

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 sources¹ 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.

¹ 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,² 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

² 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.³ Reported here are some of the main cases of attacks reported in 2003.

³ 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.⁴ 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.⁵ 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.⁶ 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.⁷

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.⁸

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

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

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

⁶ Committee to Protect Journalists (CPJ), February 28, 2003, 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.

⁷ 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>; Reporters Without Borders (RSF), February 27, 2003, www.rsf.org.

⁸ Journalists against Corruption (Periodistas Frente a la Corrupción, PFC), 7 de marzo de 2003 en: 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, March 10, 2003; (Asociación por la Defensa del Periodismo Independiente, Periodistas), March 10, 2003 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.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³

⁹ International Freedom of Expression Exchange (IFEX), 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; 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.

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

¹¹ Reporters Without Borders (RSF), May 15, 2003; 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.

¹² Argenpress, August 13, 2003, www.argenpress.info; and Journalists against corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003, www.portal-pfc.org.

¹³ 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.

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.¹⁴

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.¹⁵

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").¹⁶

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,¹⁷ 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 1994.¹⁸ 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.¹⁹ On December 4, 2003, President Kirchner signed Decree No. 1172/2003, which allows

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

¹⁵ *La Capital*, March 7, 2003, www.diariolacapital.com.

¹⁶ *Futbol argentino*, May 28, 2003, www.futbolargentino.com.ar

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

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

¹⁹ *El Clarín* (Argentina), "*Apoyan medida de Kirchner*," in <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.²⁰ 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.²¹

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

²¹ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), January 9, 2003, www.portal-pfc.org; *Río Negro* (Argentina), "IAPA prepares a document to adhere to the presentation", January 24, 2003., 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.²²

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.²³ 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.²⁴ On February 13, 2003, photographer Juan José Torrejón of *La Prensa* was injured when the lid of a tear gas canister hit his leg.²⁵

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.²⁶ The demonstrations grew more intense as of October 11, resulting in more than 70 persons killed and 200 injured. In this context, on

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

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

²⁴ International Freedom of Expression Exchange (IFEX), February 14, 2003, www.ifex.org

²⁵ International Freedom of Expression Exchange (IFEX), February 17, 2003. www.ifex.org

²⁶ *Instituto Prensa y Sociedad* (IPYS) September 24, 2003, 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.²⁷ The *Red Educación Radiofónica de Bolivia (Red ERBOL)*, which includes *Radio Pío XII*, was said to have received several threats against its journalists prior to the attack.²⁸ 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.²⁹

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.³⁰ 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.³¹

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.³²

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

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

²⁸ AMARC, October 16, 2003.

²⁹ Committee to Protect Journalists (CPJ), October 17, 2003, www.cpj.org.

³⁰ International Freedom of Expression Exchange, July 3, 2003, www.ifex.org; Inter-American Press Association (IAPA) July 3, 2003, www.sipiapa.com; and International Freedom of Expression Exchange (IFEX), July 8 2003, www.ifex.org

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

³² *Jornal do Comercio do Rio de Janeiro* (Brasil), "Desembargador denunciado como mandante de crime", www.jornaldocomercio.com.br; Inter-American Press Association (IAPA), country reports, october 2003, 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.³³

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.³⁴

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.³⁵

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, 1998.³⁶ 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

³³ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), July 24, 2003, www.portal-pfc.org ; Committee to Protect Journalists (CPJ), at www.cpj.org.

³⁴ Inter-American Press Association (IAPA), September 5, www.sipiapa.com; Reporters without Borders, September 4, 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.

³⁵ 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.

³⁶ International Freedom of Expression Exchange (IFEX), September 18, 2003; and Inter-American Press Association (IAPA), October 2003, www.sipiapa.com

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

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.³⁸

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.³⁹

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

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

³⁸ Canadian Journalists for Free Expression (CJFE), June 24, 2003, www.cjfe.org.

³⁹ Journalists against Corruption (Periodistas Frente a la Corrupción, PFC), September 11, 2003, 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.

