June 28, 1996, at Aguas Blancas, and at El Charco, on June 7, 1997; the militarization resulting from the appearance of the Ejército Popular Revolucionario, June 28, 1998; the sterilization of indigenous women, in 1998; and the Digna Ochoa case.

The subpoena came after the publication in *El Sur*, on June 5, 6, 7, and 8, 2002, in which information was provided from witnesses from the region of Petatlán, Guerrero, in the Digna Ochoa case. Of the four articles published by Maribel Gutiérrez in *El Sur*, two in particular stand out, one with the headline that says: "A gunman from the Petatlán highland killed Digna Ochoa," and another, "Rogaciano Alba, said to be one of a group of armed civilians who carry out repression in the highlands." Both reports provide a detailed narrative of events with dates, names, and places where the events took place, to back up the information  
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newspaper *El Sur*; Daniel Morelos,<sup>226</sup> journalist and director of information of *El Universal*; Enrique Méndez, Gustavo Castillo,<sup>227</sup> Rubén Villalpando, Andrea Becerril, Ciro Pérez, and Roberto Garduño, all of the daily newspaper *La Jornada*,<sup>228</sup> Francisco Guerrero Garro and Fabiola Escobar, director and reporter of *La Jornada* in Morelos;<sup>229</sup> Javier Juárez Mejía,<sup>230</sup> correspondent for *La Jornada* in Baja California; Daniel Valdés Romo<sup>231</sup>, reporter in Coahuila; Alejandro Mendoza Pastrana,<sup>232</sup> correspondent for *El Financiero* in Guerrero; Carlos Huerta<sup>233</sup>

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published. During her appearance, she was asked 95 questions to get her to reveal the names and addresses of the persons she interviewed. In addition, according to the information, on June 27 of the same year, former mayor of Petatlán, Rogaciano Alba Alvarez, presented a criminal complaint against Maribel Gutiérrez, recorded under the number 059/2002, in the General Bureau for Preliminary Inquiries of the Office of the Attorney General for the state of Guerrero. Information provided by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH).

<sup>226</sup> On December 3, 2002, Daniel Morelos, journalist and director of information for the daily *El Universal* was subpoenaed by the judicial authorities to reveal his sources for a report published June 16, 2002, on alleged acts of corruption in Petróleos Mexicanos. Information provided by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH).

<sup>227</sup> On September 4, 2003, agents presumably from the Office of the Attorney General of the Republic subpoenaed reporter Gustavo Castillo García from the daily *La Jornada* to reveal his sources for an article he published on June 19, 2003, on the seizure of a cocaine shipment in Culiacán. According to the information reported, two agents of the Federal Investigative Agency of the Office of the Attorney General of the Republic came forward, without a judicial order, and without wanting to identify themselves, at the offices of *La Jornada*, to question the reporter. Information from *El Universal* and *La Jornada*, September 5, 2003.

<sup>228</sup> On November 18, 2002, the daily *La Jornada* reported on the judicial harassment of journalists Enrique Méndez, Gustavo Castillo, Rubén Villalpando (correspondent for *La Jornada* in Ciudad Juárez), Andrea Becerril, Ciro Pérez, and Roberto Garduño, all reporters with *La Jornada*, in response to the recurrent judicial subpoenas they have received from the Office of the Attorney General of the Republic. The events arise from publications by *La Jornada* in January concerning the *Operación Crudo* and which today is known as *Pemexgate*. After the publications mentioned, going back to March 2002, the reporters began to receive subpoenas from Public Ministry agent Isabel Hernández Bargas, principal of the ninth panel of the Office of the Special Prosecutor for Crimes Against Public Servants. That prosecutorial office required, by official note 1219 to the director general of *La Jornada*, that she present two reporters to the authorities; some had already been subpoenaed on more than one occasion. One of the subpoenas was received Thursday, November 14, 2002. According to the information provided, the PGR has sought to learn the exact names of the sources in the *Pemexgate* and Raúl Salinas de Gortari cases. The investigations contain the notes and reports that appeared in this paper in both cases. During his appearance, Gustavo Castillo was asked about the Raúl Salinas de Gortari case; he was repeatedly asked who his sources were; he was warned that the questions should be answered without invoking journalistic privilege because he was being subpoenaed as a witness. Finally, according to *La Jornada*, during the proceeding the right to a copy of the record from the Public Ministry was denied, and it refused to provide any information about the main purpose of the appearance. The reporters from *La Jornada* lodged a complaint with the National Human Rights Commission over these incidents against the Attorney General of the Republic, Rafael Macedo de la Concha, the Special Prosecutor on Organized Crime (UEDO), José Luis Santiago Vasconcelos, and the principal of the Office of the Special Prosecutor for Crimes Against Public Servants of the PGR, among other officials. On February 20, 2003, the PGR opened an inquest based on one of the subpoenas, and imposed sanctions on one of the two Public Ministry agents involved and recognized the validity of journalistic privilege. Information provided by the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH).

<sup>229</sup> Francisco Guerrero Garro and Fabiola Escobar, director and reporter for *La Jornada* in Morelos (which shares a border with Guerrero) were subpoenaed to testify as witnesses before the state Attorney General's office to reveal their sources on corruption issues.

<sup>230</sup> Pedro Juárez Mejía, Baja California correspondent for *La Jornada*, was subpoenaed by the PGR in that state in November 2002 to reveal sources of information for an article that appeared in the local daily *El Forjador* on drug-trafficking and the alleged involvement of agents from the municipality of Guerrero Negro.

<sup>231</sup> In September 2003, a delegation from the PGR in Saltillo, Coahuila, subpoenaed reporter Daniel Valdés Romo to reveal his sources of information for an article he published on alleged corruption involving agents of that entity. *La Jornada*, September 25, 2003.

<sup>232</sup> On April 21, 2003, *El Financiero* correspondent and host of the news program *La Explosiva de Guerrero*, Alejandro Mendoza Pastrana, was subpoenaed by the Guerrero Attorney General's office to reveal his sources of information on alleged acts of corruption by state authorities in building a public work. That article was published in the column Palabras Punzantes in the newspaper *El Sol* of Chipancingo on March 25, 2003. *La Jornada*, April 25, 2003.

<sup>233</sup> In June 2003, reporter Carlos Huerta of the daily *El Norte* of Ciudad Juárez received a subpoena in which he was asked to come before the Federal Public Ministry as part of a criminal investigation to state where his information came from. A  
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of the newspaper *El Norte* of Ciudad Juárez, Chihuahua; and Agustín Pérez and Said Betanzos, both reporters for the daily *Frontera*.<sup>234</sup> In many of the cases reported, it was indicated that when a given criminal act is reported, some judicial officers seek to have the short-cut of getting information from journalists take the place of their own activity, which would involve getting it by other means. The Rapporteurship observed that it is important that the Public Ministry, either federal or local, develop clear rules that prevent the use of such mechanisms to harass journalists.

222. The subpoenas from the Office of the Attorney General of the Republic (PGR) to the journalists of *La Jornada* are a special case. The Rapporteurship received information according to which after a complaint was submitted to the CNDH by the six reporters, the PGR brought administrative and criminal proceedings, the first of which resulted in one of the Public Ministry agents being sanctioned. Through that proceeding, the Public Ministry recognized that some of the questions put to the journalists by their agents were aimed exclusively at harassing them.

223. The National Human Rights Commission presented an initiative to amend the Federal Code of Criminal Procedure in order to protect the right to journalistic privilege, among other things. Afterwards the Rapporteurship learned that federal deputies from different political parties would be fostering that reform to protect journalists' sources of information.<sup>235</sup>

224. In addition, it should be noted that the Office of the Attorney General of the Republic sent the IACHR a proposal for internal regulations for Federal Public Ministry agents for subpoenaing journalists and protecting reporters' journalistic privilege. The Rapporteurship sent a letter dated October 20 to the Office of the Attorney General of the Republic making preliminary observations, suggesting the need to clarify some concepts in the proposal, and requesting some information related to certain aspects of it, such as the means offered by the Mexican legislation to question the Attorney General's decision to subpoena a journalist. On December 11, 2003, the Official Journal published the internal regulations. Without prejudice to the observations made by the Rapporteurship in its letter, it is important to note that in the considerations at the beginning of the regulations, various international norms and recommendations currently in force, among them Article 13 of the American Convention on Human Rights, the Declaration of Principles on Freedom of Expression, and the Declaration of Chapultepec, were adequately cited. These citations are adequate to provide a framework for the regulations, the application of which the Rapporteurship will continue to monitor.

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complaint was lodged with the National Human Rights Commission, which sent an inspector to investigate the complaint. According to the information received, the CNDH later forwarded the complaint to the Federal Judicial Council.

<sup>234</sup> The PGR subpoenaed the *Frontera* reporters to reveal their sources. Said Betanzos was visited on April 7, 2003 at the newspaper's offices, in relation to an article on drug trafficking. Agustín Pérez was visited by two police officers who questioned him on a series of articles on several persons released on bond published March 17, 2003. Both were questioned by members of the Federal Investigations Agency as to their sources. *La Jornada*, April 18, 2003. Information provided by CMDPDH.

<sup>235</sup> That commitment was taken on by several legislators at a seminar on "Journalistic Privilege: The Right of Journalists to Protect their Sources," organized by the Mexican Association of Newspaper Editors on occasion of their 19th Annual Assembly in October 2003. The keynote speaker was José Luis Durán Reveles, Deputy Minister for Media Regulation of the Interior Ministry, in representation of President Vicente Fox. The Attorney General of the Nation, Rafael Macedo de la Concha, also stated during that event that it was a decision of the Mexican State to respect journalistic privilege, specifying that it should be the national Congress of the Union that should approve the legal reform. EFE, October 17, 2003.

225. While all these initiatives are auspicious, the Rapporteurship recommends that guidelines be included in Mexican law that establish in clear terms the right of journalists to keep their sources confidential.

### **On the placement of official advertising**

226. In the states visited (Chihuahua and Guerrero), it appears that official advertising is being placed with wide discretion, without clear parameters, and with some signs of arbitrariness. The Rapporteurship found this situation with respect to the newspapers *El Sur* of Guerrero<sup>236</sup> and *El Norte* of Ciudad Juárez,<sup>237</sup> both openly critical of the public administration. The Rapporteurship was especially concerned by statements made during a meeting with local authorities in Chihuahua in which questions were asked about official advertising guidelines in the mass media, in response to which the Secretary General of the government of Chihuahua said that “at times there are some media that criticize the government a lot, and I must tell you that perhaps those media are limited a bit.”

227. It should be recalled that Principle 13 of the Declaration of Principles on Freedom of Expression notes that the arbitrary and discriminatory placement of official advertising for the purpose of pressuring or punishing, or rewarding and privileging journalists based on how they report the news is at odds with the freedom of expression, and should be prohibited by law. The media have the right to do their work independently. Direct or indirect pressures aimed at silencing the informational work of journalists are incompatible with the freedom of expression.

228. Using the media to broadcast information is important and useful for states, at the same time as they provide the media substantial guarantees. Although there is no inherent right of the media to receive official advertising, and the states, in turn, can make decisions when it comes to placing advertising based on the percentage of the population that can be reached by the information outlet, the strength of the frequency, and similar factors, deciding where to place government advertising based on editorial line or criticism of public officials is contrary to the standards for protecting human rights and freedom of expression.

229. The rights enshrined by the international human rights instruments clearly establish non-discrimination as a criterion. Any measure that discriminates against a particular media enterprise in terms of placement of official advertising based on editorial line or criticism of the public administration would be an indirect means of limiting freedom of expression.<sup>238</sup> Such a policy could have the adverse effect of self-censorship given that the assignment of official advertising, fundamental for the operation of some media, could stand in the way of reports on abuses of authority or news aimed at providing a critical perspective of the conduct of public affairs. The Special Rapporteur recommends that all government agencies modify such

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<sup>236</sup> According to the information received during the visit, as of September 2002 the government of the state of Guerrero had suspended payments to *El Sur* for advertising, and stopped taking out paid inserts in that newspaper.

<sup>237</sup> According to information received during the visit, during past administrations the daily *El Norte* reported that since 1999 it has been discriminated against, resulting in the total cancellation of official advertising. *El Norte* denounced that this situation was in response to its editorial line critical of the administration of the new governor, and to their publication of allegations of human rights violations, especially those related to the homicides of women in Ciudad Juárez.

<sup>238</sup> 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 Expression.

practices and establish clear, fair, objective, and non-discriminatory criteria for determining the distribution of official advertising. The Rapporteurship, therefore, is of the view that in no case may official advertising be used to prejudice or favor any particular media outlet over any other because of editorial line or criticism of the conduct of public affairs.

### **Assignment of frequencies and regulation of the electronic media**

230. In Mexico, one of the most hotly debated issues in the area of legislation on electronic media has to do with the need to limit discretion in the issuing of concessions and permits for radio and television, taking into account the cultural diversity within Mexico. The Rapporteurship heard any number of complaints related to the assignment of frequencies and permits for community and indigenous radio stations to operate legally. In addition, in order to learn in more detail about the initiatives to amend the laws related to the assignment of frequencies and permits, the Rapporteur had the opportunity to meet with the Under Secretary for Regulatory Policy and the Media and the Director of Print Media of the Secretariat of the Interior; representatives from the regulatory sector for communication, television, and cinematography; the Director for Radio, Television, and Cinematography of the Secretariat of the Interior (SEGOB, by its Spanish acronym); the President of the National Commission for the Development of the Indigenous Peoples; and the Under Secretary for Radio and Television of the Secretariat of Communication and Transportation (SCT, by its Spanish acronym).

231. According to the information received, of 100 projects for community radio in Mexico, the State has only granted six permits to civic associations and social organizations, four of which belong to low-power stations that operate in homes for indigenous children in Yucatán, and which are projects under the Instituto Nacional Indigenista. The National Commission for the Development of the Indigenous Peoples has a network of 21 indigenous radio stations in the country that have been taking the steps needed to obtain permits. Nonetheless, most of these have been denied the possibility of obtaining any kind of permit, whether by omission, because the authorities do not answer the petitions, or because requirements have been imposed which in practice have been identified by some radio stations as unattainable for most of them.

232. The current legal framework has left it to the discretion of the authorities under the Executive to set the requirements for obtaining a permit. In doing so, the SCT has set requirements far beyond the possibilities of some social groups.

233. During the visit, it was learned that the SCT has decided to postpone, through the issuance of form letters, any decisions on granting permits and licenses until the results are in from the Dialogue for the Comprehensive Review of the Legislation on Electronic Media. This has meant that since it has not been possible to obtain permits, many organizations and collectives have decided to broadcast without them. In 2003, some of the civil society groups that are participating in the Dialogue delivered to the senior officers of the SCT, the Deputy Minister for Communication, and the Human Rights Unit of the Secretariat of the Interior information on 20 community radio stations under review for the issuance of permits. The groups indicated that most of those radio stations are located in indigenous and rural areas. Eighteen of these radio stations began to seek permits in 2000. More than half received negative responses from the SCT, through form letters that indicated that these determinations would be made based on the results of the negotiations at the aforementioned Dialogue.



234. The Rapporteurship notes that in view of the importance of such community channels of communication for exercising freedom of expression, it is unacceptable to establish discriminatory legal frameworks or means of delay that hinder the awarding of frequencies to community radio stations. In addition, practices that involve unwarranted threats to close down media or to seize equipment arbitrarily, even when they occur legally, are worrisome.

235. During conversations with both the Office of the Deputy Minister for Media Regulation of the Interior Ministry and with the National Commission for the Development

of the Indigenous Peoples,<sup>239</sup> it was reported that several proposed amendments to the Law on Radio and Television are before the legislature. These include the citizen proposal drawn up by several civil groups with the objective of promoting the consideration of democratic and plural criteria in the distribution of permits and frequencies and the right to reply, among other objectives. The Rapporteurship recognizes the complexity of this issue, and values the initiatives aimed at solving the problems posed, mindful of the international standards in this area. Principle 12 of the Declaration of Principles on Freedom of Expression notes that assignments of radio and television frequencies should consider democratic criteria that ensure equal opportunities for all persons to gain access to them. The Rapporteurship will continue to monitor the situation, and reiterates its willingness to cooperate, which it expressed to the authorities and members of civil society.

## NICARAGUA

### Threats and attacks

236. The home of journalist Sergio León, correspondent for the newspaper *La Prensa* in Bluefields, was stoned the night of Sunday, May 18, 2003. The incident was attributed to criminals who wanted to intimidate him due to his reports on the alleged involvement of an anti-drug official and several of his agents in acts of corruption related to drug-traffickers. Days earlier, León had been intimidated by distributors of narcotics.<sup>240</sup>

237. Due to his work in the same area, Freddy Potoy, chief of information of *La Prensa*, received five intimidating phone calls in which he and his family were threatened.<sup>241</sup>

238. On May 24, 2003, journalist Sergio León was threatened in a Managua restaurant where he was meeting with his colleagues Wálter Treminio, correspondent for *La*

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<sup>239</sup> The Director of the National Commission for the Development of Indigenous Peoples informed the Rapporteurship that there is a commitment to study the issuance of permits for indigenous radio stations. She indicated that at this time the SCT and the Commission that she presides over are analyzing, case by case, to determine whether it is a community radio station, what resources it has for operating, and how it operates. She reported that at present there are 24 indigenous radio stations seeking permits.

<sup>240</sup> International Freedom of Expression Exchange (IFEX), May 26, 2003, [www.ifex.org](http://www.ifex.org).

<sup>241</sup> Inter-American Press Association (IAP), October 14, 2003.

*Prensa* in Puerto Cabezas, and Tatiana Rothschuh, editor for the Departments section. There they came across two police officials. One of them called out to León, “it’s not in Bluefields that they’re going to kill you.”<sup>242</sup>

239. On June 2, 2003, Wálter Treminio was threatened by an individual who had been on trial for international drug trafficking. The threat was made when Treminio was in the company of his colleague José Adán Silva and photographer Germán Miranda, both of *La Prensa*.<sup>243</sup>

### Legislation

240. The Rapporteurship received information on some steps that are being taken to implement Law 372, which requires membership in a professional association to be able to work as a journalist. In this respect, the Rapporteur recalls that the Inter-American Court of Human Rights, in its Advisory Opinion No. 5, determined that compulsory membership in a professional association is contrary to the American Convention on Human Rights.

### Progress

241. On November 7, 2003, a proposed access-to-information law was introduced in the legislature. The bill seeks to ensure access to documents, files, and databases of government agencies, and of institutions that administer public goods. In addition, the initiative aims to demand the establishment of offices for access to information in each government institution covered by the proposal, in order to facilitate such access. The Rapporteurship will closely monitor the development of the legislative debate on this initiative.

### PANAMA

242. During 2003, the Special Rapporteur for Freedom of Expression visited the Republic of Panama on two occasions. His first visit was in April, by invitation of the Office of the Human Rights Ombudsperson of Panama, to participate in the seminar “Freedom of Expression and Democracy.” On July 6, he returned to Panama for the Regional Forum on Freedom of Expression organized by the Inter-American Institute of Human Rights (IIDH).

243. On July 8, 2003, the Special Rapporteur released a Report on the Situation of Freedom of Expression in Panama,<sup>244</sup> prepared by the Office of the Special Rapporteur for Freedom of Expression, and approved by the IACHR, which analyzes the regulations, statutes, and practices that limit the full exercise of freedom of expression in the country. The document highlights the Special Rapporteur’s concern over the laws on defamation (*calumnias* and *injurias*), as well as the *desacato* laws, which have made it possible, from time to time, for certain individuals to be persecuted, harassed, and/or jailed for expressing their opinions. In his conclusions, the Special Rapporteur recommended to the government of Panama that it follow

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<sup>242</sup> *Id.*

<sup>243</sup> *La Prensa* (Nicaragua), June 4, 2003, [www.laprensa.com.ni](http://www.laprensa.com.ni) and Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), June 4, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>244</sup> See report at: <http://www.cidh.org/Relatoria/Spanish/InfPaises/IndicePanama03.htm>.

through with its commitment to repeal all the laws on *desacato*, which provide a criminal cause of action to public officials when they feel they have been insulted or dishonored. He also advocates amending the legislation on defamation (*calumnia* and *injuria*) that gives a cause of action where the speech has been directed at public officials, public figures, or private persons who have voluntarily become involved in matters of public interest, and to move towards decriminalizing such conduct.<sup>245</sup>

244. The Rapporteurship notes that in its response to the report, the State indicated that some of the recommendations would be taken into consideration for possible study and incorporation. Nonetheless, as of this writing, the Rapporteurship has not seen any progress in this area.

### Judicial actions

245. In its two previous annual reports, the Rapporteurship has noted its concern over the use of trials for defamation (*injuria* and *calumnia*) to silence criticism of public figures and public officials. This concern was reiterated in the Report on the Situation of Freedom of Expression in Panama. The Rapporteurship recognizes that there have been valuable advances in the case law in the appellate decisions. Nonetheless, in 2003 some cases persisted in which the defamation and *desacato* laws were once again invoked.

246. On February 11, 2003, the Civil Chamber of the Supreme Court dismissed the charges brought by a group of workers from the daily *La Prensa* against the State. It made that decision in ruling on a motion for cassation against the judgment ordering the State to pay the damages caused by the shut-down and occupation, for 22 days, of the newspaper by units of the Defense Forces in 1988.<sup>246</sup>

247. On Wednesday, February 19, 2003, Judge Jorge Isaac Escobar ordered the detention, for six days, of television commentator Carlos Zavala. The order was based on a statement by a witness according to which on Friday, February 14, he had stated on his program that Escobar received money for his decisions. Zavala went to the National Police on February 21 to turn himself in, but the authorities refused to arrest him, as they had not received notice of the arrest warrant.<sup>247</sup> On March 7, the Second Court of Justice voided the arrest warrant against the commentator.

248. On August 1, 2003, journalists Jean Marcel Chéry and Gustavo Aparicio, of the daily *El Panamá América*, were convicted and sentenced to 12 months in prison for the crime of defamation (*injuria*) to the detriment of current Judge Winston Spadafora, who filed the claim in March 2001, when he was Minister of Interior and Justice.<sup>248</sup> The ruling, handed down by the Thirteenth Judge for Criminal Matters, Secundino Mendieta, specifies that the penalty is

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<sup>245</sup> *Idem*.

<sup>246</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 12, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>247</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 21, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>248</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 8, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

commutable to 60 days' fine at 10 dollars per day.<sup>249</sup> The judgment was appealed; as of this writing, a ruling on the appeal is still pending.

249. On October 27, 2003, Peruvian journalist Gustavo Gorriti, who was visiting Panama to give a lecture, was notified of a court decision in a lawsuit against him brought in 1996 by the Attorney General, José Antonio Sossa. Gorriti had worked as co-editor of the daily *La Prensa* of Panama City for five years. Several cases against him are still outstanding. The prohibition on his leaving the country was lifted on October 30, so Gorriti was able to leave the country.<sup>250</sup> The Rapporteur requested information on these incidents from the State in a letter dated November 4, 2003, and directed to Minister of Foreign Relations Harmodio Arias Cerjack. The Rapporteur stated his concern in that communication in relation to the criminal proceedings for defamation (*calumnia y injuria*), and in relation to the existence of constitutional and legislative provisions that define the crime of *desacato* and also asked to be kept informed of progress in the debate to decriminalize defamation. On December 2, the Rapporteurship received a response from the State describing the judicial proceeding that led to the order to block Gorriti's exit. In addition, it was reported that as of the date of the writing of the letter, dated November 26, the legislature of Panama has not amended Panama's criminal laws on defamation.<sup>251</sup>

250. In May 2003, the Second Court for Criminal Matters convicted and sentenced journalists Blas Julio and Carmen Boyd Marciaq to 25 and 12 months in prison, respectively, for the crime of defamation (*calumnia* and *injuria*) to the detriment of the Attorney General of the Nation, José Antonio Sossa. The proceeding against the two was brought in the wake of the complaint lodged by Attorney General Sossa before the Office of the Auxiliary Prosecutor (Fiscalía Auxiliar) for a series of publications on June 5, 7, 9, and 24, 2000, when they worked at the newspaper *El Siglo*. Carmen Boyd was found guilty of *injuria*, while Blas Julio was also found guilty of both *injuria* and *calumnia*. The court replaced Blas Julio's prison sentence with a fine of US\$3,000, and Carmen Boyd's with a fine of US\$1,500. Both were disqualified from holding public office for a period equivalent to that of the sentences imposed.<sup>252</sup> The judgment was appealed and as of this writing there was no news of any ruling on the appeal.

251. In April 2003, the Eighth Circuit Court affirmed a conviction and prison sentence of 16 months against journalist Marcelino Rodríguez for the crime of *injuria* to the detriment of the Procuradora de la Administración, Alma Montenegro de Fletcher, but it ruled that the sentence be commuted to a fine of US\$1,500.<sup>253</sup>

## Detentions

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<sup>249</sup> Reporters without Borders, August 11, 2003, [www.rsf.fr](http://www.rsf.fr). ; Inter-American Press Association, August 18, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>250</sup> Committee to Protect Journalists (CPJ), October 30, 2003, [www.cpj.org](http://www.cpj.org) ; Perú 21, November 3, 2003, [www.peru21.com](http://www.peru21.com).

<sup>251</sup> Communication from the Minister of Foreign Relations of Panama, Harmodio Arias, to the Special Rapporteur for Freedom of Expression, November 26, 2003.

<sup>252</sup> *Panamá América* (Panama), "Juzgado condena a prisión a periodistas", May 12, 2003, <http://www.elpanamaamerica.com.pa>, and *La Prensa* (Panama), "Piden pena máxima para periodistas", April 2 and 7, 2003, <http://www.prensa.com>.

<sup>253</sup> *El Panamá América*, April 10, 2003, [www.elpanamaamerica.com.pa](http://www.elpanamaamerica.com.pa).

252. On the afternoon of April 14, 2003, four journalists from *La Prensa* were detained, according to the authorities, for having crossed the security perimeter of the beach house assigned to the President of the Republic, Mireya Moscoso, at Punta Mala, province of Los Santos. The journalists detained alleged that they had been outside the presidential residence when, according to a report in the daily *La Prensa*, agents from the Institutional Protection Service (SPI) ordered them to enter the security perimeter.<sup>254</sup> The journalists were released after being detained for 26 hours.<sup>255</sup> On April 15, the doors to the beach house in question were opened to television journalists.

### **Access to information**

253. The Report on the Situation of Freedom of Expression in Panama highlights the virtues of Law 6 of January 22, 2002, known as the Law of Transparency. Nonetheless, this law was overshadowed by Executive Decree 124, adopted on May 21, 2002, according to which the petition for information by an “interested person” (the language used in Article 11 of the law) could only be interpreted to mean the person with a direct personal interest in the information requested.

254. The Rapporteurship received information in August 2003 on the introduction in the Legislative Assembly of a proposed amendment to the Transparency Law. The Special Rapporteur values this effort, and as stated in his Report on the Situation of Freedom of Expression in Panama, recommends to the Panamanian State that it adopt domestic legal provisions to bring Panama’s legislation into line with the American Convention on Human Rights and the case law of the inter-American system.

255. During the year, some refusals by public institutions to provide information of public interest had to be resolved in the courts.

256. The Human Rights Ombudsperson of Panama, Juan Antonio Tejada, presented several *habeas data* motions against the Ministers of the Presidency, Ivonne Young; Interior and Justice, Arnulfo Escalona; Commerce and Industry, Joaquín Jácome; and Economy and Finance, Norberto Delgado, requesting that they release information on their payrolls, and on the hiring and appointment of officials and costs of representation,<sup>256</sup> with the aim of publishing it on the web site of the Office of the Human Rights Ombudsperson, known as the *Nodo de Transparencia en la Gestión Pública*.<sup>257</sup> The Supreme Court admitted the *habeas data* actions in February 2003.<sup>258</sup> In the cases of the Ministers of Economy and Finance and Commerce and Industry, the ministers published their payrolls on the web page of each ministry, and so the Ombudsperson filed motions to dismiss before the Supreme Court. As for the Ministries of the Presidency and Interior and Justice, the Supreme Court ruled on the *habeas data* motions in

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<sup>254</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), April 16, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>255</sup> *La Prensa* (Panama), “*Liberan a periodistas*”, April 16, 2003, [www.prensa.com](http://www.prensa.com).

<sup>256</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 12, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>257</sup> See *Defensoría del Pueblo de Panamá*, <http://www.defensoriadelpueblo.gob.pa>.

<sup>258</sup> *La Prensa* (Panama), “*Corte admite acciones de hábeas data*”, April 7, 2003, [www.prensa.com](http://www.prensa.com).

May in favor of Office of the Ombudsperson, and required that both ministries provide the requested information to the Ombudsperson.

257. On January 28, 2003, *La Prensa* sought to obtain public documentation on budgetary execution for the first half of 2002 in the areas of purchases of motor vehicles, computers, and office equipment, as well as travel abroad and the payment of the respective per diem. Fifty public offices were consulted, but only seven delivered the documentation immediately.<sup>259</sup>

258. On July 16, 2003, the Supreme Court denied a request for information from activist Guillermo Cochez, who requested information on the hiring of a Costa Rican citizen, Anabella Diez de Rodríguez, by the Ministry of the Presidency. In a vote joined by five of the nine judges, the decision noted the need for there to be a “legitimate interest” to be able to make such a request.<sup>260</sup>

259. On July 23, 2003, another *habeas data* action filed by Cochez was ruled on favorably by the Supreme Court. In a unanimous decision, the *habeas data* motion filed by Cochez against the Minister of Commerce Joaquín Jácome was ruled on his favor.<sup>261</sup>

## PARAGUAY

260. The Paraguayan State, in its report to the IACHR presented in the hearing on the general human rights situation in Paraguay before the Commission, held in October 2003, undertook to take all necessary legislative, administrative, and judicial actions to implement the Rapporteurship’s recommendations. The Rapporteurship considers this express statement to be auspicious. Even so, some events are noted that had a detrimental impact on freedom of expression in 2003.

### Attacks and threats

261. In the early morning of April 7, 2003, two persons who were traveling on a motorcycle fired more than 14 shots from a firearm at the regional offices of *ABC Color* in Pedro Juan Caballero. The newspaper considered the attack to be related to articles on drug trafficking in the Bado area published days earlier. Its correspondent in the area had been threatened previously, leading the authorities to assign him a permanent bodyguard. In addition, according to the information received, there had already been threats to journalists in the area for publishing information related to drug trafficking.<sup>262</sup>

262. On May 2, 2003, journalists Osvaldo Benítez, Fernando Romero, Agustín Acosta, and Celso Figueredo of the daily *Noticias*, and Leoncio Ferreira, Mario Váldez, Claudio Prieto, and Bernardo Agusti, of the daily *Última Hora*, were taken hostage by and received

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<sup>259</sup> *La Prensa* (Panama), “Gobierno incumple ley de transparencia”, February 4, 2003, [www.prensa.com](http://www.prensa.com).

<sup>260</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC) July 31, 2003, [ww.portal-pfc.org](http://ww.portal-pfc.org).

<sup>261</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 5, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>262</sup> *ABC Color* (Paraguay), April 7, 2003, [www.abc.com.py](http://www.abc.com.py).

death threats from squatters from an illegal settlement called “Marquetalia” in San Lorenzo, 20 km east of Asunción, while covering an invasion by landless and homeless persons on neighboring properties.<sup>263</sup>

263. Nelson Esquivel Medina, a journalist from the radio station *La Voz*, in Ciudad del Este, began to receive threats after reporting on the activities of the Chinese mafia on the television program *El Ojo*. Esquivel received phone calls at least ten times warning him that he would pay dearly for having denounced powerful groups in Ciudad del Este.<sup>264</sup>

264. On June 6, 2003, the *ABC Color* correspondent in San Pedro, north of Asunción, Cristina Peralta, received death threats from members of the police while covering a demonstration by peasant farmers in the area.<sup>265</sup>

265. The correspondent for the newspaper *Última Hora* in the border city of Salto del Guairá, Rosendo Duarte, reported death threats against him on October 22. He said that someone overheard persons planning his death “to shut him up” (“*para taparle la boca*”). He said that these threats would be in retaliation for his reports on the problems of corruption in the border area. The first inquiries, reported by the local press, indicate that the threats could come from relatives of a leading criminal figure in the area who died in September in a confrontation with the police.<sup>266</sup>

### Censorship

266. The electoral judge of the second rotation Teresita Escobar Vázquez prohibited the movement Patria Querida from continuing to publish advertising that consisted of lining up, side-by-side, the candidates for senator of that movement and the Partido Colorado, under the heading “We have two options, change or more of the same!” The motion was brought by the Partido Colorado.<sup>267</sup>

267. In April, one of the episodes of the program *El Informante*, on *Canal 2*, was suspended after a favorable ruling on an *amparo* motion brought by officials of the Superintendence of Insurance, who requested, as an urgent measure, that the broadcast of the program be halted. The prohibition was later lifted. The program that was suspended included recordings of alleged officials of the institution who apparently were charging US\$20,000, and alleged phone conversations between Nicanor Duarte Frutos and other authorities who were collecting public monies to finance the electoral campaign. According to the program’s host, Luis Bareiro, Duarte Frutos had called the directors of the TV station the day before to convince them to edit out the part of the program concerning him. In addition, officials from the Superintendence of Insurance filed an *amparo* motion in which they requested, as an urgent measure, that the program not be aired, but that measure was not adopted. On the day the

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<sup>263</sup> Inter-American Press Association, October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>264</sup> ABC Color (Paraguay), October 4, 2003, [www.abc.com.py](http://www.abc.com.py).

<sup>265</sup> Inter-American Press Association, October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>266</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), October 25, 2003, [www.portal-pfc.org](http://www.portal-pfc.org); ABC (Paraguay), October 23, 2003, [www.abc.com.py](http://www.abc.com.py); *Última Hora* (Paraguay), October 22, 2003, [www.ultimahora.com](http://www.ultimahora.com); *Sindicato de Periodistas de Paraguay* (SPP), October 20, 2003.

<sup>267</sup> *Diario ABC*, April 23, 2003, [www.abc.com.py](http://www.abc.com.py).

program was to be broadcast, unidentified persons approached Bareiro to inform him that the program would not be aired. That night, there was a short in the fiber-optic circuit by which the program is broadcast.<sup>268</sup>

### Judicial actions

268. On October 31, the Court of Appeals, First Chamber, sentenced journalist Luis Verón to 10 months in prison, commutable to community service, as it considered that his reports regarding the apparent harm caused by architect Luis Fernando Pereira Javaloyes to the altarpiece of the church of Piribebuy constituted defamation.<sup>269</sup> On March 21, Verón had been found guilty at trial for the crime of defamation and *injuria*, and was ordered to pay a fine of just over 50 million guaranis (about US\$8,000). The trial resulted from the publication in the Sunday magazine of the newspaper *ABC Color*, on September 19, 1999, entitled “Attack on heritage in Piribebuy. What a barbarity! consumatum est,” in which Verón called into question the work done by Pereira on the altarpiece of the Ñandejara Guasu church of Piribebuy, which dates from 1759.<sup>270</sup>

269. Aldo Zuccolillo, director of *ABC Color*, was found guilty of the crime of defamation by Judge Dionisio Nicolás Frutos, in a trial brought by former minister Juan Ernesto Villamayor. He was sentenced to pay the State the sum of US\$15,322 and another US\$12,290 to the complainant. The trial arose from publications that appeared on March 4 and 5, 1999, that implicated Villamayor in a financial scandal related to the Banco Nacional de Trabajadores. According to information received by the Rapporteurship, Zuccolillo has had to face about 20 judicial proceedings since 1998, most brought by public officials and political leaders on defamation or *calumnia* charges.<sup>271</sup>

270. In July 2003, former senator Francisco José De Vargas filed a suit against the director of *ABC Color* after an April 8 article related to the removal of prosecutor Alejandro Nissen by the Judicial Trial Jury (*Jurado de Enjuiciamiento de Magistrados*) (of which De Vargas was a member).<sup>272</sup>

271. In April 2003, the Fourth Chamber of the Court of Appeals ordered the trial of the director of *Diario Noticias*, Eduardo Nicolás Bo. Bo was accused in November 2002 of *calumnia* and defamation by businessman Julio Osvaldo Domínguez Dibb, pre-candidate for the presidency of the republic for the Coordinadora Colorada Campesina, for attributing statements to him regarding alleged ties between the Club Deportivo Libertad soccer club and drug-trafficking.<sup>273</sup>

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<sup>268</sup> *Última Hora* (Paraguay), April 10, 2003, [www.ultimahora.com](http://www.ultimahora.com) ; *ABC Color* (Paraguay), April 10, 2003, [www.abc.com.py](http://www.abc.com.py) ; and Inter-American Press Association, October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>269</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), November 5, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>270</sup> *Diario ABC Color Digital*, March 24, 2003, [www.abc.com.py](http://www.abc.com.py) ; Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>271</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC) October 20, 2003, [www.portal-pfc.org](http://www.portal-pfc.org) ; *ABC Color* (Paraguay), October 18, 2003, [www.abc.com.py](http://www.abc.com.py) ; *Diario Noticias* (Paraguay), October 18, 2003, [www.diarionoticias.com](http://www.diarionoticias.com).

<sup>272</sup> *ABC Color* (Paraguay), August 4, 2003, [www.abc.com.py](http://www.abc.com.py).

<sup>273</sup> Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com) ; Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), [www.portal-pfc.org](http://www.portal-pfc.org) ; and *Diario Noticias* (Paraguay), [www.diarionoticias.com](http://www.diarionoticias.com) , June 10, 2003.



## PERU

### Attacks and threats

272. The Rapporteurship received information regarding attacks on journalists while covering public demonstrations. The Rapporteurship reiterates that the State is under an obligation to prevent and investigate such incidents.

273. On January 29, 2003, several journalists were attacked by workers of the Federación de Construcción Civil when reporting on the protest march that union held at Plaza 2 de Mayo in Lima. Lan Ortiz and Santiago Bravo of the daily *Perú 21*, Ismael Tasayco and Iván Ahumada of *Red Global de Televisión*, Rosario Rengifo of *América Televisión*, Marcos Rojas, of the daily *La República*, and Jaime Rázuri, of the news agency *Agence France Presse* were beaten while filming the workers' march. The workers were armed with iron rods and sticks. One demonstrator attacked the photographer for *Perú 21*, Santiago Bardo. Luis Talledo, of the daily *Expreso*, was about to be beaten by the demonstrators. Reporter Isabel Rengifo, with *América Noticias*, was beaten and forcibly expelled from the demonstration along with her photographer. President Alejandro Toledo emphatically condemned the assault of and violence directed against the journalists.<sup>274</sup>

274. In April 2003, several journalists were attacked while covering a strike by coca farmers in the department of Ayacucho, southeast of Lima. On April 7, the correspondent for *América Televisión* Fortunato Atauje Tipe was assaulted by a group of demonstrators who tried to take his camera from him. That same day, in the early morning hours, approximately 60 hooded persons entered the offices of Radio Contreras in the Apurímac river valley, province of La Mar, in Ayacucho, where they destroyed the self-managed station's antenna. The next day, the correspondent for *Frecuencia Latina*, Enrique Vargas Cancho, was assaulted by a group of striking coca growers in the department of Ayacucho (450 km southeast of Lima) who wounded him in the forehead when they tried to take his video camera from him. In the same confrontation, another group of demonstrators took the camera of Walter Condorpusa, correspondent for *Panamericana Televisión*.<sup>275</sup>

275. On May 17, 2003, during an operation directed at tourist bars ordered by the provincial municipal government of Huaraz, capital of the Ancash region, in coordination with the office of the Deputy Mayor of the same city, Gustavo Medina Salvador, cameraman for *Panamericana Televisión* was physically assaulted by a group of municipal police, who took his camera from him.<sup>276</sup>

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<sup>274</sup> Instituto Prensa y Sociedad (IPYS), January 30, 2003; [www.ipys.org](http://www.ipys.org). Inter-American Press Association (IAPA), March report, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>275</sup> International Federation of Journalists (IFJ), April 9, 2003, [www.ifj.org](http://www.ifj.org).

<sup>276</sup> Instituto Prensa y Sociedad (IPYS), June 10, 2003, [www.ipys.org](http://www.ipys.org).

276. On May 6, 2003, a group of truck drivers assaulted a photographer from the daily *La Industria* of Trujillo while he was covering the first day of the national strike called by the truck drivers in the region of La Libertad.<sup>277</sup>

277. On May 30, 2003, a team of journalists from *Canal N*, based in Arequipa, who went to the city of Puno to cover events related to the death of a student at the Universidad Nacional del Altiplano, was assaulted by a mob of demonstrators who accused them of bias in their coverage. The cameraman was roughed up at the same time as they shouted “liars from the press” (“*prensa mentirosa*”) and “yellow journalists, tell the truth” (“*prensa amarilla, digan la verdad*”). Afterwards, they were punched several times while protecting their camera. Doris Cornejo was surrounded by a multitude that took away her portable radio equipment.<sup>278</sup>

### Legislation

278. On May 1, 2003, during its afternoon session, the Congress approved the repeal of Article 354 of the Criminal Code, which established the crime of *desacato*. The Rapporteurship notes this progress by the Peruvian State, which is in keeping with Principle 10 of the Declaration of Principles on Freedom of Expression.<sup>279</sup>

279. On February 4, 2003, the Executive promulgated the modifications to the Law on Transparency and Access to Public Information, to establish the procedure by which the public will be able to request information from public entities, and to set shorter deadlines for them to implement web pages for posting information of public interest. The Armed Forces and the Peruvian National Police (PNP) should resolve citizens’ consultations without the involvement of the Interior Ministry. The law prohibits the destruction of information in the hands of the State so that the information can become publicly known, and establishes time frames for the public administration to respond to citizens’ requests for information.<sup>280</sup>

### Others

280. On September 14, 2003, journalist Cecilia Valenzuela reported that the chief of the National Intelligence Council (CNI), Alfonso Panizo, ordered the execution of a plan to monitor the team of journalists from the program *La Ventana Indiscreta*, which is broadcast on *Frecuencia Latina, Canal 2*. On September 16, Panizo stated that there was no order from his institution to harass journalists. Nonetheless, he later admitted that the journalists were being monitored even though the objective was not to investigate the journalists, but to learn about their sources, due to some leaks of information from the government. Panizo then stepped down.<sup>281</sup>

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<sup>277</sup> Instituto Prensa y Sociedad (IPYS), , May 10, 2003, [www.ipys.org](http://www.ipys.org).

<sup>278</sup> Instituto Prensa y Sociedad (IPYS), June 5, 2003, [www.ipys.org](http://www.ipys.org).

<sup>279</sup> Correo, May 1, 2003, [www.correoperu.com.pe](http://www.correoperu.com.pe).

<sup>280</sup> *El Comercio* (Peru), February 4, 2003, [www.elcomerciooperu.com.pe](http://www.elcomerciooperu.com.pe) ; Inter-American Press Association (IAPA) [www.sipiapa.com](http://www.sipiapa.com).