Planeta and from the sales outlets.⁴⁰ 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.⁴¹

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 29.⁴² On October 1, the Fifth Chamber of the Court of Appeals denied the *recurso de protección* and lifted the censorship of the program.⁴³

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.⁴⁴

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, 2003.⁴⁵

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

⁴⁰ *Instituto Prensa y Sociedad (IPyS)*, January 14, 2003, www.ipys.org

⁴¹ *Instituto Prensa y Sociedad (IPyS)*, May 30, 2003, www.ipys.org.

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

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

⁴⁴ *Instituto Prensa y Sociedad (IPyS)*, April 24, 2003, 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.

⁴⁵ *Instituto Prensa y Sociedad (IPyS)*, February 3, 2003 and April 3, 2003, www.ipys.org; Committee to Protect Journalists (CPJ), February 6, 2003, 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.⁴⁶

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

⁴⁶ *El Mostrador*, “Rechazan procesamiento contra periodistas de La Nación,” October 7, 2003, www.elmostrador.cl; Luis Narváez, “Jueza desestima injurias contra Salas, pero procesa al director y periodista,” *La Nación*, October 7, 2003, www.lanacion.cl; “Colegio de periodistas solidariza con profesionales de la Nación,” *El Mostrador*, October 8, 2003, www.elmostrador.cl; “Colegio de periodistas solidariza con la Nación”, *La Nación*, 8 de octubre de 2003, 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.⁴⁷

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.⁴⁸ In June, in Arauca, three persons suspected of being involved in Alfonso's death were detained.⁴⁹

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.⁵⁰ 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.⁵¹ In addition, an arrest warrant was issued for the mayor of Barrancabermeja, Julio César Ardila Torres, for his alleged participation in the assassination.⁵² 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

⁴⁷ 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>

⁴⁸ Press Release 71/03 of the Special Rapporteur for Freedom of Expression <www.cidh.org/Relatoria/Spanish/Compren2003/ComPren7103.htm>; Reporters without Borders (RSF), March 18, 2003, www.rsf.org; *Fundación para la Libertad de Prensa* (FLIP), March 18, 2003, www.flip.org.co, and *Instituto Prensa y Sociedad* (IPyS), March 18, 2003, www.ipys.org; Committee for the Protection of Journalists (CPJ), March 18, 2003, 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.

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

⁵⁰ 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.

⁵¹ *Fundación para la Libertad de Prensa* (FLIP), July 17, 2003, www.flip.org.co.

⁵² Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), July 11, 2003, in: 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.⁵³ The mayor alleged his innocence.⁵⁴

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.⁵⁵ 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*.⁵⁶ On his radio program, Rengifo denounced crime in Maicao.⁵⁷ Rengifo had received threats earlier.⁵⁸

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.⁵⁹ On January 23, they were released in El Chocó, to the south of the Panamanian border.⁶⁰

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.

⁵³ EFE (News Agency), September 24, in www.efe.com; International Freedom of Expression Exchange (IFEX), July 17, 2003, www.ifex.org.

⁵⁴ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), September 18, 2003, www.portal-pfc.org.

⁵⁵ *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>; *Oficina de Derechos Humanos del Periodista*, cited in International Freedom of Expression Exchange (IFEX), May 13, 2003, www.ifex.org.

⁵⁶ *El País*, April 29, 2003.

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

⁵⁸ Committee to Protect Journalists (CPJ), May 1, 2003, www.cpj.org.

⁵⁹ *Instituto Prensa y Sociedad* (IPyS), January 22, www.ipys.org.

⁶⁰ *Instituto Prensa y Sociedad* (IPyS), January 27, 2003, www.ipys.org; Committee to Protect Journalists (CPJ), January 23 and 24, 2003, www.cpj.org.

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

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 28.⁶³

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.⁶⁴ 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.⁶⁵

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

⁶¹ *Fundación para la Libertad de Prensa* (FLIP), www.flip.org.co, January 24 and 28, 2003, www.flip.org.co ; *Instituto Prensa y Sociedad* (IPyS), January 28, 2003; www.ipys.org.

⁶² *El Espectador*, "ELN Libera Periodistas Extranjeros", February 2, 2003, www.elespectador.com; Committee to Protect Journalists (CPJ), January 23, 2003, www.cpj.org.

⁶³ *Instituto Prensa y Sociedad* (IPyS), January 28, 2003, www.ipys.org and FLIP, January 28, www.flip.org.co , 2003; Committee to Protect Journalists (CPJ) www.cpj.org , January 29, 2003.

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

⁶⁵ Inter-American Press Association (IAPA), October reports, 2003; 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.⁶⁶

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.⁶⁷ Some of the journalists had previously received threats.⁶⁸

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.⁶⁹

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.”⁷⁰ Cadena left the city. He had directed the program *Hechos y cifras*, and often accused departmental and municipal officials of mismanaging public funds.⁷¹

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

⁶⁷ *Centro de Análisis de Información* (CADI), March 29, 2003, www.adeh.org/cadi.

⁶⁸ *El Tiempo* (Colombia), March 20, 2003, www.eltiempo.com/hoy.

⁶⁹ *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>; *El Espectador* (Colombia), “Periodista sale ileso de atentado en Villavicencio,” May 7, 2003; Reporters Without Borders, May 9, 2003, www.rsf.fr.

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

⁷¹ Committee to Protect Journalists (CPJ), May 12, 2003, 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 2000.⁷²

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.⁷³

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.⁷⁴ 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.⁷⁵

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.⁷⁶ Due to the death threats she received, she fled Barrancabermeja in December of 2003.⁷⁷

⁷² International Freedom of Expression Exchange, May 21, 2003, www.ifex.org.

⁷³ *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.

⁷⁴ *Instituto Prensa y Sociedad* (IPyS), October 30, 2003, www.ipys.org.

⁷⁵ *Fundación para la Libertad de Prensa* (FLIP), October 28, 2003, www.flip.org.co, and International Freedom of Expression Exchange (IFEX), October 29, 2003; www.ifex.org.

⁷⁶ *Fundación para la Libertad de Prensa* (FLIP), October 30, 2003, 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.

⁷⁷ *Radio Caracol* (Colombia), "Periodista amenazada abandona Barrancabermeja", December 4, 2003, 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.⁷⁸ 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.⁷⁹ A criminal judge filed an order of preventive detention for six months against Chaves and Calvo.⁸⁰

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.

⁷⁸ *La Nación* of Costa Rica, www.nacion.com, and the Inter-American Press Association (IAPA), www.sipiapa.com.

⁷⁹ *La Nación* (Costa Rica), "Padre Mínor y Empresario presos por crimen de Parmenio", December 28, 2003 www.nacion.com.

⁸⁰ *La Nación* (Costa Rica), "Seis meses de cárcel a Padre Mínor y a empresario", December 29, 2003; 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.⁸¹

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.⁸²

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

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

⁸² Inter-Amecian Press Association (IAPA), October report, 2003, www.sipiapa.com.

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

88. On March 18, 2003, State Security raided the homes and seized material and equipment from independent journalists in Havana.⁸⁵ 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.⁸⁶

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.⁸⁷

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.⁸⁸

91. The Rapporteurship condemned these events in two press releases, one dated March 20, 2003,⁸⁹ the other April 4, 2003.⁹⁰ 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.⁹¹

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.

⁸³ *Los Amigos de las Bibliotecas Cubanas*, <www.friendshipofcubanlibraries.org>; Reporters Without Borders, April 7, 2003, www.rsf.fr.

⁸⁴ International Freedom of Expression Exchange (IFEX), June 6, 2003, www.ifex.org.

⁸⁵ Committee to Protect Journalists (CPJ), March 19, 2003, www.cpj.org.

⁸⁶ Reporters Without Borders, March 19, 2003, www.rsf.fr ; Inter-American Press Association (IAPA), March 19, 2003, www.sipiapa.com.