<sup>281</sup> *Consejo de la Prensa*, September 26, 2003.

## DOMINICAN REPUBLIC

### Judicial actions

281. On January 29, 2003, the Director of the Dominican Port Authority (Apordom), Arsenio Borges, filed a suit for defamation and *injuria* against journalist Julio Martínez Pozo for his comments on the program “The Government in the Morning,” broadcast on the radio station Z-101. The director of the radio station, Willy Rodríguez, was also included in the accusation.<sup>282</sup>

282. On July 25, 2003, announcers for *Radio Montecristi*, in the province of Montecristi, Emilio Lemoine and Carlos Martínez, were arrested by soldiers from the Army and taken to the offices of the National Investigations Department (DNI), in the city of Santo Domingo, to be questioned on “national security matters.” On July 28, the media were told that these young men would be brought before the courts, and that they were being accused of violating Articles 367 and 368 of the Criminal Code, which establishes sanctions for defamation and *injuria*<sup>283</sup> for having offended President Hipólito Mejía on a radio show. They conducted a radio survey, asking the listeners: “if the elections were held today, who would you vote for, Hipólito or the Devil?” The announcers were released after being detained for three days. No charges were pressed.<sup>284</sup>

283. On July 8, 2003, the program *Frente al Pueblo*, transmitted by *TV Cable San Juan*, and hosted by journalist José Manuel Adames Sánchez, was shut down by decision of Faruk Garib, Arbaje, governor of the province of San Juan de la Maguana, after President Mejía’s desire to get re-elected was criticized. On July 14, Judge César Sánchez ordered that the program be resumed after learning of a *recurso de amparo* presented by the journalist’s defense counsel to have the measure lifted. The judge dismissed a motion by Adames Sánchez claiming that Garib Arbaje should pay 500,000 pesos for each day that the program had been off the air.<sup>285</sup>

284. The Rapporteurship received information on the May 2003 seizure, by the Public Ministry, of the facilities of Editora Listín Diario, C. por A., the Dominican business enterprise responsible for publishing the newspapers *Listín Diario*—which leads in circulation in the Dominican Republic—as well as *Última Hora*, *El Expreso*, and *El Financiero*. The seizure took place in relation to an alleged fraud at the Banco Intercontinental (BANINTER), which owns the publishing company. Incidents reflecting labor-management tensions were reported as a result of the seizure.<sup>286</sup>

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<sup>282</sup> *Listín Diario* (Dom. Rep.), January 30, 2003, [www.listin.com.do](http://www.listin.com.do); Inter-American Press Association (IAPA), March report, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>283</sup> *Los Nuevos Tiempos Digital*, “*El Diablo ganó en la primera vuelta*,” [www.cafebambu.com](http://www.cafebambu.com), July 29, 2003.

<sup>284</sup> Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>285</sup> “*Rechaza críticas de Fabra por cierre de programa*,” *El Nacional* (Dominican Republic), [www.elnacional.com.do](http://www.elnacional.com.do), July 12, 2003. SIP, October 2003.

<sup>286</sup> *Cadena de Noticias* (Dominican Republic), “*Periodistas del Listín Diario protestan por cancelación sub director*,” <[www.cdn.com.do](http://www.cdn.com.do)>, July 3, 2003.

285. The publishing company filed a *recurso de amparo* challenging the seizure of its facilities, which was ruled on favorably in the first instance on July 29, 2003. The Attorney General was ordered to immediately return the assets taken from the publishing company.<sup>287</sup>

286. The judgment on the *amparo* that ordered the return of the Editora Listín Diario to Ramón Báez Romano was provisional until September 17, after the Court of Appeals of the Civil and Commercial Chamber considered that Judge Samuel Arias Arzeno, who handed down the judgment, overstepped the bounds of his authority as provided by law.<sup>288</sup>

287. The Rapporteurship will continue observing the judicial proceeding in relation to the Listín Diario and will continue to consider reports received that suggest that the judicial action is being used to influence the paper's editorial line.

## Detentions

288. On June 11, 2003, four officers of the National Investigations Department (DNI, by its Spanish acronym) and one assistant prosecutor appeared at the home of journalist Marino Zapete Corniel and asked him to accompany them to the DNI. There they questioned him for more than five hours and accused him of insulting President Hipólito Mejía in a series of articles. Zapete worked for the online newspaper *Los Nuevos Tiempos Digital* (Miami-based) and for the local weekly *Primicias*. During the two months prior to the questioning, Zapete had written articles for both publications in which he criticized Mejía for his handling of the financial collapse of the Banco Intercontinental (BANINTER) and for the alleged use of government funds to build a country home in the town of Jaracoba. Zapete was released in the afternoon, when the DNI approached the president's press secretary, Luis González Fabra, to report that Mejía had instructed that he be released. The Rapporteur sent a letter to the journalist asking for information. In this letter, the Rapporteur said that the detention of a journalist for comments made on the activity of the public administration inhibits open debate, which is needed for the proper functioning of democratic institutions.

289. On June 12, 2003, President Mejía informed the local press that he would bring suit against Zapete, though he ultimately refrained from doing so. On June 14, the president showed his country home under construction and said that in due course he would release a report on all the investments he has made in it, without using any government funds.<sup>289</sup>

## URUGUAY

### Positive judicial actions in defamation cases

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<sup>287</sup> *Impunidad*, July 30, 2003, July 30 2003. Diario Libre, "Juez ordena devolución del Listín a Báez Romero", July 30, 2003, <http://diariolibre.com>.

<sup>288</sup> *Listín Diario*, "Corte tiene tres fallos en caso Listín", September 17, 2003, [www.listin.com.do](http://www.listin.com.do).

<sup>289</sup> Committee to Protect Journalists (CPJ), June 13, 2003, [www.cpj.org](http://www.cpj.org). Inter-American Press Association (IAPA), October 2003 and letter of protest, August 5, 2003, [www.sipiapa.com](http://www.sipiapa.com). International Freedom of Expression Exchange (IFEX), June 16, 2003, [www.ifex.org](http://www.ifex.org). *Diario El Nacional*, June 11, 2003, [www.elnacional.com.do](http://www.elnacional.com.do), Inter-American Press Association (IAPA), June 11, 2003, [www.sipiapa.com](http://www.sipiapa.com). *Cadena de Noticias*, [www.cdn.com.do](http://www.cdn.com.do); *Los Nuevos Tiempos*, June 11, 2003, [www.cafebambu.com](http://www.cafebambu.com); *Listín Diario*, June 12, 2003, [www.listin.com.do](http://www.listin.com.do). *Diario Hoy*, June 13 and 15, 2003, [www.hoy.com.do](http://www.hoy.com.do). Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com).

290. On February 4, 2003, Mario Areán, private secretary to the mayor of Montevideo, Mariano Arana, filed a lawsuit for defamation and *injurias* against journalist Sergio Israel of the weekly *Brecha*. The suit was in response to several articles in which Areán was implicated in various corruption cases. On April 22, Sergio Torres, the Judge for Criminal Matters, Third Rotation, acquitted the journalist.<sup>290</sup> The judgment was appealed and affirmed on June 13. Shortly thereafter, an ethics tribunal of Areán's political party, Frente Amplio, issued a document confirming several of the reports published by Israel. Areán resigned.<sup>291</sup>

291. On May 15, 2003, a Court of Appeals revoked a judgment by a court of first instance that had convicted and sentenced radio journalist Oscar Ubiría to a seven-month suspended term for the crimes of defamation and *injurias*. The action was in response to criticisms voiced by Ubiría in November 2002, on his program *Para empezar a creer*, on *CW 158 Radio San Salvador* of Dolores (Soriano), related to a fashion show being held to raise money for a charitable organization. The organizers of the show sued Ubiría and he was found guilty by a criminal judge. In a judgment overturning the lower court's decision, the Court of Appeals ruled that persons engaged in private activity are subject to criticism when their activities are of public interest, and, in those cases, freedom of expression can prevail over the right to honor.<sup>292</sup>

## VENEZUELA

292. In the following section, the Rapporteurship analyzes some of the main incidents related to freedom of expression that occurred in Venezuela in 2003. This information should be considered without prejudice to the considerations of the IACHR in its report on the human rights situation in that country, which will be published opportunistically.

### Threats and attacks

293. The Commission found that verbal and physical attacks on media workers continued in 2003. Since late 2001, the IACHR has asked that precautionary measures be adopted to protect several journalists and media. These include workers and/or directors of the following media: *El Nacional*, *El Universal*, *RCTV*, *Globovisión*, *Así es la Noticia*, and *La Razón*.

294. In early 2003, the Commission received information on several press workers who had been attacked, especially when covering protests and demonstrations. Verioska Velasco, Luis Mata (cameraman), and Alfonso Vásquez (assistant) with the channel *Promar Televisión* and Samuel Sotomayor (cameraman) of *RCTV* were attacked, in the city of Barquisimeto, state of Lara. Ángel Colmenares of *Últimas Noticias* was also attacked in the state of Lara.

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<sup>290</sup> *La República* (Uruguay), April 23, 2003, [www.larepublica.com.uy](http://www.larepublica.com.uy).

<sup>291</sup> Inter-American Press Association (IAPA), October 2003, [www.sipiapa.com](http://www.sipiapa.com). *La República* (Uruguay), February 4, 2003 <http://www.diariolarepublica.com>; *Radio El Espectador* (Uruguay), April 8, 2003, [www.espectador.com](http://www.espectador.com). Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), April 11, 2003, [www.portal-pfc.org](http://www.portal-pfc.org).

<sup>292</sup> Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 26, 2003, [www.portal-pfc.org](http://www.portal-pfc.org). Inter-American Press Association (IAPA), March 10, 2003, [www.sipiapa.com](http://www.sipiapa.com).

295. In the state of Carabobo, a vehicle belonging to *PuertoVisión* was stoned; inside was a team of reporters headed up by Humberto Ambrosino.<sup>293</sup> Javier Gutiérrez and Antonio Rodríguez of *El Regional* were assaulted in the state of Zulia.<sup>294</sup>

296. In Caracas, information was received concerning attacks on Héctor Castillo, photographer with *El Mundo*, and Johan Merchán, of *Televen*.<sup>295</sup> In April, Junior Pinto, Henry Rodríguez, and driver Oscar Mogollón, of *Venezolana de Televisión*, were assaulted. On August 20, Efraín Henríquez, a cameraman with *Globovisión*, was attacked while covering a march, also in Caracas.<sup>296</sup>

297. In the city of Anaco, in the state of Anzoátegui, Mauricio Cabal, Rubén Brito (cameraman), and Marcos Martínez (assistant) of the channel *Venevisión* were threatened at the entry to the plant of the state-owned oil company Petróleos de Venezuela, PDVSA, and the vehicle in which they were traveling was damaged. Also in Anzoátegui, photographer Angel Véliz of the daily *Impacto* was attacked.<sup>297</sup>

298. A vehicle with a team of reporters from *Correo del Caroní* was assaulted by followers of the government in Puerto Ordaz, state of Bolívar. Journalists Daniel Delgado, of *El Nacional*, and Félix Moya, of the daily *El Caribe* were assaulted by the state police of Nueva Esparta.<sup>298</sup> A press team from *Venevisión* was attacked by members of the National Guard in the vicinity of the oil facilities in Paraguaná, state of Falcón.

299. In the state of Aragua, cameraman Carlos Lathosesky and journalist Alfredo Morales were assaulted.<sup>299</sup> In the city of Puerto La Cruz, journalist Gabriela Díaz and photographer José Ramón Chicho Bello of the daily *El Tiempo* were stopped by a group of students.

300. The Rapporteur addressed the Venezuelan State in a letter of January 15, in which he stated his concern over the continuous attacks on media workers and facilities. In that communication the Rapporteur noted: “without prejudice to the actions of the media who denounce the Government, the attacks on media workers and facilities are inadmissible and unjustified.”

301. The Rapporteurship profoundly regrets that the pronouncements made by President Hugo Chávez Frías in April 2003, when he issued an appeal “to respect journalists

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<sup>293</sup> International Federation of Journalists (IFJ), January 24, 2003, in International Freedom of Expression Exchange (IFEX), January 24, [www.ifex.org](http://www.ifex.org).

<sup>294</sup> *Instituto Prensa y Sociedad* (IPYS), January 16, and January 2, 2003, [www.ipys.org](http://www.ipys.org).

<sup>295</sup> *Instituto Prensa y Sociedad* (IPYS), January 13, 2003, [www.ipys.org](http://www.ipys.org).

<sup>296</sup> *Instituto Prensa y Sociedad* (IPYS), August 21, 2003, [www.ipys.org](http://www.ipys.org).

<sup>297</sup> *Instituto Prensa y Sociedad* (IPYS), February 5, 2003, [www.ipys.org](http://www.ipys.org).

<sup>298</sup> International Freedom of Expression Exchange (IFEX), January 24, 2003, [www.ifex.org](http://www.ifex.org).

<sup>299</sup> International Freedom of Expression Exchange (IFEX), January 24, 2003, [www.ifex.org](http://www.ifex.org).

and treat them with dignity, as they deserve,”<sup>300</sup> were not maintained, and, to the contrary, towards the end of the year, he once again made public speeches that could be misinterpreted by his followers to justify the attacks.

302. In public statements, President Hugo Chávez and several high-level officials of his government have protested over the lack of impartiality and the political motivations behind the coverage of some media. This perception on the part of the government regarding the work of the Venezuelan press does not justify, in any way, restrictions or attacks on freedom of expression.

303. On the morning of June 27, 2003, journalist Marta Colomina of *Televen* was subject to an attack when eight individuals with rifles attempted to set her vehicle on fire using a “Molotov cocktail.” The journalist did not suffer any physical harm, and was able to reach the television station, where she broadcast her program *La entrevista*. The journalist, who works for the radio station *Unión Radio* and writes a column in *El Universal*, has openly opposed the government of Hugo Chávez.<sup>301</sup> The Special Rapporteur for Freedom of Expression condemned the incident in a press release of June 30, 2003.<sup>302</sup>

304. On the morning of October 11, 2003, five persons destroyed the technical equipment of the community radio station *Parroquiiana 90.1*, situated in the town of San José de Perijá, in the state of Zulia, near the border with Colombia. Hercilia León, the director, attributed the incident to a member of the local parish board, and an employee of the Machiques city hall, in the wake of reports broadcast by radio directly implicating two of the alleged assailants.<sup>303</sup>

### Judicial actions

305. In Venezuela, several judicial actions were brought against journalists for crimes allegedly involving disrespect for certain public officials.

306. The former minister of the Secretariat of the Presidency, Rafael Vargas, filed a judicial complaint against journalist Miguel Salazar, a columnist with the weekly *Quinto Día*. Salazar has made a series of reports on corruption in the Social Security Institute, one of whose alternate directors is Vargas.<sup>304</sup>

307. The Supreme Court of Venezuela ruled against a *recurso de amparo* brought against the private television stations *Radio Caracas Televisión*, *Venevisión*, *Televen*, *Globovisión*, *CMT*, *Meridiano*, and *Puma TV*, for allegedly interfering with the signal during the

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<sup>300</sup> *Instituto Prensa y Sociedad* (IPYS), February 10, 2003, [www.ipys.org](http://www.ipys.org).

<sup>301</sup> *Instituto Prensa y Sociedad* (IPYS), June 27, 2003, [www.ipys.org](http://www.ipys.org). Reporters Without Borders (RSF), June 28, 2003, [www.rsf.fr](http://www.rsf.fr). See also Reporters Without Borders (RSF), June 30, 2003, [www.rsf.fr](http://www.rsf.fr) and Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), June 27, 2003, [www.pfc.org](http://www.pfc.org).

<sup>302</sup> Press Release from the Office of the Special Rapporteur for Freedom of Expression 81/03, <[www.cidh.org/relatoria/Spanish/Compren2003/ComPren8103.htm](http://www.cidh.org/relatoria/Spanish/Compren2003/ComPren8103.htm)>.

<sup>303</sup> *Instituto Prensa y Sociedad* (IPYS), October 15, [www.ipys.org](http://www.ipys.org). Reporters Without Borders (RSF), October 17, 2003, [www.rsf.fr](http://www.rsf.fr).

<sup>304</sup> Reporters Without Borders (RSF), June 27, 2003, [www.rsf.fr](http://www.rsf.fr).

mandatory nationwide radio and television broadcast of a message by President Hugo Chávez. The *amparo* was based on the fact that on April 11, 2002, the television stations had split their screens during the presidential message in order to broadcast, simultaneously, live images of the disturbances that took place that day around the presidential palace of Miraflores.<sup>305</sup>

308. On July 15, the Constitutional Chamber issued judgment 1942, which found inadmissible a motion to void certain articles of the Criminal Code that punish the free criticism of public officials and official agencies. Attorney Rafael Chavero Gadzik filed the action in March 2001, alleging that Articles 141, 148 to 152, 223 to 227, 444 to 447, and 450, which contain provisions that criminalize *desacato*, defamation, and *injurias*, violate the Venezuelan Constitution and the international obligations accepted by Venezuela under Article 13 of the American Convention on Human Rights.<sup>306</sup> In particular, they argued that the recommendations of the Inter-American Commission are not binding.<sup>307</sup> On July 16, the Rapporteur issued a press release expressing regret over the decision, as it validated the *desacato* laws.

309. In April 2003, Tulio Capriles Hernández, president of the daily *El Siglo*, located in the state of Aragua, was called to trial for defamation. Capriles was accused by the governor of the state of publishing reports on cases of official negligence and corruption. According to the information received, the newspaper has also been the object of harassment, including attacks on the workers and material damage.<sup>308</sup>

310. The Public Ministry of the state of Miranda ordered that the state intelligence authorities undertake an investigation against the editor-director of the daily newspapers *La Voz* and *La Región*, José Matarán Tulene. The investigation is based on the publication, on March 11, of an ad by the opposition Coordinadora Democrática.<sup>309</sup>

## Legislation

311. During the year, the Rapporteurship received information on the discussion of the proposed Law on Social Responsibility in Radio and Television (known as the Contents Law). According to its provisions, the law is aimed at establishing a series of responsibilities for those who provide radio and television services, independent producers, and others.<sup>310</sup> The bill establishes some regulations related to the content of radio and television programs.

312. On February 13, 2003, the National Assembly approved, in the first debate, a version of this law that was revised by its Committee on Science, Technology, and

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<sup>305</sup> Instituto Prensa y Sociedad (IPYS), May 5, 2003, [www.ipys.org](http://www.ipys.org).

<sup>306</sup> Committee to Protect Journalists (CPJ), July 30, 2003, [www.cpj.org](http://www.cpj.org). Instituto Prensa y Sociedad (IPYS), July 18, 2003, [www.ipys.org](http://www.ipys.org). Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA), July 17, 2003.

<sup>307</sup> "Leyes de Desacato: Sala Constitucional del TSJ emitió comunicado para aclarar la sentencia Cabrera," *El Nacional*, July 17, 2003.

<sup>308</sup> Instituto Prensa y Sociedad (IPYS), April 14, 2003, [www.ipys.org](http://www.ipys.org). Inter-American Press Association, April 11, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>309</sup> Instituto Prensa y Sociedad (IPYS), April 14, 2003, [www.ipys.org](http://www.ipys.org). Inter-American Press Association (IAPA), April 11, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>310</sup> Proposed Law on Social Responsibility in Radio and Television, Article 1.



Communication Media. The Committee approved a new version of the bill on May 16 and forwarded it directly to the plenary of the National Assembly for the second debate.

313. In response to the adoption of the new version of the bill, the Rapporteur sent a missive to the Minister of Foreign Relations of Venezuela on May 27, 2003. In that communication, the Rapporteur highlighted some advances in the new version, such as eliminating the provision that granted a privilege to public officials that made it possible to impose grave sanctions on those who disseminate contents that promote “disrespect” for institutions and authorities, including via live broadcasts. Nonetheless, the Rapporteur noted that the bill maintained limitations on the contents of those radio and television programs which, together with the vague terms used in several provisions, could lead to self-censorship of the media. The Rapporteur further stated his concern over the conditions of truthfulness and timeliness of information. These conditions are at odds with Article 13 of the Convention in light of Principle 7 of the Declaration of Principles on Freedom of Expression. The Rapporteur urged the legislators to take into account international standards on freedom of expression and requested the State to provide him with information on the bill and its status. The State did not answer this communication.

314. The Rapporteur’s concerns were reiterated by the IACHR in a letter sent to the State on June 4. In its communication, the Commission stated its concern in relation to the possibility, in the context of that bill, that those who provide radio and television services might be sanctioned with suspension due to violation of the concepts of truthfulness, impartiality, and timeliness of information. The Executive Secretary asked the State to inform the National Assembly of the Commission’s concern.

315. As of this writing, the proposed Law on Social Responsibility of Radio and Television had not yet been introduced for a second debate.

### **Other**

316. The IACHR learned that administrative proceedings had begun against various television channels in Venezuela at the initiative of the Ministry of Infrastructure (MINFRA).

317. On January 20, 2003, *Globovisión* and *Radio Caracas Televisión (RCTV)* were given notice that administrative proceedings had been initiated against them to determine whether they had breached the law on radio and television broadcasts.<sup>311</sup> On February 5, 2003 officials from MINFRA went to the offices of *Venevisión*<sup>312</sup> and *Televen* to give notice that an administrative investigation was being initiated. In addition, a similar proceeding was initiated against the *Televisora Regional de Táchira*.<sup>313</sup>

318. These proceedings were related to alleged violations of Article 171 of the Telecommunications Law and Article 53 of the Partial Regulation of Television Broadcasts by

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<sup>311</sup> Committee to Protect Journalists (CPJ), January 23, 2003, [www.cpj.org](http://www.cpj.org).

<sup>312</sup> Inter-American Press Association (IAPA), February 6, 2003, [www.sipiapa.com](http://www.sipiapa.com) ; International Federation of Journalists, (IFJ), February 6, 2003, [www.ifj.org](http://www.ifj.org).

<sup>313</sup> Committee to Protect Journalists (CPJ), January 23, [www.cpj.org](http://www.cpj.org). Human Rights Watch, January 27, 2003.

these stations during the civic strike organized by the opposition from December 2, 2002 to February 6, 2003. The first of those articles warns of a possible revocation of the administrative authorization or concession for one who uses or allows the use of telecommunications services as means for helping to commit a crime. The regulation prohibits broadcasting speeches that incite rebellion and disrespect for the institutions and their authorities; the dissemination of propaganda aimed at subverting the social public order; and false, deceitful, or tendentious signals and news.

319. In a press release, the Rapporteur for Freedom of Expression indicated that it was worrisome that procedures would be initiated invoking legislation contrary to the international standards on freedom of expression.

320. The television stations filed a request for nullity on grounds of “unconstitutionality” and a constitutional *amparo* against several of the articles of the Organic Law on Telecommunications. In addition, they sought precautionary measures to order the Minister of Infrastructure, Diosdado Cabello, to refrain from enforcing the Organic Law on Telecommunications and the Partial Regulation on Television Broadcasts while the lawsuit was pending. In addition, they requested a precautionary measure to have the administrative proceedings brought against television stations by the Minister of Infrastructure sent to the National Telecommunications Commission (CONATEL).<sup>314</sup> On June 2, 2003, the Constitutional Chamber of the Supreme Court denied the precautionary measures requested by the television stations *Globovisión*, *Televen*, and *RCTV*.

321. The Rapporteurship has repeatedly stated that the right to information encompasses all information, including that which, in opposition to “truthful,” may be “erroneous,” “untimely,” or “incomplete,” given that it is precisely the open debate and exchange of ideas that are the appropriate method for searching for the truth. If prior conditions are imposed on expression, requiring that information must be “truthful”, in many cases a highly subjective determination, the debate needed to try to arrive at that truth is limited.

322. The community television station *CATIA TV* was closed by officials of the office of the Mayor of Caracas on Thursday, July 10, 2003, when representatives of the Health Secretariat of the city government showed up at the studios and evicted the station from the facilities without presenting any judicial order, but alleging legal and technical reasons for the shutdown. The station broadcasts from the sector of Catia, a low income neighborhood of Caracas.<sup>315</sup> The Rapporteur asked the State for information on this case to evaluate the situation, and at the same time reiterated his interest in community media, as they facilitate the free circulation of information, encouraging freedom of expression and dialogue within communities to foster their participation. The information requested was never provided by the State. One week later, it was reported that the director of health for the city, Pedro Artistimuño, had ceased implementing the measure and had apologized to the directors of the station.<sup>316</sup>

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<sup>314</sup> *Instituto Prensa y Sociedad* (IPYS), June 4, 2003, [www.sipiapa.com](http://www.sipiapa.com).

<sup>315</sup> AMARC, July 15, 2003.

<sup>316</sup> AMARC, July 18, 2003; *Instituto Prensa y Sociedad* (IPYS), July 14, 2003, [www.ipys.org](http://www.ipys.org).

323. On February 4, 2003, in a joint operation of the National Telecommunications Commission (CONATEL) and the Bureau of Intelligence and Protective Services (DISIP), the radio station *Amiga 105.7* in the town of El Hatillo, state of Miranda, was shut down. It had been on the air for three months. On two occasions it had been inspected, and no irregularity was found. Representatives of the media added that the government's intervention came as they were preparing to interview Ley Benshimol, president of the *Colegio Nacional de Periodistas* (CNP), and constitutional law expert attorney Enrique Meir, on the proposed Law on Social Responsibility, in radio and television or "Contents Law". Information was posted on the web site of CONATEL, according to which the radio was shut down due to fiscal irregularities, which was denied by the radio.<sup>317</sup>

324. On October 3, 2003, staff of the National Telecommunications Commission (CONATEL) showed up at two facilities of the television channel *Globovisión* to give notice of an investigation related to the alleged use of unauthorized frequencies. The CONATEL officials seized part of the microwave equipment. *Globovisión* stated that this measure could endanger its live broadcasts. That same day, the Special Rapporteur for Freedom of Expression issued a press release warning of the possible consequences of this action for the channel's informational activity and requested that the procedure ensure respect for the right to defense. The Commission issued a precautionary measure on behalf of *Globovisión* and ordered the State to return the seized equipment.<sup>318</sup> In addition, the Commission called both parties on October 21, during its 118th session, to separate hearings, at the request of the State. The State's representatives argued that they had acted in keeping with the legal provisions that regulate the radio spectrum. The representatives of *Globovisión* stated that the measure was causing them irreparable harm, as they were unable to go before an impartial and independent court to settle the dispute. The Commission reviewed the precautionary measures and demanded that the State guarantee simple and prompt recourse before competent and impartial judges or courts.

325. On December 9, 2003, CONATEL upheld the seizure of seven pieces of equipment and a fine of 583 million Bolívares (US\$363,000). On December 11, *Globovisión* presented a petition to nullify the decision.

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<sup>317</sup> International Federation of Journalists, cited in International Freedom of Expression Exchange (IFEX), February 10, 2003, [www.ifex.org](http://www.ifex.org).

<sup>318</sup> Committee to Protect Journalists (CPJ), October 7, [www.cpj.org](http://www.cpj.org).

## D. Assassinations of Media Personnel in 2003

MEDIA PERSONNEL ASSASINATED IN 2003				
INFORMATION ABOUT THE MEDIA PERSONNEL	PLACE AND DATE	FACTS OF THE CASE	BACKGROUND	STATUS OF THE INVESTIGATION
<p><b>Nicanor Linhares Batista</b>, owner and manager of <i>Radio Vale do Jaguaribe</i>, presenter of the program <i>Encontro Politico</i>.</p>	<p>Limoeiro do Norte, State of Ceará, BRAZIL. June 30, 2003.</p>	<p>Nicanor Linhares, 42 years of age, was assassinated on the night of June 30, 2003 by two armed individuals who suddenly entered the radio studio, fired several shots at point-blank range, and fled on a motorcycle. Linhares was taken to the Public Hospital of Limoeiro do Norte, but was declared dead on arrival.</p>	<p>Nicanor Linhares was known as a controversial journalist who was critical of the local public administration and politicians. Several of his family members and acquaintances told local media that he had previously received threats.</p>	<p>The Police investigation led to the detention, in August, of five persons. Among them was an Army sergeant, Edesio de Almeida, suspected of being an intermediary in the murder. On October 10, 2003, Francisco Lindenor de Jesus Morua Juniro was detained and confessed to having been paid for killing Linhares. On October 20, 2003, the Public Ministry filed an accusation against José Maria Lucena, judge of the Federal Regional Tribunal of the fifth region, and his wife, Arivan Lucena, mayor of Limoeiro do Norte, suspected of being the intellectual authors of the murder. At this writing, three other suspects were reportedly fugitives from justice.</p>
<p><b>Luiz Antônio da Costa</b>, photojournalist with the magazine <i>Época</i>.</p>	<p>São Bernardo do Campo, State of São Paulo, BRAZIL. July 23, 2003.</p>	<p>Da Costa, 36 years of age, was covering an invasion of a lot owned by an auto company when three persons arrived and shot at him.</p>	<p>According to one of the suspect's confession, da Costa was assassinated because the suspects believed that he had taken photographs during a robbery they had just committed at a nearby gas station.</p>	<p>On July 30, the police of São Bernardo do Campo detained two suspects in the assassination. One of them confessed to having fired at the reporter but stated that his intention had been to hit the camera. On August 6, the third suspect, a 16-year-old, appeared in court and plead his innocence. The minor was freed the day after his arrest, but he was accused of participating in the assassination.</p>

INFORMATION ABOUT THE MEDIA PERSONNEL	PLACE AND DATE	FACTS OF THE CASE	BACKGROUND	STATUS OF THE INVESTIGATION
<p><b>Luis Eduardo Alfonso Parada</b>, correspondent for <i>El Tiempo</i>, and co-director of the news program <i>Actualidad Informativa</i> of the radio station <i>Meridiano 70</i>.</p>	<p>City of Arauca, Department of Arauca, COLOMBIA. March 18, 2003.</p>	<p>Two subjects fired at the journalist as he arrived at the <i>Meridiano 70</i> radio station.</p>	<p>Alfonso was known for denouncing corruption and for reporting on the armed conflict. He had availed himself of the Ministry of Interior's Journalist Protection Program. Additionally, on June 28, 2002, the owner of <i>Meridiano 70</i> was assassinated.</p>	<p>In June, three suspects were detained in relation to the journalist's death. At the time this report was drafted, the Special Rapporteur had not received further information about the case.</p>
<p><b>José Emeterio Rivas</b>, director of the program <i>Las Fuerzas Vivas</i>.</p>	<p>Department of Santander, COLOMBIA. April 7, 2003.</p>	<p>The body of José Emeterio Rivas was found, along with another body, that of a student, alongside the road leading to Barrancabermeja.</p>	<p>Rivas had been threatened and so had availed himself of the Journalist Protection Program of the Ministry of Interior and Justice in January 2001, and had been assigned a bodyguard. Nonetheless, the week he was killed, Rivas went without protection. Days prior to his death, Rivas had denounced that he had been the victim of an assassination attempt.</p>	<p>On July 11, three officials of the office of the mayor of Barrancabermeja were detained: Juan Pablo Arica, Fabio Pajón Lizcano, and Abelardo Rueda Tobón. In addition, an arrest warrant was issued for the mayor of Barrancabermeja, Julio César Ardila Torres, for his alleged participation in the assassination. On September 17, Ardila Torres presented himself to the Attorney General of Colombia, Luis Camilo Osorio. On September 24, the Office of the Attorney General of Colombia issued an order to detain Ardila without bond for his alleged participation in the assassination of five persons, including Rivas. The mayor alleged his innocence.</p>
<p><b>Guillermo Bravo Vega</b>, columnist with the newspaper <i>Tribuna del Sur</i> and director of the television program <i>Hechos y Cifras</i>.</p>	<p>Department of Huila, COLOMBIA. April 28, 2003.</p>	<p>A paid assassin entered Bravo's home at night and shot him three times.</p>	<p>The journalist had previously received threats. He was known for his work on economic and political issues, and had obtained many journalism awards.</p>	<p>As of the time this report was drafted, the Special Rapporteur had not received information about the status of the investigation of the assassination of the journalist Guillermo Bravo.</p>
<p><b>Jaime Rengifo Revero</b>, director of the newspaper <i>El Guajiro</i> and producer of the program <i>Periodistas en acción</i>.</p>	<p>Department of Guajira, COLOMBIA. April 29, 2003.</p>	<p>Rengifo was shot five times in the hotel where he had been living for three years by an individual who had registered under the name Luis Alfredo Gómez.</p>	<p>Rengifo had previously received threats. On his program, he denounced crime in the city of Maicao.</p>	<p>As of the time this report was drafted, the Special Rapporteur had not received information about the status of the investigation of the assassination of the journalist Jaime Rengifo.</p>

INFORMATION ABOUT THE MEDIA PERSONNEL	PLACE AND DATE	FACTS OF THE CASE	BACKGROUND	STATUS OF THE INVESTIGATION
<p><b>German Antonio Rivas</b>, director and manager of Corporación Maya Visión (Channel 7).</p>	<p>Santa Rosa de Copán, HONDURAS. November 26, 2003.</p>	<p>Unidentified individuals shot Rivas as he arrived at the Channel's headquarters in Santa Rosa de Copán.</p>	<p>On February 24, 2003, Rivas had emerged unscathed from another attack, when an unknown person shot at him as he arrived at his place of residence.</p>	<p>The Office of the Special Rapporteur was informed that the Honduran Attorney General's Office has begun an investigation of the incident and has carried out the preliminary procedural steps. At the time this report was drafted, there had been no official statement as to the possible motives for the crime.</p>



## CHAPTER III

### JURISPRUDENCE

#### **A. Summary of the jurisprudence of the European Court of Human Rights on freedom of expression<sup>1</sup>**

##### **1. Introduction**

1. The following sections summarize the jurisprudence on freedom of expression of the European Court of Human Rights. The inclusion of these sections in this chapter responds to an attempt by the Special Rapporteur for Freedom of Expression to encourage comparative case law studies in compliance with the mandate of the Heads of State and Government conferred at the Third Summit of the Americas held in Quebec, Canada, in April 2001. During the Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression, and further held 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.”

2. The Special Rapporteur for Freedom of Expression regards the European Court's extensive jurisprudence on the right to freedom of expression as a valuable source that can shed light on the interpretation of this right in the Inter-American system, and serve as a useful tool for legal practitioners and interested people.

3. In its 2002 Report on Terrorism and Human Rights, the Inter-American Commission on Human Rights recognized the value of the European Jurisprudence as a useful tool for the interpretation of the right to freedom of expression as guaranteed by the inter-American system. Specifically, when dealing with the issue of emergency situations that might constitute exceptions to the ban on prior censorship guaranteed by Article 13.2 of the American Convention, the Commission referred to the jurisprudence of the European Human Rights System in order to demonstrate the high level of scrutiny that any prior censorship must be given. In this regard, the Commission pointed out that “The case law of the European Human Rights system can serve as a relevant indicator of the application of the issue of prior censorship at the regional level, in particular considering its considerable number of cases dealing with freedom of expression. Notwithstanding the fact that the European Human Rights System does not recognize the same absolute ban on prior censorship as in the Inter-American

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<sup>1</sup> 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 for this report, and of Andrea de la Fuente, a recent law graduate from Universidad Torcuato Di Tella, Argentina, who drafted this report. Both were interns in the Office of the Special Rapporteur for Freedom of Expression during 2003. The Office thanks them for their contributions. The summaries of the cases contained in this chapter have been primarily based on the summaries of cases offered by Article XIX, a London-based non-governmental organization committed to promoting freedom of expression and access to official information. The summaries of cases by Article XIX are available at <http://www.article19.org>.



system, its institutions have also been reluctant to allow prior restraints on dissemination of expression (...).<sup>2</sup>

4. The European Convention for the Protection of Human Rights and Fundamental Freedoms was opened up for signature in November 1950 and entered into force in September 1953. The Convention lay down a list of civil and political rights and freedoms, and established an institutional architecture for the enforcement of the rights set out in the Universal Declaration, made up of the European Commission of Human Rights, the Committee of Ministers of the Council of Europe and the European Court of Human Rights. In 1998, as a result of an increasing workload for the Court, Protocol 11 to the Convention came into force, changing the manner in which the judicial function was performed by the Court. Under the former system, the main stage in the examination of a complaint was carried out by the European Commission of Human Rights, which ceased to exist in October 1999. Under the reformed system, the existing Court and Commission were replaced by a single full-time Court. However, the great number of applications attracted by the new system has led the Ministers to evaluate the possibility of further reforms. In 1999, the President of the new Court noted that:

The continuing steep increase in the number of applications to the Court is putting even the new system under pressure. Today we are faced with nearly 10,000 registered applications and more than 47,000 provisional files, as well as around 700 letters and more than 200 overseas telephone calls a day. The volume of work is already daunting but is set to become more challenging still...<sup>3</sup>

5. Both the American and European Conventions have a specific provision regarding the right to freedom of expression, delineated in Articles 13 and 10, respectively. However, the form in which the articles are drafted differs greatly: while Article 13 of the American Convention contains a specific list of exceptions to the general principle established in the first paragraph of the Article, its counterpart in the European Convention is formulated in very general terms. Also, the articles have a very different reach, evident in the establishment in Article 13 of the American Convention of a virtually complete ban on prior censorship, absent in Article 10 of the European document. The Inter-American Court of Human Rights has compared Article 10 of the European Convention with Article 13 of the American Convention and Article 19 of the International Covenant on Civil and Political Rights, concluding that "A comparison of Article 13 with the relevant provisions of the European Convention (Article 10) and the Covenant (Article 19) indicates clearly that the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas".<sup>4</sup>

6. The higher regard in which the American Convention holds the right to freedom of expression in relation to the European Convention makes it imperative that the rules derived from the jurisprudence of the European Court be understood as minimum standards required by the right to freedom of expression, but never as a limitation on the enjoyment of greater protection of freedom of expression. This approach is consistent with the view adopted by the

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<sup>2</sup> See IACHR, *Report on Terrorism and Human Rights*, OAS/Ser. L./V/II.116, Doc. 5 rev. 1 corr. 22 October 2002, 194-195.

<sup>3</sup> President of the Permanent European Court of Human Rights, quoted in 20/3 Hum. Rts L.J. 114 (1999), cited by Henry J. Steiner and Philip Alston, *International Human Rights in Context*, Second Edition, 799.

<sup>4</sup> 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, Series A No. 5, Judgment of November 13, 1995, para. 50.

Inter-American Court of Human Rights on the simultaneous applicability of international treaties. In this regard, the Court affirmed, following the rule of interpretation set out in Subparagraph (b) of Article 29 of the American Convention<sup>5</sup>, that " (...) if in the same situation both the American Convention and another international treaty are applicable, the rule most favorable to the individual must prevail. Considering that the Convention itself establishes that its provisions should not have a restrictive effect on the enjoyment of the rights guaranteed in other international instruments, it makes even less sense to invoke restrictions contained in those other international instruments, but which are not found in the Convention, to limit the exercise of the rights and freedoms that the latter recognizes." <sup>6</sup>

## **2. Cases under the European Convention for the Protection of Human Rights and Fundamental Freedoms**

7. Section 1 of Article 10 of the European Convention provides for the right to freedom of expression in the following way:

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

8. Section 2 of Article 10 states that:

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

9. The following section refers to cases decided by the European Court of Human Rights on subjects related to the right to freedom of expression. The selection of these subjects responds to the importance of their proper understanding in tackling the difficulties faced by the countries in the Americas at the current stage of development of the right to freedom of expression.

10. The subjects treated in this section are divided under the following titles: Public Order; Prior Censorship; and Defamation. The cases under the title of Public Order refer to situations in which the questioned restrictions are imposed on the grounds that they are necessary for the protection of public order. The cases under the title Prior Censorship portray situations in which there has been a prior restraint on a publication on the basis of the achievement of a legitimate aim. The cases under the title of Defamation refer to situations in which legal proceedings for defamation were brought against the complainants for allegedly damaging the reputation of another person or persons through the exercise of the right to freedom of expression.

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<sup>5</sup> Article 29 of the Inter-American Convention on Human Rights reads: "No provision of this Convention shall be interpreted as (...) b. restricting the enjoyment or exercise of any right or freedom recognized in this Convention or to restrict them to a greater extent than is provided for herein (...)."

<sup>6</sup> OC-5/85, *supra*, note 4, para. 52.

11. The cases portrayed are only a few of the cases available on the subjects treated in the extensive jurisprudence of the European Court. The cases below have been selected to illustrate the Court's interpretation of the right to freedom of expression as set out by Article 10 of the European Convention. In these cases, the Court analyzes whether there has been a violation of the right to freedom of expression by evaluating whether the restrictions imposed come within the ambit of Article 10. The complete text of these cases can be viewed through the European Court's website.<sup>7</sup>

**a) Public Order**

12. Section 2 of Article 10 of the European Convention establishes that the rights provided for in paragraph 1 may be subject to "such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, . . . for the prevention of disorder or crime[.]" In the cases below, the European Court of Human Rights analyzes the concept of public order, and studies whether the restrictions imposed are justified on these grounds, pursuant to the Article's provision.

i) Engel and Others v. The Netherlands

13. The European Court of Human Rights addressed the issue of public order in the 1976 case of *Engel and Others v. The Netherlands*.<sup>8</sup> In this case, two of the applicants, conscripts in the Netherlands Army and editors of a journal aimed at conscripts, published an article which alleged unlawful behavior on the part of several military commanders, suggesting that the commanders used intimidation techniques to suppress dissent and that conscripts had been unfairly punished. The commanding officer of the barracks deemed that this article and other articles in the same publication that discussed a demonstration of the conscripts' union against the government tended to undermine military discipline. Following a hearing, the applicants were committed to several months' service in a disciplinary unit.

14. In evaluating the legality of the restriction, the European Court understood that the interference met this condition to the extent that its purpose was the prevention of disorder within the armed forces. The Court analyzed the concept of "public order", stating that the term covered a range of situations:

The concept of 'order' refers not only to public order or 'ordre public' ... [I]t also covers the order that must prevail within the confines of a specific special group. This is so, for example, when, as in the case of armed forces, disorder in that group can have repercussions on order in society as a whole.<sup>9</sup>

15. In analyzing the question of whether the restriction imposed was "necessary in a democratic society", the Court esteemed that the applicants contributed to the publication and distribution of a writing that was inflammatory in nature. In these circumstances the Supreme Military Court was justified in holding that the applicants had attempted to undermine military

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<sup>7</sup> European Court of Human Rights, <http://www.echr.coe.int/>

<sup>8</sup> Eur. Ct. H.R., Case of *Engel and Others v. The Netherlands*, Judgment of November 23, 1976, Application No. 00005100/71 ; 00005101/71 ; 00005102/71 ; 00005354/72 ; 00005370/72.

<sup>9</sup> *Id.* at para. 98.

discipline and that the imposition of a penalty was necessary. Therefore, the applicants had not been deprived of their right to freedom of expression; they had merely been punished for the abusive exercise of that right. Because the punishment was prescribed by law, necessary in a democratic society, and pursued the legitimate aim of the prevention of disorder, the Court held that the State did not violate Article 10.

ii) Chorherr v. Austria

16. A similar solution was arrived at in the 1993 case of Chorherr v. Austria.<sup>10</sup> In this case, the European Court held that there was an interference by a public authority with the applicant's right to freedom of expression, which was prescribed by law and pursued a legitimate aim, namely the prevention of disorder. The applicant and his friend were detained for refusing to stop distributing leaflets calling for a referendum on the purchase of fighter aircraft by the Austrian Armed Forces. Their demonstration had caused a commotion at a military ceremony to mark the thirtieth anniversary of Austrian neutrality. The two friends were informed by a police officer that they were disturbing public order and instructed to cease their "demonstration." They refused to comply, citing their right to freedom of expression. Despite further warnings, the applicant and his friend continued to pass out leaflets. They were arrested and held for three-and-a-half hours.

17. The Court held with regard to the necessity of the interference, that Contracting States hold a certain margin of appreciation in assessing whether and to what extent an interference may be "necessary" for the purposes of Article 10(2). The Court stated that this margin extends to the choice of the reasonable and appropriate means to be used by the authorities to ensure that lawful manifestations can take place peacefully. Here, the Court noted that the nature, importance and scale of the parade could appear to the police to justify strengthening the forces deployed. Further, the applicant, in choosing this event, must have realized that it might lead to a disturbance requiring measures of restraint, which the Court did not find excessive. Finally, when the Austrian Constitutional Court approved these measures it expressly said such measures had been intended to prevent breaches of the peace and not to frustrate the expression of opinion. The Court said there was a reasonable relationship of proportionality between the means employed and the legitimate aim pursued and accordingly there was no violation of Article 10.

iii) Piermont v. France

18. The European Court found that a violation of Article 10 of the European Convention had been committed in the 1995 case of Piermont v. France.<sup>11</sup> In this case, the applicant, a German pacifist, environmentalist, and Member of the European Parliament, visited French Polynesia during an election campaign preceding the territorial assembly and parliamentary elections. The applicant was served with an expulsion and exclusion order from the territory after she had taken part in a demonstration during which she denounced the continuation of nuclear testing and the French presence in the Pacific. The applicant flew to New Caledonia, which was also in the throes of an election campaign. Upon arrival, she was excluded from the territory due to the likelihood that her presence during election time would

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<sup>10</sup> Eur. Ct. H.R., Case of Chorherr v. Austria, Judgment of August 25, 1993, Application No. 13308-87.

<sup>11</sup> Eur. Ct. H.R., Case of Piermont v. France, Judgment of March 20, 1995, Application No 015773/89, 15774/89.

cause public disorder.

19. The European Court assessed that both in French Polynesia and in New Caledonia there had been an interference with the right to freedom of expression. In addressing the legitimacy of the interference in French Polynesia, the Court concluded that the restriction was prescribed by law, and pursued the legitimate aims of the prevention of disorder and the preservation of territorial integrity. The Court did not, however, consider that the interference was necessary in a democratic society. The Court emphasized that the applicant's speech, which in no way promoted violence, occurred during a peaceful, authorized demonstration. The Court concluded that a fair balance was not reached between the public interest in preventing disorder and preserving territorial integrity, on the one hand, and the applicant's right to freedom of expression, on the other. In addressing the legitimacy of the interference in New Caledonia, the Court stated that the exclusion order amounted to an interference, since the applicant had not been able to come into contact with the politicians who had invited her or to express her ideas on the spot. The interference was prescribed by law; the High Commissioner was entitled to use his general police powers to ban the applicant on grounds of public safety. However, regarding the necessity of the interference, the Court stated that even if the political atmosphere was tense and the applicant's arrival led to a limited demonstration of hostility, there was no substantial difference in her position vis-à-vis the two territories.

## iv) Incal v. Turkey

20. A violation of Article 10 of the European Convention was also found in the 1998 case of *Incal v. Turkey*.<sup>12</sup> The applicant was a member of the executive committee of the People's Labour Party. The committee asked for official permission for the distribution of a leaflet calling for the establishment of neighborhood committees to oppose the official policy to drive out Kurds from the city of Izmir. As a result, an injunction was obtained ordering the seizure of all copies of the leaflet, on the basis that they contained separatist propaganda capable of inciting people to resist the Government and commit crimes. Criminal proceedings were instituted against the applicant and other members of the committee. The applicant was found guilty of attempting to incite hatred or hostility through racist words and was sentenced to six months and twenty days' imprisonment. As a result of his conviction, he was debarred from the civil service and forbidden from taking part in a number of activities within political organizations, associations or trade unions.

21. The European Court held that there was an interference by a public authority with the applicant's right to freedom of expression; it was prescribed by law, and pursued a legitimate aim, namely the prevention of disorder. Regarding the issue of "necessity," the Court assessed that none of the appeals raised by the leaflets amounted to incitement to violence, hostility or hatred between citizens. The Court further expressed that the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician, and that the actions or omissions of the Government must be subject to the close scrutiny of public opinion in a democracy. Therefore, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. The Court noted that in spite of this, it does remain open for competent state authorities to adopt measures, even of a criminal-law nature, intended to react appropriately to such remarks. The Court noted the radical nature of the interference. Even taking the background of terrorism into account, there was nothing that could warrant the conclusion that the applicant was responsible for the problems of terrorism in Turkey or Izmir. The Court concluded that the applicant's conviction was disproportionate to the aim pursued and therefore unnecessary.

**b) Prior Censorship**

22. In its 2002 Report on Terrorism and Human Rights, the Inter-American Commission on Human Rights recognized that "[T]he case law of the European Human Rights system can serve as relevant indicator of the application of the issue of prior censorship at the regional level, in particular considering its considerable number of cases dealing with freedom of expression. Notwithstanding the fact that the European Human Rights System does not recognize the same absolute ban on prior censorship as in the inter-American system, its institutions have also been reluctant to allow prior restraints on dissemination of expression, as illustrated in the 'Spycatcher cases' (...)."<sup>13</sup> In the following cases, the European Court analyzes cases of prior censorship to determine whether the restrictions imposed are prescribed by law

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<sup>12</sup> Eur. Ct. H.R., Case of *Incal v. Turkey*, Judgement of June 9, 1998, Application No. 22678193.

<sup>13</sup> See IACHR, *Report on Terrorism and Human Rights*, *supra* note 2, 194-195.

and necessary in a democratic society, according to the requirements of Article 10, Section 2 of the European Convention.

i) Handyside v. The United Kingdom

23. In the 1976 case of *Handyside v. The United Kingdom*,<sup>14</sup> the applicants, a publishing firm, published "The Little Red Schoolbook," which was intended for, and made available to, schoolchildren of the age of twelve and upwards. The book contained chapters on sex, including sub-sections on issues such as contraceptives, pornography, homosexuality, and abortion, and addresses for help and advice on sexual matters. The book had first been published in Denmark and subsequently in several European and non-European countries. After receipt of a number of complaints, the applicant's premises were searched and copies of the books were seized. The applicant was arraigned before a court and found guilty on two counts of having in his possession obscene books for publication for gain. He was fined and ordered to pay costs. The court also made a forfeiture order for the destruction of the books by the police. The conviction was upheld on appeal, and the books seized were then destroyed. A revised edition of the book was later published after alterations were made to the text and certain offensive lines were re-written or eliminated.

24. The Court decided that there had not been a violation of Article 10 of the European Convention, considering that the applicants' conviction constituted an interference with the right to freedom of expression which had been "provided by law" and pursued the legitimate aim of protecting morals. At issue was whether the interference had been "necessary in a democratic society." In this respect, the Court assessed that in the field of "protecting morals," it was impossible to find in the domestic law of the various contracting states a uniform European conception. For this reason, and interpreting that the adjective "necessary" is not synonymous with the terms "indispensable" or "absolutely necessary" found in other provisions of the Convention, the Court concluded that it is appropriate to leave Contracting States a margin of appreciation in assessing the "pressing social need implied by the notion of "necessity." The European Court underscored that the proportionality of a restriction to the legitimate aim it is to serve is implicit in the concept of "necessity." The Court esteemed that in this case, the restriction applied was proportionate to the aim of the restriction, as applying lesser restrictions would likely not have achieved the desired outcome. Furthermore, the Court considered that the fact that no proceedings had been instituted against the revised edition, which differed extensively from the original edition on the points at issue, suggested that the authorities had wished to limit themselves to what was strictly necessary.

25. The Court also stated that it was necessary to pay the utmost attention to the principles characterizing a "democratic society." In particular, it held that:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society." This means, amongst other

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<sup>14</sup> Eur. Ct. H.R., Case of *Handyside v. the United Kingdom*, Judgment of December 7, 1976, Application No. 5493/72.

things, that every "formality," "condition," "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.<sup>15</sup>

ii) *The Sunday Times v. The United Kingdom*

26. In the 1979 case of *The Sunday Times v. The United Kingdom*,<sup>16</sup> the European Court determined that there had been an interference with the right to freedom of expression and a violation of Article 10 of the European Convention. In this case, a British drug company had manufactured and distributed drugs containing thalidomide, which allegedly caused birth defects in babies born to mothers who had used these drugs during pregnancy. The drugs were withdrawn from the market in 1961. Numerous parents of babies born with birth defects subsequently brought lawsuits against the company. In 1972, while many of the lawsuits were still in settlement negotiations, the applicant newspaper published an article criticizing the settlement proposals, as well as various aspects of domestic law in personal injury cases, and complaining of the delay that had elapsed since the births. A footnote to the article announced that a future article would trace how the tragedy occurred, including an investigation into whether the drug company had carried out proper tests on the drug, and whether it had been aware that thalidomide could have a negative impact on the unborn. The attorney general applied for and was granted an injunction restraining publication of this future article on the grounds that it would constitute contempt of court. The applicant applied for the injunction to be lifted but was ultimately unsuccessful. The injunction was finally lifted in 1976, after a settlement had been reached and approved by the courts. The article was published four days later.

27. Regarding the question of whether the injunction was "provided by law," the Court noted that two constant principles had been relied on throughout the Appeals process: the pressure principle (the deliberate attempt to influence a proceeding) and the prejudgment principle (causing public prejudgment of issues raised in pending litigation). The Court considered that there had been no doubt that these had been formulated with sufficient precision to enable the applicants to foresee to the appropriate degree the consequences which publication of the draft article might entail, and concluded that the injunction was "provided by law". Further, the Court held that the expression "provided by law" implied at least two requirements:

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<sup>15</sup> *Id.* at para. 49.

<sup>16</sup> Eur. Ct. H.R., Case of *The Sunday Times v. the United Kingdom*, Judgment of April 26, 1979, Application N° 6538/74.



First, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice- to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.<sup>17</sup>

28. On the issue of whether the law of contempt of court served a legitimate aim, the applicants contended that the law was designed to prevent interference with recourse to the courts and to avoid the danger of prejudgment. The Court concluded that the law of contempt of court served the legitimate aim of safeguarding the authority and impartiality of the judiciary.

29. As regards the issue of whether the injunction was "necessary in a democratic society", the Court found that the interference did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of the European Convention. The Court considered that the effect of the article, if published, would have varied from reader to reader. Accordingly, it was unlikely that publication would have had adverse consequences for the authority of the judiciary, as contended. The Court added that the thalidomide disaster was a matter of undisputed public concern, as the families of numerous victims of the tragedy had a vital interest in knowing all the underlying facts and the various possible solutions. The Court further stated that:

[W]hilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.<sup>18</sup>

[The right to freedom of expression] guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed.<sup>19</sup>

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<sup>17</sup> *Id.* at para. 49.

<sup>18</sup> *Id.* at para. 65.

<sup>19</sup> *Id.* at para. 66.

iii) The "Spycatcher" cases

30. The Court decided that the right to freedom of expression had also been violated in the 1991 cases of *The Sunday Times v. The United Kingdom (No. 2)*<sup>20</sup> and *The Observer and Guardian v. The United Kingdom*.<sup>21</sup> In these cases, a former member of the British Security Service had written his memoirs, entitled "Spycatcher", which contained allegations of serious malpractice and illegal conduct by that Service. The book had been due to be published in Australia when the British government instituted proceedings there for an injunction on the grounds that the author had received the information contained in the book under an obligation of confidence. Proceedings were instituted in the English courts and interim injunctions were obtained, restraining any further publication of the kind in question pending the substantive trial of the action in Australia. *The Sunday Times*, a Sunday newspaper, was restrained by various injunctions from publishing details of the book "Spycatcher". Whilst the Australian proceedings were still pending, two other newspapers, the *Observer* and the *Guardian*, published short articles on their inside pages reporting on the forthcoming hearing in Australia and giving details of some of the contents of the manuscript of "Spycatcher". Subsequently, proceedings were instituted against the *Observer* and the *Guardian* for breach of confidence; the Attorney General also sought and was eventually granted injunctions restraining them from making any publication of "Spycatcher" material. When it was announced that "Spycatcher" would soon be published in the United States, the *Sunday Times* printed the first installment of extracts from "Spycatcher", timed to coincide with publication of the book in the United States. Proceedings for contempt of court were instituted against the *Sunday Times* on the ground that the publication frustrated the purpose of the original injunctions against the *Observer* and the *Guardian*, and a temporary injunction was granted against the *Sunday Times* restraining them from publishing further installments for one week. A substantial number of copies of the book had been brought into the UK by British citizens who had visited the U.S. or who had purchased it by mail order from U.S. bookshops. "Spycatcher" was published in Australia, and also went on sale in Canada, Ireland and various other European countries as well as in Asia. However, a varied version of the injunction restraining the *Sunday Times* from publishing details from the book remained in place until after the conclusion of both the Australian proceedings as well as the contempt of court proceedings that had been commenced against the newspaper.

31. In the *Sunday Times* case, regarding the issue of whether the injunctions in question had been "necessary in a democratic society," the European Court reached a negative conclusion, finding that there had been a violation of Article 10 of the European Convention. In the submission of the Government, the continuation of the interlocutory injunctions remained "necessary," in terms of Article 10 (art. 10), for maintaining the authority of the judiciary and thereby protecting the interests of national security. The Government argued that, notwithstanding the United States publication: (a) the Attorney General still had an arguable case for permanent injunctions against the applicant, which case could be fairly determined only if restraints on publication were imposed pending the substantive trial; and (b) there was still a national security interest in preventing the general dissemination of the contents of the book

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<sup>20</sup> Eur. Ct. H.R., Case of *The Sunday Times v. the United Kingdom (No. 2)*, Judgment of November 26, 1991, Application No. 00013166/87.

<sup>21</sup> Eur. Ct. H.R., Case of *The Observer and Guardian v. United Kingdom*, Judgment of November 26, 1991, Application No. 00013585/88.

through the press and a public interest in discouraging the unauthorized publication of memoirs containing confidential material. The Court considered that the fact that the further publication of "Spycatcher" material could have been prejudicial to the trial of the Attorney General's claims for permanent injunctions was certainly, in terms of the aim of maintaining the authority of the judiciary, a "relevant" reason for continuing the restraints in question. The Court found, however, that under the circumstances, it did not constitute a "sufficient" reason for the purposes of Article 10.

32. As regards the interests of national security relied upon, the European Court in the *Sunday Times* case observed that while the injunctions had originally been sought on the basis of breach of confidence, after the book had been published in the U.S. and had lost its confidential character, the purpose of the injunctions had become confined to "the promotion of the efficiency and reputation of the Security Service", in particular by preserving confidence in that Service on the part of third parties, making it clear that the unauthorized publication of memoirs by its former members would not be countenanced, and deterring others who might be tempted to follow in the author's footsteps. These objectives were found not to be sufficient to justify the injunctions. Additionally, the Court pointed out that it was not clear whether the actions against the applicant could have served to advance the attainment of these objectives any further than had already been achieved by the steps taken against the author himself. Moreover, continuation of the restrictions after its U.S. publication prevented newspapers from exercising their right and duty to purvey information, already available, on a matter of legitimate public concern.

33. Regarding the requisite that the restrictions in the *Observer* and *Guardian* case be prescribed by law, the applicants submitted that the legal principles upon which the injunctions were granted were not sufficiently foreseeable. The principles were derived from the common law, and had never before been applied in a case similar to theirs. However, the Court considered that since the principles were expressed to be of general application, they had from time to time to be used in novel situations. Their utilization on this occasion involved no more than the application of existing rules to a different set of circumstances. In any event, having examined the common law principles applicable, the Court had no doubt that they were formulated with a degree of precision that is sufficient in a matter of this kind. The restriction was therefore "prescribed by law."

34. Regarding the requisite that the restrictions in the *Observer* and *Guardian* case were "necessary in a democratic society," the European Court distinguished two phases in the development of the facts of the case. During the first period, before "Spycatcher" had been published in the U.S., the applicants had published two articles which touched upon allegations in "Spycatcher" of wrongdoing by the Security Service. Injunctions had been granted on the grounds that the Attorney General was seeking a permanent ban on the publication of "Spycatcher"; to refuse interlocutory injunctions would effectively destroy the substance of the actions and, with it, the claim to protect national security. These were "relevant" reasons both in terms of protecting national security and of maintaining the authority of the judiciary, and as regards this period the injunction could be justified as "necessary in a democratic society". As regards the second period, after Spycatcher had been published in the U.S., the Court observed that the Attorney General's case underwent a metamorphosis. On July 14, 1987, "Spycatcher" was published in the United States, meaning that the contents of the book ceased to be a matter of speculation and that their confidentiality was destroyed. The continuation of the injunctions after July 1987 prevented the newspapers from exercising their right and duty to

purvey information, already available, on a matter of legitimate public concern. Therefore, after July 30, 1987, the interference complained of was no longer "necessary in a democratic society". Thus, the Court concluded that there had been a violation of the right to freedom of expression in the second period but that there had not been a violation of this right in the first period.

iv) Wingrove v. The United Kingdom

35. In the 1996 case of *Wingrove v. The United Kingdom*,<sup>22</sup> the European Court found that the right to freedom of expression had not been violated. The applicant was a film director who wrote the script and directed the making of a video entitled "Visions of Ecstasy," which featured St. Teresa and Christ engaging in sexual activities. The applicant submitted the film to the British Board of Film Classification in order to be able to supply it to the public legally, and the Board rejected classification on the ground that the film was considered to be blasphemous.

36. In considering whether the interference was "provided by law," the Court stated that the relevant laws must be "formulated with sufficient precision to enable those concerned—if need be, with appropriate legal advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."<sup>23</sup> In addition, the Court noted that a law that "confers a discretion is not in itself inconsistent with this requirement, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference"<sup>24</sup> The Court recognized that "the offence of blasphemy cannot by its very nature lend itself to precise legal definition. National authorities must therefore be afforded a degree of flexibility in assessing whether the facts of a particular case fall within the accepted definition of the offence".<sup>25</sup> The Court also noted that there was no general uncertainty or disagreement between the parties regarding the definition of blasphemy in English law. After viewing the film, the Court concluded that the applicant could reasonably have foreseen that his film could be considered blasphemous. Because the law afforded the applicant adequate protection against arbitrary interference, the Court considered that the restriction was "prescribed by law." Considering the legitimacy of the blasphemy law, the European Court considered that the aim of the law was to protect Christians and those in sympathy with the Christian faith, from feeling insulted or outraged. This corresponded to the protection of others contained in Article 10(2). The Court considered that whether there was a real need for protection was an issue regarding the necessity of the interference, as opposed to its legitimacy. The Court also noted that the fact that the law protected only Christianity and not other religions did not detract from the legitimacy of the aim pursued.

37. In determining whether the interference was "necessary in a democratic society", the Court recognized that strong arguments for the abolition of blasphemy laws existed, such as

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<sup>22</sup> Eur. Ct. H.R., Case of *Wingrove v. United Kingdom*, Judgment of November 25, 1996, Application No. 00017419/90.

<sup>23</sup> *Id.*, para.40.

<sup>24</sup> *Id.*, para.40.

<sup>25</sup> *Id.*, para.42.

their discriminatory nature. On the other hand, the Court considered that there was no uniform set of morals nor conception of the requirements of "the protection of the rights of others" in relation to attacks on religious convictions in Europe. Moreover, there was insufficient agreement in the legal and social sense among the member states of the Council of Europe regarding the issue of whether censoring blasphemous material was unnecessary in a democratic society. The Court maintained that states are in a better position than an international body to determine what will substantially offend individuals, particularly when religious persuasion varies according to place and time. The Court supported this assertion with the proposition that a wide "margin of appreciation" is available to states when regulating expression that relates to "matters liable to offend intimate personal convictions within the sphere of morals, especially religion," whereas states have less freedom to restrict political speech or debate of matters affecting the public interest. The Court considered that it is still necessary for the Court to supervise states' compliance with their obligations to prevent risks of arbitrary or excessive interference, particularly with regard to the "breadth and open-endedness" of the concept of blasphemy and the safeguards inherent in legislation. The Court recognized that because the restriction was a form of prior censorship, it would subject the restriction to special scrutiny. The Court stated that the blasphemy did not prohibit the expression of views hostile to Christianity or merely offensive to Christians. Rather, the laws prohibited that insult to the religion must be severe, as illustrated by the language of the common law—"contemptuous," "reviling," "scurrilous," or "ludicrous." The Court asserted that the "high level of profanation" that had to be obtained served as a safeguard against arbitrariness. The Court concluded that the justification of the interference was relevant and sufficient, and the decisions of the national authorities were not arbitrary or excessive; therefore, a violation of the right to freedom of expression was not found.

### c) Defamation

38. This section is concerned with cases in which defamation proceedings were brought against the complainants for allegedly damaging the reputation of another person or persons as a result of the exercise of the right to freedom of expression. The European jurisprudence and the U.S. jurisprudence share the principle of a distinction between the private person and the public person, the latter being expected to show a greater degree of tolerance when it comes to public scrutiny. The inter-American system has sustained that defamation laws can give way to abuse, with the result of the right to freedom of expression being restricted. In the cases below, the European Court weighs the interest of the reputation of the individual subject to public scrutiny against the importance of the right to freedom of expression and information. In some of these cases, the allegedly defamed parties are public officials or public persons, while in others, they are private individuals.

#### i) Lingens v. Austria

39. In the 1986 case of *Lingens v. Austria*,<sup>26</sup> the Court decided unanimously that a violation of Article 10 of the European Convention had taken place. The applicant, a journalist and editor of the Vienna magazine *Profil*, published two articles discussing the participation of Austrians in atrocities committed during the Second World War. The articles had appeared after a general election. It had been expected that the retiring Austrian Chancellor would have to

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<sup>26</sup> Eur. Ct. H.R., Case of *Lingens v. Austria*, Judgment of July 8, 1986, Application No. 00009815/82.

form a coalition with the party of Mr. Peter in order to stay in power. However, very shortly after the elections, revelations had been made about Mr. Peter's Nazi past. The retiring Chancellor defended Mr. Peter and attacked his detractor, whose activities he described as "mafia methods." The applicant's articles sharply criticized the retiring Chancellor for protecting former Nazis, using the expressions "basest opportunism", "immoral" and "undignified" to describe his attitude. The retiring Chancellor then instituted private proceedings for defamation, and the Vienna Regional Court, holding that the retiring Chancellor had been criticized in his private capacity, fined the applicant 20,000 Schillings. On appeal, the fine was reduced to 15,000 Schillings.

40. The Court stressed that the press has an important role to play in political debate, and established that the principles of acceptable criticism are wider for a "public" person than for a "private" person:

Freedom of the press (...) affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others -that is to say, of all individuals- to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.<sup>27</sup>

41. In considering whether the restriction was "necessary in a democratic society," the Court reached a negative conclusion, and found that the fine imposed on the applicant constituted a violation of the right to freedom of expression. In reaching this conclusion, the Court noted that the applicant had used the impugned expressions to criticize the Chancellor's attitude as a politician towards the position of former Nazis in Austrian society. Therefore, the Court esteemed that the applicant had criticized the Chancellor in his public functioning and not in his private capacity. Furthermore, the Court pointed out that the remarks had been made against the background of a post-election controversy. The Court also noted that the facts on which the applicant had based his articles were undisputed, and that the applicant had been fined for his use of strong words to describe the retiring Chancellor's attitude. In such cases, the Court held that:

[A] careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.

(...)

[A requirement of proof with regard to value-judgments] infringes freedom of opinion itself, which is a fundamental part of the right.<sup>28</sup>

ii) Barfod v. Denmark

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<sup>27</sup> *Id.* at para. 42.

<sup>28</sup> *Id.* at para. 46.

42. In the 1989 case of *Barfod v. Denmark*<sup>29</sup>, the Greenland Local Government decided to introduce taxation of Danish nationals working on United States bases in Greenland. A number of individuals challenged this decision, which found for the local government in a 2-1 decision. Two lay judges (employees of the local government) found for the government, and one professional judge found for the plaintiffs. The applicant wrote a newspaper article in which he expressed the opinion that the two lay judges should have been disqualified for conflict of interest. He questioned their ability and power to decide impartially in a case brought against their employer, the Local Government, and suggested that by deciding in its favor the lay judges "did their duty". The professional High Court judge considered that this last remark about the two lay judges was of a kind which might damage their reputation in the eyes of the public and hence generally impair confidence in the legal system, and imposed a fine on the applicant pursuant to the Greenland Penal Code.

43. In the *Barfod* case, the Court considered that the government interfered with the applicant's freedom of expression to protect the reputation of others and indirectly to maintain the authority and impartiality of the judiciary. In determining whether the interference was proportionate and therefore necessary in a democratic society, the Court emphasized that "proportionality implies that the pursuit of the aims mentioned in [Article 10(2)] has to be weighed against the value of open discussion of topics of public concern." The Court underscored that in arriving at a fair balance between these two interests, it must consider the importance of not discouraging the public from expressing their opinions on issues regarding the public interest because of their fear of criminal or other sanctions. In the instant action, the Court noted that the article in question involved two elements: 1) a criticism of the composition of the court; and 2) a statement inferring that the lay judges cast their votes as local government employees and not as independent and impartial judges. The Court stated that the interference addressed the second element. The Court concluded that the interference was not aimed at restricting the applicant's right to criticize publicly the composition of the domestic court. The Court placed emphasis on the fact that the applicant provided no evidence that the judges' decisions were affected by their status as government employees. Moreover, the Court contended that the state's legitimate interest in protecting the reputation of the judges did not conflict with the applicant's right to engage in public debate about the composition of the domestic court that presided over the tax case. Rather than viewing the subject of the applicant's personal criticism of the judges as part of the political debate, the Court concluded that the accusations were defamatory, capable of adversely affecting the judges' public image, and unsupported by any evidence. The Court concluded that the political context in which the tax case was brought was irrelevant to the proportionality issue. The Court concluded that there was no violation of Article 10.

iii) Castells v. Spain

44. In the 1992 case of *Castells v. Spain*,<sup>30</sup> the Court decided that a violation of the right to freedom of expression had been committed. The applicant, an opposition member of Parliament, published an article complaining of inactivity on the part of the authorities with regard to numerous attacks and murders that occurred in the Basque Country. The article further alleged that the police colluded with the guilty parties and inferred that the government

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<sup>29</sup> Eur. Ct. H.R., Case of *Barfod v. Denmark*, Judgment of February 22, 1989, Application No. 00011508/85.

<sup>30</sup> Eur. Ct. H.R., Case of *Castells v. Spain*, Judgment of April 23, 1992, Application No. 00011798/85.

was responsible. Criminal proceedings were instituted against the applicant for insulting the government, his parliamentary immunity was withdrawn, and he was convicted and sentenced to conditional imprisonment.

45. The Court found that an interference had occurred that pursued the legitimate aims of protecting the reputation of others and preventing disorder. In determining whether the interference was necessary in a democratic society, the Court reiterated that Article 10 protects ideas that shock, offend, or disturb. The Court additionally maintained that freedom of expression is particularly important for elected representatives, as they defend the interests of their constituents. Therefore, the Court stated that it would closely scrutinize restrictions against a member of Parliament. The Court also underscored the importance of the press in a democratic society, stating that freedom of the press provides members of the public with one of the best means of discovering the ideas and opinions of their political leaders.

46. In applying these principles to the facts at hand, the Court recognized that the applicant denounced the impunity enjoyed by the perpetrators of several attacks in Basque Country. According to the Court, this information was of great interest to public opinion. Additionally, the Court noted that the applicant made serious accusations against the government. Nonetheless, the Court pointed out that the limits of permissible criticism are wider with respect to the government than in relation to private citizens or politicians. The Court further noted that the dominant position the government occupies makes it necessary for it to display restraint in imposing criminal penalties, particularly when other means are available for replying to unjustified attacks and criticisms. The Court emphasized, however, that as guarantors of public order, a state may impose criminal measures that are "intended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith." Furthermore, the Court gave significant weight to the fact that the domestic court did not admit evidence demonstrating the truth of the applicants' statements. The Court concluded that the interference with the applicant's freedom of expression was not necessary in a democratic society.<sup>31</sup>

iv) De Haes and Gijssels v. Belgium

47. In 1997, the Court studied the case of *De Haes and Gijssels v. Belgium*.<sup>32</sup> The applicants were the editor and a journalist of a weekly magazine. They published five articles criticizing judges in a divorce suit, for awarding custody of children to Mr. X, a self-confessed Nazi, who had been the subject of criminal proceedings for incest and abuse of his children. The articles accused the judges of sharing the father's political sympathies and based their criticisms on medical reports that showed that the children had returned from visits with their

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<sup>31</sup> Judges De Meyer and Pekkanen agreed that the State violated Article 10. Nevertheless, both considered that the Court's emphasis on the unavailability of the defense of truth was misplaced. According to these judges, the truthfulness of the applicant's opinion was irrelevant. Rather, the relevant inquiry should have been limited to whether the applicant's statements should have been protected given the fact that his statements represented his opinion on an issue subject to public debate. According to the judges, the applicant relied on true facts—that several people were murdered and that their perpetrators had not been convicted. In the judges' view, the applicant's opinion that the government was complicit with these acts should be tolerated in a democratic society. Judge Carrillo Salcedo concurred and emphasized that freedom of expression is not absolute and that states may adopt measures, including criminal measures, intended to react appropriately and without excess, to defamatory accusations devoid of factual foundation or formulated in bad faith.

<sup>32</sup> Eur. Ct. H.R., Case of *De Haes and Gijssels v. Belgium*, Judgment of February 24, 1997, Application No. 00019983/92.



father with evidence of having been raped. The judges and advocate-general instituted civil proceedings for defamation against the applicants. Nominal damages were awarded and an order was made requiring the applicants to have the judgment published in the applicants' magazine and to pay for it to be published in six other newspapers. They claimed a violation of the right to freedom of expression.

48. The Court pointed out that in a criminal defamation case initiated by Mr. X against family members who filed a criminal complaint against Mr. X for incest, a domestic court found that it had no reason to doubt the family members' allegations and acquitted the defendants. Based on this information, the Court concluded that the applicants cannot be accused of having failed in their professional obligations by publishing what they learned about the case. The Court reiterated that the press has a duty to report on matters important to the public interest, particularly when such matters involve very serious allegations, such as the abuse of young children and the functioning of the judicial system. In this respect, the Court noted that the applicants stated in one of the articles: "It is not for the press to usurp the role of the judiciary, but in this outrageous case it is impossible and unthinkable that we should remain silent."

49. The European Court additionally took notice of the fact that the advocate-general who brought the proceedings in the De Haes Case<sup>33</sup> did not cast doubt on the information published about the fate of Mr. X's children, except for the statement that the case in question had been withdrawn from the domestic courts. In the Court's view, this last fact, in comparison with the articles as a whole, and the fact that the applicants mentioned this, cannot raise doubt as to the reliability of the journalists' work.

50. Furthermore, the Court noted that the government accused the applicants of making personal attacks on the judges and advocate-general that were defamatory and amounted to an attack on their honor. The government claimed that the applicants grossly infringed upon the judges' private life by accusing them of having extreme right-wing sympathies. A domestic court held that the applicants made unproven statements about the private lives of the advocate-general and the judges. In the Court's view, there is an important difference between facts and value judgments. Specifically, the existence of facts may be demonstrated, while the truth of value judgments may not be proven. The Court also pointed out that based on the information the applicants gathered regarding the political sympathies of the judges, such information could indicate that their sympathies were relevant to the issues at hand. The Court stated that Article 10 protects ideas that tend to shock, offend, or disturb. The Court added that "journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation." Moreover, in evaluating the context surrounding the instant action, the Court considered that the accusations amounted to an opinion, the truth of which could not be proven. The Court considered that the opinion in this case was not excessive. Although the Court deemed the comments to be highly critical, they were proportionate to the "stir and indignation" caused by the matters of the articles. Taking into consideration the seriousness of the circumstances and issues at stake, the interference was not necessary. The Court considered, however, that the interference was necessary only insofar as it targeted the mention of the political tendencies of one judge's father. Because the interference was not necessary with respect to certain elements of the case, the Court held that the state violated Article 10.

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<sup>33</sup> De Haes and Gijssels v. Belgium Case, *supra*, note 51.

v) *Bladet Tromsø and Stensaas v. Norway*

51. In the 1999 case of *Bladet Tromsø and Stensaas v. Norway*,<sup>34</sup> the Court esteemed that there had been a violation of the right to freedom of expression. The applicants were a company that published a newspaper and the paper's editor. The paper published articles based on the findings of an officially appointed inspector who traveled aboard a seal-hunting ship. The report alleged that seal hunters acted illegally by failing to adhere to regulations. The report was temporarily exempted from publication by the Ministry of Fisheries because named individuals were accused of criminal conduct. Following the institution of defamation proceedings by the crew members against the applicants, certain statements were declared to be defamatory and accordingly null and void. The applicants were ordered to pay compensation to the crew members.

52. The European Court considered that the State's reasons for the interference were relevant to the legitimate aim of protecting the reputation or rights of the subjects of the article. In determining whether those reasons were sufficient, the Court mentioned that it must not consider the articles in isolation. Rather, the Court emphasized that it must consider the background against which the statements were made. In this respect, the Court indicated that Article 10 protects ideas that offend, shock, or disturb. Additionally, the Court commented that the mass media's responsibility is to impart information and ideas concerning matters of public interest. In evaluating the facts of the case in light of the larger context at hand, the Court concluded that the purpose of the articles was not to accuse individuals of committing illegal acts; to the contrary, because the newspaper published other views pertaining to this issue, the articles were published to present the views of one side of an ongoing debate.

53. The Court also mentioned that careful scrutiny on part of the Court is necessary when the measures imposed by the State are capable of discouraging the participation of the press in debates over matters of legitimate public concern. The Court nonetheless maintained that the exercise of freedom of the press carries with it duties and responsibilities, namely the duty to act in good faith to provide accurate and reliable information in accordance with the ethics of journalism. Finally, in determining whether the newspaper had a duty to verify the findings of the report to which it cited, the Court considered two factors: 1) the nature and degree of the defamation; and 2) the extent to which the newspaper could reasonably regard the Lindberg report as reliable with respect to the allegations in question. With respect to the first inquiry, the Court considered that although the allegations implied reprehensible conduct, such allegations were not particularly serious. Furthermore, the Court considered that although other statements were relatively serious, the potential adverse effect on the subjects of the article was attenuated by several factors, including the fact that the criticism was not aimed at all the crew members or any specific crew member. In determining the trustworthiness of the report, the Court first mentioned that the press should normally be entitled to rely on the contents of official reports without corroborating its facts with independent research. Additionally, the Court pointed out that at the time of publication of the newspaper article, the Ministry of Fisheries, which commissioned the report, did not express any doubts as to the validity of the report or the competence of the author. The Court also found that the newspaper

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<sup>34</sup> Eur. Ct. H.R., Case of *Bladet Tromsø and Stensaas v. Norway*, Judgment of May 20, 1999, Application No. 00021980/93.

took actions to protect the reputations of individual seal hunters, and that the paper could reasonably rely on the official report without having to conduct its own investigation. The Court therefore considered that the newspaper acted in good faith. The Court concluded that the crew members' interest in protecting their reputations was not sufficient to outweigh the vital public interest in ensuring an informed public debate over a matter of local, national, and international interest. Therefore, in the Court's view, the reasons relied on by the State were not sufficient to show that the interference was necessary in a democratic society. Moreover, in spite of the national authorities' margin of appreciation, the Court reasoned that the interference was not proportionate to the legitimate aim pursued.

vi). Dalban v. Romania

54. In the 1999 case of *Dalban v. Romania*,<sup>35</sup> the Court held that the State violated Article 10 because convicting a journalist for publishing allegedly defamatory information without demonstrating that such information was untrue was not proportionate to the legitimate aim of protecting the reputation of others. The applicant was the widow of a journalist, Mr. Dalban. Dalban wrote several articles in a local magazine that he operated, alleging fraud by G. S., the chief executive of a state-owned agricultural company. In addition, Mr. Dalban made allegations against Senator R.T., who sat on the board of the agricultural company, stating that he had improperly benefited from his position on the board. Mr. Dalban was convicted of criminal defamation, received a suspended sentence, was ordered to pay costs, and was banned from practicing his profession. On appeal, the ban was set aside. On further appeal by the Attorney General, the Supreme Court acquitted Mr. Dalban's conviction in respect of G.S. on the ground that he acted in good faith. In respect of the libel of R.T., the Supreme Court quashed Dalban's conviction and, while holding that he had been rightly convicted, decided to discontinue the proceedings in view of his death. As Dalban's widow, the applicant sought compensation for the State's alleged violation of Article 10. The Court considered that the applicant was a victim regardless of the fact that the domestic courts reversed one of his convictions and quashed the other conviction because of Dalban's death. The Court arrived at this conclusion because the domestic courts did not provide adequate redress as required by domestic law and held that Dalban was rightly convicted.

55. The Court relied on the principles set out in the *Bladet Tromsø* case, and noted that the articles at issue concerned matters of public interest—the management of state assets and the way in which politicians fulfill their mandate. The Court further mentioned that there was no proof that the description of events in the article was totally untrue and designed to promote a defamation campaign against G.S. and Senator R.T. Moreover, the Court pointed out that Mr. Dalban did not write about aspects of Senator R.T.'s private life, but rather focused on the senator's behavior and attitudes in his capacity as an elected representative. The Court also recognized that in the proceedings for defamation against G.S., the domestic court found that the prosecutor could not provide sufficient information to establish that the information Mr. Dalban published was false. Finally, the Court indicated that the government did not respond to the European Commission's contention that the applicant's conviction was not necessary in a democratic society. The Court concluded that Mr. Dalban's conviction was not proportionate to the legitimate aim pursued, and therefore that the State violated Article 10.

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<sup>35</sup> Eur. Ct. H.R., Case of *Dalban v. Romania*, Judgment of September 28, 1999, Application No. 00028114/95.

vii) *Bergens Tidende and Others v. Norway*

56. The issue was brought up again in the 2000 case of *Bergens Tidende and Others v. Norway*.<sup>36</sup> In this case, the applicants were a daily newspaper, its editor, and a journalist employed by the newspaper. The newspaper published an article describing the work of Dr. R, a cosmetic surgeon, and the advantages of cosmetic surgery. Subsequently, the newspaper was contacted by a number of women who had received treatment from Dr. R and were highly dissatisfied with it. The paper published some of the complaints received together with photographs showing disfigurement. Several articles were published in subsequent issues of the paper. As part of the discussion, the paper published an interview with a hospital plastic surgeon who stated that there are small margins between success and failure in plastic surgery. In addition, one issue contained an interview with Dr. R. He declined to comment on the particular cases stating that he was bound by a duty of confidentiality, despite the fact that the women concerned had consented to release him from the duty. Further articles on the subject of Dr. R's cosmetic treatment followed in which satisfied patients voiced their opinions. After the publication of the newspaper articles, Dr. R received fewer patients and had to close his business in April 1989. Dr. R instituted defamation proceedings against the applicants. The Supreme Court found in favor of Dr. R and awarded him damages and costs.

57. The European Court emphasized the principles that a State must tolerate ideas that shock, offend, or disturb. The Court also underscored the essential role the press plays in a democratic society, pointing out that the "national margin of appreciation is circumscribed by the interests of a democratic society in enabling the press to exercise its vital role of 'public watchdog' by imparting information of serious public concern." Additionally, the Court pointed out that "when measures taken by national authorities are capable of discouraging the press from disseminating information of legitimate public concern, careful scrutiny of the proportionality of the measures on the part of the Court are called for." The Court also maintained that the exercise of freedom of expression carries duties and responsibilities. For journalists, this responsibility requires them to act in good faith in order to provide accurate and reliable information according to media ethics.

58. The Court considered that the personal accounts of various women's experiences with plastic surgery raised important questions about human health and were therefore matters important to the public interest. The Court rejected the government's argument that the patients' grievances regarding the standard of care provided by one surgeon were private matters in which the public did not have an interest. Rather, the Court maintained that the articles were published as part of an ongoing general debate on issues regarding cosmetic surgery, particularly because the women's testimonies were published in response to Dr. R's ad that appeared prior to the publication of the testimonies.

59. The Court did not accept the government's argument that the articles amounted to accusations that Dr. R was negligent in his practice. The Court reasoned that even if the public were to consider that the articles suggested that Dr. R practiced his surgery in a reckless manner, it did not consider that its duty was to determine how the public would interpret the articles. Rather, the Court stated that its duty was to consider whether the measures imposed

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<sup>36</sup> Eur. Ct. H.R., Case of *Bergens Tidende and Others v. Norway*, Judgment of May 2, 2000, Application No. 00026132/95.

by the domestic court were proportionate to the legitimate aim pursued. To this end, the Court noted that the women's accounts were correct and were accurately reported by the newspaper. Even though the women used strong language, the Court did not find that the statements were excessive or misleading.

60. Additionally, the Court rejected the government's position that the articles lacked proper balance. According to the Court, reporting based on interviews is one of the most important ways in which the press can play its vital "public watchdog" role. It therefore reasoned that it is not the Court's nor the national courts' role to substitute their views for those of the press as to what reporting techniques are appropriate. The Court also noted that the newspaper published articles defending Dr. R after the newspaper published the women's accounts.