⁸⁷ Committee to Protect Journalists (CPJ), April 2, 2003, www.cpj.org.

⁸⁸ Committee to Protect Journalists (CPJ), April 9, 2003, www.cpj.org.

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

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

⁹¹ 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.⁹² 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.⁹³

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,⁹⁴ declared a hunger strike. Mario Enrique Mayo, Adolfo Fernández Sainz, and Iván Hernández Carrillo, imprisoned at the penitentiary in Holguín, did likewise.⁹⁵ 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 12.⁹⁶

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.⁹⁷

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."⁹⁸

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

⁹² Reporters Without Borders, August 8, 2003, www.rsf.fr.

⁹³ Reporters Without Borders, April 26, 2003, www.rsf.fr ; International Freedom of Expression Exchange (IFEX), September 4, 2003, www.ifex.org.

⁹⁴ Reporters Without Borders, September 3, 2003, www.rsf.fr ; International Freedom of Expression Exchange (IFEX), September 3, 2003, www.ifex.org ; Committee to Protect Journalists (CPJ), September 3, 2003; www.cpj.org.

⁹⁵ Reporters Without Borders, August 25, 2003, www.rsf.fr.

⁹⁶ *La Nación* (Argentina), February 13, 2003.

⁹⁷ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), www.portal-pfc.org, *Noticiero Cubanet*, March 3, 2003.

⁹⁸ Reporters Without Borders, May 4, 2003, www.rsf.fr.

⁹⁹ Inter-American Press Association (IAPA), October 30, 2003, and Montero, Rosa, "De Cuba", *El País* (Spain), 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.¹⁰⁰

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.¹⁰¹

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*.¹⁰² The condolence note was signed Fernando María Buendía, one of the names used in previous threats attributed to the clandestine group Legión Blanca.¹⁰³ 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.

¹⁰⁰ Reporters Without Borders, October 31, 2003, www.rsf.fr.

¹⁰¹ Committee to Protect Journalists (CPJ), November 18, 2003, www.cpj.org.

¹⁰² Hoy, "Cedhy denuncia intimidación a periodistas y académicos", September 25, 2003, www.hoy.com.ec. ; and International Freedom of Expression Exchange, September 24, 2003, www.ifex.org.

¹⁰³ Comisión Ecuémica 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶

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

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

¹⁰⁵ Hoy, “No hay un canal abierto con la Presidencia”, January 27, 2003, www.hoy.com.ec.

¹⁰⁶ *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.¹⁰⁷ 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*.¹⁰⁸ 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.¹⁰⁹

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*,¹¹⁰ finding that the government can withhold on national security grounds information about more than 1,100 non-U.S. citizens detained since September 11.¹¹¹ 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.¹¹² 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

¹⁰⁷ Christopher Marquis, "Name Sources, Judge Orders Five Reporters," *New York Times*, October 15, 2003; Reporters Without Borders, www.rsf.org, October 16, 2003.

¹⁰⁸ 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.

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

¹¹⁰ 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.

¹¹¹ 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.

¹¹² FCC News, June 2, 2003.

emergency stay pending a full review.¹¹³ The hearing in this case is currently scheduled for February 2004.¹¹⁴ Both the Senate and the House of Representatives have also been considering legislative proposals that would overturn the new rules.¹¹⁵ 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.¹¹⁶ However, in December, these provisions were deleted during the final congressional negotiations.¹¹⁷

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.¹¹⁸

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.¹¹⁹

Positive Developments

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

¹¹⁴ Capitol Broadcasting Company, October 27, 2003.

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

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

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

¹¹⁸ "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.

¹¹⁹ Reporters Without Borders, 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).¹²⁰

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.¹²¹

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,

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

¹²¹ 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.¹²² 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.¹²³

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.¹²⁴

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.¹²⁵ 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.¹²⁶

¹²² 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.

¹²³ 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>.