61. Finally, the Court confirmed that the publication of the articles had serious consequences for Dr. R's practice. Nonetheless, as a result of the criticisms relating to his follow-up treatment, it was inevitable that substantial damage to his reputation would have occurred. The Court concluded that the interest of Dr. R in protecting his professional reputation was not sufficient to outweigh the public interest in the freedom of the press to impart information concerning matters important to the public interest. In the Court's view, the state's justification for the interference was relevant but not sufficient to demonstrate that such an interference was necessary in a democratic society. The Court further considered that the restrictions were not proportionate to the legitimate aim pursued by the domestic authorities.

viii) Constantinescu v. Romania

62. The Court again addressed the issue of defamation in the 2000 case of *Constantinescu v. Romania*.<sup>37</sup> In this case, the Court found no violation of the right to freedom of expression, because the interference complained of was proportionate to the legitimate aim of protecting the reputations of others. The applicant, the general secretary of the Primary and Secondary School Teachers' Union of the second district of Bucharest, expressed his dissatisfaction with the slow pace of the criminal investigation brought against two former managers and a former secretary of the union for theft, misappropriation and fraud. He referred to them as "*delapidatori*" (persons found guilty of fraudulent conversion) in an article that was published after the prosecutor decided to discontinue the criminal investigation. The applicant was convicted of criminal libel before the Bucharest County Court, was fined, and was ordered to pay damages to the former union employees. Six years later, the Supreme Court of Justice quashed the decision, but the applicant was not refunded the damages or the fine paid. Even though the applicant was acquitted, he could be considered a victim according to the European Court because he was not awarded damages for his wrongful conviction and was not refunded the fines and damages that he paid.

63. In considering whether the interference in the *Constantinescu* Case was necessary in a democratic society, the European Court emphasized that it would review the decisions the national courts took pursuant to their power of appreciation. The Court noted that the applicant's remarks were part of a debate regarding matters important to the public interest—the independence of unions and the functioning of the courts. Nevertheless, the Court

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<sup>37</sup> Eur. Ct. H.R., Case of *Constantinescu v. Romania*, Judgment of June 27, 2000, Application No. 00028871/95.

recognized that there are limits to the right to freedom of expression. In the instant action, the Court considered that the applicant was free to participate in public debate by criticizing the subjects of the article. Nevertheless, the Court considered that the applicant did not have to use the term "*delapidatori*", because the subjects of the article were not convicted by a court. The Court therefore concluded that the interference was proportionate to the legitimate aim pursued. The Court additionally concluded that the penalty imposed was not disproportionate. The Court ultimately held that because the authorities did not exceed the margin of appreciation accorded to them, no violation of Article 10 occurred.

ix) Feldek v. Slovakia

64. In the 2001 case of *Feldek v. Slovakia*,<sup>38</sup> the Court decided unanimously that a violation of Article 10 of the European Convention had been committed. The applicant had published a poem in a newspaper commenting on the change of leadership in the country. The poem contained a passage stating that "a member of the SS and a member of the [former Czechoslovak secret police] embraced each other". Two journalists commented on the poem, saying that the reference to the "former member of the SS" applied to the newly-appointed Minister for Culture and Information, about whom it was common knowledge that during the Second World War he had been enrolled in a military course run by Germans. The Minister published a rebuttal to which the applicant responded stating that he had merely expressed his concern about the participation in the newly-formed democratic government of someone with a "fascist past." The Minister then sued the applicant for defamation. The applicant won at first instance, but on appeal his statements were found to be defamatory and the Minister was allowed to publish this finding in five newspapers of his choice.

65. The Court considered that the applicant's statement was made and published as part of a political debate on matters of general and public concern relating to the history of the country which might have repercussions on its future democratic development. Moreover, it concerned a Government Minister, a public figure in respect of whom the limits of acceptable criticism are wider than for a private individual. The Court noted that the applicant's statement contained harsh words, but was not without a factual background, and that there was no suggestion that it had been made otherwise than in good faith, pursuing the legitimate aim of protecting the democratic development of the newly-established State of which he was a national. The Court noted, furthermore, that the applicant's statement was a value judgment, the truthfulness of which was not susceptible of proof. The Court did not consider that the mere use by the applicant of the phrase "fascist past" constituted a statement of absolute fact; the term was a wide one, capable of encompassing different notions as to its content and significance; one of them could be that a person participated in a fascist organization, as a member, and it did not imply specific activities propagating fascist ideals.

66. The domestic court had based its conviction, among other things, on the fact that the applicant had no factual basis for the value judgment he had made. The European Court held that this was an erroneous interpretation of the guarantee of freedom of expression:

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<sup>38</sup> Eur. Ct. H.R., Case of *Feldek v. Slovakia*, Judgment of July 12, 2001, Application No. 00029032/95.

[T]he Court cannot accept the proposition, as a matter of principle, that a value judgment can only be considered as such if it is accompanied by the facts on which that judgment is based. The necessity of a link between a value judgment and its supporting facts may vary from case to case in accordance with the specific circumstances.<sup>39</sup>

67. The Court was satisfied that the value judgment made by the applicant had been based on information which was already known to the wider public, both because the Minister's political life was known, and because information about his past had been in publications by the press which preceded the applicant's statement as well as in a book published by the Minister himself. The domestic courts had failed to establish a pressing social need for protecting the personal rights of the Minister, a public figure, above the applicant's right to freedom of expression and the general interest of promoting this freedom when issues of public interest are concerned. For all these reasons, the Court considered that the facts disclosed a violation of the applicant's right to freedom of expression.

x) Dichand and Others v. Austria

68. In the 2002 case of *Dichand and Others v. Austria*,<sup>40</sup> the Court found that there had been a violation of the right to freedom of expression. In June 1993, the applicants' newspaper published an article written under a pseudonym by the editor/publisher concerning a Mr. Graff. In addition to his position as Chairman of the Legislative Committee at that time, Mr. Graff was a private lawyer who represented one of the applicants' primary competitors. In his parliamentary capacity, Mr. Graff proposed legislation that significantly increased monetary liability for failure to comply with injunctions, whereby fines were to be multiplied by the number of enforcement orders levied when a party failed to comply with an injunction. The article in the applicants' newspaper alleged that Mr. Graff proposed this legislation in order to serve his private client and criticized Mr. Graff's failure to leave his private legal practice while undertaking government service. Mr. Graff applied for and was granted an injunction, ordering the applicants to refrain from publishing statements alleging conflicts of interest with respect to Mr. Graff's capacities as a private lawyer and a Member of Parliament. The Austrian court interpreted the statements regarding Mr. Graff as insults and as statements of fact, the truth of which must be proved by the applicant, rather than value judgments. The Austrian court believed, additionally, that the article contained an incorrect factual assertion that Mr. Graff was a member of the government. The applicant appealed the injunction to two higher Austrian courts, where both appeals were unsuccessful.

69. The European Court assessed that the injunction as to the statements regarding Mr. Graff constituted an interference with the right to freedom of expression. The Court found that the interference was "prescribed by law," in spite of the applicants' submission otherwise, because there was considerable domestic case law on this issue. The Court also found that the interference was in pursuit of a legitimate aim, namely the protection of the reputation or rights of others. The Court assessed that Austria had overstepped the margin of appreciation accorded Member States under the European Convention on Human Rights, and that the injunction was not proportionate to the aim pursued.

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<sup>39</sup> *Id.* at para. 86.

<sup>40</sup> Eur. Court H.R., Case of *Dichand and Others v. Austria*, Judgment of February 26, 2002, Application No. 00029271/95.

70. In light of the political context surrounding publication, the Court concluded that the statement in the applicant's publication was a value judgment, rather than a statement of fact. Accordingly, the applicant should not be required to prove the truth of such statements in order to publish them.

71. The Court disagreed with the Austrian courts' contention that the article misrepresented the fact that Mr. Graff was a member of the government. The Court argued that such a reading was not justifiable, given the context. Indeed, they pointed out that, "Mr. Graff's exact function [was] spelled out explicitly," in the course of the article.

72. With respect to conflict of interest allegations in the article, the Court contended that the test applied by the Austrian courts that the allegations were statements of fact which the applicants were required to prove, "imposed an excessive burden on the applicant." The Court believed that these allegations were value judgments for which a sufficient factual basis existed. The Court noted of the conflict of interest allegations that:

Mr. Graff was a politician of importance, and the fact that a politician is in a situation where his business and political activities overlap may give rise to public discussion, even where, strictly speaking, no problem of incompatibility of office under domestic law arises.<sup>41</sup>

## 2. Domestic Jurisprudence of the Member States

### 1. Introduction

73. The Office of the Special Rapporteur for Freedom of Expression has pursued the aim of furthering comparative law studies as a way of contributing to the flow of information between the member States regarding the international standards which govern the right to freedom of expression, in the hope that it will lead to a deeper understanding and establishment of the right to freedom of expression in the Americas. Following these initiatives, the Office of the Special Rapporteur for Freedom of Expression has included in its 2003 Annual Report a Chapter describing the jurisprudence of the European system and presenting decisions of local courts from the member States that essentially uphold the standards of freedom of expression.<sup>42</sup>

74. In this section, the report refers to the States' domestic jurisprudence, and it includes certain decisions by local tribunals that were handed down during 2003 and that reflect the importance of respecting freedom of expression as protected in the American Convention.

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.

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<sup>41</sup> *Id.* at para. 51.

<sup>42</sup> See IACHR, *Annual Report of the Inter-American Commission on Human Rights 2002, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.LN/II.117, Doc. 5 rev. 1, March 7, 2003, Chapter III.



76. As a final thought, it will be clear that not all opinions in the decisions quoted are shared by the Office of the Special Rapporteur for Freedom of Expression, but that the 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.
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.<sup>43</sup> 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 concession of radio and television broadcast frequencies according to democratic criteria that provides equal opportunity of access for all individuals, in Principle 12; b) the right to access public information, in Principle 4; c) the principle of distinction between public figures and private persons in criminal defamation cases, in Principle 10; and d) the ban on prior censorship, in Principle 5.

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<sup>43</sup> See IACHR, *Annual Report of the Inter-American Commission on Human Rights 2000, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.LN/II.111, Doc. 20 rev., April 16, 2001, Chapter II.

79. This report covers case law from Argentina, Uruguay, Costa Rica and Chile. 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. Democratic criteria for the concession of radio and television broadcast frequencies**

80. Declaration of Principles on Freedom of Expression. Principle 12. "(...) The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

81. Case decided by: Supreme Court of Argentina, Decision of September 1<sup>st</sup>, 2003. Case A. 215. XXXVII - "Asociación Mutual Carlos Mujica c/ Estado Nacional (Poder Ejecutivo Nacional - COMFER) s/ amparo."

82. Facts of the case. The Carlos Mujica Mutual Association (*Asociación Mutual Carlos Mujica*), which runs a radio station with frequency modulation, brought an appeal for constitutional protection (*amparo*) against the State, challenging the constitutional validity of the following laws: Article 45 of Law No. 22.285 and its regulatory decree No. 286/81; Executive Decrees No. 310/98 and 2/99; Resolutions 16/99 of the Federal Committee of Broadcasting (*Comité Federal de Radiodifusión*, COMFER); and Resolution No. 2344/98 of the National Department of Communications (*Secretaría de Comunicaciones de la Nación*). According to these provisions, only the applicants for a legal concession to provide a station of sound broadcasting with frequency modulation who are a "physical person or commercial corporation which is legally constituted" are eligible for such concession, excluding therefore civil corporations, cooperatives, and mutual associations. The appellant alleged that Article 45 of the Broadcasting Law (*Ley de Radiodifusión*) interferes with the right of a large sector of the community made up of the associations that are not regulated by the legislation to provide a media service competitively, violating their right to freedom of expression as guaranteed by the Argentine Constitution and the American Convention on Human Rights. The Appellate Court of the Province of Córdoba confirmed the decision of the lower court in that it declared that the legislation in question violated the Argentine Constitution. The Federal Committee of Broadcasting (*Comité Federal de Radiodifusión*) appealed this decision before the Supreme Court of Argentina.

83. Decision. (pertinent paragraphs)

According to the legal framework that governs broadcasting, in order to apply for a legal authorization to provide a broadcasting station with frequency modulation, it is required that the applicant is a physical person or a commercial corporation that is legally constituted, which excludes civil associations, cooperatives, and mutual and non-profit associations.<sup>44</sup>

Such a provision cannot be arbitrary in its absolute exclusion of certain associations, preventing its members from applying for a broadcasting license for the only reason that they are not constituted as a commercial corporation regulated by the law, and without this exclusion being based on an

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<sup>44</sup> The original text reads: "Según el marco normativo en materia de radiodifusión, para poder concursar a fin de ser prestadora legalmente autorizada de una estación de radiodifusión sonora con modulación de frecuencia, se requiere necesariamente ser persona física o sociedad comercial, legalmente constituida, lo que excluye a las sociedades civiles, cooperativas y asociaciones mutuales sin fines de lucro."

objective and reasonable criteria, because this ultimately amounts to an unreasonable limitation of the right to freedom of expression and of the right to freedom of association.<sup>45</sup>

The participation of a mutual association in a bidding process with the aim of acquiring a broadcasting license, if it is selected from amongst the bidders, promotes the diversity of opinions which defines a democratic society, and constitutes a true balance to economic groups. This is why the limitation imposed by the challenged legal provisions is unjustified and constitutes a clear violation of the right to freedom of association, as it imposes the end for which people will legally associate, without there being a sufficient justification for sustaining an imposition which prevents certain non-profit organizations from conducting an activity which is in essence of a cultural nature.<sup>46</sup>

The Court does not find that there is a higher aim which would authorize preventing the complainant from participating in a bidding process aimed at regularizing his legal situation and being able, if chosen, to exercise his right to freedom of expression. Therefore, the first paragraph of Article 45 of Law No. 22.285 and its regulatory and complementary provisions, in as much as they prevent the plaintiff from participating in the bidding process to obtain a broadcasting license for the reason of not being legally constituted as a corporation, violate Articles 14, 16, 28 and 75 para. 23 of the National Constitution and Article 13 of the Inter-American Convention on Human Rights.<sup>47</sup>

#### **a. The right to access public information**

84. Declaration of Principles on Freedom of Expression. Principle 4. "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously be established by law in case of a real and imminent danger that threatens national security in democratic societies."

85. Case decided by: Constitutional Chamber of the Supreme Court of Costa Rica. Decision of May 2, 2003. File: 02-009167-0007-CO, Res. 2003-03489.

86. Facts of the case. On October 8, 2002, the Representative José Humberto Arce Salas presented a request for information to the Board of Directors of the Bank of Costa Rica regarding the irregularities in the private financing of political parties, reflected in the acceptance of large donations by companies and foreign businessmen which had not been reported to the Supreme Election Board. The information requested by the Representative included the

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<sup>45</sup> The original text reads: "*Tal reglamentación no puede ser arbitraria y excluir de un modo absoluto, sin sustento en un criterio objetivo razonable, a determinadas personas jurídicas de la posibilidad de acceder a una licencia de radiodifusión por no haberse constituido en una sociedad comercial, pues ello importa, en definitiva, una irrazonable limitación al derecho a expresar se libremente y de asociarse o no hacerlo.*"

<sup>46</sup> The original text reads: "*La participación de una asociación mutua en un concurso público para acceder a una licencia de radiodifusión, en el supuesto de ser seleccionada, facilita el pluralismo de opiniones que caracteriza a las sociedades democráticas, e importa un verdadero contrapeso o poder equilibrador de los grupos económicos. Por lo que la limitación que establecen las normas impugnadas no tiene fundamento alguno e importa una clara violación al derecho de asociarse con fines útiles, pues impone cuál debe ser el espíritu que ha de animar a quienes conforman tal organización colectiva, sin que se sustente en un motivo suficiente que justifique que ciertas entidades de bien público no puedan desarrollar una actividad que es cultural por esencia.*"

<sup>47</sup> The original text reads: "*No se advierte la existencia de un interés superior que autorice a prohibir que la actora intervenga en un concurso público para normalizar su situación legal y poder, en el caso de ser seleccionada, ejercer su derecho a la libre expresión. Por lo que el párrafo primero del Art. 45 de la ley 22285 y las normas dictadas en su consecuencia, en cuanto impiden que la demandante participe en concursos para la obtención de una licencia por no constituirse en una sociedad comercial, resultan violatorias de los Arts. 14, 16, 28 y 75, inc. 23, de la Constitución Nacional y del Art. 13 de la Convención Americana sobre Derechos Humanos.*"

following: a) if the parties "*Unidad Social Cristiana*", "*Liberación Nacional*", or any other party which had participated in the last national elections had had current accounts listed in their names in the Bank during the past year; and b) if the companies Plutón S.A., Faltros S.R.S S.A., Gramínea Plateada S.A. and Bayano S.A. had had current accounts in that Bank during the past year, given their relation to the treasuries of the political parties. The Board of Directors of the Bank denied Representative Arce Salas access to the requested information, on the grounds that such information was protected by bank secrecy and the right to privacy. The Constitutional Chamber of the Supreme Court of Costa Rica declared by unanimous vote the admissibility of the appeal for constitutional protection presented by the Representative José Humberto Arce Salas against the Bank of Costa Rica.

### 87. Decision. (pertinent paragraphs)

Regarding the request for information posed by the complainant, and in order to avoid confusion, it is necessary to point out that it presents two aspects that demand a differentiated solution, namely: a) the request for information relative to the current accounts contracted by the parties of *Unidad Social Cristiana* and *Liberación Nacional* and, generally, any party that participated in the last National Elections, and b) the request regarding the current accounts contracted by the various companies which allegedly would be involved with the treasury departments of the political parties. Regarding issue a) it is important to note that given that the funds of the parties (whether they have a public or private source) are, by constitutional mandate (Article 96, paragraph 3 of the National Constitution) subject to the principles of publicity and transparency, the number of current accounts, their movement and balance in the commercial banks of the state, private banks or any financial entity are of public interest, and therefore, can be accessed by any person.<sup>48</sup>

Regarding issue b), this Court assesses that the number of accounts held by any juridical person or collective organization constituted according to private law—corporation, partnership, limited liability company, foundation, association, etc.—its movements and balances are in principle protected by the right to privacy, as in this case the express limitation provided by the Constitution for the contributions to political parties does not operate. In this case, the law of bank secrecy stated in Article 615 of the Commercial Code is also applicable. The aforesaid rule has as an exception that operates in the case that there is unequivocal evidence that a political party has transferred part of its private funds to a privately-owned company. In this case, the information would cease to be of a private nature—as is characteristic of a merely contractual relationship—and would become of public interest.<sup>49</sup>

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<sup>48</sup> The original text reads: "*En lo que se refiere a la solicitud de acceso a la información formulada por el recurrente, es preciso indicar que presenta dos vertientes que demandan una solución diferenciada para evitar equívocos, a saber: a) La solicitud de información acerca de las cuentas corrientes que poseen, específicamente, los Partidos Unidad Social Cristiana y Liberación Nacional y, en general, cualquier partido que haya participado en las últimas elecciones nacionales y b) la solicitud acerca de las cuentas corrientes que poseen varias sociedades anónimas presuntamente vinculadas con las tesorerías de campaña de los partidos referidos. En lo relativo al supuesto a) es menester indicar que en vista de la sujeción del patrimonio de los partidos políticos -independientemente de su origen privado o público- a los principios de publicidad y transparencia por expresa disposición constitucional (artículo 96, párrafo 3º) la cantidad de cuentas corrientes, sus movimientos y los balances que los partidos políticos poseen en los Bancos Comerciales del Estado, bancos privados y cualquier entidad financiera no bancaria son de interés público y, por consiguiente, pueden ser accedidos por cualquier persona.*"

<sup>49</sup> The original text reads: "*En lo tocante a la hipótesis b) este Tribunal estima que el número de cuentas corrientes que posea una persona jurídica u organización colectiva del Derecho Privado -Sociedad Anónima, Sociedad de Responsabilidad Limitada, Fundación, Asociación, etc.-, sus movimientos y sus balances, en tesis de principio, sí están cubiertas por el derecho a la intimidad, puesto que, en esta hipótesis no opera la limitación constitucional expresa establecida para las contribuciones de los partidos políticos. En tal supuesto, rige, además, el instituto legislativo del secreto bancario contemplado en el artículo 615 del Código de Comercio para el contrato de cuenta corriente. La regla anterior tiene como excepción la demostración fehaciente e idónea que un partido político le ha transferido a una de tales personas jurídicas parte de sus aportaciones privadas, puesto que, de ser así la información dejaría de ser privada -propia de una relación meramente contractual- y se tornaría de interés público.*"

The action is declared admissible solely with relation to the request for information regarding the current accounts in the Bank held by the *Unidad Social Cristiana, Liberación Nacional* and any other parties that participated in the last elections, as well as by the companies Gramínea Plateada and Bayano, as it was demonstrated that accounts were opened listed with the names of these companies to guarantee the flow of funds and expenses incurred by the electoral campaign of the party *Unidad Social Cristiana*.<sup>50</sup>

## **b. Criminal defamation and public officials**

88. Declaration of Principles on Freedom of Expression. Principle 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."

89. Case decided by: Court of First Instance of Montevideo, Judgement of April 22, 2003.

90. Facts of the case. On February 20, 2003, the accusation brought by Mr. Mario César Alvez, a public official for the intendancy of the city of Montevideo, against Mr. Sergio Israel Dublinsky, a journalist for the periodical publication *Brecha* was admitted. Mr. Dublinsky was accused of having committed the crimes of libel or defamation (*difamación o injurias*).<sup>51</sup> The accusation was fueled by the publication, by Mr. Dublinsky, of a series of articles portraying the claimant's involvement in acts of corruption such as requesting the payment of a bribe, and awarding state benefits to his personal acquaintances. After the preliminary hearings were held, the issue was left to be decided by the Court of First Instance of Montevideo.

## 91. Decision. (pertinent paragraphs)

(...) in our country, and following the trend that was inaugurated in 1830, freedom of expression is provided for in Article 29 of the National Constitution, which states that "the expression of thoughts by words, private writings or published material, or by any other means of disclosure, is entirely free, without the need of prior censorship. The author, and, in some cases, the printer or transmitter of the statement will be responsible for the abuses they commit."<sup>52</sup>

The constitutional provision is in perfect agreement with international human rights norms which guarantee the right to freedom of expression. In this way, this right is provided for in Article 13 of

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<sup>50</sup> The original text reads: "(...) se impone declarar con lugar el recurso de amparo, únicamente, en cuanto a la solicitud de información acerca de las cuentas corrientes que tienen a su nombre en el banco recurrido los Partidos Unidad Social Cristiana, Liberación Nacional y cualquier otro que participara en las últimas elecciones nacionales, así como de las empresas Gramínea Plateada y Bayano al haberse demostrado que a nombre de estas empresas fueron abiertas cuentas corrientes para organizar el flujo de ingresos y gastos de la campaña electoral del Partido Unidad Social Cristiana."

<sup>51</sup> The accusation referred to an alleged violation of Articles No. 333 or 334 of the Criminal Code of Uruguay.

<sup>52</sup> The original text reads: "(...) en nuestro país la libertad de expresión, siguiendo la tendencia inaugurada en el año 1830, se encuentra actualmente consagrada en el art. 29 de la Constitución Nacional, en cuanto dispone que "es enteramente libre, en toda materia, la comunicación de pensamientos por palabras, escritos privados o publicados en la prensa, o por cualquier otra forma de divulgación, sin necesidad de previa censura; quedando responsable el autor y, en su caso, el impresor o emisor, con arreglo a la ley por los abusos que se cometieren."

the American Convention on Human Rights, in the International Covenant on Civil and Political Rights (Article 19), in the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10), in the African Charter on Human and People's Rights (Article 9), in the Universal Declaration of Human Rights (Article 19), and in the American Declaration of the Rights and Duties of Man (Article IV).<sup>53</sup>

(...) in the present case, given that the sayings of the defendant were disclosed in several journalistic articles with a wide public reach, we are faced with a confrontation of two fundamental rights: on one hand, the right of the defendant to freely express thoughts—in the form of press freedom or freedom of information—and on the other hand, the right to the protection of honor and personal reputation of the plaintiff, both rights being protected by the mentioned national and international instruments.<sup>54</sup>

For this reason, we would like to stress what the American Convention of Human Rights (*Pacto de San José de Costa Rica*) provides in this respect, as, we must remember, the Convention is applicable in our country as of its incorporation by Law No. 15.737 of March 8, 1985, and it expressly addresses the matter at hand when it points out in Article 13.2 that "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 (...)"<sup>55</sup>

Article 11 of the Convention further recognizes the protection of the right to privacy and dignity, stating that: "(...) no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or unlawful attacks on his honor or reputation (...)" and that "(...) [e]veryone has the right to protection of the law against such interference or attacks.

The American Declaration of the Rights and Duties of Man also protects this right in Article 5, which declares that: "Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life".<sup>56</sup>

In its Report. No. 11/96, referring to Case No. 11.230, the Commission has held, in relation to the conflict which arises between the right to the protection of honor and the right to freedom of expression, that the right to the protection of honor does not possess a higher rank than the right to freedom of expression. In order to illustrate this idea, the Commission pointed out that Article 29 of the American Convention states that "No provision of this Convention shall be interpreted as: a)

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<sup>53</sup> The original text reads: "*El texto en cuestión, se encuentra en perfecta consonancia y armonía con las normas internacionales de derechos humanos que reconocen el derecho a la libertad de expresión. Es así que se encuentra consagrado en el art. 13 de la Convención Americana sobre Derechos Humanos, en el Pacto Internacional de Derechos Civiles y Políticos (art. 19), en la Convención Europea de Derechos Humanos (art. 10), en la Carta Africana de Derechos Humanos (art. 9), en la Declaración Universal de Derechos Humanos (art. 19) y en la Declaración Americana de Derechos Humanos (art. IV).*"

<sup>54</sup> The original text reads: "*(...) el caso que nos ocupa, dado que se cuestionan los dichos del enjuiciado emitidos en sendos artículos periodísticos con amplia difusión pública, supone el enfrentamiento de dos derechos fundamentales: por un lado el derecho a la libertad de expresión del pensamiento -en su forma de libertad de prensa o de información- del denunciado y por el otro el derecho del honor del denunciante; ambos amparados por la normativa nacional e internacional referida.*"

<sup>55</sup> The original text reads "*Para ello nos permitiremos mencionar nuevamente lo que al respecto señala la Convención Americana sobre Derechos Humanos (Pacto de San José de Costa Rica) —que, bueno es recordarlo, es derecho vigente en nuestro país, a partir de su aprobación por la Ley No. 15.737 de 8 de marzo de 1985- la que, a texto expreso aborda la cuestión planteada al señalar en su art. 13 numeral 2do. que: "... el ejercicio del derecho previsto en el inciso precedente (la libertad de pensamiento y expresión) no puede estar sujeto a previa censura sino a responsabilidades ulteriores, las que deben estar expresamente fijadas por la ley y ser necesarias para asegurar: a) el respecto a los derechos o a la reputación de los demás ...".*

<sup>56</sup> The original text reads: "*La Convención también, en su art. 11, reconoce la protección de la honra y de la dignidad, cuando señala que "... nadie puede ser objeto de injerencias arbitrarias o abusivas en su vida privada, en la de su familia, en su domicilio o en su correspondencia, ni de ataques ilegales a su honra o reputación..." y "... toda persona tiene derecho a la protección de la ley contra esas injerencias o ataques ...".*

*La Declaración Americana de los Derechos del Hombre también así lo consagra en su art. V al establecer que "toda persona tiene derecho a la protección de la ley contra los ataques abusivos a su honra, a su reputación y a su vida privada y familiar."*

permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to greater extent than is provided for herein." The Commission also recalled that Article 32.2 of the Convention establishes that "The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society."<sup>57</sup>

In its 1994 Annual Report, the Inter-American Commission on Human Rights noted that "the Inter-American Court of Human Rights ("the Court") has stated that because freedom of expression and thought plays a crucial and central role in public debate, the American Convention places an "extremely high value" on this right and reduces to a minimum any restrictions on it." As the Court noted, it is in the interest of the "democratic public order inherent in the American Convention" that freedom of expression be "scrupulously respected."<sup>58</sup>

Several conclusions can be derived from the opinions and case law mentioned, which the interpreter must keep in mind in order to arrive to a fair solution of the very delicate issue at hand.

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<sup>57</sup> The original text reads: "*Por su parte, en lo que tiene directa relación con los conflictos que se originen entre el derecho al honor y el derecho a la libertad de expresión, la Comisión en su informe No. 11/96 relativo al caso No. 11.230 sostuvo el principio de que el derecho al honor no tiene una jerarquía superior que la que tiene el derecho a la libertad de expresión. En tal sentido recordó que el art. 29 establece que "ninguna disposición de la presente Convención puede ser interpretada en el sentido de: a) permitir a alguno de los Estados partes, grupo o persona, suprimir el goce y ejercicio de los derechos y libertades reconocidos en la Convención o limitarlos en mayor medida que la prevista en ella; y que el art. 32.2 dispone que "los derechos de cada persona están limitados por los derechos de los demás, por la seguridad de todos y por las justas exigencias del bien común, en esa sociedad democrática".*

<sup>58</sup> The original text reads: "*En el Informe Anual de la Comisión Interamericana de Derechos Humanos del año 1994 por su parte, se señaló sobre el tema que "la Corte Interamericana de Derechos Humanos ("la Corte") ha declarado que, dado que la libertad de expresión y pensamiento desempeña una función crucial y central en el debate público, la Convención Americana otorga un "valor sumamente elevado" a este derecho y reduce al mínimo toda restricción al mismo. Como lo señaló la Corte, es en interés del "orden público democrático" tal como está concebido por la Convención Americana que se respete escrupulosamente el derecho de cada ser humano de expresarse libremente".*

These are the following:

Firstly, that the general (but naturally, not absolute) principle to be kept in mind is that the right to freedom of expression, given its crucial role in promoting public debate and its relation to democratic societies and institutions, when exercised legitimately, is regarded in the national and international arenas as possessing an "extremely high value" which places it in a higher rank in relation to the other civil rights.

Secondly, that given its superior status, any restriction to this right must necessarily be reduced to a minimum, and any interference must always be linked to the legitimate needs of a democratic society.

Thirdly, that the protection offered by this right must not only be regarded as pertaining to favorable ideas, but also, most importantly, to those that might be offensive, disturbing, exaggerated, prone to incite strong reactions, or shocking, because such are the demands of pluralism and mental openness without which a democratic society cannot exist.

Fourthly, that while this right does not protect libel or other defamation offenses, nor falsity, lies or mistakes when they are a consequence of a careless disregard for the truth, it does protect the press when the information portrayed refers to public matters or public officials, even if the news contains inexact information, as long as its author believes the information to be true and had, in good faith and without malice, aimed at disclosing information of public interest.

Fifth, the superior status of the right to freedom of expression in relation to the other rights will be maintained as long as a) the information derived from it is "useful" to a democratic society, and b) there is an objective ground which leads the informer to believe that the information is true, even when it is later found to be false.

Sixth and last, and summarizing the foregoing conclusions, if an informer has legitimately exercised his right to freedom of expression, the conclusion that a violation to the right to the protection of honor has been committed cannot be validly reached.<sup>59</sup>

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<sup>59</sup> The original text reads: "Ahora bien, de los fallos y opiniones mencionadas, se pueden extraer varias conclusiones cuya consideración el intérprete deberá tener siempre presente si es que quiere arribar a una justa solución de la muy delicada cuestión puesta en sus manos."

Ellos son:

*En primer lugar, que el principio general a tener presente –que no es absoluto naturalmente- es que tanto en la normativa nacional como internacional, el derecho a la libertad de expresión, dado el crucial y central papel que desempeña en el debate público y su indisoluble vinculación con las sociedades e instituciones democráticas, cuando es ejercido en forma legítima, posee un "valor sumamente elevado" que lo ubica en un plano superior al de los demás derechos civiles.-*

*En segundo lugar que, dada su situación de preeminencia, toda restricción al mismo debe, necesariamente, reducirse al mínimo; y cualquier interferencia deberá siempre estar vinculada con las legítimas necesidades de una sociedad democrática.-*

*En tercer lugar, que la protección que ofrece este derecho no solo debe extenderse a las ideas favorables, sino también y sobre todo, a aquellas ideas que puedan resultar ofensivas, perturbadoras, exageradas, provocativas o chocantes pues, tales son las exigencias del pluralismo y la apertura mental sin las cuales no es posible que exista una sociedad democrática.-*

*En cuarto lugar, que si bien este derecho no ampara ni los agravios, ni la injuria, ni la calumnia, ni la difamación; y tampoco protege la falsedad, la mentira o la inexactitud cuando es fruto de la total y absoluta despreocupación por verificar la realidad de la información. Sí ampara a la prensa cuando la información se refiere a cuestiones públicas o a funcionarios públicos, aún en el caso de que la noticia tuviera expresiones falsas o inexactas, siempre y cuando su autor las crea verdaderas y su propósito haya sido el de ilustrar a la opinión pública del tema tratado, de buena fe y sin malicia.-*

*En quinto lugar, que la posición de preferencia que posee la libertad de expresión por sobre los otros derechos se mantendrá, siempre y cuando: a) la información que de ella emane resulte "útil" a una sociedad democrática; y b) existan bases objetivas que induzcan al informador a considerar que dicha información es cierta, aún cuando posteriormente se demuestre el hecho como objetivamente falso.-*

continued...



In conclusion, and in light of the foregoing, the right to the protection of the honor of the plaintiff has not been violated, as we understand that the journalist, Mr. Sergio Israel Dubinsky, has legitimately exercised his right to inform. Therefore, it must be concluded, according to the provision of Article 10 of the Republic's Constitution, that his conduct is exempt from this Magistrate's authority.<sup>60</sup>

**b. The ban on prior censorship**

92. Declaration of Principles on Freedom of Expression. Principle 5: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression".

93. Case decided by: Court of Appeals of Santiago de Chile. Case of April 16, 2003. Appeal No. 5681/2002. Res. 47579 -

94. Facts of the case. The complainants, direct descendants of Arturo Prat Chacón, sought by means of an appeal for constitutional protection to obtain a precautionary measure to prevent the continuation of an exhibition that was considered to dishonor Arturo Prat Chacón, a marine officer and lawyer, and an important historic figure in Chile. On October 16, the *Mercurio* of Santiago published the information that in the "Sergio Aguirre" hall, owned by the Representative Arts Department of the University of Chile, there was to be an exhibition, starting on October 17, of the work "Prat", by Manuela Infante. The publication added that as of that date, the showing of the exhibition was not certain due to its defamatory character in relation to its portrayal of Arturo Prat Chacón. The complainants sustained that the exhibition was offensive and perverse, damaging the figure of Prat Chacón, and further expressed that the scandal which arose as a consequence of the exhibition forced the resignation of Nivia Palma, the National Coordinator of FONDART, an organization dependent on the Ministry of Education, who financially supported the exhibition with public funds. The Appeals Court of Santiago de Chile rejected the appeal on the grounds that its admittance would have amounted to prior censorship, banned by Article 13 of the Inter-American Convention on Human Rights. The decision of the Appeals Court was later upheld by the Supreme Court of Santiago de Chile (ROL N° 1961, July 16, 2003).

95. Decision (pertinent paragraphs)

The complainants express, as has been noted in the first and fifth arguments of this judgment, the way in which the representation of the piece would violate the right to protection of honor, personal reputation, and private and family life of don Arturo Prat Chacón, as well as of every Chilean and member of the Historic Institute that carries his name. The alleged violation was founded on the provision of Article 19 No. 4 of the Constitution, which states: "The Constitution guarantees every

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...continued

*Y en sexto y último lugar -lo que en definitiva resume todo lo antes señalado- que en caso de que el periodista haya ejercido en forma legítima este derecho, no es posible concluir jurídicamente que el derecho al honor se hubiera visto lesionado de forma alguna."*

<sup>60</sup> The original text reads: "*En suma, en función de todo lo expresado, siendo que el derecho al honor del denunciante no se ha visto afectado en razón de que el periodista, Sr. Sergio Israel Dubinsky, en nuestro concepto, ha ejercido en forma legítima la libertad de informar, corresponde concluir, en mérito a lo establecido por el art. 10 de la Constitución de la República, que su conducta ha quedado exenta de la autoridad de este magistrado."*

person the right to respect for and protection of private and public life, and the honor of every person and his family (...).<sup>61</sup>

Article 19.12 of the Constitution establishes in its first paragraph that it guarantees all people: the right to express opinions and impart information without prior censorship, in any way and by any means, notwithstanding their possible responsibility for the offenses and abuses that might result from the exercise of these freedoms. This fundamental right is also contained in Article 13 of the American Convention on Human Rights, also known as the *Pacto de San José de Costa Rica*, which states 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. 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."<sup>62</sup>

Consequently, if it is considered that the presentation of the theatrical work in question could entail the applicability of Article 13.4, it might be the task of the corresponding administrative organ to perform the relevant corrective measures.<sup>63</sup>

Article 13.1 of the American Convention specifically provides that freedom of thought and expression may be exercised orally, in writing, in print, or in the form of art.<sup>64</sup>

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<sup>61</sup> The original text reads: "*Que, los recurrentes expresan, conforme se ha explicado en los fundamentos 1º y 5º de este fallo, cómo mediante la representación de la pieza citada se conculcaría el derecho del respeto y protección a la honra de la persona y de la familia de don Arturo Prat Chacón, de todo chileno como, también, de los integrantes del Instituto Histórico que lleva su nombre. El precepto que contempla el derecho que consideran amagado está contenido, como se ha dicho anteriormente, en el artículo 19 Nº 4 de la Carta Fundamental que establece: La Constitución asegura a todas las personas: el respeto y protección a la vida privada y pública y a la honra de la persona y de su familia (...).*"

<sup>62</sup> The original text reads: "(...) la Constitución Política en su artículo 19, Nº 12, inciso primero, establece que ésta: asegura a todas las personas: la libertad de emitir opiniones y de informar sin censura previa, en cualquier forma y por cualquier medio, sin perjuicio de responder de los delitos y abusos que se cometan en el ejercicio de estas libertades,... Este derecho fundamental se encuentra, por su parte, contenido en el artículo 13 de la Convención Americana sobre Derechos Humanos o Pacto de San José que establece: 1.- toda persona tiene derecho a la libertad de pensamiento y de expresión. Este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística o por cualquier otro procedimiento de su elección. 2.- El ejercicio del derecho previsto en el inciso precedente no puede estar sujeto a previa censura sino a responsabilidades ulteriores, las que deben estar expresamente fijadas por la Ley y ser necesarias para asegurar: a) el respeto a los derechos o a la reputación de los demás, o b) la protección de la seguridad nacional, el orden público o la salud o la moral públicas. 3.- No se puede restringir el derecho de expresión por vías o medios indirectos, tales como el abuso de controles oficiales o particulares de papel para periódicos, de frecuencias radioeléctricas, o de enseres y aparatos usados en la difusión de información o por cualesquiera otros medios encaminados a impedir la comunicación y la circulación de ideas y opiniones. 4.- Los espectáculos públicos pueden ser sometidos por la ley a censura previa con el exclusivo objeto de regular el acceso a ellos para la protección moral de la infancia y la adolescencia, sin perjuicio de lo establecido en el inciso 2. 5.- Estará prohibida por la ley toda propaganda a favor de la guerra y toda apología del odio nacional, racial o religioso que constituyan incitaciones a la violencia o cualquier otra acción ilegal similar contra cualquier persona o grupo de personas, por ningún motivo inclusive los de raza, color, religión, idioma u origen nacional."

<sup>63</sup> The original text reads: "*Que, en consecuencia, si llegara a estimarse que, mediante la representación de la pieza teatral comentada, pudiese incurrirse en la situación que contempla el artículo 13 de la citada Convención en su número 4, podría caberle al órgano administrativo correspondiente, en su oportunidad, impetrar las medidas correctivas procedentes.*"

<sup>64</sup> The original text reads: "*Que, entre las formas de exteriorizarse la libertad de pensamiento y de expresión, el Nº 1 del artículo 13 del Pacto de San José dispone, en forma explícita, que éste derecho puede manifestarse: ya sea oralmente, por escrito*... continued..."

In this way, by writing the theatrical piece and making it public by presenting it, the authors and other people who were involved in this production and presentation exercised their right to freedom of expression, which cannot be subject to prior censorship by any organ, notwithstanding the responsibilities which might arise by the commission of offenses or abuses during its creation or representation, or of the measures that might be taken in the case portrayed by Article 13.4 of the Convention, as was explained above. Therefore, if the appeal were admitted and the subsequent exhibitions of the piece which has given rise to it prohibited, this Court would incur in a form of prior censorship, which is forbidden to this Court. Consequently, this Court understands that it must be rejected (...).<sup>65</sup>

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...continued  
o en forma impresa o artística."

<sup>65</sup> The original text reads: "*Que, de este modo, al haberse escrito la pieza teatral y difundido mediante su representación, los autores y demás personas que estuvieron comprometidos en dicha producción y divulgación hicieron uso de su libertad de expresión, la cual no puede ser censurada por ningún órgano, sin perjuicio de las responsabilidades que pudieren surgir con motivo de la comisión de posibles delitos o daños que pudieren ocasionarse mediante su creación y/o representación o de las medidas que pudieren adoptarse, en el caso en que se incurriere en la situación contemplada en el numeral 4 del artículo 13 de la Convención mencionada, conforme ha explicado precedentemente. De impedirse, por lo tanto, ulteriores exhibiciones de la pieza que ha motivado la presentación de recurso, acogiéndolo, se incurriría en una forma de censura previa, lo que está vedado a este tribunal, por ello, esta Corte considera que corresponde rechazarlo (...)*".

## CHAPTER IV

### REPORT ON ACCESS TO INFORMATION IN THE HEMISPHERE<sup>1</sup>

#### A. Introduction

1. The Office of the Special Rapporteur for Freedom of Expression has engaged in continuous efforts to ensure and expand access to information in the Americas, in the understanding that its effective implementation constitutes a touchstone for the consolidation of the right to freedom of expression, and provides a framework for the establishment of policies of transparency necessary to strengthen democracies.

2. In this spirit, and in pursuance of the mandates issued by the Heads of State and Government at the Third Summit of the Americas, held in Quebec City, Canada, in April 2001,<sup>2</sup> the Special Rapporteur for Freedom of Expression of the IACHR has undertaken to conduct an annual exercise to monitor the adoption of new laws and regulatory systems pertaining to the guaranteeing of the right to freedom of information in the OAS member States.

3. To this end, the Office published in 2001 a "Report on Action with respect to *Habeas Data* and the Right of Access to Information in the Hemisphere."<sup>3</sup> This report contains an account of existing legislation and practices within the OAS member States with respect to the right of access to information and the action of *habeas data*. The report was based on the information provided by the member States in response to the official questionnaires issued by the Office of the Special Rapporteur, as well as on information gathered from national and international nongovernmental organizations (NGOs). In the 2001 Report, the Special Rapporteur concluded, in the light of the information obtained, that "practices contributing to a culture of secrecy with respect to state-held information continue to be followed in most countries, because of insufficient awareness of the specific provisions regulating this exercise, or because, given the vague, general language used in the provision, agents in possession of such information opt in favor of denying it, out of fear of punishment," and further stressed that these practices "represent a threat to the constitutional democratic system, permitting a greater incidence of corruption."<sup>4</sup> In the 2001 report, the Special Rapporteur for Freedom of Expression also recommended that the following measures be taken to guarantee the rights to freedom of information and *habeas data* in accordance with international standards:

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<sup>1</sup> This chapter was made possible through the assistance of Kathleen Daffan, a second-year law student at Columbia University, who provided the research and the preliminary drafting of this report, and of Andrea de la Fuente, a recent law graduate from Universidad Torcuato Di Tella, Argentina, who further assisted in the drafting of this report. Both were interns at the Office of the Special Rapporteur for Freedom of Expression during 2003. The Office thanks them for their contributions.

<sup>2</sup> See Third Summit of the Americas, Declaration and Plan of Action. Québec, Canada, 20-22 April 2001. During the Summit, the Heads of State and Government declared their commitment 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."

<sup>3</sup> See IACHR, Annual Report 2001, Volume II, Report of the Office of the Special Rapporteur for Freedom of Expression [hereinafter Annual Report of the IACHR 2001], Chapter III, *Report on Action with Respect to Habeas Data and the Right to Access to Information in the Hemisphere*, OEA/Ser.LV/II.114 Doc. 5, rev. 1, April 16, 2002.

<sup>4</sup> Annual Report of the IACHR 2001, Chapter III, *Report on Action with Respect to Habeas Data and the Right to Access to Information in the Hemisphere*, para. 164.

1. The promulgation of laws permitting access to state-held information and supplemental provisions regulating the exercise of such access, as well as the promulgation of laws providing for the right of individuals to obtain access to personal data through the action of *habeas data*, taking international standards into account in this regard.

2. The existence of avenues of recourse for independent review to determine whether restrictions established for reasons of national defense are balanced, taking into account the protection of other fundamental rights consistent with international standards in the area of human rights and the right of a society to be informed, *inter alia*, about matters of public interest.

3. The introduction of legislation on civil society participation and consensus-building.

4. Policies promoting and disseminating information on these individual and collective rights as legal tools for achieving transparency in government, protecting personal privacy against the arbitrary or illegitimate handling of personal data, and promoting accountability to and participation by society.<sup>5</sup>

4. On December 11 and 12, 2002, the Office of the Special Rapporteur for Freedom of Expression of the IACHR cooperated with the Inter-American Dialogue<sup>6</sup> in a conference on access to information held in Buenos Aires, Argentina, with the aim of collaborating in the Inter-American Dialogue's efforts to further democracy in Latin America. Local co-organizers were the Association for Civil Rights (*Asociación por los Derechos Civiles*) and the Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*, CELS). In attendance were leading decision makers and members of institutions working on access to information issues throughout Latin America, the United States, and the United Kingdom. The conference brought together academics, civil society organizations, journalists, lawmakers, and members of public and private entities with expertise in the areas of enacting, enforcing, or interpreting access to information laws throughout the region.<sup>7</sup>

5. In June 2003, the General Assembly of the OAS recognized the importance of access to information with the adoption of Resolution AG/Res. 1932 (XXXIII-O/03).<sup>8</sup> In this Resolution, the General Assembly reaffirmed the statement of Article 13 of the American Convention in that everyone has the freedom to seek, receive, and impart information and held that access to public information is a requisite for the very exercise of democracy.<sup>9</sup> Further, the General Assembly reiterated that states are obliged to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.<sup>10</sup> Paragraph 6 of the Resolution resolved to "instruct the Inter-American Commission on Human Rights, through the Special Rapporteur for Freedom of Expression, to continue including in its annual report a report on access to public information in the region." As a consequence, this

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<sup>5</sup> Annual Report of the IACHR 2001, Chapter III, *Report on Action with Respect to Habeas Data and the Right to Access to Information in the Hemisphere*, para. 166.

<sup>6</sup> The Inter-American Dialogue is a center for policy analysis, exchange, and communication on issues in Western Hemisphere affairs. Information on the Inter American Dialogue is available at <http://www.thedialogue.org>.

<sup>7</sup> See Inter-American Dialogue, *supra*, note 6, *Access to Information in the Americas: A Conference Report*, 9.

<sup>8</sup> This resolution is included in the Annex section of this report.

<sup>9</sup> OAS, Resolution AG/RES. 1932 (XXXIII-O/03), para. 1.

<sup>10</sup> *Id.*, para 2.

chapter will summarize the current situation of the member States in relation to the right to freedom of information, in an effort to record the development of the States in this area.

6. In August 2003, the President of the Permanent Council of the OAS requested the collaboration of the Office of the Special Rapporteur for Freedom of Expression in the presentation of a document containing proposals for the Council's compliance with paragraph 5 of Resolution AG/Res. 1932 (XXXIII-O/03), which instructed the Permanent Council to "promote seminars and forums designated to foster, disseminate, and exchange experiences and knowledge about access to public information so as to contribute, through efforts by the member states, to fully implementing such access." The Special Rapporteur for Freedom of Expression of the IACHR presented this document, included in the Annex Section of this report, during the session of the Permanent Council held on September 10, 2003.<sup>11</sup> Many of the proposals suggested here reiterate the considerations made before the Permanent Council.

7. Public discussion and debate about access to state-held information can only improve the strength of American democracies. And yet, the Office of the Special Rapporteur for Freedom of Expression would like to take this opportunity to emphasize to each member State that more focused attention is necessary to achieve compliance with the American Convention. In fact, a recent study found that 84% of the journalists interviewed, from 18 OAS member States, felt that it was difficult or very difficult to obtain information or documents from public officials in their countries.<sup>12</sup> In order to correct this situation and adequately guarantee citizens' right to state-held information, States must make concentrated, simultaneous advances on at least three different levels.

8. First, the theoretical background of the right of access to information should be widely understood as both deep and broad. Guaranteeing public access to state-held information is not only a pragmatic tool that strengthens democratic and human rights norms and promotes socioeconomic justice; it is also a human right protected under international law.

9. Secondly, this conceptual foundation must be accompanied by an access to information regime that is well-conceived and based on a balanced confluence of procedural coordination, civic activism, and political will. Only a legislative and regulatory structure that relies on such principles can achieve the degree of openness fostered by Article 13 of the American Convention.

10. Finally, the adequate provision of the right of access to state-held information requires a specific, clear and transparent system of exceptions. It is inevitable that states will occasionally encounter a tension between the guarantee of the right of access to information and other valid state interests, such as the protection of individual privacy and the maintenance of national security. Defining and weighing these various interests presents a challenge of enormous delicacy and importance.

11. Given the practical complexity of providing the right of access to state-held information as guaranteed by Article 13 of the American Convention on Human Rights, the

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<sup>11</sup> OEA/Ser.G CP/doc. 3780/03, August 29, 2003 Original: Spanish.

<sup>12</sup> Study by the International Center for Journalists, July 7, 2003. For more information, see <http://www.libertad-prensa.org/foetemplate.html>.

Office of the Special Rapporteur would like to take this opportunity to elaborate requirements and strategies for adequate compliance with the Convention. This discussion will be followed by a summary of the laws and practices on the right of access to information in each of the OAS member States.

## **B. Adequately Guaranteeing Access to Information**

### **1. Theoretical framework**

12. The value of access to information extends to the promotion of the most important goals in the Americas, including transparent and effective democracies, respect for human rights, stable economic markets, and socioeconomic justice. Under the Inter-American System, access to state-held information is protected by Article 13.1 of the American Convention, which guarantees “the 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.” A state must acknowledge all of these factors in order to guarantee sufficiently the right to access information.

13. It is widely acknowledged that without public access to state-held information, the political benefits that flow from a climate of free expression cannot be fully realized. At the Third Summit of the Americas, the Heads of State and Government recognized that the sound administration of public affairs requires effective, transparent, and publicly accountable government institutions. They also assigned the highest importance to citizen participation through effective control systems.<sup>13</sup> In accordance with this view, the Inter-American Court of Human Rights has stated that the “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.”<sup>14</sup> Access to information promotes accountability and transparency within the State and enables a robust and informed public debate. In this way, access to information empowers citizens to assume an active role in government, which is a condition for sustaining a healthy democracy.

14. A transparent mechanism that provides access to state-held information is also essential to foster a climate that is respectful of all human rights. The right of access to information is also a component of the right to know the truth. In this respect, the Inter-American Commission has said that “(T)he right to know the truth is a collective right that ensures society access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation, in particular, in cases where amnesty laws are adopted. Article 13 of the American Convention protects the right of access to information.”<sup>15</sup> Access to state-held information is similarly necessary to prevent future abuses by government officials and also to ensure that effective remedies against such abuses are guaranteed.

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<sup>13</sup> See Third Summit of the Americas, Declaration and Plan of Action. Québec, Canada, 20-22 April 2001.

<sup>14</sup> I/A Court H.R., Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), November 13, 1985, Ser. A, No 5 [hereinafter Advisory Opinion OC-5/85], para. 69.

<sup>15</sup> Case 10.488, Report N° 136/99, Ignacio Ellacuría, S.J. y Otros (El Salvador), December 22, 1999, Annual Report of the IACHR 1999, OEA, Ser.L/V/II.106, Doc. 6 rev. April 13, 1999, Original: Spanish.

15. Access to information laws can also constitute a stabilizing force in financial markets:

To understand and anticipate market movements, investors require timely and accurate information on company financial indicators and macroeconomic data (...) Information on price and product standards helps consumers select products. Records of health inspections, school performance, and environmental data help citizens make informed social choices.<sup>16</sup>

16. This line of argumentation proposes that given the role of access to information in improving the flow of information in these various sectors, increasingly open regimes can benefit the world economy: "because better information flows can improve resource allocation, they may be able to mitigate global financial volatility and crises."<sup>17</sup>

17. As the Office of the Special Rapporteur elaborated in last year's Report on Freedom of Expression and Poverty, access to information is also a critical tool in the alleviation of socioeconomic injustice. The poor often suffer from a lack of access to information about the very services that the government offers to help them survive. Disenfranchised groups need access to information about these services as well as the many other decisions made by government and private agencies that profoundly affect their lives.<sup>18</sup>

18. The effective exercise of access to information also helps combat corruption, which has been identified by the Organization of American States as a problem requiring special attention in the Americas, given its capability to seriously undermine the stability of democracies. During the Third Summit of the Americas, the Heads of State and Government recognized the need to step up efforts to combat corruption, and highlighted the need to support initiatives to allow for greater transparency to ensure that the public interest is protected and that governments are encouraged to use their resources effectively for the collective good.<sup>19</sup> Corruption can be controlled adequately only through joint efforts aimed at raising the level of transparency of government action.<sup>20</sup> Transparency of government action can be enhanced by creating a legal system that allows society to have access to information and that eliminates or restricts the resistance by governments to releasing information, delays in the processes for granting requested information, and the imposition of unreasonable fees on access. A recent report on global corruption has noted that "only by insisting on both access to information and greater transparency in every sphere of society, from the local to the intergovernmental, can civil society, business and government hope to forestall and expose corruption, and ensure that the corrupt will run out of places to hide."<sup>21</sup>

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<sup>16</sup> World Bank, World Development Report 2002, "Building Institutions for Markets", 189.

<sup>17</sup> *Id.*

<sup>18</sup> See IACHR, Annual Report 2002, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, *Freedom of Expression and Poverty*, OEA/Ser.L/V/II.117, Doc. 5, rev.1, 7 March 2003.

<sup>19</sup> See Third Summit of the Americas, Declaration and Plan of Action, Quebec City, Canada, April 20-22, 2001.

<sup>20</sup> See Inter-American Convention against Corruption, Inter-American System of Legal Information, OAS.

<sup>21</sup> Transparency International, *Global Corruption Report 2003*, 6.



19. Access to information is protected by the American Convention on Human Rights. Article 13.1 of the Inter-American Convention states that the right to freedom of thought and expression "includes the 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."

20. In order to understand the implications of access to information as guaranteed by the Convention, we must look to the guidance offered by the Inter-American Commission on Human Rights and by the Inter-American Court of Human Rights, given their interpretative authority with respect to the rights protected in the American Convention. As its Statute declares, the Commission was created to "promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter."<sup>22</sup> For this reason, the Inter-American Court has written that "(...) if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission[.]"<sup>23</sup> In addition, the General Assembly of the OAS has urged its members to follow all recommendations of the Inter-American Commission.<sup>24</sup>

21. Based on the text of Article 13.1 of the Convention, the Inter-American Commission on Human Rights has affirmed that "the right to freedom of expression includes both the right to disseminate and the right to seek and receive ideas and information."<sup>25</sup>

22. The approval by the Inter-American Commission of the Declaration of Principles on Freedom of Expression developed by the Office of the Special Rapporteur for Freedom of Expression affirmed the notion that in order to adequately comply with the obligations set out by the Convention, States must take effective measures to ensure access to state-held information. Principle 4 states that:

Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of the right (...).

23. The Commission has supported the States' obligation to ensure the effective guarantee of the right to know the truth about serious past violations of human rights. In this respect, the Commission has said that States' obligations under the Convention include "the establishment of investigating committees whose membership and authority must be determined in accordance with the internal legislation of each country, or the provision of the necessary resources so that the judiciary itself may undertake whatever investigation may be necessary."<sup>26</sup>

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<sup>22</sup> Article 1.1, Statute of the Inter-American Commission on Human Rights. Approved by Resolution No. 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October, 1979, in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/SER.L/V/I.4 rev. 8 (May 22, 2001), at 131, [hereinafter BASIC DOCUMENTS].

<sup>23</sup> I/A Court H. R. "Loayza Tamayo" Case, September 7, 1997, Series C No. 33, para. 80.

<sup>24</sup> See, e.g., Resolution AG/RES. 1917 (XXXIII-0/03).

<sup>25</sup> See IACHR, *Report on Terrorism and Human Rights*, OAS/Ser.L./II.116, Doc. 5 rev. 1 corr. 22 October 2002, 180.

<sup>26</sup> Annual Report of the Inter-American Commission on Human Rights 1985-1986, 193.

24. The obligation of the States to guarantee access to state-held information is also supported by the Inter-American Court's interpretation of Article 1.1 of the American Convention on Human Rights. In the *Velazquez Rodriguez* case, after considering that "The first obligation assumed by the States Parties under Article 1 (1) is 'to respect the rights and freedoms' recognized by the Convention,"<sup>27</sup> the Court went on to say that:

The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention (...).<sup>28</sup>

25. In its Advisory Opinion of November 13, 1985, the Inter-American Court further interpreted the provision of Article 13 of the Convention as containing both an individual and a collective right:

Those subject to the Convention have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive, and impart information and ideas of all kinds... the freedom of expression and information requires, on the one hand, that no one be arbitrarily hindered or prevented from expressing his own thoughts, and therefore represents a right of every individual. But it also entails a collective right to receive any information and to have access to the thoughts of others.<sup>29</sup>

26. The importance of an effective right of access to information has a solid basis in international and comparative human rights law. Although not all countries and international organizations ground the right of access to state-held information in the right to freedom of expression, there is a growing consensus that governments do have positive obligations to provide state-held information to their citizens, since this right is interdependent with other fundamental rights.<sup>30</sup>

27. The Special Rapporteur on Freedom of Opinion and Expression of the United Nations has stated clearly that the right to access information held by public authorities is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR).<sup>31</sup> The protection of this right was found to be derived from the right to freedom of expression provided by the Covenant, which states that this right "shall include freedom to seek, receive

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<sup>27</sup> I/A Court H.R. *Velásquez Rodríguez* Case, Judgment of 28 July 1988, Series C No. 4, at para. 165.

<sup>28</sup> *Id.*, para. 166.

<sup>29</sup> Advisory Opinion OC-5/85, *supra*, note 14, para. 30.

<sup>30</sup> See, e.g., *Shabalala v. Attorney-General of the Transvaal & Ano.* (South Africa), 1996 (1) S A 725 (CC); Eur. Ct. H.R., Case of *Guerra and Others v. Italy*, Judgment of 19 February 1998, Application No. 0014967/89; *Jane Doe v. Board of Commissioners of Police for the Municipality of Toronto* (Canada), 74 O.R. (2d) 225 (Div. Ct.); Saras Jagwanth, "The Right to Information as a Leverage Right" in Calland & Tilley, eds., *The Right to Know, The Right to Live*, Open Democracy Advice Center, 2002; In the United Nations System, the interdependence of free access to information with all other rights was made clear in 1946, when the General Assembly adopted Resolution 59(I) stating: "freedom of information is a fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated, Toby Mendel, *Freedom of Information as an Internationally Protected Right*, Article XIX, 2000.

<sup>31</sup> See Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussein, UN doc. E/CN.4/1999/64, 29 January, 1999.

and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (...)."<sup>32</sup>

28. Also, it is interesting to note that the right of access to state-held information is recognized more explicitly in the Inter-American System than in the European Human Rights System. Article 10 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the European Convention"), says: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." The word "seek" is absent from this formulation of the right to free expression.<sup>33</sup> But despite this difference, the European Court has held in two recent cases that individuals do have the right to access state-held records, grounding it in the right to private or family life instead of the freedom of expression. Article 13 of the American Convention, by contrast, explicitly protects the "freedom to seek, receive and impart information and ideas of all kinds."<sup>34</sup> Given that the freedom to *receive* information should prevent public authorities from interrupting the flow of information to individuals, the word *seek* would logically imply an additional right.<sup>35</sup>

29. While the international comparisons mentioned above are useful, there are more concrete legal strategies for arriving at an interpretation of the American Convention. The Vienna Convention on the Law of Treaties establishes rules for the interpretation of Treaties, and Article 31 of the Vienna Convention says that the ordinary meaning of the terms must be taken into account in their context. The context includes the preamble, annexes and any agreements or instruments made "in connection with the conclusion of the treaty."<sup>36</sup> To this end, it is important to note the preamble of the American Convention, where the State parties reaffirmed their "intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."<sup>37</sup> Perhaps even more illuminating is Article 29 of the Convention, entitled "Restrictions Regarding Interpretation":

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

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<sup>32</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

<sup>33</sup> See Eur. Ct. H.R., *Case of Gaskin v. United Kingdom*, Judgement of 7 July 1989, Application No. 000104054/83; *Guerra and Ors v. Italy*, *supra*, note 30.

<sup>34</sup> Emphasis added. American Convention on Human Rights, in BASIC DOCUMENTS, *supra*, note 22, Article 13.1.

<sup>35</sup> See Toby Mendel, "Freedom of Information as an Internationally Protected Human Right", *supra*, note 30, 3.

<sup>36</sup> See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 [hereinafter Vienna Convention on the Law of Treaties], Article 31.2.

<sup>37</sup> American Convention on Human Rights, in BASIC DOCUMENTS, *supra*, note 22, Preamble.

- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

30. The emphasis on choosing the least restrictive interpretation possible and the dramatic importance of representative democracy in these contextual excerpts both suggest that an interpretation of the word "seek" that protects the right of access to state-held information is appropriate. The Vienna Convention on the Law of Treaties also offers other tools that further support this outcome.<sup>38</sup>

31. Article 31.3.b of the Vienna Convention establishes that "[t]here shall be taken into account, together with the context...any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation." In the case of the American Convention on Human Rights, the relevant interpretations in the course of its application are those made by the Inter-American Court and Commission. The Commission has unambiguously interpreted Article 13 to include a right of access to state-held information, and the Court's jurisprudence seems to support this analysis. Consequently, guaranteeing access to state-held information must be understood as more than a way of achieving political, fiscal, and socioeconomic advantage; it is also a human right protected by the American Convention.

## 2. Implementation of Access to Information regimes

32. Achieving an access to information regime that complies with the requirements of the American Convention on Human Rights is much more complex than simply declaring that the public may have access to state-held information. There are specific legislative and procedural characteristics that must be exhibited by any compliant access to information regime, including: a principle of maximum disclosure, a presumption of publicity with respect to meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and deadlines, independent review of denials, and sanctions for noncompliance. Even given all of these qualities, an access to information law could still never be successful without the presence of strong political will to implement it, along with an active civil society.

33. The foundation of any compliant access to information law is a presumption that all information held by public bodies should be subject to disclosure, which is sometimes referred to as the "principle of maximum disclosure."<sup>39</sup> Of course, information held by public

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<sup>38</sup> See, e.g., Vienna Convention on the Law of Treaties, *supra*, note 36, Article 32, which allows interpretation of the "preparatory work of the treaty" in certain cases. However, the preparatory work of the American Convention on Human Rights makes it clear that "the debate turned on aspects of technical precision more than it did on substance" (Report of the Rapporteur of Committee I, Doc. 60 19 Nov. 1969, page 7). In fact, none of the member States commented on the language that subsequently became Article 13.1, and it was accepted in the form as it appeared in the Draft Convention. There is no documentation concerning interpretation of the word "seek."

<sup>39</sup> See, e.g., Article XIX, *The Public's Right to Know: Principles on Access to Information Legislation* (June 1999), available in <http://www.article19.org/docimages/1113.htm> [hereinafter Freedom of Information Principles], Principle 1. Article XIX is a global non-governmental organization dedicated to promoting freedom of expression and access to official information. Its Freedom of Information Principles have been used widely by international organizations and NGOs. See, e.g., Annual Report 1999, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.111, Doc. 3 rev., Vol. III, at 88; continued...

authorities is not acquired for the benefit of the officials that control it, but for the public as a whole.<sup>40</sup> For this reason, an access to information law must ensure that "[p]ublic bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information."<sup>41</sup> Everyone present in the territory of the country should benefit from this right. The exercise of this right should not require individuals to demonstrate a specific interest in the information."<sup>42</sup> New access to information regimes will need to openly promote this principle of maximum disclosure, through public dissemination of information regarding the right of access to information, its scope and its attendant procedures. Training within State organs is equally important, and should address how to maintain and access records efficiently, as well as the importance and legal protection of access to information.<sup>43</sup>

34. Another essential element in the provision of the right of access to information is the presumption of openness with respect to certain important government functions. First, there should be a presumption that all meetings of governing bodies are open to the public. This tenet should affect any meeting involving the exercise of decision-making power, including administrative proceedings, court hearings, and legislative proceedings. Meetings may only be closed in accordance with established procedures and where adequate justifications exist, and the decision itself must always be public.<sup>44</sup> Second, public bodies should be under obligation to publish key information, including:

- operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public;
- information on any requests, complaints or other direct actions which members of the public may take in relation to the public body;
- guidance on processes by which members of the public may provide input into major policy or legislative proposals;
- the types of information which the body holds and the form in which this information is held; and
- the content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision.<sup>45</sup>

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...continued

Commission on Human Rights Resolution 2001/47, UN Commission on Human Rights, 57<sup>th</sup> Sess. Supp. No. 3, at 209, E/CN.4/RES/2001/47 (2001), Preamble.

<sup>40</sup> See Toby Mendel, "Freedom of Information as an Internationally Protected Human Right." Article XIX, *supra*, note 30, 1.

<sup>41</sup> Freedom of Information Principles, Principle 1.

<sup>42</sup> Freedom of Information Principles, Principle 1.

<sup>43</sup> Freedom of Information Principles, Principle 3.

<sup>44</sup> Freedom of Information Principles, Principle 7.

<sup>45</sup> Freedom of Information Principles, Principle 2.

35. The right of access to information as protected by the American Convention implicitly contains a broad understanding of the word "information," and States must match this breadth in their own laws. The public should have access to all records held by a public body, regardless of the source; the information may have been produced by a different body but should still be accessible. The date of production is also irrelevant. In addition, "information" encompasses all types of storage or retrieval systems, including documents, film, microfiche, video, photographs, and others.<sup>46</sup>

36. The cost of searching and duplication can be significant for certain requests, so access to information laws may include provisions about charging a reasonable fee to those who request information. However, the cost of gaining access to information must never be high enough to deter potential applicants. Some states differentiate between commercial requests and private or public interest requests to address this problem.<sup>47</sup>

37. Access to information laws must also establish a reasonable but strict deadline, requiring States to respond in a timely manner. In order to avoid putting an undue burden on the public body, some laws may choose to have a short time limit in which the State must acknowledge receipt of the request, and then up to several more weeks to substantively comply with the request. Requests should be handled promptly on a "first come, first served" basis, except when an applicant indicates an urgent need for the information, in which case the documents should be provided immediately.<sup>48</sup>

38. Every adequate access to information regime must also protect an individual's right to appeal any decision in which information is denied. The independent administrative body charged with hearing this appeal can be an existing body such as an Ombudsman or Human Rights Commission or one established for this purpose. It should be composed of independent persons who are appointed by representative bodies, and required to meet standards of competence and follow strict conflict of interest rules. The body should have full powers to investigate any appeal, and to dismiss the appeal or require the body to disclose the information. When faced with a negative decision by the administrative body, both the applicant and the public body should have the right to appeal to the courts.<sup>49</sup>

39. In addition to these remedies, there must be a system of sanctions in place, in the event that an agency fails or refuses to comply with the access to information law. The independent administrative body that hears appeals should have the power to fine public bodies for obstructive behavior. It should also have the power to refer certain cases to the court system, if the proceedings disclose evidence of criminal activity, such as damaging or destroying records, using documents for an illegal purpose, or criminal obstruction of access.<sup>50</sup>

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<sup>46</sup> Freedom of Information Principles, Principle 1. See also, Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussein, UN Doc. E/CN.4/1999/64, 29 January, 1999, para. 12.

<sup>47</sup> Freedom of Information Principles, Principle 6.

<sup>48</sup> Kate Doyle, *Freedom of Information in Mexico*, 2 May 2002, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index3.html>.

<sup>49</sup> See, e.g., Freedom of Information Principles, Principle 5.

<sup>50</sup> Freedom of Information Principles, Principle 5.

40. Finally, a successful access to information regime is absolutely dependent on the substantial political will necessary to implement it. For example, there must be a willingness to allocate public funds toward the establishment of an independent appellate body as well as educational programs to inform the public. Public officials must also be willing to adjust their day-to-day practices to consistently reflect a culture of openness. Perhaps most importantly, civil society must be willing and able to capitalize on the right of access to information in favor of the public interest. Non-governmental organizations and individual citizens can do this by participating in the debate surrounding the formation, implementation, and utilization of the laws that guarantee access to information, and then by using these laws to participate more fully in their democracies.

### 3. Exceptions to the Presumption of Publicity

41. Access to state-held information must be subject to certain exceptions, since there are legitimate state goals that could be harmed by the publication of particularly sensitive information. In Resolution AG/RES 1932 (XXXIII-0/33), the General Assembly of the Organization of American States recognized that “the goal of achieving an informed citizenry must sometimes be rendered compatible with other societal aims such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect” and urged member States “to take into consideration the principles of access to information in drawing up and adapting national security laws.”

42. Article 13.2 of the American Convention on Human Rights provides for circumstances under which States can deny public access to sensitive information and still comply with their obligations under international law. In this respect, the Convention states that restrictions must be expressly defined in the law and be “necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of the national security, public order, or public health or morals.”<sup>51</sup> As was recently pointed out,<sup>52</sup> it follows from this principle that exceptions must be provided by legislation which is carefully drafted and widely publicized, and approved by the formal mechanisms established in the legal systems.<sup>53</sup> Consequently, exceptions that are not expressly defined by law or do not fit reasonably into one of these categories are not acceptable. The Inter-American Court wrote in 1985 that limitations to the rights granted in Article 13 “must meet certain requirements of form, which depend upon the manner in which they are expressed. They must also meet certain substantive conditions, which depend upon the legitimacy of the ends that such restrictions are designed to accomplish.”<sup>54</sup>

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<sup>51</sup> American Convention on Human Rights, in BASIC DOCUMENTS, *supra*, note 22, Article 13.2.

<sup>52</sup> José Antonio Guevara, “*El Secreto Oficial*,” in *Derecho de la Información: Conceptos Basicos, Colección Encuentros*, Ecuador, August 2003, 438-439.

<sup>53</sup> *Id.*, footnote 342. Guevara notices that the Inter-American Court of Human Rights has said that: “Within the framework of the protection of human rights, the word “laws” would not make sense without reference to the concept that such rights cannot be restricted at the sole discretion of governmental authorities. To affirm otherwise would be to recognize in those who govern virtually absolute power over their subjects. On the other hand, the word “laws” acquires all of its logical and historical meaning if it is regarded as a requirement of the necessary restriction of governmental interference in the area of individual rights and freedoms. The Court concludes that the word “laws,” used in Article 30, can have no other meaning than that of formal law, that is, a legal norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State”, Inter-American Court of Human Rights, The Word “Laws” in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, May 9, 1986, Inter-Am. Ct. H.R. (Ser. A) No. 6 (1986).

<sup>54</sup> Advisory Opinion OC-5/85, *supra*, note 14, para. 37.

43. The list of materials or documents that might be subject to public knowledge or classified as “secret” by the States generally comprise those related to personal privacy; national defense; external relations; prevention, prosecution, and punishment of illegal conduct (even criminal behavior); the functioning of public administration; and the economic interests of the State.<sup>55</sup>

44. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information are guidelines that the Commission, like other international authorities, considers to provide authoritative guidance for interpreting and applying the right to freedom of expression in such situations.<sup>56</sup>

45. It is consistent with the Johannesburg Principles<sup>57</sup> that when one of the criteria provided by Article 13 of the American Convention is used to justify a restriction on the disclosure of state-held information, the burden of proof is on the State to show that the restriction is compatible with the standards of the Inter-American System of Human Rights. To meet this burden, the government must show that the information meets a strict three-part test:

1. the information must relate to a legitimate aim listed in the law;
2. disclosure must threaten to cause substantial harm to that aim; and
3. the harm to the aim must be greater than the public interest in having the information.<sup>58</sup>

46. In fulfilling the first requirement of this test, the aim is only legitimate if it is compatible with the limited exceptions listed in Article 13.2 of the American Convention. In addition, the aims that are listed in the law should be defined narrowly and precisely, both in terms of content and duration. For example, the justification for classifying information on the basis of national security should no longer be available when the threat subsides.<sup>59</sup> All

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<sup>55</sup> See José Antonio Guevara, *El Secreto Oficial*, in “*Derecho de la Información*” *supra*, note 52, 431-432.

<sup>56</sup> See, e.g., The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (November 1996), *available at* <http://www.article19.org/docimages/511.htm>, last visited 30 July 2003 [hereinafter Johannesburg Principles]. The Johannesburg Principles constitute a set of voluntary principles drafted by an international group of experts on human rights and media law, and are frequently invoked by the UN Commission on Human Rights (see, e.g., Commission on Human Rights Resolution 2002/48, UN Commission on Human Rights, 58th Sess., UN Doc. E/CN.4/RES/2002/48 (2002), Preamble; Resolution 2001/47, UN Commission on Human Rights, 57th Sess., Supp. No. 3, at 209, E/CN.4/RES/2001/47 (2001), Preamble, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (See e.g., Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45, UN Commission on Human Rights, 52<sup>nd</sup> Sess., E/CN.4/1999/39, 22 March 1996, para. 4), the UN Special Rapporteur on the independence of judges and lawyers (See, e.g. Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Kumaraswamy, Addendum, Report on the mission to Peru, UN Commission on Human Rights, 54<sup>th</sup> Sess., E/CN.4/1998/39/Add.1, 19 February 1998, introduction.) and the Special Representative of the Secretary-General on Human Rights defenders (See e.g. Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61, UN Commission on Human Rights, 57<sup>th</sup> Sess, E/CN.4/2001/94, 26 January 2001, para. 14)., and the Special Representative of the Secretary-General on human rights defenders.

<sup>57</sup> Johannesburg Principles, Principle 1(d).

<sup>58</sup> Freedom of Information Principles, Principle 4.

<sup>59</sup> Freedom of Information Principles, Principle 4.



exceptions listed in the law should be based on the content, rather than the type, of document requested.<sup>60</sup>

47. In fulfilling part two of the above test by assessing whether the harm threatened is "substantial," States must consider both the short and long term consequences of the disclosure. As an example, exposing a pattern of bribery in the legislature may have negative consequences for the stability of the public body in the short term. However, in the long term it will help eliminate corruption and strengthen the legislative branch. Thus, the *overall* effect of disclosure must be substantially harmful in order to justify an exception.<sup>61</sup>

48. Finally, part three of the test involves an explicit balancing of the harm in question with the public interest in releasing the information. In the above example, the state-held information that exposes bribery may be private in nature, but the public interest in exposing corruption among democratic representatives should outweigh the legitimate aim of privacy. Thus, in order to protect the fundamental right of its citizens to access to state-held information, every justification given by a State must do more than relate to one of the aims in Article 13.2. The justification must also threaten to cause substantial harm to the aim, and this harm must be greater than the public interest in having the information.

49. This process of evaluation required to adequately justify a denial of access to state-held information takes on particular urgency and importance when the legitimate aim in question is that of protecting national security. Restrictions to access to information on these grounds must be highly scrutinized in order to determine whether they are legitimate. In the Report of the Inter-American Dialogue it was noted that:

[T]he standards of the inter-American system—whereby rights can be restricted only under certain rules—may provide an appropriate foundation for the legislatures to embrace the principle of strict scrutiny in matters of national security. One such rule holds that the restriction must be equal to the objective sought. Since Article 13 of the American Convention on Human Rights does indeed include information access rights, the principle of strict scrutiny may in fact be considered to apply.<sup>62</sup>

50. In its Report on Terrorism and Human Rights, the Inter-American Commission on Human Rights highlighted the importance of the Johannesburg Principles with the objective of creating a balance between the public's right to information and the state's legitimate need to protect keep information secret in order to protect national security.<sup>63</sup> In this report, the Commission points out that the Principles confirm that "[a]ny restriction on the free flow of information may not be of such nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law have been committed".<sup>64</sup>

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<sup>60</sup> Freedom of Information Principles, Principle 4.

<sup>61</sup> Freedom of Information Principles, Principle 4.

<sup>62</sup> Comment by Victor Abramovich, *supra* note 6, 16.

<sup>63</sup> See IACHR, *Report on Terrorism and Human Rights*, *supra*, note 25, 203-204.

<sup>64</sup> Johannesburg Principles, Principle 19.

Further, the Report stresses that any exemption provided in access to information laws "must not only serve to protect the national security or ability to maintain public order, it must also require that the information should be disclosed unless the harm to one of these legitimate interests would be substantial."<sup>65</sup>

51. The Johannesburg Principles define legitimate national security interests, stating:

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose or demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.<sup>66</sup>

52. The Johannesburg Principles acknowledge that, when facing a lawfully declared state of emergency, States may have to impose additional restrictions on access to information, but "only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law."<sup>67</sup> In such cases, States bear the burden of proof in showing that the restrictions are not excessive in light of the exigencies of the situation. States that are under lawfully declared emergency situations and considering suspending any guarantees under Article 13 of the Convention should take into account the importance of freedom of expression for the functioning of democracy and guaranteeing other fundamental rights.

53. To the extent that access to information must be restricted in times threatening public order or national security, the State must carefully balance the threat with the public interest, and define the exceptions in a way that does not intensify the precarious status of human rights obligations. Thus, the Johannesburg Principles dictate that "[a]ny restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed."<sup>68</sup> Indeed, governments may not restrict the entry of the above parties even into areas that are known to be experiencing violent conflict, unless doing so would pose "a clear risk to the safety of others."<sup>69</sup>

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<sup>65</sup> See IACHR, *Report on Terrorism and Human Rights*, *supra*, note 25, 204.

<sup>66</sup> Johannesburg Principles, Principle 2.

<sup>67</sup> Johannesburg Principles, Principle 3.

<sup>68</sup> Johannesburg Principles, Principle 19.

<sup>69</sup> Johannesburg Principles, Principle 19.

54. It is equally important that restrictions on access to information do not thwart the guarantee of fundamental human rights in the aftermath of threats to national security. As such, any restrictions based on national security should be bounded by a reasonable time limit. The Inter-American Commission acknowledged this principle in its 1998 Annual Report:

The administration of swift and effective justice, especially in exposing, sanctioning, and providing remedy for atrocities or grave violations of human rights by agents of the state, often requires reference to documents that have been classified as secret or inaccessible for reasons of national security. Maintaining State secrecy in such cases perpetuates impunity and erodes State authority, inwardly and outwardly. Such legal and administrative obstacles must be removed, and the way cleared for the Commission to establish state and individual responsibility for such reprehensible conduct, with all of the legal and moral consequences it entails, by opening the archives and declassifying documents requested by appropriate national as well as international authorities.<sup>70</sup>

55. Finally, it is important that modern democracies establish a series of constitutional checks on the "official secrets." Keeping a record on secret information is necessary to ensure that it exists in accordance with legislation. In some cases, a public organ is created to this effect, and other times it is the Judicial Power which exerts this control.<sup>71</sup> In every case, it must be evaluated whether the restrictions imposed outweigh the importance of the public's right to information.

## C. Access to Information in the Member Countries

### 1. Introduction

56. The General Assembly of the OAS resolved, in Paragraph 6 of Resolution 1932 (XXXIII-0/03), to "instruct the Inter-American Commission on Human Rights, through the Special Rapporteur for Freedom of Expression, to continue including in its annual report a report on access to public information in the region." Pursuant to this mandate, this section of this report will summarize the current situation of the member States in relation to the right to freedom of information, in an effort to record the developments of the States in this area.

57. To this end, in July 2003, and following the procedure adopted for the 2001 Annual Report, an official questionnaire was issued to the permanent missions of the OAS member States, requesting them to provide information on constitutional and legal provisions as well as facts about jurisprudence and implementation procedures regarding access to information.<sup>72</sup> The information received from the States has been integrated with research done

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<sup>70</sup> See IACHR, Annual Report 1998, Chapter 7, *Recommendations to member states in areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights*, para. 20.2. OEA/Ser.L/V/II.102 Doc. 6 rev. April 16, 1999, Original: Spanish.

<sup>71</sup> This has been pointed out by Guevara, *supra*, note 52, 439-440.

<sup>72</sup> In transmitting the questionnaire, the Office of the Special Rapporteur included the following clarification: "The concept of "access to information" is often confused with the concept of "*habeas data*". As explained in the 2001 Annual Report, the Office of the Special Rapporteur for Freedom of Expression understands that "access to information" refers to state-held information that should be available to the public. An action of *habeas data* refers to the right of any individual to access information *referring to him*, and to modify, remove or correct such information when necessary. This questionnaire only requests information about access to public information." The questions were formulated as follows:

1. Are there constitutional provisions that recognize the right to access to state-held information?  
Please attach the text of the pertinent norms.

by media sources and non-governmental organizations in order to provide an overview of the situation in each member State.

58. In this chapter, the Special Rapporteur reports on existing laws and practices in the member States of the Organization of American States with respect to the right of access to information. This account demonstrates that the topic of access to information has received a remarkable amount of attention during the past two years. Several states, such as Mexico, Jamaica, Panama, and Peru, have passed laws guaranteeing this right or are currently considering similar legislation, and civil society has been vigilant in observing the States' progress.

59. As of the date of the submission of this report to the Inter-American Commission on Human Rights for its consideration and inclusion in the IACHR's Annual Report, only the States of Argentina, Chile, Colombia, Honduras, Mexico, Paraguay, Suriname, Uruguay, and Venezuela, out of all the member countries of the Organization of American States, replied to the questionnaire sent by the Special Rapporteur. The Special Rapporteur greatly appreciates the efforts of these States in gathering the requested information, and encourages all member States of the OAS to collaborate in the preparation of future studies by this Office in order to better take advantage of the conclusions derived from them. It must be noted that the information provided below for the member States is an update of the information obtained in 2001, based on the information provided by the States in response to the questionnaire sent in July 2003, and complemented by information obtained from other sources such as non-governmental organizations (NGOs). Also, it must be noted that the excerpts below do not contain all the information submitted by the States, but rather a summary of it.

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...continued

2. Are there laws and/or regulations that recognize and protect the right to access state-held information? Please attach the text of the laws or regulations.
3. Are there laws and/or regulations that limit, restrict, or define exceptions to the right to access to information? Please attach the text.
4. Are there legal proposals under consideration that recognize and protect the right to access to information? Please attach the text of the proposals.
5. Are there legal proposals under consideration that limit, restrict, or define exceptions to the right to access to information? Please attach the text.
6. Is there any jurisprudence in tribunals of justice that concedes access to information? Please attach a copy of the decisions from leading cases.
7. Is there jurisprudence in tribunals of justice that denies access to information? Please attach a copy of the decisions from leading cases.
8. Are there public campaigns to educate civil society and public functionaries about the right to access to information? If the answer is yes, describe these campaigns.
9. Is there a system to register requests for public information? If the answer is yes, describe the system and provide the following information:
  - a. How many requests did the State receive in the last two years? If possible, indicate the total number of requests directed to each state entity.
  - b. In how many cases during the last two years were requests denied completely? Partially? If possible, provide the reasons for these denials.
10. Are there local (provincial, municipal, departmental, etc.) norms regarding the right to access to information? Please attach the text of these norms.

60. The Special Rapporteur notes that since 2001, the issue of access to information has brought greater debate amongst the civil societies of member States, and several states have adopted positive measures towards the implementation of this right. However, as expressed in previous reports, the Rapporteur still believes that member States need to display greater political willingness to work toward amending their laws and ensuring that their societies fully enjoy freedom of expression and information. Democracy requires broad freedom of expression, and that cannot be pursued if mechanisms that prevent its generalized enjoyment remain in force in our countries. The Special Rapporteur again underscores the need for States to assume a stronger commitment toward that right, in order to help consolidate the Hemisphere's democracies.

61. The following paragraphs present the information gathered with respect to domestic provisions on freedom of information in the member States.

## **2. Laws and Practices on the Right to Access of Information: Information classified by country in alphabetical order**

### **Argentina**

62. The National Constitution of Argentina does not contain a specific provision regarding free access to state-held information. The official Argentine response to the questionnaire highlights that with the constitutional Reform of 1994 Argentina granted constitutional rank to several international instruments, amongst them the American Convention on Human Rights, which guarantees the right to "seek, receive and impart information and ideas of all kinds," as stated by Article 13 of the Convention.

63. Regarding legal provisions, a bill that would provide a comprehensive guarantee of access to information is under consideration and was already approved by the House of Representatives in May 2003. The bill will allow citizens to access databases from official organs, and provides for administrative and judicial sanctions to the public officials who fail to carry out the requests. It would also make public laws, decrees, and documents that have been kept secret by the State for more than 10 years and which have not been reclassified as secret.<sup>73</sup> Although approved by the House of Representatives, the bill is held up in the Senate.<sup>74</sup> The Special Rapporteur for Freedom of Expression encourages the treatment and approval by the Senate of the Bill under consideration. In October 2003, President Néstor Kirchner signed a decree which allows any person to gain access to information held by the State and by any organ that receives contributions or subsidies from the State. The decree establishes certain exceptions, such as when information is reserved for reasons of safety, national defense, or is protected by bank or fiscal secret.<sup>75</sup>

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<sup>73</sup> *La Nación* (Argentina), May 9, 2003, available at <http://www.lanacion.com> ; *El Clarín* (Argentina), May 19, 2003, available at <http://www.clarin.com.ar>.

<sup>74</sup> *El Clarín* (Argentina), *Apoyan medida de Kirchner*, October 21, 2003, available at <http://www.clarin.com.ar>.

<sup>75</sup> *El Clarín* (Argentina); *Kirchner firma un decreto para crear transparencia y controlar lobbies*, October 20, 2003, available at <http://www.clarin.com.ar>.