¹²⁴ Editorial, "The Presidential Bubble," *New York Times*, September 25, 2003; www.aclu.org; Eunice Moscoso, "Suit claims Secret Service violates protesters' rights", *Atlanta Journal-Constitution*, September 24, 2003.

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

¹²⁶ 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.¹²⁷ 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.¹²⁸

Attacks and threats

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

¹²⁸ *Prensa Libre* (Guatemala), October 27, 28, 29, and 30, 2003; Committee to Protect Journalists (CPJ), October 28, 2003, 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 2003.¹²⁹

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.¹³⁰ 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.¹³¹

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.¹³²

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

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

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

¹³² *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.¹³³

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.”¹³⁴ 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.”¹³⁵ On June 27, he reported that due to the intimidation and pressures, he had to get his family out of the country.¹³⁶ The Rapporteur, Eduardo Bertoni, expressed his grave concern over the threats received by Zamora in a press release issued July 7, 2003.¹³⁷ 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.¹³⁸ The journalist reported the intimidating acts to the Public Ministry and the Office of the Human Rights Ombudsperson. On

¹³³ *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.

¹³⁴ *Prensa Libre* (Guatemala), “Repudian ataque a periodista Rubén Zamora”, June 25, 2003, 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 ; Asociación para el Estudio y Promoción de la Seguridad en Democracia, SEDEM, June 25, 2003; Reporters Without Borders, June 25, 2003, www.rsf.fr; Siglo XXI, “Zamora denuncia que persisten amenazas”, June 27, 2003, www.sigloxxi.com ; BBC News, <www.news.bbc.co.uk>, June 28, 2003.

¹³⁵ Siglo XXI (Guatemala), June 27, 2003, www.sigloxxi.com ; *Prensa Libre*, June 27, 2003, www.prensalibre.com.gt; *El Periódico*, June 27, www.elperiodico.com.gt.

¹³⁶ Reporte Guatemala Hoy, June 28, 2003.

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

¹³⁸ *Prensa Libre* (Guatemala), June 27, 2003, www.prensalibre.com.gt ; Committee for the Protection of Journalists (CPJ), July 8, 2003, 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.¹³⁹

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."¹⁴⁰ Ten minutes later she received another call in the same terms.¹⁴¹ On Thursday, July 3, she received another telephone call in which the intimidation was repeated¹⁴² 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.¹⁴³

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).¹⁴⁴

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).¹⁴⁵

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.¹⁴⁶ On July 23, the IACHR asked the Guatemalan State to issue precautionary measures to protect Font's life and personal integrity.

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

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

¹⁴¹ *Alianza contra la impunidad*, July 2, 2003.

¹⁴² *Centro de Reportes Informativos de Guatemala (Cerigua)*, August 21, 2003.

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

¹⁴⁴ *Id.*

¹⁴⁵ 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.

¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹

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.¹⁵⁰

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.¹⁵¹

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.¹⁵² He attributed the threats to his coverage of the FRG demonstrations in Guatemala City.¹⁵³

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

¹⁴⁸ Committee to Protect Journalists (CPJ), July 24, 2003, www.cpj.org.

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

¹⁵⁰ *Centro de Reportes Informativos de Guatemala*, (Cerigua), August 1; *Prensa Libre* "Director de Guatevisión denuncia amenazas", August 1, 2003, www.prensalibre.com.gt.

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

¹⁵² *Centro de Reportes Informativos de Guatemala* (Cerigua), August 18, 2003.

¹⁵³ *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.¹⁵⁴ 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).¹⁵⁵

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.¹⁵⁶

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.¹⁵⁷

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.¹⁵⁸

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

¹⁵⁵ *Centro de Reportes Informativos de Guatemala* (Cerigua), August 15, 2003.

¹⁵⁶ Report Guatemala Hoy, *Prensa Libre*, October 30, 2003.

¹⁵⁷ *Centro de Reportes Informativos de Guatemala* (Cerigua), November 9, 2003.

¹⁵⁸ Siglo XXI (Guatemala), January 20, 2003, 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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ 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.¹⁶²

¹⁵⁹ *Centro de Reportes Informativos de Guatemala* (Cerigua), January 22, 2003.