64. In the City of Buenos Aires, Law No. 104 of 1998 guarantees standing for all persons to request all information held by the State. The law includes exemptions for banking secrets, professional secrets, and other information exempted by specific laws, such as privacy laws. Requests must be made in writing and justification is not required. The law determines that replies are due in 10 days, with a one-time postponement of 10 days when absolutely necessary, and further establishes that if the information is not provided within the stipulated time frame, the requestor may seek a Court injunction to obtain the information, as stipulated in the national and city constitutions.<sup>76</sup>

65. At the provincial level, the Argentine response points out that several provinces have passed laws that recognize free access to information.<sup>77</sup>

66. Regarding the action of *habeas data*, Article 43 of the Argentine Constitution provides that:

All persons may file this action to ascertain what data about them is contained in public or private records or databases for the purpose of providing reports, and in the event of false or discriminatory information, can demand the removal, rectification, confidential treatment, or updating of the information concerned. The secrecy of news information sources cannot be affected.

67. National Law No. 25.326 of 2000 and Decree No. 1558 of 2001 regulate the above constitutional provision, and most provinces have also regulated in this respect in their constitutions and provincial legislation.

### **Bolivia**

68. The Bolivian Constitution does not include provisions for the action of *habeas data* or regulating access to state-held information. The Statute of Journalists, however, does include provisions in this regard.

69. Article 9 of Chapter III of the Organic Statute of Journalists provides that:

No one may abridge the journalist's freedom of expression and information, subject to prosecution for the violation of constitutional rights.

70. Article 10 provides:

No one may adulterate or conceal news information in a manner prejudicial to the truth and the general welfare. Journalists may publicly denounce such adulteration or concealment and shall be protected from dismissal or reprisals.

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<sup>76</sup> Martha Framelo, *The Freedom of Information campaign in Argentina*, posted October 14, 2003, available at <http://freedominfo.org/case/argentina.htm>.

<sup>77</sup> See Law No. 12.475 of 2002 of the Province of Buenos Aires on disclosure of information from public bodies of the Provincial State and Access to administrative documents; Law No. 8803 from 1999 of Córdoba on Access to information of acts by the state; Decree 486/1993 on Public Information; Law No. 4444 of Public Administration on publicity of the Acts of Government; Decree No. 462/1996 of Mendoza on publicity of the acts of government; Decree 929/2000 of the Province of Misiones; Law No. 1829 of 1984 and Law No. 3441 of 2002 of Rio Negro.

71. Although these articles exist, the professional statute does not carry the legislative force necessary to effectively ensure the citizenry's right of access to information or afford persons the protection inherent in the action of *habeas data*.

72. The Office of the Special Rapporteur has received information regarding an initiative by the government of Bolivia to carry out workshops for the discussion of a bill that would guarantee access to state-held information.

## Brazil

73. Article 5 of the Constitution of the Federative Republic of Brazil provides:

All persons are assured of access to information and protection for the confidentiality of their sources when necessary for the exercise of their profession (...) (Section XIV).

[T]he right to *habeas data* is granted: a) to ensure knowledge of information relating to the person of the petitioner, contained in records or data banks of government entities or of public entities; b) for the correction of data, if the petitioner does not prefer to do so through confidential, judicial, or administrative proceedings (...) (Section LXXII)

74. A bill on Access to Public Information that would regulate Article 5 of the Constitution is being examined by the National Congress, and will be treated by the Chamber of Representatives. The bill would establish that every citizen has the right to receive information of personal, collective, or general interest from public organs, to be rendered in the time set out by law, subject to penalties. The bill would exclude from this provision the information that must be kept secret to guarantee the safety of society or the State.

75. In 2001, the Ministry of Justice indicated that there are legal provisions regulating the right to information. Law 9.507 of November 12, 1997 "regulates the right of access to information subject to the *habeas data* procedure", and Law 9.265 of February 12, 1996 "regulates section LXXII of Article 5 of the Constitution...".

76. Law 8.159 of January 8, 1991 contains provisions on national policy with respect to public, private, and other archives, regulated by decrees 1.173 of June 29, 1994 and 1.461 of April 25, 1995. There are also two bills in this area, one in the Federal Senate and the other in the Chamber of Deputies.

77. Decree No. 4.553 of December 27, 2002, signed by former President Cardoso and maintained by President Lula da Silva, extends the time limit for maintaining the confidentiality of secret documents to 50 years, and further provides for an indefinite renewal of this time limit.

## Canada

78. Paragraph 2b of the Canadian Charter of Rights and Freedoms establishes the right of the media to access information referring to judicial proceedings, but, according to the information submitted by the State in 2001, this "does not include the general right of access to information generated in the process of government," since "in general terms, section 2b pertains to intellectual freedom and the right to communicate with others."

79. In 1997, the Supreme Court of Canada ruled in favor of access to information in a case brought against the Minister of Finance. The arguments were based on "the facilitation of democracy in helping to ensure that citizens obtain requested information and participate in a significant way in the democratic process[.]"

80. With respect to legal provisions, the Privacy Act governs the protection of personal information held by government institutions, and the Access to Information Act



guarantees the right, subject to certain exceptions, of access to files held by government institutions.

81. Any physical or legal person present in Canada can file requests under the Access to Information Act, subject to the imposition of reasonable fees. From April 1, 1998 to April 1, 1999, 14,340 requests for access to information were made under the Act. Requests for information under the Privacy Act are free of charge.

82. Requests under the Access to Information Act must be processed within a period of 30 days, although "under special circumstances" this period can be extended one time by government institutions. The duration of this extension is not limited, and the reasons given for denial of information range from the exception based on the right to confidentiality of commercial information, to the exception based on the right to confidentiality of information received from other governments.

83. According to the information received in response to the questionnaire sent in 2001, the Royal Canadian Mounted Police (RCMP) and the Canadian Secret Intelligence Service (CSIS) can deny information "that may interfere with law enforcement or national security." The Access to Information Act is limited by the exceptional circumstances indicated above, although the Act stipulates that such exceptions must be used in moderation and only when necessary.

84. Finally, the system for archiving state information includes various provisions for the preservation of documents: the National Archives Act specifies that no federal government document may be destroyed without the permission of the National Archivist, who publishes an agenda indicating what documents can be destroyed and when. The Access to Information Act was amended to incorporate a provision making the destruction of documents a criminal offense, as an infringement of the rights of citizens to access information.

## **Chile**

85. Article 19.12 of the Political Constitution of the State of Chile ensures the freedom to impart opinions and to inform, without prior censorship, in any way and by any means. The Constitution also provides for the right to petition to the authorities on any matter of public interest.

86. Law No. 19.653, known as the Administrative Probity Act (*Ley de Probidad Administrativa*), was published in 1999 and reforms the constitutional organic law on government administration. The Administrative Probity Act incorporates a series of provisions on the publicity of the acts of the Administration of the State, stating that the administrative acts of the organs of the Administration of the State and the documents which support them are public. It also regards as public the reports and records of the private corporations which provide public services and of government-controlled corporations.

87. Article 11 of the Administrative Probity Act provides that it is legitimate to limit access to information on the grounds that the effective functioning of government agencies

would be impaired. Concern over this broad language has been expressed, since it could give rise to abuses of discretionary authority by government agents.<sup>78</sup>

88. In January of 2001, a Supreme Decree was passed to regulate, pursuant to Article 13 of the Organic Law on Government Administration (*Ley de Bases Generales de la Administración*), the cases of secret and reserved information applicable to administrative acts, documents, and records held by the organs of the Administration of the State. It has been pointed out that the Decree has exceeded the provision of the law which it regulates by illegitimately extending the cases of secret and reserved information to administrative acts, and that the limitations established by the Decree are too broad in scope and allow for great discretion on behalf of the state organs in charge of its implementation.<sup>79</sup> Another source states that the regulatory regime adopted undermines the principle of transparency guaranteed by the Administrative Probity Act and is contrary to the provisions of the Political Constitution and international treaties.<sup>80</sup>

89. In May 2003, Law No. 19.880 was passed, which establishes standards for the administrative procedures of the organs of the Administration of the State, adopting the principle of transparency regarding administrative procedures and allowing each citizen to keep track of the administrative processes.

## Colombia

90. Article 20 of the Political Constitution of Colombia of 1991 states that:

Every person is guaranteed the freedom to express and disclose his thoughts and opinions, to inform and to receive impartial and truthful information, and to found broadcasting media.

91. Article 23 of the Political Constitution of Colombia of 1991 states that:

Every person has the right to respectfully request information to the authorities for reasons of general or particular interest and to obtain an expeditious response. The Legislative Branch may regulate the exercise of this right with respect to private organizations to guarantee fundamental rights.

92. Further, Article 74 of the Constitution of Colombia of 1991 states that:

Every person has the right to access public documents, with the exceptions provided by law.

93. The Constitution also recognizes the action of *habeas data* as a fundamental right in its Article 15, which specifies that:

(...) All persons are entitled to their personal and family privacy and their good name, which the state must respect and protect. They also have the right to investigate, update, and rectify information about them that has been collected and entered into the databases and archives of public and private entities (...)

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<sup>78</sup> Pedro Mujica, *Acceso a la información según la legislación chilena*, available at <http://www.revistaprobidad.info/23/008.html>.

<sup>79</sup> See *Informe Annual sobre Derechos Humanos en Chile 2003 (Hechos de 2002)* (Annual Report on Human Rights in Chile 2003 (Facts from 2002)), *Facultad de Derecho, Universidad Diego Portales*, 231.

<sup>80</sup> *El Mercurio* (Santiago de Chile), November 18, 2003.

94. With respect to legal or regulatory provisions, Article 15 of the Constitution is supplemented by Chapter IV of the Code of Administrative Procedure (*Código Contencioso Administrativo*), on the right to request information. According to this chapter, any person has the right to consult documents on file in public offices and to receive copies of those documents, provided that they are not legally considered to be classified information and are not related to national defense or security. Any individual can exercise his right to request information from the state in Colombia. The Code of Administrative Procedure provides that requests for information must be processed within 10 days of their receipt.

95. Article 12 of Law 57 of July 5, 1985 entitles any person to consult documents held by public offices and to receive copies of those documents.

96. Regarding restrictions, the list of classified documents has been expanded with the approval of a law under which disciplinary and administrative investigations conducted by oversight agencies in connection with disciplinary and fiscal responsibility proceedings are to be kept secret (Anticorruption Statute, Law No. 190 of 1995, Article 33).

97. Decree 1972 of 2003 of Telecommunications establishes in Article 58 that the operator of telecommunication services may indicate to the Ministry of Communications expressly and in writing which information must be considered to be confidential according to law. Article 60 of this law requires that the Ministry of Communications maintain the confidentiality of the information received in this character.

98. Article 110 of the Code of Administrative Procedure establishes that:

The records of sessions of the Council of State, its divisions or sections and the administrative courts, shall be reserved for four years. The opinions of the Council of State, when acting as a consulting body of the government, shall also be reserved for the same period; but the government may disclose them or authorize their publication when it considers it advisable (...)

99. Law No. 270 of 1996, known as the "Statute Law of the Administration of Justice" (*Ley Estatutaria de la Administración de Justicia*), establishes the publicity and reserve criteria regarding the records of other organs of the Administration of Justice.

100. Article 323 of the new Code of Criminal Procedure (*Código de Procedimiento Penal*) establishes the confidentiality of preliminary findings during criminal procedures. However, the legal counsel of the accused who have rendered a preliminary statement may access this information and request copies. Article 330 of the Code also establishes restrictions to the release of information during preliminary criminal proceedings. Article 418 of the Code establishes a punishment for the public official who reveals information that has been classified as secret.

101. Article 114 of the Code of the Minor (*Código del Menor*) established that documents related to adoption procedures shall be kept reserved for 30 years.

102. Article 95 of Law No. 734 of 2002 regulates the confidentiality of information regarding disciplinary actions:

In the ordinary procedure, disciplinary actions shall be confidential until the charge sheet or the order to initiate the action is formulated, without prejudice to the rights of the individual who is the subject of the action. In the special procedure before the Solicitor General of the Nation and in the verbal procedure, until the decision to call for a hearing.

The person under investigation will have the obligation to refrain from disclosing the evidence that is considered to be reserved by provision of the constitution or the law.

## Costa Rica

103. Article 27 of the Costa Rican Constitution ensures the freedom to petition, individually or collectively, to any public official or government agency, and the right to obtain prompt resolution. This right is protected by means of a summary procedure in the Constitutional Chamber in the case of arbitrary denial of information.

104. This is an expeditious procedure commonly used by journalists, who, under the procedure established by Article 31 of the Law of Constitutional Jurisdiction, must previously send a letter to the official from whom the information is being requested. If an adequate response is not received within 10 working days, the summary procedure is instigated before the Constitutional Chamber, which conducts a hearing of the public official concerned. If it is determined that the decision to deny the information was not satisfactory, the official is ordered to provide the information, subject to criminal prosecution for contempt should he fail to do so.<sup>81</sup>

105. Further, Article 30 of the Constitution expresses that:

The free access to administrative departments for the purposes of obtaining information on matters of public interest is guaranteed. State secrets are exempt from this provision.

106. Regarding legal provisions, Article No. 273 of the General Law of Public Administration (*Ley General de la Administración Pública*) of Costa Rica establishes that:

1. Access to parts of the proceedings will be denied when its disclosure may compromise secrets of the state or confidential information of the opposing party, or generally, when the possession of such contents grants the party an undue benefit or provides the party with an opportunity to illegitimately cause damage to the Administration, the opposite party or third parties, within or outside the proceedings.

2. There is a rebuttable presumption of nondisclosure of resolutions under consideration, reports directed to consultative organs, and opinions issued by these before they have been adopted.

107. In a 2002 case, the Constitutional Chamber of the Supreme Court of Costa Rica held that the refusal by the President of the Central Bank of Costa Rica to disclose a report of the International Monetary Fund entailed a violation of the right of information of the citizens of Costa Rica. The Court expressed that: "the State must guarantee that information of a public character and importance is made known to the citizens, and, in order for this to be achieved, the State must encourage a climate of freedom of information (...) In this way, the State (...) is the first to have an obligation to facilitate not only the access to this information, but also its

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<sup>81</sup> Report of the Inter-American Press Association (IAPA), available at <http://www.sipiapa.org>.

adequate disclosure and dissemination, and towards this aim, the State has the obligation to offer the necessary facilities and eliminate existing obstacles to its attainment."<sup>82</sup>

108. The Constitutional Chamber of the Supreme Court of Costa Rica has also upheld the right of access to state-held information in a case of May 2, 2003.<sup>83</sup> In this case, the Board of Directors of the Bank of Costa Rica had denied the request of information presented by the Representative José Humberto Arce Salas regarding irregularities in the private financing of political parties, on the grounds that such information was protected by bank secrecy and the right to privacy. The Court assessed that "(...) in the case that there is unequivocal evidence that a political party has transferred part of its private funds to a privately-owned company (...) the information would cease to be of a private nature (...) and become of public interest."

### **Cuba**

109. There are no legal or constitutional provisions protecting or promoting free access to information in Cuba. The legal system places a number of restrictions on the capacity to receive and disclose information. In February 1999, a law was approved "to protect national independence and the national economy", known as Law 88, permitting the government to control the information that can be disclosed within the country. This law establishes sanctions of up to 20 years imprisonment, the confiscation of personal property, and fines. According to the information received, the journalists Bernardo Arévalo Padrón, Jesús Joel Díaz Hernández, Manuel González Castellanos, and Leonardo Varona are currently in prison for such alleged offenses.

### **Dominica**

110. Section 10 of the Constitution contains provisions recognizing the right of access to information held by the State and *habeas data*: "Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence."

### **Dominican Republic**

111. Article 8.10 of the Constitution provides that the media have free access to government and private news sources consistent with public order and national security.

112. In March 2003, Senator José Tomás Pérez presented a bill on Free Access to Public Information (*proyecto de Ley General de Libre Acceso a la Información Pública*) for

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<sup>82</sup> Appeal for constitutional protection presented by Carlos Manuel Navarro Gutiérrez, General Secretary of the Employees Union of the Ministry of Economy, in favor of La Nación S.A., against Eduardo Lizano Fait, Executive President of the Central Bank of Costa Rica. File: 02-000808-0007-CO, Res. 20002-03074.

<sup>83</sup> Appeal for constitutional protection presented by the Representative José Humberto Arce Salas against the Bank of Costa Rica. File: 02-009167-0007-CO, Res. 2003-03489.

consideration. The purpose of this bill is to guarantee the right of individuals to investigate and to receive information and opinions and to disseminate them.

113. The bill establishes, in its Article 1, that "all persons have the right to request and to receive truthful, complete, adequate and opportune information from any organ of the Dominican State and of all corporations, firms or public companies with state participation."

114. Article 2 of the bill expresses that the right established in Article 1 includes the right to access the information contained in public documents and files, activities performed by organizations or persons of a public nature, as long as it does not affect national security, public order, health, public morals, or the reputation of others.

115. Article 3 of the bill establishes the obligation of the State to publish all the acts and activities of the public administration including those of the Legislative and Judicial Branches. This information includes the presentation of budgets and calculation of resources and approved expenses, its evolution and state of execution. It also includes the programs and projects, their budgets, terms and execution, bids, offerings, purchases, expenses and results, listing of officials, legislators, magistrates, employees, categories, functions and salaries. Also, the lists of beneficiaries of welfare programs, subsidies, scholarships, pensions and retirement benefits, statements of account of the national debt, indicators, and statistics must be published.

116. Article 4 of the bill establishes that all the powers and organisms of the State will have to orchestrate the publication of their respective Web pages for the information dissemination and assistance to the public.<sup>84</sup>

## **Ecuador**

117. The first paragraph of Article 81 of the Political Constitution of the Republic of Ecuador provides that:

The state shall guarantee the right, in particular for journalists and social commentators, to obtain access to sources of information; and to seek, receive, examine, and disseminate objective, accurate, pluralistic, and timely information, without prior censorship, on matters of general interest, consistent with community values.

118. Paragraph 3 of this same article provides that:

Information held in public archives shall not be classified as secret, with the exception of documents requiring such classification for the purposes of national defense or other reasons specified by law.

119. The Office of the Special Rapporteur has received information regarding several bills that have been presented before Congress on Access to Public Information in Ecuador. Bill No. 23-931 on Disclosure and Access to Information grants the citizens access to information held by the organs of the public sector, with the exception of the information of a personal or reserved nature that has been classified as such by a competent public official. Bill No. 23-834

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<sup>84</sup> The information in the foregoing paragraphs was obtained from *Periodistas Frente a la Corrupción* and is available at <http://probidad.org/regional/legislacion/2002/025.html>

guarantees the access of information held by public entities as well as by private entities that possess public information, excluding personal data. This bill provides that information may only be classified as reserved or confidential through an executive decree. A bill for an Organic Law on Access to Public Information has been subject to a first debate in Congress, and would grant the right to access information from public or private sources. The exceptions established in this bill include information related to commercial or financial matters, information which is reserved in the international sphere, information that affects personal or family security, information related to the government's control duties and the administration of justice, and information on safety and national defense.

120. Article 28 of the Modernization of the State Act (*Ley de Modernización del Estado*) regulates the right to petition, providing that:

All requests must be resolved within a period of no more than 15 days reckoned from the date of their submission, unless a legal provision explicitly provides otherwise. This practice shall not be suspended, and the issuance of decisions in response to requests or claims submitted by members of the community shall not be denied by any administrative agency. In all cases, once the specified period has elapsed, silence by the administrative agency shall be construed to mean that the request has been approved or that the claim has been resolved in favor of the claimant(...)

In the event that any administrative authority rejects a petition, suspends an administrative procedure, or fails to issue a decision within the period specified, criminal proceedings may be brought against such acts as contrary to the constitutionally protected right of petition, in accordance with Article 213 of the Penal Code, without prejudice to the exercise of other actions provided for by law.

121. Article 32 of this same Act refers to access to documents, as follows:

Subject to the provisions of special laws, any party having an interest in the disposition of legally protected situations shall have the right of access to administrative documents held by the state and the various public sector agencies, so as to maximize the legitimacy and impartiality of government activities.

122. Article 33 provides for the enforcement of these legal provisions:

Public officials or employees who violate any of the provisions under this chapter shall be punished with dismissal from their posts, without prejudice to their civil, criminal, or administrative responsibility pursuant to other laws.

## **El Salvador**

123. Article 6 of the Political Constitution of El Salvador recognizes the right to freedom of expression. However, the Constitution does not contain a specific provision regarding freedom of information.

124. Some provisions establish limits to access to information.

125. The Code of Ethics of the Court of Accounts of El Salvador establishes that:

Confidentiality and the prudent use of information are basic components of the exercise of the functions of the Court. The servants of the Court must protect confidentiality and the professional

secret, without revealing information that is of their knowledge by reason of their work, except as required by law.<sup>85</sup>

126. Article 28.c of the Internal Regulations of Personnel of the Court of Accounts (*Reglamento Interno de Personal de la Corte de Cuentas de la República*) of El Salvador establishes the duty of confidentiality and reserve for the personnel and former employees of the Court.<sup>86</sup>

127. Article 66.4 of the Internal Regulations of the Executive Organ (*Reglamento Interno del Órgano Ejecutivo*) provides that: "The duties of the public employees are: (...) maintain confidentiality regarding matters that are of their knowledge by reason of their work."<sup>87</sup>

### Guatemala

128. With respect to state-held information, Article 30 of the Guatemalan Constitution provides that:

All government acts are public. Interested parties have the right at any time to obtain reports, copies, reproductions, and certifications upon request and the exhibition of such records as they wish to consult, unless they pertain to military or diplomatic matters of national security, or data provided by individuals subject to confidentiality.

129. Other information which is subject to confidentiality is information related to correspondence, telephone, radio, and cable communications, and other forms of communication available through modern technology (Article 24, Constitution of Guatemala). Financial and banking information is also protected (Article 134 of the Constitution), as well as information which may pose a threat to life, physical integrity, or security (Article 3 of the Constitution). Judicial information which is legally protected may also be withheld.

130. With respect to *habeas data*, Article 31 of the Constitution specifies that:

All persons have the right to know about information pertaining to them in state archives, files, or other records, and its intended use, as well as to correct, rectify, and update such information. Records and files regarding political affiliation are prohibited, with the exception of those maintained by election authorities and political parties.

131. Although Articles 30 and 31 of the Constitution establish the general principle of public disclosure of government acts and the action of *habeas data*, there are no provisions in Guatemalan law regulating the effective exercise of these rights, nor is there an independent body to which appeals can be filed when information is withheld.

132. Article 35 of the Political Constitution provides that:

Access to information sources is free, and no authority may limit that right.

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<sup>85</sup> Carlos Rafael Urquilla Bonilla, *Estado del Acceso a la Información Pública en El Salvador*, available at <http://www.probidad-sv.org/cac/carlosurquilla.html>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*



133. In August 2000, a bill on access to information was produced by the Office of Strategic Analysis of the Presidency of the Republic of Guatemala. This bill would regulate the right to access state-held information, and the exceptions to disclosure. The bill also regulates the action of *habeas data*. Several drafts of this bill have been studied by the government and civil society organizations.

134. A monitoring of the replies to requests for information to 67 entities that hold public information from the Capital City revealed that financial information is handled secretly by the public entities of the State. Requests for information related to public expenditures received no reply from the consulted institutions, and 70% of requests for information regarding purchases and contracting received negative responses.<sup>88</sup>

### Honduras

135. From a legal standpoint, there is no provision impeding media access to official sources. The legal provision establishing the obligation to inform is contained in Article 80 of the Constitution:

All persons or associations of persons have the right to present petitions to authorities for reasons of individual or general interest and to obtain a prompt response within the legally specified period of time.

136. The official response from Honduras to the questionnaire sent by the Office of the Special Rapporteur indicated that several laws in Honduras contain the principle of publicity of the acts of government. The Law of Organization and Powers of the Tribunals (*Ley de Organización y Atribuciones de los Tribunales*) establishes that the acts of the tribunals are public, with the exceptions provided by law. Additionally, Articles 3 and 5 of the Administrative Simplification Act (*Ley de Simplificación Administrativa*) establish the obligation of every organ of the State to develop systems for the organization of public information so as to guarantee its updating and easy access by the administration.

137. Restrictions to access to information apply to the disclosure of information on preliminary criminal procedures or of information that, if disclosed, may affect family privacy or persons under legal age. Other exceptions relate to bank secrecy and the imposition of sanctions against public officials who disclose confidential information.

138. The exercise of the right to access to information is not regulated in Honduras. However, the official response from Honduras to the questionnaire sent by the Special Rapporteur indicated that any citizen who deems his constitutional rights to have been violated may raise a *recurso de amparo* to regain or maintain the exercise of his rights.

139. On September 20, 2003, the Committee for Freedom of Expression C-Libre hosted a Regional Dialogue in the city of Choluteca on the subject of "The Right to Information

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<sup>88</sup> Monitoring exercise conducted by *Observatorio Ciudadano para el Libre Acceso a la Información*, an organization set up in September 2002 by *Acción Ciudadana, Proyecto Libre Acceso a la Información Pública*. *Observatorio Ciudadano* is composed of non-governmental organizations, associations, academic institutions and the media. See "*Manual Ciudadano*", First Edition, Guatemala, May 2003.

in the National Agenda.” Two similar meetings had been held in other regions of Honduras. During this conference, the local limitations faced by journalists, social communicators, and citizens to access information of public interest were examined. Another topic that was discussed during the meeting was the demand of the parties involved in the study for a bill on Access to Public Information and *Habeas Data*, brought by C-Libre. Also, the participants expressed a commitment to investigate the handling of reserved information of public interest in the south of the country. The National Anti-Corruption Office has also produced a draft bill on Access to Information.

### **Jamaica**

140. An Access to Information Act, approved by the Senate on June 28, 2002, is in the process of being implemented in Jamaica. The Act provides for the release of government documents but exempts the "opinions, advice or recommendations (and) a record of consultation or deliberations" of civil servants, including Cabinet members, from disclosure. As part of the Act, an Access to Information Unit within the Prime Minister's Office has been established to guide the implementation process, and establish a framework for citizens to effectively use the Act.<sup>89</sup> The implementation of the first phase of the Act was originally scheduled to begin in August 2003, but was later postponed until October 2003. In September 2003, the government announced that the Senate will not be debating the amendment to the Access to Information Act until the regulations governing its long-awaited implementation have been presented, to ensure that final consideration of the Bill and the regulations take place together.<sup>90</sup>

141. There are a number of available avenues of recourse through which information is made public by law, guaranteeing access by the public, including the press, to files and documents. These processes refer to the records and documents of the Office of the Registry of Business Enterprises, the Title Registry, and the Registry of Births and Deaths. The registries of corporate shareholders and business executives are also public.

### **Mexico**

142. The Political Constitution of Mexico includes two provisions concerning access to official information.

143. Article 6 of the Political Constitution provides that:

The expression of ideas shall not be subject to any judicial or administrative prosecution, provided that it does not offend morals, the rights of third parties, encourage criminal behavior or interfere with public order (...),

(...) the right to information shall be guaranteed by the State.

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<sup>89</sup> David Banisar, The *www.freedominfo.org* Global Survey, *Freedom of Information and Access to Government Record Laws around the world*, 28 September 2003, available at <http://www.freedominfo.org/survey/survey2003.pdf> ; International Press Institute: 2002 World Press Freedom Review, available at: <http://www.freemedia.at/wpfr/world.html>.

<sup>90</sup> Jamaica Gleaner, 4 October 2003, available at: <http://www.jamaica-gleaner.com/gleaner/20031004/news/news1.html>.

144. Article 8 of the Political Constitution provides that:

Public officials and employees shall respect the right of petition, provided it is exercised in writing and in a peaceful and respectful manner; with regard to political matters, however, only citizens of the Republic may avail themselves of this right.

A written decision shall be issued in response to all petitions by the authority to whom they are addressed; such authorities have the obligation to inform the petitioner of such decisions within a brief period of time.

145. On June 11, 2002, the Federal Law of Transparency and Access to State Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*) came into force. This law recognizes and protects the free access to public information held by the three Branches of the Government of the United Mexican States, as well as by the autonomous constitutional organs and any other federal organ. Pursuant to Article 61 of the Law, each Branch of the Government of the United Mexican States and a number of federal organs submitted regulations to comply with this law.

146. Upon concluding his official visit to the United Mexican States in August 2003, the Special Rapporteur for Freedom of Expression recognized the importance of the promulgation of the Federal Law of Transparency and Access to State Information in achieving greater transparency in government operations and for combating corruption. However, the Special Rapporteur expressed concern over the perception that the principle of maximum disclosure and transparency set forth in that law was not being strictly followed by either the Legislative Branch, the Judicial Branch, or by certain autonomous constitutional agencies, such as the National Human Rights Commission:

As regards the Legislature, it has been noted that regulations for the Chamber of Deputies are different from regulations for the Senate. These regulations were issued separately by each of the Houses. However, the Rapporteur notes preliminarily that they are not complying with certain basic principles that guarantee access to public information, such as the right to appeal to administrative institutions that guarantee their independence, in the event that information is denied by the Chamber of Deputies. Moreover, the Rapporteur heard of instances in which requests for information submitted to the National Human Rights Commission were turned down. The Rapporteur is concerned that this agency for the protection of human rights would interpret the federal transparency law in force in Mexico in a way not in keeping with its own principles.

Finally, in the judicial sector, by Supreme Court Decision No. 9/2003, certain provisions were established to regulate access to information in the possession of that Branch of the Mexican State. From a preliminary analysis, the Rapporteur notes that the interpretation of some of the articles of that decision could jeopardize access to information, since it allows certain information to be considered as confidential in criminal or family proceedings for an excessively long period of time. In the opinion of the Rapporteur, certain criminal matters may involve crimes linked to subjects of keen public interest, such as corruption, and so it is important for the people to have full knowledge of them in a democratic society, without having this entail a violation of fundamental rights or guarantees.<sup>91</sup>

147. The Federal Law of Transparency and Access to State Information set up the "Federal Institute of Access to Public Information" (IFAI, initials in Spanish), an autonomous entity with the aim of overseeing all aspects of the information process, and guaranteeing the

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<sup>91</sup> Office of the Special Rapporteur for Freedom of Expression, Press Release 89/03.

right of access to information and the protection of personal data. The Institute is empowered to review the cases in which public authorities have denied access to information, and to determine whether the denial was justified in the light of the legal provisions. On August 12, 2003, the Institute reported that the agencies and dependencies of the Federal Public Administration had received 11,700 requests for information in the first two months of the Law's operation.<sup>92</sup>

148. Several local governments have a law on the right to information, and many are in the process of reviewing and analyzing the adoption of such laws.

### **Nicaragua**

149. Article 52 of the Constitution provides that:

Citizens have the right to file petitions, denounce irregularities, and express constructive criticism of the state or any authority, individually and collectively; to obtain a prompt decision and response; and to be informed of the decision within the periods of time established by law.

150. Article 66 of the Constitution provides that Nicaraguans have the right to truthful information and, in exercising that freedom, may seek, receive, and disseminate information and ideas, orally, in writing, in graphic form, or by another medium of their choice.

151. Article 26 of the Constitution provides for the possibility of obtaining all information contained in official files, and the reasons and purpose for which the information is held, when it pertains to the person requesting it:

All persons have the right to:

1. Their private life and that of their family.
2. The inviolability of their home, correspondence, and communications of every kind.
3. Respect for their honor and reputation
4. Knowledge of all information about them registered by state authorities, as well as the right to know why and for what purpose this information is held.

152. In early December 2003, the Office of the Special Rapporteur received information that a bill on Access to Information had been recently presented before the National Assembly of Nicaragua. The bill would guarantee the right of citizens to gain access to documents, files and databases held by the organs of the State, as well as by private institutions which administer public goods (Article 1 of the bill). This information is considered to be a "public good" available to whomever requests it as provided by the bill (Article 2 of the bill). The bill further provides for the setting up of Access to Information Offices in every State institution subject to the bill, with the aim of facilitating access to information.

153. In Nicaragua, the right of access to information has been made difficult by restrictions imposed by provisions such as the ones from the Penal Code, which make it a

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<sup>92</sup> IFAI/006/03 (Mexico), 12 August 2003, available at: <http://www.ifai.org.mx/textos/gaceta/comunicado06-120803.pdf>.

criminal offense to reveal state secrets and official information (Articles 538 and 540). Information is classified as “very secret”, “secret”, and “confidential” (Article 540). All information originating from sources within the government as a direct result of the conduct of official business is considered “official information” and its disclosure is subject to limitations guaranteeing the security of national defense.

154. Article 1 of the Law Regulating Information on Internal Security and the National Defense of 1980 (*Ley para Regular las Informaciones sobre Seguridad Interna y Defensa Nacional de 1980*) provides that the media may not disclose news or information compromising or undermining the country’s internal security or national defense.

155. This provision includes the communication of information or news on such matters as armed conflict, assaults on government officials, etc. without first reliably verifying such information or news with the Government Council on National Reconstruction (*Junta de Gobierno de Reconstrucción Nacional*) or with the Ministry of Interior or Defense.

156. As indicated in the section on international provisions on the public right to state-held information, the use of broad language to restrict access to information on grounds of national security could give rise to abuses of discretionary authority by state agents.

## **Panama**

157. Panama does not have a constitutional clause expressly guaranteeing the right to access information. However, Article 41 of the Constitution of Panama does contain a clause establishing the right of petition, which can serve as the basis for petitions filed seeking public information:

Everyone has the right to file petitions and respectful complaints to public servants, for motives of private or social interest, and the right to receive a prompt resolution of the matter.

The public servant with whom a petition, inquiry or complaint is filed shall resolve the matter within thirty days.

The law shall stipulate the punishments for those who violate this provision.

158. With respect to legal provisions, Law 36 (5/6/1998) reinforces the provisions concerning the right to petition, and Article 837 of the Administrative Code explains that:

All individuals have the right to receive copies of documents existing in the secretariats and archives of administrative officers, provided that: the documents are not classified; the person requesting the copy provides the necessary paper and pays the fees specified in Book 1 of the Judicial Code; and that the copies can be removed under the inspection of an employee of the office concerned, without interfering with his work.

159. The constitutional provision on the right to petition is regulated by Law 15 of 1957, which provides that officials who do not respond to a petition within 30 days shall be punished with a fine of \$10 to \$100 the first time and double that amount for subsequent occurrences. Officials who fail to respond on more than three occasions are to be dismissed.

160. In cases in which the petition is denied, the Administrative Law Judicial Proceedings Act (*Ley Orgánica de la Jurisdicción de lo Contencioso Administrativo*) establishes

the procedure to be followed during the course of administrative proceedings, which includes the following avenues of recourse: the recourse for reconsideration, filed with the administrative official of the first instance for clarification, modification, or rescission of the decision; the recourse of appeal to the immediate supervisor, for the same purposes; and those indicated in the Judicial Code.

161. There are legal criteria for classifying state information as restricted (Articles 834 and 837 of the Administrative Code).

162. On January 22, 2002, Law No. 6 on transparency in government was enacted. This law provides that every individual or juridical person has the right to request information from government bodies and the official concerned has 30 days to provide such information. The official's failure to comply entails a fine or dismissal. The law sets out nine cases of "restricted access", among them those having to do with information on national security and cases under investigation by the Public Prosecutor's Office.<sup>93</sup>

163. On May 21 of 2002, the Executive Branch approved the Regulatory Decree 124, which regulates Law No. 6. On August 9, 2002, Panama's Human Rights Ombudsman (*Defensor del Pueblo*) filed a legal suit seeking repeal of Articles 4, 5, 8, 9 and 14 of the Decree. The Special Rapporteur for Freedom of Expression expressed his concern regarding certain regulatory articles of the Decree. In particular, referring to Article 8 of the Decree, which provides that an "interested person" for purposes of Article 11 of Law No. 6 is "a person who has a direct personal interest in the information he or she is requesting," the Special Rapporteur expressed that "this article is inconsistent with the purposes of the law and international standards on access to information, as any person should be entitled to exercise this right."<sup>94</sup>

164. The Office of the Special Rapporteur for Freedom of Expression received information regarding the presentation before the Legislative Board of a proposal for reform of Law No. 6. The Special Rapporteur values this effort, and recalls his comments in the Report of the Special Rapporteur for Freedom of Expression on the situation of Freedom of Expression in Panama, where he recommends that the adoption of internal legislation be brought into line with the American Convention on Human Rights and the jurisprudence of the Inter-American System.<sup>95</sup>

## Paraguay

165. The Forum for Freedom of Expression of Paraguay has informed that Article 28 of the National Constitution guarantees the right of every citizen "to receive truthful, responsible and impartial information" and further establishes that "the public sources of information are of free access to anyone".

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<sup>93</sup> Inter-American Press Association, Press Release February 5, 2002, available at <http://www.sipiapa.com/pressreleases/srchphrasedetail.cfm?PressReleaseID=561>.

<sup>94</sup> See Report of the Special Rapporteur for Freedom of Expression on the situation of Freedom of Expression in Panama, OEA/Ser.L/V/II.117, Doc. 47, 3 July 2003, Original: Spanish.

<sup>95</sup> *Id.*

166. In spite of the Constitution's provision that laws would regulate the exercise of the above precept, a regulatory regime to this effect has not yet been adopted.

167. Paraguay's Criminal Code, Law No 1682/01 and Law No. 1626 establish restrictions to the free disclosure of information, in that they do not make a distinction between the public and private spheres to set limitations on publication and demands of publicity to the communications media and journalists.

168. In September 2001, the Executive Branch repealed Law 1729 on Administrative Transparency and Free Access to Information (*Transparencia Administrativa y Libre Acceso a la Información*). The law had been approved in July 2001 for the purpose of promoting transparency in government and ensuring access to information. However, this law provoked national and international protest, since it contained several articles imposing restrictions on the right of the press to access official documents.

169. The Forum for Freedom of Information of Paraguay has informed that there is a bill awaiting consideration by Congress on the subject of free access to public information.

## Peru

170. The right to information is set out in Article 2.5 of the Constitution of Peru, which states that every person has the following right:

(...) To request, without the need to express the reason, the information needed, and to receive it from any public entity, within the period of time established by law, provided the payment of the fee associated with such request. The following information is not included by this Article: information that affects privacy and that information specifically excluded by law or by reason of national security. Bank and fiscal secrecy can be lifted by a judge or investigative committee of the Congress, according to the law and as long as they refer to the case under investigation.

171. On August 2, 2002, Peruvian President Alejandro Toledo formally promulgated the Law of Transparency and Access to Public Information (*Ley de Transparencia y Acceso a la Información Pública*), which was then published on August 3, 2002 in the official government daily *El Peruano*. Only minor changes had been made to the second draft of the law, which had been approved by the Peruvian Congress in July. While this law represents a major advance for the right to information, attention has been drawn to Article 15 of the law, which refers to the exceptions of the Law that grant the Executive authority to classify information as "secret and strictly secret" for reasons of national security, as this procedure would grant the ministerial cabinet, an entity eminently political, the power to classify information as secret.<sup>96</sup>

172. On August 6, 2003, the regulatory decree for the Law of Transparency and Access to Public Information came into force. This regulation was promoted by the Commission created by the Law to give compliance with the provisions set out therein.

## Suriname

173. The official response from Suriname to the questionnaire sent by the Special Rapporteur points out that Article 158 of the Constitution of Suriname states that:

1. Everyone shall have the right to be informed by the organs of government administration on the advancement in the handling of cases in which he has a direct interest and on measures taken with regard to him.
2. Interested parties have access to the courts to have them judge the unjustified character of any final and executionable act by an organ of governmental administration.
3. In disciplinary procedures the right of interested parties to reply shall be guaranteed.

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<sup>96</sup> Freedominfo.org, *Peru's new freedom of information law*, posted August 8, 2002, available at: <http://www.freedominfo.org/news/peru2/>.



174. In addition, Article 22 of the Constitution provides that:

1. Everyone has the right to submit written petitions to the public authorities.
2. The law regulates the procedure for handling them

175. The official response from Suriname also points out that Constitutional Law and Administrative Law of the State provide that the government is obligated to publish certain information in the official publications. This information pertains to laws, regulations, decrees and other decisions, as well as requests for licenses for trade, commerce, and other activities.

176. Non-governmental organizations in Suriname frequently organize general campaigns to educate or inform the general public, particularly in the sectors in which they operate (e.g., labor, women, children, health), on the right to free access to information.

### **Trinidad and Tobago**

177. In its response to the questionnaire sent by the Special Rapporteur in 2001, the Government of Trinidad and Tobago cited general constitutional provisions that serve to protect freedom of information, such as "freedom of thought and expression," or "the right to express political opinions." Immediately afterwards, however, it recognized that the Constitution of Trinidad and Tobago does not contain provisions recognizing free access to state-held information. Nor are there judicial precedents in this area, or in the area of *habeas data*.

178. In the absence of specific legal provisions in this regard, reference was made to recognition of the Freedom of Information Act as the applicable legal provision:

All persons shall have the right to obtain access to official documents.  
All persons are legally entitled to request information from various government agencies.

179. The procedure for requesting and obtaining information is free of charge, unless copies in printed form or other information storage formats, such as diskettes, tapes, etc., are requested.

180. If the information is denied, the requesting party must receive written notification, affording him the reasonable opportunity to consult with a government representative, who is required to provide the requesting party with the information needed to continue the procedure and renew the request. The reasons for denying the information must also be given to the requesting party, who must be informed of his right to appeal the decision to the High Court.

## United States

181. In 1966, the United States approved the Freedom of Information Act (FOIA), which requires federal agencies to offer access to documents of public interest. Exceptions to the Freedom of Information Act include the following: information on national security, the internal regulations and policies of government agencies, matters specifically exempt from disclosure by statute, trade secrets, and other secret information pertaining to business, letters and memorandums between government agencies and individuals, personnel files and medical histories, bank information, police files, and geological and geophysical information.

182. The reach of statutory exemptions provided by the Freedom of Information Act (FOIA) has been expanded with new exemptions and statutory allowances for certain security-related information. A "critical infrastructure" exemption could limit public access to health, safety, and environmental information submitted by businesses to the government.<sup>97</sup>

183. In addition to the Freedom of Information Act (FOIA) at the federal level, each of the 50 states has laws guaranteeing access to the official documents of state, county, and municipal agencies.

184. The Privacy Act of 1974 also prohibits federal agencies from revealing information about a person without his or her written consent, unless cited by the Freedom of Information Act as the type of information that must be disclosed.<sup>98</sup>

185. In addition to laws providing access to files and documents, other laws, known as "open meetings" or "sunshine" laws, require state and local agencies to make most of their meetings open to the public.