¹⁶⁰ *Guatemala Hoy*, January 22, 2003.

¹⁶¹ *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.

¹⁶² 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.¹⁶³

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.¹⁶⁴

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.¹⁶⁵

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.¹⁶⁶

¹⁶³ 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/index.htm>>.

¹⁶⁴ 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>>.

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

¹⁶⁶ Inter-Amecian Press Association (IAPA), March 24, 2003, 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.¹⁶⁷

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 2002.¹⁶⁸

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.¹⁶⁹

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.¹⁷⁰

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.¹⁷¹

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.¹⁷² 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.¹⁷³

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.¹⁷⁴ 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.

¹⁶⁷ Inter-Américian Press Association (IAPA), March 24, 2003, www.sipiapa.com.

¹⁶⁸ 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.

¹⁶⁹ Inter-Américian Press Association (IAPA), March 24, 2003, www.sipiapa.com.

¹⁷⁰ Reporters Without Borders (RSF), February 20, 2003, www.rsf.org

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

¹⁷² International Freedom of Expression Exchange (IFEX), September 2, 2003, www.ifex.org; Inter-American Press Association (IAPA), October 14, 2003, www.sipiapa.com.

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

¹⁷⁴ *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.¹⁷⁵

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

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 3.¹⁷⁷

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.¹⁷⁸

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, 2000.¹⁷⁹ On August 4 the Court of Appeals of Port-au-Prince ordered a new investigation to determine the masterminds of that crime.¹⁸⁰ Subsequently, the Court also ordered the release of three of the suspects for lack of sufficient evidence to keep them in prison.¹⁸¹

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

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

¹⁷⁵ Alter Presse, October 28, 2003.

¹⁷⁶ *Id.*

¹⁷⁷ Committee to Protect Journalists (CPJ), October 30, www.cpj.org; RSF, October 30, Reporters Without Borders (RSF), www.rsf.org.

¹⁷⁸ Association de Journalistes Haïtiens.

¹⁷⁹ Committee to Protect Journalists (CPJ), March 25, 2003, www.cpj.org.

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

¹⁸¹ Haiti Press Network, August 5, 2003.

¹⁸² *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 release¹⁸³ 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.¹⁸⁴ 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*¹⁸⁵ or crimes against honor,¹⁸⁶ invoking the provisions of the Criminal

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

¹⁸⁴ 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.

¹⁸⁵ 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.¹⁸⁷ As of this writing, the case was in the production of evidence stage. A third complaint was dropped after a conciliation hearing.¹⁸⁸

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.¹⁸⁹ Charges were also filed against Sandra Moreno.¹⁹⁰

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.¹⁹¹ 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

...continued

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.

¹⁸⁶ Title III of the Criminal Code of Honduras.

¹⁸⁷ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003. www.portal-pfc.org.

¹⁸⁸ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), September 25, 2003, www.portal-pfc.org.

¹⁸⁹ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 11, 2003, www.portal-pfc.org.

¹⁹⁰ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 15, 2003, www.portal-pfc.org.

¹⁹¹ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), October 27, 2003; *La Prensa* (Honduras), "Buscan eliminar censura", October 25, 2003, www.laprensahn.com; *Tiempo Digital* (Honduras), October 25, 2003, www.tiempo.hn; *El Heraldo* (Honduras), "Fiscalía pide anular ley que impone censura a periodistas", October 25, 2003, 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.”¹⁹² 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.¹⁹³

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

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

¹⁹³ 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.¹⁹⁴

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,

¹⁹⁴ The Jamaica Observer, July 15, 2003, 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; Inter-American Press Association, October 14, 2003, 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.¹⁹⁵

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.¹⁹⁶ 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.¹⁹⁷

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 release¹⁹⁸ 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

¹⁹⁵ The Jamaica Observer, June 1, 2003, www.jamaicaobserver.com ; Inter-American Press Association (IAPA), October 2003, www.sipiapa.com.