186. The Government in the Sunshine Act of 1976 applies to all federal agencies. All agency meetings must be open to the public, unless the law provides otherwise, such as when personal matters are being discussed. For all agency meetings covered by this law, the agency in question must notify citizens through a public announcement and publication in the Federal Register, at least one week in advance, as to the time, place, and subject of the meeting, as well as the name and telephone number of a contact person for additional information.<sup>99</sup>

187. Executive Order 13292 (E.O. 13292), issued by President Bush on March 28, 2003, also promotes greater government secrecy by allowing the executive to delay the release of government documents; giving the executive new powers to reclassify previously released information; broadening exceptions to declassification rules; and lowering the standard under which information may be withheld from release - from requiring that it "should" be expected to result in harm to that it "could" be expected to have that result. In addition, E.O. 13292 removes

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<sup>97</sup> Report of the Lawyers Committee for Human Rights: *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*; available at: <http://www.lchr.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf>.

<sup>98</sup> 5 U.S.C. §522a(b)(2).

<sup>99</sup> 5 U.S.C. §552b.

a provision from the previously operative rules mandating that "[i]f there is significant doubt about the need to classify information, it shall not be classified." In essence, this deletion shifts the government's "default" setting from "do not classify" under the previous rules to "classify" under E.O. 13292.<sup>100</sup>

188. According to the National Archives and Records Administration, the number of classification actions by the Executive Branch of the United States rose 14% in 2002 over 2001 and declassification activity fell to the lowest level in seven years.<sup>101</sup>

## Uruguay

189. There is no provision in Uruguay that requires the state to disclose information, or legal or judicial mechanisms obliging the state to provide information.

190. The official response to the questionnaire furnished reveals that there are several provisions that prohibit the disclosure of information related to professional, banking, and personal data.<sup>102</sup>

191. There are two bills under consideration for regulating access to information awaiting their approval by the Uruguayan Parliament.

192. One of the bills was presented by the opposing party, and approved by the House of Representatives in October 2002. The bill regulates the right of any person to consult or request copies of the administrative acts issued by governmental bodies or public entities, whether national or departmental. This action only necessitates the presence of the interested party when the information requested might affect his right to privacy.<sup>103</sup>

193. Article 11 of this bill regulates the action of *habeas data*, and stipulates that the action may be brought by the petitioner after 15 days have elapsed since the resolution that denies the disclosure of the requested information, and after the passing of 45 days since the request was made.<sup>104</sup>

194. In June 2003, two senators from the National Party presented a bill for the protection of personal data of a commercial nature. This bill establishes the admissibility of the action of *habeas data* brought before any entity in charge of a public or private database under the following conditions:

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<sup>100</sup> Report of the Lawyers Committee for Human Rights: *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, *supra*, note 94.

<sup>101</sup> *Id.*

<sup>102</sup> See Code of Organization of Tribunals (Article 207), Code of Children (Article 40), Law N° 4.056 of 1912 (article 13), Law No. 10.674 of November 20, 1945 (Article 6), Law No. 13.711 of November 29, 1968, Law No.14.068 of July 10, 1972, Decree No. 14.294 of October 31, 1974, Decree No. 15.322 of September 17, 1982, Decree No. 94/983, Law No. 16.320 of November 1, 1992.

<sup>103</sup> *Probidad, Ley sobre derecho a la información y acción de hábeas data*, available at: [http://probidad.org/regional/legislacion/2002/041\\_a.html](http://probidad.org/regional/legislacion/2002/041_a.html)

<sup>104</sup> *Id.*

- a) that the interested party wishes to obtain information regarding his personal data and this information was not provided by the entity responsible for the database.
- b) when the rectification or elimination of personal data has been requested, and the entity responsible for the database has failed to carry out the requested action.

195. The official response of Uruguay declares that the wide majority of the jurisprudence on access to state-held information has recognized the right of the individuals to access state-held personal information, following the precedent of the Supreme Court on the matter. In the case LJ U 13.994 of 1999, the Supreme Court said that objective criteria must be used to determine when information is of public interest, regardless of the person involved being a public figure, and further stated that "freedom of information contributes to public opinion, which is inherent to every democratic system."<sup>105</sup>

### **Venezuela**

196. Article 28 of the Constitution, reformed in 1999, provides:

All persons have the right of access to information and data held in government or private files referring to them or to their property, except where the law provides otherwise; to know why and for what purpose the information is kept; and to file requests before the competent court for the updating, rectification, or destruction of information that is erroneous or that illegitimately affects their rights. They may also obtain access to documents of any kind containing information of interest to communities or groups of individuals.

197. Article 51 of the Constitution establishes the right to submit petitions to the authorities. According to this provision, all persons have the right to address petitions to any authority or public official on matters within their purview and to obtain a timely and adequate response. Violations of this right are punishable by law and can result in dismissal.

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<sup>105</sup> Supreme Court of Uruguay, LJ U 13.994 of 1999, para. V.

198. Article 6 of the Organic Law on Public Administration (*Ley Orgánica de Procedimientos Administrativos*) of 2001 establishes that:

The Public Administration will carry out its activities and shall be organized in such a way that citizens:

May resolve their issues, be assisted in the formal drafting of administrative documents, and receive information of general interest by telephonic, electronic, and telematic means (...)

May easily access up-to-date information regarding the organizational structure of organs and entities of the Public Administration, and the services provided by them.

199. Article 7 of the Organic Law on Public Administration further provides that citizens shall have the following rights:

6. To obtain information and guidance regarding the legal or technical requirements imposed on projects, proceedings or requests that citizens may wish to undertake

7. To access the archives and records of the Public Administration in the terms provided by the Constitution of the Bolivarian Republic of Venezuela and the law (...)

200. The Organic Law on Administrative Procedures (*Ley Orgánica de Procedimientos Administrativos*) of 1981 provides the following:

Article 2. Every interested person may, by himself or by means of his representative, address requests to any organ, entity or administrative authority. These shall decide on the requests, or state the reason for their failure to do so.

201. Article 59 of the Organic Law on Administrative Procedures also provides for public information or access to government sources for interested parties or their representatives. However, documents classified as confidential are exempt.

202. The 2003 Law Against Corruption (*Ley contra la Corrupción*) also establishes in its Articles 8, 9 and 10 the right of the citizens to access information regarding the administration of the public patrimony of state organs.

## CHAPTER V

### INDIRECT VIOLATIONS OF FREEDOM OF EXPRESSION: DISCRIMINATORY ALLOCATION OF OFFICIAL PUBLICITY<sup>1</sup>

#### A. Introduction

1. The murder of investigative reporters, a state's closure of a newspaper, vows of violence against journalists by security forces, or the refusal to allow certain television programs to air, are strong examples of direct violations of the right to freedom of expression. However, underlying these blatant violations are more subtle, and oftentimes more effective, indirect ways in which States curtail freedom of expression. Because such indirect violations are often obscure, quietly introduced obstructions, they do not compel investigation, nor do they receive the widespread censure that do other, more direct violations.

2. To call attention to these types of violations, the Office of the Special Rapporteur for Freedom of Expression has undertaken to study the use of official publicity as an indirect restriction on the free circulation of ideas. The discriminatory allocation of official publicity is only one possible manifestation of an indirect restriction to the right to freedom of expression. However, the Special Rapporteur for Freedom of Expression believes that this topic merits special attention in the Americas, where media concentration has historically promoted the abuse of power by governments in the placement of their advertising revenue.

#### B. Official Publicity

3. There are two types of government publicity: unpaid and paid. "Unpaid" publicity includes press releases, the texts of legislation or legislative body meetings, and information which carries government support but which may be paid for by a private party. There are often legal obligations for national media sources to release this publicity, as a condition of the media outlets' use of the state's available frequencies and airwaves. Such conditions are usually included in states' fundamental broadcasting and press laws. "Paid" publicity includes paid advertising in the press, on radio and on television, government-produced or -sponsored software and video material, leaflet campaigns, material placed on the Internet, exhibitions, and more.<sup>2</sup> Governments use paid publicity to inform the public about important issues (i.e. ads pertaining to health and safety concerns), to influence the social behavior of individuals and business (such as encouraging voter turnout in an upcoming election), and to generate revenue through various programs (oftentimes through state-owned industry). The use of the media to transmit information is an important and useful tool for states, and provides much-needed advertising profits for media outlets.

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<sup>1</sup> This chapter was made possible through the assistance of Rachel Jensen, a second-year law student at Georgetown University, who provided the research and the preliminary drafting of this report, and of Andrea de la Fuente, a recent law graduate from Universidad Torcuato Di Tella, Argentina, who further assisted in the drafting of this report. Both were interns at the Office of the Special Rapporteur for Freedom of Expression during 2003. The Office thanks them for their contributions.

<sup>2</sup> United Kingdom Cabinet Office, *Government Printing and Advertising*, available at [http://www.cabinet-office.gov.uk/central/1999/workgis/annex\\_a.htm](http://www.cabinet-office.gov.uk/central/1999/workgis/annex_a.htm).

4. Media outlets' production costs are high, and the most lucrative way to cover these expenses is through extensive advertising. Traditionally, government advertising budgets have comprised a substantial percentage of media outlets' total advertising investments. Generally, exact numbers of advertising expenditures are not available to the public. Yet, there are reports from many media outlets that they receive 40-50% of their revenue from the government. Government publicity can often provide the means for voices that, without the aid of government funding, would not be able to survive financially. The increasing consolidation and cross-ownership of media outlets means that smaller newspapers, radio and television stations are facing harder competition for available advertising revenue. The other major providers of revenue, large corporate advertisers, often only place ads in media sources that are favorable to their business interests, avoiding those outlets that report on financial scandal, environmental damage, or labor disputes. Government publicity can offset the vast communications resources controlled by corporate or wealthy interests, in that it can amplify the voices of local journalists and media, smaller media, and those media critical of corporations.<sup>3</sup>

5. Often, a large portion of domestic government expenditures are on advertising. There is very little public information about the criteria used in making allocation of advertising decisions. States distribute advertising to various media outlets often without legal restraint or overview. This results in selectivity of publicity placement. A state's decision to continue or to suspend advertising in a media source will have profound effects on the annual advertising revenue of that source.<sup>4</sup>

6. Historically, a sizable part of the productive capital of media outlets in the Americas has originated in the allocation by the States of official publicity. This fact, combined with the discretionary selectivity of publicity placement, creates the danger of self-censorship to avoid the financial hardships that might be faced by the media sources which are denied official publicity. A recent study of media ownership structures in 97 countries has found that:

(...) monopolies or concentrated ownership of the media industry that provide control over information to any individuals or organizations, public or private, will reduce the effectiveness of media coverage, and it now regularly intervenes in content decisions.<sup>5</sup>

7. In the framework of distribution criteria, there are both negative and positive discriminatory allocations of publicity. Negative allocation would be given to an individual or media outlet in order to induce them to not report unfavorably on those in power. Positive allocation requires the recipient to engage in favorable expression in order to receive government revenue.<sup>6</sup> Both positive and negative discriminatory allocation can constitute an infringement on free speech; negative allocations are content-based forms of coercion that force media outlets to be silent on issues of public interest, whereas positive allocations may

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<sup>3</sup> Mark G. Yudof, *When Governments Speak: Toward a Theory of Government Expression and the First Amendment*, 57 Tex. L. Rev. 863, 866 (1979).

<sup>4</sup> Marylene Smeets, *Americas Overview 2001*, available at: [http://www.cpj.org/attacks01/pages\\_att01/acrobat\\_att01/AmericasOverviews.pdf](http://www.cpj.org/attacks01/pages_att01/acrobat_att01/AmericasOverviews.pdf).

<sup>5</sup> World Bank Group, *World Development Report 2002*, 185-186.

<sup>6</sup> Money Talks, Martin H. Redish, NYU Press (New York 2001), 205.

artificially distort a public debate by inducing some who otherwise would have taken a contrary position (or chosen not to speak at all) to support the government's views.<sup>7</sup>

8. Three types of government media subsidies, which can be analogized to positive allocations of government advertising, have been identified: categorical, viewpoint-based, and judgmental necessity.<sup>8</sup>

9. A categorical decision to award advertising is a viewpoint-neutral choice to fund a particular category, subject or class of expression (such as choosing to advertise in the medium of national newspapers, provincial television, or local radio frequencies). Such a decision may be consistent with freedom of expression, based on government goals, but if such a positive allocation is made according to discriminatory criteria, it violates freedom of expression.

10. In viewpoint-based decisions, the criteria for awarding funding is based entirely on the viewpoint expressed by a particular media outlet. Clearly this is the most blatant form of a violation of freedom of expression in official publicity.

11. Judgmental necessity pertains to the need of government officials to differentiate between a variety of media sources within one medium (in which national newspaper, among a group of papers with similar distribution and reach, will they place advertisements?). For such determinations to be in keeping with freedom of expression principles, they must be based on criteria "substantially related" to the prescribed viewpoint-neutral purpose.<sup>9</sup> For example, if a state's goal was to promote sales of monthly passes on its city-wide public transportation system, it could legally choose to advertise only in newspapers largely distributed within that city. Newspapers from other regions that may have a very small distribution within that city would not be unfairly discriminated against by the government's choice not to advertise with them. The criteria of being a paper with a majority of your distribution within the city is substantially related to the program's viewpoint-neutral purpose of promoting use of its public transportation system, and thus, non-discriminatory.

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<sup>7</sup> *Id.* at 207.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 198.



### **C. Discriminatory Allocation of Official Publicity**

12. There exists no inherent right to receive government advertising revenue. It is only when a state allocates advertising revenue in discriminatory ways that the fundamental right to freedom of expression is infringed. A state could deny advertising revenue to all media outlets, but it cannot deny publicity income only to specific outlets based on discriminatory criteria. Although states may make determinations to award advertising based on the percentage of the population reached by the source, frequency strength, and similar factors, determinations to award or cut off publicity based on coverage of official actions, criticism of public officials, or coverage that might hurt officials' financial contributors amount to penalizing the media for exercising the right to freedom of expression. It is possible that government advertising is so central to an outlet's operation that the denial of it will have as much adverse impact as would a fine or prison sentence. Because their hopes for advertising revenue hinge upon a favorable allocation of official publicity, media sources will be compromised and effectively forced into producing reports favorable to the ultimate publicity decision-makers.

13. Indirect obstruction through distribution of official publicity acts as a strong deterrent to freedom of expression. Although jurisprudence in this area is limited in the Inter-American System, the American Convention on Human Rights provides a legal framework against such indirect violations, establishing that discriminatory allocation of official publicity, based on the publication or broadcast of critical reports, is a violation of the guaranteed right of freedom of expression.

### **D. Inter-American Standards**

14. The controlling legal document concerning human rights in the Americas is the American Convention on Human Rights. Concerning freedom of expression, the Convention states in Article 13(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.<sup>10</sup>

15. The Declaration of Principles on Freedom of Expression was approved by the Inter-American Commission on Human Rights as a tool for interpreting Article 13 of the American Convention. The Declaration has been influential in reflecting the emerging regional standards on this issue. It states in Principle 13:

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 expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social

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<sup>10</sup> American Convention on Human Rights, in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/SER.L/V/I.4 rev. 8 (May 22, 2001), 9.

communicators to stifle the dissemination of information are incompatible with freedom of expression.<sup>11</sup>

16. The Declaration of Chapultepec was developed by experts in freedom of expression. The Inter-American Press Association sponsored the Declaration and went to Latin American leaders asking for their support and signatures. Though not legally binding, the Declaration is a demonstration of the will and support of many leaders to upholding freedom of expression rights. It states explicitly in Principle 7 that:

Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.<sup>12</sup>

17. In an international recognition of the illegality of discriminatory allocation of official advertising, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, stated in a joint declaration:

Governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.<sup>13</sup>

## **E. The European Experience**

18. The right against arbitrary allocation of government advertising has also been recognized by the European Court of Human Rights. In the case of *Vgt Verein gegen Tierfabriken v. Switzerland*,<sup>14</sup> the company responsible for advertising on the national broadcaster had refused to broadcast a commercial which had been submitted by the applicant, an association for the protection of animals. The commercial, which intended to deter meat consumption in Switzerland, was refused for broadcast on the grounds that it was clearly political in character. The Court concluded that the restriction in question amounted to a violation by the State of Switzerland of the right to freedom of expression as guaranteed by Article 10 of the European Convention.<sup>15</sup> In evaluating whether the interference was “necessary in a democratic society,” the Court expressed that:

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<sup>11</sup> Declaration of Principles on Freedom of Expression, Principle 13.

<sup>12</sup> Declaration of Chapultepec, adopted by the Hemisphere Conference on Free Speech, Mexico City, March 11, 1994, Principle 7.

<sup>13</sup> International Mechanisms for Promoting Freedom of Expression Joint Declaration, November 2001. See Annex to the Report of the Office of the Special Rapporteur for Freedom of Expression 2001, OEA/Ser.L/II.114, Doc. 5 rev. 1, April 16, 2002.

<sup>14</sup> Eur. Ct. H.R., Case of *Vgt Verein gegen Tierfabriken v. Switzerland*, June 28, 2001, Application No. 24699/94 R.

<sup>15</sup> Article 10: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It is true that powerful financial groups can obtain competitive advantages in the area of commercial advertising and may thereby exercise pressure on, and eventually curtail the freedom of, the radio and television stations broadcasting the commercials. Such situations undermine the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.<sup>16</sup>

19. Though the *Vgt Verein gegen Tierfabriken* case refers to the prohibition of private political advertising, not of government advertising, it effectively struck down a law that led to the discriminatory allocation of advertising, supporting the idea that allocation of advertising, whether done by private or government entities, may not be grounded in clearly discriminatory criteria. In examining the contested measure in the light of the prohibition of political advertising as provided in section 18(5) of the Federal Radio and Television Act, the Court addressed the issue that the law applied only to radio and television broadcasts, and not to other media such as the press:

[W]hile the domestic authorities may have had valid reasons for this differential treatment, a prohibition of political advertising which applies only to certain media, and not to others, does not appear to be of a particularly pressing nature.<sup>17</sup>

20. In expounding the meaning of Article 10.2 of the European Convention,<sup>18</sup> the European Court of Human Rights understood the requirement "prescribed by law" to prohibit insufficiently precise laws and unacceptable discretionary powers.<sup>19</sup>

21. Although the Court has not specifically addressed this issue in the context of government advertising, it has addressed the existence of unclear laws and overly wide discretionary powers as a violation of freedom of expression in the case of *Autronic A.G. v. Switzerland*.<sup>20</sup> In this case, the European Court questioned whether the broadcast license-granting laws of Switzerland were sufficiently precise since "they [did] not indicate exactly what criteria [were] to be used by the authorities in determining applications."<sup>21</sup> The Court did not decide the issue in that case, dismissing it for other reasons, but warned that such license-granting laws that did not establish clear criteria could constitute a violation of freedom of expression.

22. The decision in *Herczegfalvy v. Austria*<sup>22</sup> affirms the need of precise legislation to fulfill the "prescribed by law" requirement of Article 10 of the European Convention. In this case, the European Court did hold restrictions on the freedom of movement of psychiatric detainees to be insufficiently precise to fulfill the "prescribed by law" requirement of Article 10 (and Article 8), because they failed to specify the scope or conditions for the exercise of discretionary power. The European Court held that the lack of any indication as to the kind of restrictions permitted,

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<sup>16</sup> Case of *Vgt Verein gegen Tierfabriken v. Switzerland*, supra note 15, para. 73.

<sup>17</sup> *Id.* para. 74.

<sup>18</sup> See supra note 16.

<sup>19</sup> Human Rights Practice R.O. June 2000, P. 10.1031

<sup>20</sup> Eur. Ct. H.R., Case of *Autronic A.G. v. Switzerland*, May 22, 1990, Application No. 12726/87.

<sup>21</sup> *Id.* at 485.

<sup>22</sup> Eur. Ct. H. R., Case of *Herczegfalvy v. Austria*, September 24, 1992, Application No. 10533/83, paras. 91-94.

their purpose, duration, and extent, and the lack of arrangements for the review of any restrictions imposed, led to the deficiency of a minimum degree of protection against arbitrariness.<sup>23</sup>

23. Insufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. It is indeed when laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials that there exists a legal framework contrary to freedom of expression.

## F. Legal Framework in Member Countries

24. This section is intended to provide an overview of the legal provisions on the allocation of official publicity in the countries of the OAS. The laws and legal standards mentioned below were compiled through searches of the online databases of each respective State, as well as through information received from a number of different sources.<sup>24</sup>

25. In order to obtain a more accurate description of the legal framework on the allocation of official publicity in the countries of the Americas, in September 2003 the Office of the Special Rapporteur for Freedom of Expression issued a questionnaire to the Permanent Representatives of the OAS Member States inquiring about the laws in effect in each state on this issue. The questionnaires set out the laws found to be relevant and in effect regarding the allocation of official publicity, and gave the opportunity for the States to confirm, deny, or update such information.<sup>25</sup>

26. The analysis of the information obtained by the Office of the Special Rapporteur reveals, in general, an absence of legislative provisions regarding the allocation of official publicity. This section only reports on the legal framework of the States which have adopted regulations on official publicity. In some countries, it was observed that, notwithstanding the absence of specific legislation in this regard, there exist provisions which may provide a remedy to a discriminatory allocation of official publicity.

27. The official response from Argentina to the questionnaire sent by the Special Rapporteur points out that National Law 22.285 of Broadcasting (*Ley 22.285 de Radiodifusión*) governs publicity rules under the competence of the Committee of Broadcasting (*Comité de Radiodifusión*, COMFER):

### Law 22.285:

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<sup>23</sup> Human Rights Practice R.O. June 2000, P. 10.1031.

<sup>24</sup> The Special 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 Special Rapporteur.

<sup>25</sup> To the date of the approval of this report by the Inter-American Commission on Human Rights for its inclusion in the IACHR's Annual Report, only the States of Argentina, Colombia, Costa Rica, Mexico, Nicaragua, Peru, and the United States, out of the total of the member States of the OAS, have submitted the information requested by the Special Rapporteur. The Republic of Trinidad and Tobago replied to the letter sent by the Special Rapporteur, and expressed that the State would provide the Office with the requested information at the earliest opportunity. The State of Bahamas requested further information on the request of the Special Rapporteur. The Special Rapporteur greatly appreciates the efforts of these States in gathering the requested information, and encourages all member States of the OAS to collaborate in the preparation of future studies by this Office in order to better take advantage of the conclusions derived from them.

**Art. 69. Publicity Contracts.** Publicity to broadcast shall be contracted by the bearer of services directly with advertisers; or with publicity agencies previously registered in the Federal Broadcasting Committee acting on behalf of identified advertisers.

**Art. 72. Transmissions without charge.** The bearers of broadcast services shall perform transmissions without charge in the following cases:

- a) That contemplated in Article 7; [referring to issues of national security]
- b) Mandatory national, regional, or local broadcasts, as ordered by the Federal Broadcast Committee;
- c) In the face of serious national, regional, or local emergencies;
- d) By requirement of the authorities of civil defense;
- e) To broadcast messages or warnings related to dangerous situations that affect the means of transportation or communication;
- f) To broadcast messages of national, regional, or local interest ordered by the Federal Broadcast Committee, up to one minute and thirty seconds per hour;
- g) For the broadcast of the programs foreseen in Article 20 [educational programs] required by the Minister of Culture and Education, as well as for the treatment of themes of national, regional, or local interest that the Federal Broadcast Committee authorizes, up to a maximum of seven percent (7%) of the daily broadcasts.

28. Article 12 of Decree No. 1771/91 modifies Article 72 b) of Law No., 22.285, allowing the Secretariat for Communications Media of the Presidency (*Secretaría de Medios de Comunicación de la Presidencia de la Nación*, SMC), in cases of urgency, to request COMFER to coordinate with the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CNC) the use of the compulsory national broadcasting system to allow messages to reach the stations.

29. Article 31 of Law No. 25.600 on Financing of Political Parties (*Ley 25.600 de Financiamiento de los Partidos Políticos*) provides that the State will grant spaces in the broadcasting media to the parties or alliances that put forward official candidates.

30. Decree No. 2507 of 2002 approved the statute for the State Association Télam (*Télam Sociedad del Estado*) for its operation under the jurisdiction of the SMC. The association is empowered to plan and contract publicity space and produce the official publicity requested by the different sectors of the national government.

31. Decisions concerning allocation of state advertising in Argentina are most often made by the administrative heads of the various government entities requiring advertising space. Other decisions are made by the executive branches of the various provincial governments. There appear to be no official national criteria for determining allocation of advertising. Some provinces have specific legislation allowing for oversight of government decisions.

32. In Bolivia, there are few legal norms specific to advertising and there appears to be no official oversight of government advertising practices. Bolivia's only law relating to

advertisements and announcements from the government is contained in an addendum to Article 43 of Law 1632, the Telecommunications Law, which states:

ADDENDUM TO ARTICLE 43, RANK OF LAW

Art. 67.- Radio stations must transmit free of charge in the following cases:

- a) As stipulated in the previous article.
- b) Serious national emergency, war or disruption of public order.
- c) Messages or notices related to the safeguard of human lives and ships, aircraft or naval or air devices in dangerous situations.
- d) Civic and literacy programs.
- e) Announcements of general interest, commercial free, up to ninety seconds per hour, upon the request of the General Telecommunications Directorate.<sup>26</sup>

33. In December 2001, the Senate of Bolivia approved a new electoral code. Article 119 of the new code would require the media to register with the National Electoral Authority (*Corte Nacional Electoral*, CNE). The CNE would decide which media could publish election advertisements in the weeks prior to the voting, and thus which media would receive the large revenue such advertisements generated. The law would oblige political parties to deal only with these media or risk punishment, ranging from fines to suspension of a newspaper for a period to be decided by the CNE.<sup>27</sup> Media that did not charge the price set for the ads by Article 119 would also be punished. However, after extensive lobbying by journalism organizations, Congress approved a law on April 30, 2002, determining that Article 119 of the Electoral Code would not be in effect for the June 2002 general election.<sup>28</sup> Free press groups then sought the repeal of Article 119, so that it would not be enforced in future municipal or general elections. Such a repeal has not yet been accomplished.

34. In Canada, the only national law specifically dealing with advertising regulation concerns elections. The Broadcasting Act states:

10.(1) The [Canadian Radio-television and Telecommunications] Commission may, in furtherance of its objects, make regulations

(e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates<sup>29</sup>

35. Provincial laws in Canada often go further, as evidenced by this law of Ontario:

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<sup>26</sup> Law 1632, Law on Telecommunications, Article 43, Addendum, from <http://www.sittel.gov.bo/mlrldr.htm>. Article 43 of the Telecommunications Law elevates a number of articles of Supreme Decree No. 09740 (*Decreto Supremo* No. 09740) to the status of law, including the quoted passage from Article 67 of that decree.

<sup>27</sup> Reporters without Borders, *Bolivia Annual Report 2002*, available at: [http://www.rsf.fr/article.php3?id\\_article=1379&var\\_recherche=%22official+advertising%22+bolivia](http://www.rsf.fr/article.php3?id_article=1379&var_recherche=%22official+advertising%22+bolivia).

<sup>28</sup> International Press Institute, *2002 World Press Freedom Review*, available at <http://www.freemedia.at/wpfr/Americas/bolivia.htm>.

<sup>29</sup> Broadcasting Act, 1991.

**Official Notices Publication Act:**

2.(1) Unless another mode of publication is authorized by law, there shall be published in *The Ontario Gazette*,

- (a) all proclamations issued by the Lieutenant Governor;
- (b) all notices, orders, regulations and other documents relating to matters within the authority of the Legislature that require publication; and
- (c) all advertisements, notices and publications that are required to be given by the Crown or by any ministry of the Government of Ontario, or by any public authority, or by any officer or person. R.S.O. 1990, c. O.3, s. 2 (...)

4.(1) The Queen's Printer for Ontario may establish a schedule of rates for publishing information in *The Ontario Gazette* and for purchasing subscriptions to it and copies of it. 2000, c. 26, Sched. J, s. 3.<sup>30</sup>

36. In April 2001, the Chilean Senate approved the new Law 19733 on Freedoms of Opinion and Information and the Practice of Journalism (*Ley 19733 sobre las Libertades de Opinión e Información y Ejercicio del Periodismo*), known as the Press Law. The law eliminated Law 16643 on Publicity Abuses (*Ley 16643 sobre Abusos de Publicidad*), but does not specifically address allocation of official publicity. This Press Law explains the law on freedom of opinion and information and the regulations pertaining to the profession of journalism. The law deals with general provisions, the practice of the profession of journalism, formalities of the operation of the social communications media, violations, crimes, liability, and proceedings.

37. The Official response from the State of Colombia to the questionnaire sent by the Special Rapporteur referred to a number of laws in the country which are relevant to the allocation of official publicity.

38. Law No. 14 of 1991 establishes and regulates the functioning of the Television and broadcasting service in Colombia and establishes the National Institute of Radio and Television (*Instituto Nacional de Radio y Televisión, Inravisión*) and the National Television Council (*Consejo Nacional de Televisión*). Article 29 of Law No. 182 of 1995 establishes that:

Except for provisions in the Constitution and the law, the contents of television programming and advertising shall be freely expressed and transmitted, and are not subject to censorship or prior control. However, programming and advertising shall be classified and regulated by a section of the National Television Commission, so as to promote quality, guarantee compliance with the purposes and principles which govern television as a public service, protect the family and the more vulnerable segments of the population, particularly children and young people, assure harmonious and integral development, and promote Colombian broadcasting.<sup>31</sup>

39. Decree 182 of 1974 regulates public spending by the organs in charge of administering the funds of the Treasury. The official response from Colombia also mentioned Decree No. 1737 of 1998, which governs rules of austerity and efficiency in public administration.

<sup>30</sup> Official Notices Publication Act, R.S.O. 1990, c. O.3, s. 2.

<sup>31</sup> Inter-American Press Association, *Press Laws of Colombia*, available at <http://www.sipiapa.com/projects/laws-col3.cfm>.

40. The official response from Costa Rica to the questionnaire sent by the Special Rapporteur shows that, although there are no specific laws in Costa Rica pertaining to the allocation of official publicity, there are a few norms which provide a framework for the distribution of official publicity by the government. Regarding privately owned media, the government can make allocation of publicity decisions through the procedure established by the Administrative Contracting Act (*Ley de Contratación Administrativa*), by means of the approval of an "Information and Publicity" budget in each Ministry. Regarding publicly owned media, the 1993 Organic Law of the National System of Radio and Cultural Television (*Ley Orgánica del Sistema Nacional de Radio y Televisión Cultural*) created a communications network composed of television, radio, and written media outlets, through which the State can distribute official publicity.

41. In Cuba, the role and duties of the press are spelled out in the Communist Party's Program Platform and the resolution approved at the Party's 1st Congress (1975) concerning mass media. Private ownership of news media is strictly prohibited under Article 53 of the National Constitution. The Constitution further stipulates that state ownership of the press and other mass communication media "ensures their exclusive use by the working people and in the interests of society."<sup>32</sup> The Department of Revolutionary Orientation (DOR) under the Ideological Secretariat of the Communist Party of the State's Program Platform was created in the mid-1960s and handles propaganda and ideology for the government and designs and carries out official policy concerning the news media.<sup>33</sup> Due to these regulations, media are totally dependent on the state both for funding and for the right to operate.

42. In the Dominican Republic, there is no specific law regulating government allocation of advertising, but the Dominican Institute of Telecommunications is the established regulatory body that oversees telecommunications throughout the Dominican Republic and implements the General Telecommunications Law No. 153-98.<sup>34</sup> Under that law, the board of the Institute is charged with overseeing inappropriate activity in telecommunications, including private and government activity.

43. In Ecuador, there are no specific laws regulating government allocation of advertising. The Superintendent of Telecommunications regulates the media industries. A Special Committee was formed for oversight of all advertising in the Consumer Protection Law (*Ley de Defensa del Consumidor*) of 1990.<sup>35</sup>

44. In Haiti, there are no specific laws regulating government allocation of advertising. The Haitian Constitution provides:

Article 28.1:

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<sup>32</sup> Inter-American Press Association, *Press Law Database*, available at <http://www.sipiapa.com/projects/laws-cub.cfm>.

<sup>33</sup> *Id.*

<sup>34</sup> *Instituto Dominicano de las Telecomunicaciones, Ley General de las Telecomunicaciones* No. 153-98, available at [http://www.indotel.org.do/site/marco\\_legal/ley153-98.htm](http://www.indotel.org.do/site/marco_legal/ley153-98.htm).

<sup>35</sup> Inter-American Press Association, *Press Law Database*, available at <http://www.sipiapa.com/projects/laws-ecu20.cfm>.



Journalists shall freely exercise their profession within the framework of the law. Such exercise may not be subject to any authorization or censorship, except in the case of war.<sup>36</sup>

45. In Jamaica, the Broadcasting and Radio Re-Diffusion Act and the Television and Sound Broadcasting Regulations refer to advertising limitations in Sections 8 and 9 (i.e. alcohol advertising, etc.) but do not refer to restrictions or guidelines on government advertisements.<sup>37</sup>

46. The official response from the government of Mexico provides information about agreements on general norms for government spending; norms regarding government spending on publicity, official publications, and communications media; and guidelines for the orientation, planning, authorization, coordination, and supervision of media strategies, programs, and campaigns of government entities and dependencies. Additionally, information on actual federal expenditures in 2003 was provided. This information was received by the Office of the Special Rapporteur as the drafting of this report was being concluded; the Office will analyze this information more fully in the future.

47. The official response from Nicaragua to the questionnaire sent by the Special Rapporteur points out that Article 68 of the Political Constitution of the Republic of Nicaragua states that:

The state shall ensure that media are not subjugated by foreign interests or any economic power monopoly. The law shall regulate this matter.

48. In Nicaragua, the Law of Government Contracting (*Ley de Contrataciones del Estado*) specifies in its Article 25 that the providers of the State must be registered in the Registry of Providers of the State, and must comply with legal requirements such as having fiscal solvency and a certificate of registration. The Official response from Nicaragua specifies that the records of government spending on advertising and allocation of publicity are of 700,000 Córdobas for the last trimester of 2003 (approximately U.S. \$45,841), and that an expenditure of 3,000,000 Córdobas (approximately U.S. \$196,400) is expected for 2004.

49. In Panama, there is no specific regulation on the allocation of government advertising. The Regulator of Public Services (*Ente Regulador de los Servicios Públicos*) is charged with directing public services of radio and television, and with making rules for publicity norms, according to Article 38 of Law 24, which regulates public services of radio and television and dictates other provisions.<sup>38</sup>

50. The National Constitution of Paraguay does not specifically address the issue of the allocation of official publicity. However, its Article 27 states that:

The use of the news media is of public interest; consequently, their operation may not be closed down or suspended (...) Any discriminatory practice in the provision of supplies for the press is prohibited, as is interference with radio frequencies and obstruction, by whatever means, of the free

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<sup>36</sup> Haitian Constitution, Title III, Chapter II, Section C: Freedom of Expression (1987).

<sup>37</sup> Jamaican Broadcasting Commission, <http://www.broadcastingcommission.org/broadcastinglaws/index.htm>.

<sup>38</sup> *República de Panamá, Ente Regulador de los Servicios Públicos*, Ley No. 24, 30 de Junio de 1999, available at [http://www.ersp.gob.pa/leyes\\_decretos/Ley24.asp](http://www.ersp.gob.pa/leyes_decretos/Ley24.asp).

circulation, distribution and sale of newspapers, books, magazines, or other publications with responsible management or authorship.<sup>39</sup>

51. Further, Law 1297 of 1998 of Paraguay prohibits all government institutions, including department administrations and municipalities, from carrying out any kind of paid propaganda in domestic or foreign communications media, except when they are related to publication of notices of biddings, general edicts, promotion of campaigns of rural and sanitary information and education, programs aimed at the promotion of the folklore and the national culture, or in the case of state or joint corporations competing in the market.<sup>40</sup>

52. The official response from Peru to the questionnaire submitted by the Special Rapporteur indicated that the Ministry of Transportation and Communications is in charge of the design and execution of the policies of promotion and development of the radio broadcasting services. However, it is not empowered to regulate the regime of official publicity. The official response also establishes in relation to the existence of records of public spending on publicity that Law No. 27.806 on Transparency and Access to Public Information aims at achieving greater transparency in the administration of Public Finance.

53. In the United States, although there is no constitutional right of the media to receive government advertising revenues, if a publisher can show that a termination of advertising is a content-based penalty, it violates the free speech and press clause of the First Amendment of the U.S. Constitution.<sup>41</sup> The relevant laws are:

#### **United States Code**

##### **44 U.S.C. § 3702 - Advertisements not to be published without written authority**

Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority.

##### **44 U.S.C. § 3703 - Rate of payment for advertisements, notices, and proposals**

Advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts. But the heads of the several departments may secure lower terms at special rates when the public interest requires it. The rates shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making publication.

#### **Federal Acquisitions Regulations, 48 CFR 5**

##### **Subpart 5.5- Paid Advertisements**

##### **5.501 Definitions**

As used in this subpart-

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<sup>39</sup> National Constitution of Paraguay, Article 27.

<sup>40</sup> *Honorable Cámara de Diputados de Paraguay*, <http://www.camdip.gov.py>.

<sup>41</sup> Marc A. Franklin and David A. Anderson, *Mass Media Law*, Foundation Press, 1995, 164.

"Advertisement" means any single message prepared for placement in communication media, regardless of the number of placements.

"Publication" means-

(1) The placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium; or (2) The broadcasting of an advertisement over radio or television.

#### **5.502 Authority**

(a) Newspapers. Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302 (b)). Contracting officers shall obtain written authorization in accordance with policy procedures before advertising in newspapers. (b) Other media. Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

#### **5.503 Procedures**

(a) General. (1) Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions. (2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made by using electronic commerce or by using the Governmentwide commercial purchase card for micropurchases. (b) Rates. Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703) (...).

54. In Uruguay's main laws concerning freedom in the media, there is no mention of restrictions on government advertising. However, Law 16.320 states in Article 484 that:

State advertising must take into account the inland print media and this shall be obligatory wherever this is aimed specifically at residents of a particular city, region or province in the interior where print media is published and distributed, without prejudice to placement also in a national publication regarded as appropriate.<sup>42</sup>

55. Venezuela has a variety of legislation concerning the media and the practice of journalism, including the Organic Law of Telecommunications of 1940, the Radiocommunications Regulations of 1980, and the Law on the Exercise of Journalism of 1994, to name a few. However, there appear to be no specific laws governing allocation of government publicity. Decree 808 of September 1985 approves the Standards for Coordination and Execution of State Publicity, which assigns the direction and coordination of government information programs to the "Central Information Office" in the President's office. This law provides that the information office should produce programs and information campaigns annually and sets down basic instructions for accounts and contracting.

### **G. Situations in Member Countries**

56. The information provided above reflects that most OAS countries lack specific legislation on the issue of allocation of official publicity. The Special Rapporteur for Freedom of

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<sup>42</sup> *Poder Legislativo, República Oriental del Uruguay: Ley No. 16.320, Rendición de Cuentas y Balance de Ejecución Presupuestal Ejercicio*, available at <http://www.parlamento.gub.uy/Leyes/Ley16320.htm>.

Expression is concerned that this lack of regulation may create the danger of an excessive discretionary power in decision-making bodies which could give way to discriminatory allocations of official publicity.

57. This section is concerned with the reporting of information regarding instances of alleged discrimination in the distribution of official publicity. Although few cases concerning discrimination in allocation of official advertising have made it through the various legal systems of the Americas, several situations have been denounced in which a possible discriminatory practice has taken place. A few of these instances will be mentioned here.

58. The incidences reported illustrate situations in member States in which the allocation of official publicity to media organizations has allegedly been handled in a discriminatory way. This might entail that the allocation of publicity to media sources might have been reduced as a way of punishing the manifestation of criticism towards the government, or that the allocation of publicity might have represented a reward for a positive review.

59. As there are few official resources provided by the governments of the Americas concerning allocation of state publicity, it was necessary to compile reports of incidences of advertising cuts and alleged discrimination from non-official sources, such as watchdog groups, human rights organizations, and the media outlets themselves.

60. The Office of the Special Rapporteur for Freedom of Expression has received information regarding an alleged instance of discriminatory allocation of official publicity in Argentina, pertaining to the judicial action raised before the Supreme Court of Argentina by Mr. Julio Rajneri, the main shareholder of the publishing firm responsible for the daily newspaper *Río Negro* in the Province of Neuquén, Argentina. The claimant affirms that an instance of discriminatory allocation of official advertising took place when, after the newspaper had reported on allegations of corruption in the Neuquén provincial government, the Neuquén Lottery notified *Río Negro* that it would no longer purchase advertising space, as it had done during the previous years.<sup>43</sup>

61. Another reported instance in Argentina refers to the declaration, by the Argentine National Lottery, on October 15, 2001, that it would no longer advertise on the radio program *La Danza de la Fortuna*. The program reports on the results of official wagers and games of chance. Prior to the advertising cut, journalist González Rivero had criticized Leandro Alciati on the air while commenting on the country's political situation. Alciati is president of the lottery organization and in charge of the allocation of advertising. Alciati denied any connection between González Rivero's comments and the withdrawal of advertising. He stated that the measure was strictly due to a normal reduction in the end-of-year advertising allocation, in addition to an almost seventy-five per cent reduction in the National Lottery's budget.<sup>44</sup>

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<sup>43</sup> *Periodistas Frente a la Corrupción (PFC), Suspenden Publicidad oficial al diario Río Negro*, ALERTA-ARGENTINA, <http://portal-pfc.org/perseguidos/2003/002.html>, 9 de enero de 2003; *Río Negro (Argentina), La SIP ya prepara un documento de adhesión a la presentación. El organismo continental de prensa trabaja con sus abogados. También la asociación periodistas*, [www.rionegro.com.ar](http://www.rionegro.com.ar), 24 de enero de 2003.

<sup>44</sup> *Asociación para la Defensa del Periodismo Independiente (PERIODISTAS), Advertising withdrawn from radio programme*, 12 November 2001, available at <http://www.ifex.org/en/content/view/full/14991>.

63. Also in Argentina, on May 26, 2001, the Chubut Province Bank, a corporation with state-owned shares, revealed that a clause in its publicity contracts enabled it to refuse placing advertisements in media outlets that criticized the bank or published information that its authorities deemed negative. Bank Director Jorge Barcia revealed this when expressing his annoyance at radio station *LU17 Golfo Nuevo*, which had divulged information about alleged irregularities in the bank's administration of funds.<sup>45</sup>

63. In June 2001, *El Liberal*, a newspaper in the province of Santiago del Estero, Argentina that had published criticism of the Women's Branch of the Justicialista party, claimed it was discriminated against in the granting of governmental advertising in a decision that was linked to political factions associated with governor Carlos Juárez, according to several watchdog media organizations.<sup>46</sup>

64. *El Diario*, a Bolivian newspaper, reported on January 18, 2002, that the Pando Social Communications Media group denounced the Bolivian government's alleged threats to reporters that they would have to publish what the government wanted or they would be subject to a suspension of state publicity.<sup>47</sup>

65. In Brazil, the daily *A Tarde de Bahía* was allegedly the object of discrimination in the allocation of official publicity in the state of Bahía. The Rede Bahía media group sued *A Tarde* journalist Marconi de Souza for libel in connection with an article he wrote on October 25, 2000, which reported a claim by Salvador city officials that 80% of the city government's advertising was placed with that media group. Rede Bahía belongs to the family of Antonio Carlos Magalhães, the state's former governor and Senate speaker.<sup>48</sup> According to *A Tarde*, in 1999 the state spent about U.S. \$33 million in official advertising, almost exclusively directed to Rede Bahía.<sup>49</sup> In Salvador, the state capital, opposition political parties denounced the alleged use of official advertising to reward media outlets belonging to the former governor's family.<sup>50</sup>

66. In Canada, a state where government advertising is not as imperative to independent media survival, instances of discriminatory allocation of advertising tend to be local occurrences. In March 2003, a local public school board allegedly threatened to withhold advertising from newspapers or broadcasters that the board felt had reported its affairs inaccurately.<sup>51</sup>

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<sup>45</sup> *Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), *Discriminatory administration of state publicity*, May 31, 2001, available at <http://www.asociacionperiodistas.org>.

<sup>46</sup> *Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), *Advertising withdrawn from radio programme*, November 12, 2001, available at <http://www.ifex.org/en/content/view/full/14991>.

<sup>47</sup> *El Diario* (Bolivia), *Medios pandinos denuncian atentados y acuden a la SIP*, January 18, 2002, available at <http://www.portal-pfc.org/libexp/docs/2002/010.html>.

<sup>48</sup> Reporters Without Borders (RSF), *RSF calls for an inquiry into the allocation of public sector advertising in Bahia*, January 31, 2001, available at <http://ifex.org/en/content/view/full/12569>.

<sup>49</sup> Claudio Abramo Weber, Programme in Comparative Media Law & Policy at Oxford University, *Brazilian Media*, available at <http://pcmlp.socleg.ox.ac.uk/mas/reports/abramo.shtml>.

<sup>50</sup> Reporters without Borders, *Brazil Annual Report 2002*, available at [http://www.rsf.fr/article.php?id\\_article=1380&Valider=OK](http://www.rsf.fr/article.php?id_article=1380&Valider=OK).

<sup>51</sup> Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

67. In Colombia, *El Espectador*, a Bogotá newspaper, was largely financed by the government and its other advertisers through publicity revenue. In 2001, the Mayor of Bogotá allegedly punished the paper with advertising cuts when it was critical of a costly public project.<sup>52</sup> The paper has since been forced to cut back on its editions and circulation.

68. During 2002 and 2003, many media outlets in El Salvador, especially television stations, have complained that official advertising often favors the pro-government media, which encourages journalists' practice of self-censorship.<sup>53</sup>

69. In 2001, *TV Doce* of El Salvador suffered cuts in government advertising, as well as advertising by important business groups. In May 2001, the station suffered losses of between U.S. \$220,000 and \$350,000 due to the cuts in advertising, which owners insist occurred because of its critical reports.<sup>54</sup> Due to its financial situation, in March 2003, *TV Doce* cancelled "*Sin Censura*" ("Uncensored") the television program that had broadcast most of the criticism directed at the government.

70. In 1998 in Guatemala, then-president Alvaro Arzú Irigoyen deprived many publications of government advertising. Guatemalan journalists complained that if they printed favorable news, advertising revenue would flow in and if they printed bad news, the money would dry up.<sup>55</sup> In January 1998, the government banned all advertising by state agencies in the weekly magazine *Crónica* and the daily newspaper *El Periodico*.<sup>56</sup> Both *Crónica* and *El Periodico* had been critical of President Arzú's administration. The editors at *Crónica* claimed that private sector advertising was also seriously affected as a result of government pressure. This led, in December 1999, to the forced sale of *Crónica*.

71. In Haiti, there are reports by local human rights groups that radio stations allegedly censor content so as not to lose much-needed advertising funds.<sup>57</sup> These reports have not been confirmed or denied by the government.

72. In Honduras, situations regarding the selective allocation of official publicity have been reported. Allegedly, a number of the major media outlets in this State are owned and operated by politicians, and independent media have repeatedly complained of discrimination in the placement of official government advertising.<sup>58</sup>

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<sup>52</sup> Javier Dario Restrepo, *El Espectador: Agonía de un periódico*, December 2001, available at [http://portal-pfc.org/recursos/biblio\\_periodismo\\_archivos/el\\_espectador\\_co.htm](http://portal-pfc.org/recursos/biblio_periodismo_archivos/el_espectador_co.htm).

<sup>53</sup> Freedom House, *Annual Survey of Press Freedom 2002*, available at <http://www.freedomhouse.org/pfs2002/pfs2002.pdf>.

<sup>54</sup> Journalists Against Corruption (PFC), *Piden investigar a presidente Flores por injerencia en medios*, May 12, 2003, available at <http://www.ifex.org/en/content/view/full/49593>.

<sup>55</sup> Marylene Smeets, *Speaking Out, Speaking Out: Postwar Journalism in Guatemala and El Salvador*, available at <http://www.cpj.org/attacks99/americas99/americasSP.html>.

<sup>56</sup> Article XIX, *Submission on Guatemala's Second Periodic Report to the UN Human Rights Committee*, available at <http://www.article19.org>.

<sup>57</sup> Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

<sup>58</sup> Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

73. It has been reported that in June, 2002, the administration of *Channel 13* and *Radio Reloj* of Honduras protested that Executive Branch officials of the Government of President Ricardo Maduro "have tried to use publicity as a method of extortion against the media."<sup>59</sup> According to their denunciation, Government officials notified them that they had cut publicity to *Channel 13* and *Radio Reloj* because both media criticized a secret trip taken by President Maduro to Italy.

74. *Diario Tiempo* of Honduras also allegedly suffered a temporary suspension of state publicity for publishing news of the President's Italy trip. The daily paper suspended the reporter who broke the story, but there still exist publicity restrictions for that paper and the official who signs the publicity contracts affirms that "there are orders from above" that they will not allocate publicity to the newspaper.<sup>60</sup> It is alleged by media sources that those outlets that promote the work of the Government or the Presidential and mayoral figures enjoy the largest publicity contracts.

75. Another reported case was that of the magazine *Hablemos Claro*, which experienced a cutting of state publicity after it published, on January 14-20, 2003, a "Special Report" stating that the First Lady of the nation had solicited the president to ask for the resignation of the Minister of Culture.<sup>61</sup>

76. Miguel Pastor and Oscar Kilgore, mayors of the major cities of Honduras, Tegucigalpa and San Pedro Sula, respectively, and both competing presidential candidates, had allegedly employed strategies of restricting publicity in media that criticized their efforts at infrastructure work. Pastor is accused of pressuring owners of the communication media with threats of suspending all publicity to them if they criticized a series of taxes that were recently imposed.

77. In Mexico, prior to 1996, most newspapers stayed afloat with revenue they received from government advertisements. Also, most papers published *gacetillas* (paid government propaganda disguised as news stories).<sup>62</sup> During most of the reign of the long-ruling Partido Revolucionario Institucional (PRI), the press skewed its political coverage in exchange for subsidies, tax incentives, and government advertising.<sup>63</sup> In 1996, the government abandoned, officially at least, its long practice of subsidizing favorable news coverage by spending heavily on ads. Though selective allocation of government advertisement is officially no longer a regular practice, the mostly private media still largely depends on the government for advertising revenue.

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<sup>59</sup> Comité para la Libertad de Expresión (C-Libre), *Situación de la Libertad de Expresión en Honduras*, available at <http://probidad.org/honduras/libexp/2003/008.html>, "Situación de la Libertad de Expresión en Honduras".

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Joel Simon, *Breaking Away: Mexico's Press Challenges the Status Quo*, available at <http://www.cpj.org/attacks97/specialreports/sr-americas.html>.

<sup>63</sup> Marylene Smeets, Overview: The Americas, available at [http://www.cpj.org/attacks00/pages\\_att00/acrobat\\_att00.html/Americas\\_countries.pdf](http://www.cpj.org/attacks00/pages_att00/acrobat_att00.html/Americas_countries.pdf).

78. In 2003, there were reports in the Mexican states of Chiapas and Baja California that the government had withdrawn advertising funds in response to unfavorable coverage. Governor Antonio Echevarría Domínguez, of Nayarit state, western Mexico, was accused of censoring the *Radio Korita* program "Consensos," which has been critical of his administration, through the discriminatory use of government advertising. On January 31, 2003, the radio station's signal was cut just as the "Consensos" program was scheduled to go on the air. Espinoza Vargas, the manager of *Radio Korita*, stated that he was told that cutting the signal was done under "the governor's orders" and that this was "a condition for the renewal of a year's worth of advertising."<sup>64</sup> Espinoza Vargas alleges that Nayarit state officials have in the past attempted to have his program taken off the air. Prior to the signal cut, Espinoza Vargas had reported on fraud in the housing authorities' administration of public markets.<sup>65</sup>

79. The government of the Mexican state of Baja California was accused of withholding official advertising in *La Crónica* newspaper because the paper had published several complaints against irregularities in public administration that involved Governor Eugenio Elordoy Walther. *La Crónica's* owners alleged that because of their reports on the erratic purchase of vehicles, nepotism within the Government, and salary increases for employees in recent months, the State cancelled all government advertising in the newspaper and has made access to public information difficult for journalists.<sup>66</sup>

80. During visits to the Mexican states of Chihuahua and Guerrero, the Special Rapporteur corroborated that official advertising was being placed in a discretionary way, without clear parameters and with certain signs of arbitrariness. The Rapporteur noted this situation with regard to the newspapers *El Sur* of Guerrero and *El Norte* of Juárez, both of which are openly critical of the government. The Special Rapporteur urged all state agencies to modify these practices and to establish clear, fair, and objective criteria for determining how to distribute official advertising. Additionally, the Special Rapporteur declared that in no case may official advertising be used for the intention of harming or favoring one means of communication over another.<sup>67</sup>

81. In Uruguay, opposition representatives in Congress denounced irregularities in the allocation of official advertising that favored print and broadcast media that positively covered the governing Colorado party. ANTEL, the state-owned telecommunications monopoly and largest official advertiser, was the main target of the denunciations.

82. Journalists in Uruguay have consistently objected to the government's granting the directors of state agencies and enterprises complete discretion in their use of advertising budgets. They have also called for transparency in the distribution of state advertising, and have proposed the creation of an online database with detailed information on state advertising spending.

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<sup>64</sup> Reporters without Borders, *Radio Programme Discriminated Against in Allocation of Government Advertising*, 5 February 2003, available at [http://rsf.fr/article.php3?id\\_article=4879&var\\_recherche=%22advertising+revenue%22](http://rsf.fr/article.php3?id_article=4879&var_recherche=%22advertising+revenue%22).

<sup>65</sup> *Id.*

<sup>66</sup> Inter-American Press Association, October 23, 2002.

<sup>67</sup> See Office of the Special Rapporteur for Freedom of Expression, Press Release 89/03, available at <http://www.cidh.org/Relatoria/English/PressRel03/PRelease8903.htm>.



83. After four years of a penal tribunal investigation, there have been two indictments of government officials in Uruguay for alleged illegal management of official publicity, using discriminatory criteria more than minimal technical criteria, to reward or punish media outlets.<sup>68</sup>

84. In Venezuela, human rights monitors have alleged that throughout 2002 the State showed favoritism with government advertising revenues.<sup>69</sup>

85. Venezuela's daily *La Opinión* in the state of San Carlos had all state advertising withdrawn from it in May 2002. The managing editor accused the state governor, Johnny Yánes Rangel, of attempting to bankrupt the paper.<sup>70</sup>

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<sup>68</sup> *Periodistas Frente a la Corrupción, Recopilaciones sobre Libertad de Expresión y de prensa en America Latina*, March 27, 2003, available at <http://www.portal-pfc.org/libexp/recopilaciones/2003/0327.html>.

<sup>69</sup> Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

## H. Conclusions

87. The multitude of alleged cases is evidence of the widespread nature of alleged indirect violations of freedom of expression. These possible indirect violations are promoted by the lack of legal regulations that provide adequate remedies for the discriminatory allocation of official publicity, as these legal voids give way to excessive discretionary power on behalf of the decision-making authorities.

88. The Special Rapporteur for Freedom of Expression urges and recommends that the OAS member States adopt laws which prevent discriminatory practices in the allocation of official publicity, as well as mechanisms for putting them into effect.

89. A legal framework establishing clear guidelines for official publicity distribution is imperative for continuing fair management of advertising revenue. In order to ensure freedom of expression in the future, states should discard insufficiently precise laws and avoid granting unacceptable discretionary powers to officials. The establishment of a mechanism for oversight of decisions would be instrumental in granting legitimacy to discretionary allocations made by officials.

90. In considering the adoption of such legislation, the States must keep in mind that transparency is vitally needed. The criteria used by government decision-makers to distribute publicity must be made public. The actual allocation of advertising and sum totals of publicity spending should also be publicized, to insure fairness and respect for freedom of expression.

91. As media sources have the courage to be vocal about discrimination in the allocation of official publicity, and as human rights organizations and domestic opposition political forces continue to bring attention to instances and regimes of discrimination, the local and international attention called to these acts will increase.

92. The Office of the Special Rapporteur for Freedom of Expression will continue to monitor the development of these practices.



## CHAPTER VI

### CASES OF FREEDOM OF EXPRESSION IN THE INTER AMERICAN SYSTEM

#### A. Cases before the Inter-American Commission on Human Rights

##### 1. Cases declared admissible by the IACHR during 2003

###### REPORT Nº 60/03<sup>1</sup>

ADMISSIBILITY

PETITION 12.108

MARCEL CLAUDE REYES, SEBASTIÁN COX URREJOLA,  
AND ARTURO LONGTON GUERRERO

CHILE

October 10, 2003

1. On December 17, 1998, a group consisting of "ONG FORJA," "Fundación Terram," the "*Clínica Jurídica de Interés Público*" of Diego Portales University, and "Corporación la Morada" (Chilean organizations); the Institute of Legal Defense of Peru (Peruvian organization); "*Fundación Poder Ciudadano*" and the Association for Civil Rights (Argentinean organizations); and Chilean legislative representatives (*Diputados*) Baldo Prokurica Prokurica, Osvaldo Palma Flores, Guido Girardi Lavín and Leopoldo Sánchez Grunert (hereinafter "the petitioners") submitted a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR"). The complaint alleges violation by the State of Chile of Articles 13 (Freedom of Thought and Expression), 25 (the Right to Judicial Protection), and 23 (Right to Participate in Government) in relation to the overall obligations enshrined in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Inter-American Convention on Human Rights (hereinafter "the Convention") to the detriment of Marcel Claude Reyes, Sebastián Cox Urrejola, and Arturo Longton Guerrero (hereinafter "the victims").

2. The petitioners allege that the State of Chile violated the right to freedom of expression and free access to state-held information, when the Chilean Committee on Foreign Investment omitted to release information about a deforestation project the petitioners wanted to evaluate. Also, the domestic courts' refusal to admit the subsequent case against the State allegedly constitutes a violation of the right to judicial protection.

3. The State of Chile argues that the actions of the Committee on Foreign Investment complied with the requirements of Article 13(1) and the response of the courts was thus proper. The State also argues that the petitioners failed to exhaust the remedies available in Chile before their recourse to the Inter-American Commission.

4. After reviewing the positions of the parties in the light of the admissibility requirements set out in the Convention, the Commission decided to declare the case admissible as it relates to the alleged violations of Articles 13 and 25 in relation to the general obligations enshrined in Articles 1 and 2 of the American Convention.

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<sup>1</sup> Commissioner José Zalaquett, of Chilean nationality, did not take part in the discussion and voting on the present report, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

**REPORT Nº 73/03**  
**ADMISSIBILITY**  
**PETITION 12.213**  
**ARISTEU GUIDA DA SILVA**  
**BRAZIL**  
 October 22, 2003

1. On September 23, 1999, the Inter-American Press Association (IAPA) lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") against the Federative Republic of Brazil (hereinafter "Brazil" or "the State").
2. The petitioner claimed that Mr. Aristeu Guida da Silva, a journalist by profession, was murdered on May 12, 1995, for reasons associated with the exercise of his professional activities.
3. The State provided information about the judicial proceedings pending at the domestic level in connection with the murder of Mr. Aristeu Guida da Silva.
4. Having examined the petition, the Commission decided, in accordance with Articles 46 and 47 of the American Convention, and with Articles 30, 37 and related articles of its Rules of Procedure, to declare the petition admissible as regards alleged violations of Articles 4, 13, 8, 25 and 1(1) of the American Convention on Human Rights.

**2. Cases declared inadmissible by the IACHR during 2003**

REPORT Nº /03  
 INADMISSIBILITY  
 PETITION 453/01  
 ELÍAS SANTANA AND OTHERS  
 VENEZUELA  
 October 23, 2003

1. On July 1, 2001, the Inter-American Commission on Human Rights (hereafter "the Inter-American Commission", "the Commission", or "the IACHR") received a petition submitted by Cecilia Sosa Gómez against the Republic of Venezuela (hereafter "the State" or "the Venezuelan State") arguing that, by virtue of Judgment 1013 issued by the Constitutional Chamber of the Supreme Tribunal of Venezuela on June 12, 2001, the State violated her right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), the right to judicial guarantees (Article 8), the right to private property (Article 21.1), and the provisions relating to restrictions regarding interpretation (Article 29.a and b) and to the scope of restrictions (Article 30), all contained in the American Convention on Human Rights (hereafter the "American Convention" or "the Convention"), contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them, as well as Article 19 of the International Covenant on Civil and Political Rights. Mrs. Cecilia Sosa attached to her petition a list of persons, with their name, nationality and signature, who declared their adherence to the complaint submitted by the petitioner to the Commission.
2. On July 16, 2001, the Commission received a petition submitted by Elías Santana, acting on his own behalf and as representative of the organization known as "*Queremos Elegir*" [roughly "We Want to Vote"], together with Mrs. Marieta Hernandez, a broadcaster and columnist with the newspaper *Tal Cual* and a founding member of that association, and the lawyer Hector Faundez Ledesma, a columnist with the newspaper *El Nacional* and President of the *Centro por la Democracia y el Estado de Derecho* (Center for Democracy and the Rule of Law), complaining that the State of Venezuela, by means of that same Judgment 1013, had violated the right to judicial guarantees (Article 8), the right to freedom of thought and expression (Article 13), the right of reply (Article 14), political rights (Article 23.1.a and c), the right to equal protection (Article 24), the right to judicial protection (Article 25), and provisions relating to restrictions regarding interpretation (Article 29) and the scope of restrictions (Article 30), contained in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in

Article 2 on the duty to adopt legislative measures to give effect to them. On July 20, 2001, the Commission, in accordance with Article 29.d of its Rules of Procedure, decided to open file P-0434/2001 Cecilia Sosa and file P-0453 Elías Santana, and to process them together under the same case, P-0453/2001.

3. On July 20, 2001, the IACHR received a petition on behalf of the nongovernmental association "*Bloque de Prensa Venezolana*"<sup>2</sup> [roughly "Venezuelan Press Front"], represented by members of its Board of Directors, Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera, who were acting as well in their personal capacity as media editors, and Asdrubal Aguiar Aranguren, as their legal representative, in which they complained that the Venezuelan State, by means of the same court judgment number 1013, had violated the right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), and the provisions relating to restrictions regarding interpretation (Article 29.a, b, c and d) and the scope of restrictions (Article 30), recognized in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them. Consequently, on August 6 the Commission decided to open the file P-0474/2001, and to process it together with that of Cecilia Sosa and Elías Santana (P-0453/2001). Hereafter, these persons are referred to collectively as "the petitioners".

4. For its part, the State argued that the petitioners do not meet the requirements of Article 46 (1.d) of the American Convention, and that consequently the Commission must declare the petition inadmissible, pursuant to Article 47.a. The State rejected the charge that it had violated Article 14 of the Convention, because on September 11, 2000, the director of *Radio Nacional de Venezuela* granted Elías Santana the right to make a correction or reply, which would be broadcast by three stations belonging to *Radio Nacional de Venezuela*. In its response to the petition, the State also insisted on the differentiation between factual information and opinions, arguing that in the present case the object of the complaint was a simple opinion rendered by the President on the statements made by Mr. Santana to the newspaper *El Nacional*. On the basis of this distinction, the State argued that the right of reply applied only to inaccurate or offensive statements or information, and not to opinions. Finally, the State argued that the operative portion of the court judgment did not violate Article 13 of the American Convention.

5. After examining the positions of the parties, the Commission concluded that it was competent to examine the petitions submitted by some of the petitioners, and that these were inadmissible, in light of Articles 46 and 47 of the American Convention.

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<sup>2</sup> The *Bloque de Prensa Venezolana* is a nongovernmental association constituted on September 23, 1958, embracing most of the owners, editors and directors of national and regional newspapers and magazines of permanent circulation within Venezuela.

### 3. Precautionary Measures granted by the IACHR during 2003

#### Guatemala

1. On March 18, 2003, the Commission granted precautionary measures on behalf of María de los Ángeles Monzón Paredes, a Guatemalan journalist who has done crucial work on issues related to the observance and protection of human rights, and of her family. The information available indicates that she has received threats in the wake of publishing articles on the situation of the Azmitia Dorantes family—the petitioner in a case before the IACHR—and the assassination of indigenous leader Antonio Pop. In addition, in the early morning hours of March 2, 2003, unknown persons entered her home, checked her vehicles, and removed property of hers, allegedly to make it look like a robbery. In view of the risk to which the beneficiaries are exposed, the Commission asked the Guatemalan State to adopt the measures needed to protect the life, personal integrity, and freedom of expression of María de los Ángeles Monzón Paredes and to investigate the threats against her. In response, the State reported on the implementation of perimeter security measures for her and her family. Later, the IACHR learned that Ms. Monzón had continued receiving death threats.

2. On July 24, 2003, the Commission granted precautionary measures on behalf of Juan Luis Font, director of the daily newspaper “*El Periódico*” and the newspaper’s technical and administrative staff. The information available indicates that beginning in February 2003, several investigative journalists from the newspaper received threats brought on by the exercise of their activity, and that, according to certain witnesses, its director has been in imminent danger. In addition, it is alleged that on July 11, 2003, two men entered the facilities of “*El Periódico*” inquiring after Mrs. María Luisa Marroquín, director of printing facilities, after which they attacked with firearms and wounded the security agent who had received them. On June 24, 2003, a dozen armed individuals who passed themselves off as agents from the National Civilian Police and the Public Ministry took control of the residence of José Rubén Zamora, journalist and president of “*El Periódico*,” and abused members of his family. As a result of these events and the threats received subsequently, Mr. Zamora had to leave the country. In view of the risk to which the beneficiaries are exposed, and the context of violence against journalists, the IACHR asked the Guatemalan State to adopt the measures needed to protect the lives and personal integrity of the beneficiaries.

3. On August 15, 2003, the Commission granted precautionary measures on behalf of Héctor Haroldo Sánchez Valencia, a journalist with *Guatevisión*. The information available indicates that on August 12, 2003, an email was received at the offices of that channel conveying death threats to over a dozen persons, including him, and that he was alerted by reliable sources of the death threats against him because of his coverage of the Ríos Montt case, with which several sectors were displeased. In view of the risk to which he is exposed, the IACHR asked the Guatemalan State to adopt the measures needed to protect the life and personal integrity of Héctor Haroldo Sánchez. On December 3, 2003, the Commission lifted the precautionary measures at the express request of the petitioner.

4. On September 22, 2003, the Commission granted precautionary measures to Jorge Eduardo Springmuhl Samayoa, general manager of the newspaper “*Nuestro Diario*,” and his family. The information available indicates that Jorge Andrés Springmuhl Flores, Jorge Eduardo Springmuhl’s 17-year-old son, was kidnapped on August 20, 2003, in zone 15 of Guatemala City by three armed men. The kidnapping is part of a pattern of threats and acts of

intimidation directed against Jorge Eduardo Springmuhl Samayoa. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Guatemalan State to adopt the measures needed to protect the life and personal integrity of Jorge Eduardo Springmuhl Samayoa and his family. In response, the State reported on the implementation of measures to carry out the requests of the IACHR. On December 5, 2003, the Commission communicated to the parties that it was lifting the precautionary measures at the request of the petitioner.

## Haiti

5. On January 7, 2003, the Commission granted precautionary measures on behalf of journalist Michèle Montas, the director of Radio Haiti and widow of journalist Jean Dominique, who was assassinated in April 2003. The information available indicates that on December 25, 2002, two armed men showed up at the beneficiary's residence and shot one of her two security guards, Mr. Maxime Seide, as the guards tried to cut them off. The attack is allegedly related to her active work to clarify the facts in the assassination of her husband, just as the judge in charge of the investigation was to rule on concluding the preliminary investigation. In view of the risk to which the beneficiary is exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life and personal integrity of Ms. Michèle Montas. Subsequently, on December 19, 2003, the IACHR learned that the beneficiary had left the territorial jurisdiction of the Haitian State, and so proceeded to inform the parties that it had lifted the precautionary measures.

6. On May 29, 2003, the Commission granted precautionary measures on behalf of journalist Liliane Pierre-Paul, director of programming for Radio Kiskeya and Charles Emile Joassaint, a radio correspondent. The information available indicates that on April 30, 2003, the beneficiary received an ultimatum signed by members of several popular organizations, including "Domi nan Bwa," threatening to disseminate an appeal to French President Jacques Chirac to free up payments to Haiti. The note, accompanied by a rifle bullet, includes not only threats against the journalist, but also against French nationals in Haiti, and sets May 6, 2003 as the deadline for carrying out the demands set forth. Mr. Charles Emile Joassaint has become a target of threats made in writing and by telephone. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life, personal integrity, and exercise of the freedom of expression of Liliane Pierre-Paul and Charles Emile Joassaint. In response, the State reported that the National Police of Haiti had already adopted measures to strengthen security for the journalist and for the radio station premises, and to investigate the threats.

7. On September 25, 2003, the Commission granted precautionary measures on behalf of Choubert Louis, Léon Jean Sainthyl, Mercurieu Aubain, Jean Wilkerson Alexis, Souffrant Bonivard, Charles Dunet, Pierre Francky Roland, Magalie Felix, Eric Galleus, and Esaie Raymond, all residents of Cité Soleil. The information available indicates that the beneficiaries have been subject to threats because they organized an event held July 12, 2003, in Cité Soleil, with the participation of a series of civil society organizations known as the "Group of 184." During that event the participants were attacked as other residents of the city threw stones at them, and the beneficiaries fear further reprisals by gangs that operate in Cité Soleil. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life and personal integrity of Choubert Louis, Léon Jean Sainthyl, Mercurieu Aubain, Jean Wilkerson Alexis, Souffrant Bonivard, Charles Dunet, Pierre Francky Roland, Magalie Felix, Eric Galleus, and Esaie Raymond.



## Venezuela

8. On October 3, 2003, the Commission granted precautionary measures on behalf of Gustavo Azocar Alcalá, correspondent for the daily newspaper *El Universal*, in the state of Táchira. The information available indicates that Mr. Alcalá has been harassed on numerous occasions, including one time when firearms were shot at his vehicle, on May 29, 2003, in front of his home. In addition, it is noted that as of July 2003, he received a steady flow of phone calls, emails, and anonymous messages with death threats. In view of the risk to which he is exposed, facing, the Commission asked the Venezuelan State to adopt measures to protect the rights to life, personal integrity, and freedom of expression of journalist Gustavo Azocar Alcalá.

9. On October 3, 2003, the Commission granted precautionary measures to protect the right to freedom of expression in relation to the government's seizure of certain operating equipment at the television station *Globovisión*. The information available, in the context of an administrative proceeding, indicates that personnel from the National Telecommunications Commission (CONATEL) seized broadcast equipment at various facilities of the *Globovisión* channel, giving rise to the potential restriction on the continuity of the operations of that media outlet. In view of the situation and its possible consequences, the IACHR asked the Venezuelan State to suspend the seizure measure and to return the equipment seized, in order to guarantee the right to freedom of expression, and it called the parties to a hearing. On October 21, 2003, the Commission held the hearing as scheduled, and determined that the seizure of the equipment, considered in isolation and by itself, did not appear to place the persons affected at imminent risk of suffering irreparable harm in the enjoyment of their rights, considering that the television station continued to broadcast news, although its live broadcasts were seriously affected or delayed. Nonetheless, according to the information received, the representatives of *Corpomedios G.V. Inversiones, C.A. (Globovisión)* filed an action for constitutional protection (*acción de amparo constitucional*) before the First Court for Contentious-Administrative Matters, which was pending resolution, since on October 8, 2003, the Committee on Operation and Restructuring of the Judiciary had suspended the President of that Tribunal and one other member for 60 days. Accordingly, on October 24, 2003, the IACHR asked the Venezuelan State to adopt measures aimed at ensuring urgently a simple and prompt remedy before competent and impartial judges or tribunals to protect against acts that the petitioners allege violate their fundamental rights related to the administrative procedure brought against *Globovisión*. On October 28, 2003, the State reported that it had forwarded the request for precautionary measures to the Supreme Court of Justice.

### B. Cases before the Inter-American Court on Human Rights

#### 1. Cases sent to the Court during 2003

##### Costa Rica

##### Case of “*La Nación*” newspaper<sup>3</sup>

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<sup>3</sup> See *supra* Provisional Measures

10. On January 28, 2003, the Inter-American Commission on Human Rights submitted to the Inter-American Court an application against the Costa Rican State in relation to the case of “La Nación” newspaper (Case 12,367), the facts of which refer mainly to the violations committed by the Costa Rican State on having convicted Mauricio Herrera Ulloa and having declared him to be responsible for four criminal offenses, for offensive publications constituting defamation, with all of the legal and practical effects thereof. Those effects include having entered the criminal conviction of Mauricio Herrera in the Judicial Registry of Criminals, having ordered that the link at “La Nación Digital,” on Internet, between the last name Przedborski and the articles written by Mauricio Herrera Ulloa be taken down, and having intimidated Mr. Fernán Vargas Rohrmoser to carry out the judgment, with the express warning of the possibility that he might be found to have committed the crime of disobedience of the judicial authority.

11. The Commission considered in its application that those acts violate Article 13 (freedom of thought and expression) of the American Convention on Human Rights, in relation to Articles 1(1) (obligation to respect the rights) and 2 (duty to adapt domestic legislation) of the Convention. Accordingly, the Commission asked the Court, in keeping with Article 63 of the American Convention, to order the Costa Rican State to adopt the measures of reparation indicated in the application. (See *supra* Provisional Measures.)

12. On May 19, 2003, the Costa Rican State submitted a brief by which it filed preliminary objections in relation to this case. The preliminary objections of the Costa Rican State are based on the requirement of prior exhaustion of domestic remedies set forth at Article 46 of the American Convention. The Inter-American Commission presented the Court its written arguments on the preliminary objections invoked by the State, in keeping with Article 36(4) of the Court’s Rules of Procedure. In this respect, the Commission argued that the preliminary objections invoked by Costa Rica should be rejected since they lack any legal or factual basis. The IACHR argued that the objection of non-exhaustion of domestic remedies, invoked by the State during the processing of the case before the Inter-American Court, should be rejected, since it is claiming that remedies should be exhausted that are not adequate or effective, for failure to raise the objection in timely fashion before the Commission, and because it ignores the fact that the Commission adopted an express decision on admissibility in Report No. 128/01 on this case.

## **2. Provisional Measures adopted during 2003**

### **Luisiana Ríos et. al.**

13. The Court held a public hearing on February 17, 2003, where it heard statements by Armando Amaya and Luisiana Ríos, and the arguments of the Inter-American Commission on Human Rights and Venezuela regarding the provisional measures ordered. On February 20, 2003, the Court issued an Order wherein it resolved:

1. To find that the State has not effectively implemented the provisional measures that the Inter-American Court of Human Rights ordered in its November 27, 2002 Order.
2. To again order the State to adopt forthwith all measures necessary to protect the life and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argemis Uribe.

3. To again order the State to allow the applicants to participate in the planning and implementation of the protection measures and, in general, keep them informed of the progress made on the measures that the Inter-American Court of Human Rights ordered.

4. To again order the State to investigate the facts denounced, which gave rise to the [...] measures, so as to identify and punish those responsible.

5. To order the State and the Inter-American Commission on Human Rights to take, by no later than March 21, 2003, the necessary steps to create a suitable mechanism to coordinate and monitor the measures [...].

6. To order the State to report to the Inter-American Court of Human Rights, by no later than February 28, 2003, on the measures it has taken pursuant to the [...] Order.

7. To order the Inter-American Commission on Human Rights to present to the Inter-American Court its observations on the State's report, within one week of notification thereof.

8. To order the State that, subsequent to its communication of February 28, 2003 [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; and to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of receiving them.

[...]

14. The IACHR petitioned the Court to expand the provisional measures ordered for Luisiana Ríos *et al.* in the Court's November 27, 2002 Order and later reiterated in a February 20, 2003 Order. The Commission was seeking protection of the life, safety and freedom of expression of Noé Pernía, a reporter with Radio Caracas Televisión, Carlos Colmenares, a cameraman with RCTV, and Pedro Nikken, an RCTV reporter. The precautionary measures adopted by the IACHR had had no effect in correcting the attacks on freedom of expression or the threats and assaults on the life and safety of the RCTV media personnel being protected; according to information the Commission had received, the three journalists had been physically assaulted while performing their functions.

15. On October 2, 2003, the President of the Inter-American Court issued an order wherein he decided:

1. To again order the State to adopt, without delay, all necessary measures to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe

2. To order the State to adopt, without delay, all necessary measures to protect the life, safety and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken.

3. To order the State to allow the beneficiaries of the protection measures to participate in their planning and application and, in general, keep them informed of the progress of the measures ordered.

4. To order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

5. To order the State to report to the Inter-American Court of Human Rights on the measures taken to comply with the present Order, no later than October 16, 2003.

6. To order the Inter-American Commission on Human Rights to submit its comments on the State's report to the Inter-American Court of Human Rights within a week of being notified thereof.

7. To order the State, subsequent to its first report (*supra*, operative paragraph five), to continue reporting to the Inter-American Court of Human Rights, every two months, on the measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of receiving them.

8. To notify the State and the Inter-American Commission on Human Rights of the present Order.

16. On November 21, 2003, the Inter-American Court decided:

1. To ratify the October 2, 2003 Order of the President of the Inter-American Court of Human Rights.

2. To again order the State to adopt, without delay, all measures necessary to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe.

3. To order the State to adopt and maintain all measures necessary to protect the life, personal safety and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken, journalists with Radio Caracas Televisión (RCTV).

4. To order the State to allow the beneficiaries of these protection measures to participate in their planning and implementation and, in general, keep them informed of the progress regarding the measures ordered by the Court.

5. To order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

6. To order the State to report to the Inter-American Court of Human Rights on the measures adopted to comply with this Order, no later than November 28, 2003.

7. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report, within one week of being notified thereof.

8. To order the State, subsequent to its first report [...], to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to the State's reports within six weeks of being notified thereof.

9. To notify the State and the Inter-American Commission on Human Rights of the [...] Order.

17. On December 2, 2003, the Inter-American Court of Human Rights adopted an Order to the following effect:

1. To reiterate that the State has not effectively implemented the various provisional measures that the Inter-American Court of Human Rights ordered in case [...].

2. To declare the State to be in noncompliance with its duty under Article 68(1) of the American Convention on Human Rights.

3. To declare that the State did not comply with its duty to report to the Inter-American Court of Human Rights on implementation of the measures the Court ordered.

4. Should the current situation persist, to report to the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights and

Article 30 of the Statute of the Inter-American Court on Human Rights, concerning a State's failure to comply with the decisions of the Inter-American Court of Human Rights.

5. To again order the State to adopt, without delay, all measures necessary to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía and Pedro Nikken.

6. To again order the State to allow the beneficiaries of these protection measures to participate in their planning and implementation and, in general, keep them informed of the progress regarding the measures ordered by the Inter-American Court of Human Rights.

7. To again order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

8. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with this order, no later than January 7, 2004.

9. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its comments on the State's report, within 15 days of notification thereof.

10. To order the State, subsequent to its first report referenced in operative paragraph eight *supra*, to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on

Human Rights to submit its observations on the State's reports within six weeks of their receipt.

11. To notify the State and the Inter-American Commission on Human Rights of the [...] Order.

18. As the Inter-American Court is monitoring implementation of the measures ordered in the present case, the Commission has repeatedly conveyed to the Court its serious concern over the fact that the State has done nothing more than repeat information already presented to the Court and has provided no information to show actual compliance with the provisional measures the Court ordered. It has also underscored the need to press for all measures necessary to fully protect the persons specifically named in the Court's orders of November 27, 2002 and November 21, 2003.

### **Marta Colomina and Liliana Velásquez**

19. In the case of Marta Colomina and Liliana Velásquez, the Commission sought provisional measures so that the Court would order the State to protect the life, personal safety and freedom of expression of journalists Marta Colomina and Liliana Velásquez, who were the victims of an attempt on their lives in the early morning hours of June 27, 2003, while on their way to the TELEVEN television station for their daily show "*La Entrevista*".

20. On July 30 2003, the Presidente of the Court resolved:

1. To order the State to adopt, without delay, all measures necessary to protect the life, personal safety and freedom of expression of journalists Marta Colomina and Liliana Velásquez.

2. To order the State to allow the beneficiaries of the protection measures to participate in their planning and implementation and, in general, keep them informed of the progress made on the measures ordered.

3. To order the State to investigate the facts reported in the complaint that gave rise to the present measures, in order to identify and punish those responsible.
4. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with this Order, no later than August 8, 2003.
5. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report within one week of notification thereof.
6. To order the State that, subsequent to its first report [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; and to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of their receipt.

21. On September 8, 2003, the Court issued an Order for Provisional Measures in the present case, wherein it resolved:

1. To ratify the July 30, 2003 Order of the President of the Inter-American Court of Human Rights.
2. To order the State to adopt and maintain all measures needed to protect the life, personal safety, and freedom of expression of journalists Marta Colomina and Liliana Velásquez.
3. To order the State to allow the beneficiaries of the protection measures to participate in their planning and implementation and, in general, keep them informed of the progress made on the Court-ordered measures.
4. To order the State to investigate the facts reported in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.
5. To order the State to report to the Inter-American Court of Human Rights, by September 15, 2003 at the latest, on the measures it has taken to comply with the [...] Order.
6. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report within one week of notification thereof.
7. To order the State that, subsequent to its first report [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of their receipt.
8. To notify the State and the Inter-American Commission on Human Rights of this Order.

22. On December 2, 2003, the Court issued another Order for Provisional Measures, wherein it decided:

1. To reiterate that the State has not effectively implemented the provisional measures that the Inter-American Court of Human Rights ordered in the September 8, 2003 Order.
2. To declare the State to be in noncompliance with its duty under Article 68(1) of the American Convention on Human Rights.
3. To declare that the State has not yet complied with its duty to report to the Inter-American Court of Human Rights on implementation of the measures the Court ordered.
4. Should the current situation persist, to report to the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court on Human Rights, concerning a State's failure to comply with the decisions of the Inter-American Court of Human Rights.
5. To reiterate to the State that it is required to effectively implement the measures ordered by the Inter-American Court of Human Rights in its September 8, 2003 Order for protection of the lives, personal safety and freedom of expression of Marta Colomina and Liliana Velásquez.
6. To again order the State to allow the applicants to participate in the planning and implementation of the protection measures and, in general, keep them informed of the progress made with the measures ordered by the Inter-American Court of Human Rights.
7. To again order the State to investigate the denunciations that prompted adoption of these provisional measures, in order to identify and punish those responsible.

8. To order the State to report to the Inter-American Court of Human Rights on the measures adopted pursuant to [...] Order, by no later than January 7, 2004.
9. To order the Inter-American Commission on Human Rights to present the observations it deems pertinent on the State's report, within 15 days of being notified thereof.
10. To order the State, subsequent to its first report (*supra* operative paragraph eight), to continue to report to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to continue to present its observations on those reports within six weeks of their receipt.
11. To notify the State and the Inter-American Commission on Human Rights of this Order.





## CHAPTER VII

### FINAL CONSIDERATIONS AND RECOMMENDATIONS

1. Freedom of expression and access to information are fundamental to the democracies of the Hemisphere. Through the exercise of freedom of expression and access to information, society can avoid and prevent improper behavior by public officials.

2. The importance of freedom of expression in our Hemisphere has been reaffirmed during the year 2003. The Declaration of Santiago on Democracy and Public Trust, unanimously approved by the Ministers of Foreign Affairs of the Member States of the OAS, recognizes that democracy is strengthened by the full respect for freedom of expression, access to information and free dissemination of ideas. It further recognizes that all sectors of society, including the media, through the information they provide to citizens, can contribute to an environment of tolerance for all opinions, promote a culture of peace, and strengthen democratic governance. This declaration follows the plans of action adopted during the Summits of the Americas, and particularly, during the Third Summit of the Americas held in 2001.

3. The Plan of Action of the Third Summit of the Americas established the need for 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.

4. However, notwithstanding the constant reference to the need to respect and guarantee freedom of expression in the Hemisphere, the exercise of this freedom cannot be characterized as full and free of obstacles. As this report clearly reveals, acts of aggression and reprisals for the exercise of this freedom, including murders and the misuse of anti-defamation laws to silence opposition, have continued to take place during 2003.

5. Several States are currently considering the possibility of adopting laws on access to information. However, in contrast to the situation in 2002, none of the States passed laws on this subject this year. It is important to note that, during its last period of ordinary sessions, the General Assembly of the Organization of American States (OAS) approved Resolution AG/RES. 1932 (XXXIII-0/03), which establishes that "states are obliged to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application."

6. Most countries of the Hemisphere still maintain "*desacato*" (insult or contempt of public officials) laws. In spite of repeated recommendations, only one State has repealed these laws during 2003. Many countries of the Hemisphere have demonstrated a clear intention to intimidate journalists by initiating judicial proceedings against them. Many public officials or government leaders use criminal libel, slander, and defamation laws in the same manner as *desacato* laws, with the intention of silencing journalists who have produced articles that criticize the government on matters of public interest.

7. 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 Special Rapporteur for Freedom of Expression reiterates the recommendations made in previous reports:

- 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 *desacato* as a crime, since they limit public debate, which is essential to the functioning of democracy, and are not in keeping with the American Convention on Human Rights.
  - e. Promote the amendment of criminal defamation laws to prevent them being used in the same way as the *desacato* laws.
  - f. Enact laws allowing access to information and complementary rules governing their implementation in accordance with international standards.
  - g. Promote policies and practices that effectively permit freedom of expression 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 about public policies.
  - h. Finally, the Special Rapporteur recommends that the member 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.
8. The Rapporteur thanks all the States that have worked with him this year, as well as the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support. Lastly, the Rapporteur thanks all those independent journalists and other media personnel who, day after day, fulfill their important function of keeping society informed.