¹⁹⁶ 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>, The Jamaica Observer, September 13, 2003 at: www.jamaicaobserver.com.

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

¹⁹⁸ 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.¹⁹⁹ 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 defenders²⁰⁰ and media outlets.

193. In the states of Guerrero²⁰¹ 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

¹⁹⁹ 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).

²⁰⁰ 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.

²⁰¹ 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,²⁰² 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;²⁰³ Luciano Campos Garzam, correspondent for the magazine *Proceso* in Monterrey, Nuevo León; Humberto Pacheco Guardado²⁰⁴ 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,²⁰⁵ Francisco Barradas, of the

²⁰² 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>.

²⁰³ 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.

²⁰⁴ 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.

²⁰⁵ 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;²⁰⁶ 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;²⁰⁷ Alejandro Humberto López Lena Cruz, director general of the *Corporación radiofónica* of Oaxaca;²⁰⁸ Eduardo López Betancourt;²⁰⁹ Isabel Arvide Limón;²¹⁰ Javier Hernández Alpízar, reporter and columnist and political cartoonist Marcos Cruz, both of Xalapa, Veracruz.²¹¹

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

²⁰⁶ 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.

²⁰⁷ 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*.

²⁰⁸ 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.

²⁰⁹ 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.

²¹⁰ 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.

²¹¹ 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.²¹²

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.”

²¹² 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.²¹³ 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.²¹⁴

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

²¹³ “*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>, on November 17, 2003.

²¹⁴ 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.²¹⁵ 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.²¹⁶ 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.”²¹⁷ 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”²¹⁸ and that “the harm to the aim must be greater than the public interest in having the information.”²¹⁹ 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.²²⁰

²¹⁵ 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.

²¹⁶ 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....”.

²¹⁷ American Convention on Human Rights, Article 13(2).

²¹⁸ Principles on Freedom of Information, note 212 *supra*, Principle 4.

²¹⁹ *Id.*

²²⁰ *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.²²¹ 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.²²² 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

²²¹ 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.

²²² 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.²²³

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 Varillas²²⁴ of Cancún; Maribel Gutiérrez,²²⁵ reporter and editor of the Guerrero section of the

²²³ 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>>.

²²⁴ 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).

²²⁵ 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 continued...

newspaper *El Sur*; Daniel Morelos,²²⁶ journalist and director of information of *El Universal*; Enrique Méndez, Gustavo Castillo,²²⁷ Rubén Villalpando, Andrea Becerril, Ciro Pérez, and Roberto Garduño, all of the daily newspaper *La Jornada*,²²⁸ Francisco Guerrero Garro and Fabiola Escobar, director and reporter of *La Jornada* in Morelos;²²⁹ Javier Juárez Mejía,²³⁰ correspondent for *La Jornada* in Baja California; Daniel Valdés Romo²³¹, reporter in Coahuila; Alejandro Mendoza Pastrana,²³² correspondent for *El Financiero* in Guerrero; Carlos Huerta²³³

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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).

²²⁶ 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).

²²⁷ 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.

²²⁸ 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).

²²⁹ 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.

²³⁰ 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.

²³¹ 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.

²³² 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.

²³³ 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*.²³⁴ 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.²³⁵

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.

²³⁴ 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.

²³⁵ 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 Guerrero²³⁶ and *El Norte* of Ciudad Juárez,²³⁷ 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.²³⁸ 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

²³⁶ 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.

²³⁷ 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.

²³⁸ 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,²³⁹ 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.²⁴⁰

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.²⁴¹

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*

²³⁹ 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.

²⁴⁰ International Freedom of Expression Exchange (IFEX), May 26, 2003, www.ifex.org.

²⁴¹ 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.”²⁴²

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*.²⁴³

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,²⁴⁴ 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

²⁴² *Id.*

²⁴³ *La Prensa* (Nicaragua), June 4, 2003, www.laprensa.com.ni and Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), June 4, 2003, www.portal-pfc.org.

²⁴⁴ 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.²⁴⁵

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 1988.²⁴⁶

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.²⁴⁷ 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.²⁴⁸ The ruling, handed down by the Thirteenth Judge for Criminal Matters, Secundino Mendieta, specifies that the penalty is

²⁴⁵ *Idem*.

²⁴⁶ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 12, 2003, www.portal-pfc.org.

²⁴⁷ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 21, 2003, www.portal-pfc.org.

²⁴⁸ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 8, 2003, www.portal-pfc.org.

commutable to 60 days' fine at 10 dollars per day.²⁴⁹ 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.²⁵⁰ 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.²⁵¹

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.²⁵² 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\$1,500.²⁵³

Detentions

²⁴⁹ Reporters without Borders, August 11, 2003, www.rsf.fr. ; Inter-American Press Association, August 18, 2003, www.sipiapa.com.

²⁵⁰ Committee to Protect Journalists (CPJ), October 30, 2003, www.cpj.org ; Perú 21, November 3, 2003, www.peru21.com.

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

²⁵² *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>.

²⁵³ *El Panamá América*, April 10, 2003, 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.²⁵⁴ The journalists were released after being detained for 26 hours.²⁵⁵ 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,²⁵⁶ 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*.²⁵⁷ The Supreme Court admitted the *habeas data* actions in February 2003.²⁵⁸ 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

²⁵⁴ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), April 16, 2003, www.portal-pfc.org.

²⁵⁵ *La Prensa* (Panama), “Liberan a periodistas”, April 16, 2003, www.prensa.com.

²⁵⁶ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 12, 2003, www.portal-pfc.org.

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

²⁵⁸ *La Prensa* (Panama), “Corte admite acciones de hábeas data”, April 7, 2003, 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.²⁵⁹

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.²⁶⁰

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.²⁶¹

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.²⁶²

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

²⁵⁹ *La Prensa* (Panama), “Gobierno incumple ley de transparencia”, February 4, 2003, www.prensa.com.

²⁶⁰ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC) July 31, 2003, ww.portal-pfc.org.

²⁶¹ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), August 5, 2003, www.portal-pfc.org.

²⁶² *ABC Color* (Paraguay), April 7, 2003, 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.²⁶³

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.²⁶⁴

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.²⁶⁵

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.²⁶⁶

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.²⁶⁷

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 Superintendencia 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 Superintendencia 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

²⁶³ Inter-American Press Association, October 2003, www.sipiapa.com.

²⁶⁴ ABC Color (Paraguay), October 4, 2003, www.abc.com.py.

²⁶⁵ Inter-American Press Association, October 2003, www.sipiapa.com.

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

²⁶⁷ *Diario ABC*, April 23, 2003, 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.²⁶⁸

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.²⁶⁹ 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 1759.²⁷⁰

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.²⁷¹

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).²⁷²

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.²⁷³

²⁶⁸ *Última Hora* (Paraguay), April 10, 2003, www.ultimahora.com ; *ABC Color* (Paraguay), April 10, 2003, www.abc.com.py ; and Inter-American Press Association, October 2003, www.sipiapa.com.

²⁶⁹ Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), November 5, 2003, www.portal-pfc.org.

²⁷⁰ *Diario ABC Color Digital*, March 24, 2003, www.abc.com.py ; Inter-American Press Association (IAPA), October 2003, www.sipiapa.com.

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

²⁷² *ABC Color* (Paraguay), August 4, 2003, www.abc.com.py.

²⁷³ Inter-American Press Association (IAPA), October 2003, www.sipiapa.com ; Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), www.portal-pfc.org ; and *Diario Noticias* (Paraguay), 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.²⁷⁴

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*.²⁷⁵

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.²⁷⁶

²⁷⁴ Instituto Prensa y Sociedad (IPYS), January 30, 2003; www.ipys.org. Inter-American Press Association (IAPA), March report, 2003, www.sipiapa.com.

²⁷⁵ International Federation of Journalists (IFJ), April 9, 2003, www.ifj.org.

²⁷⁶ Instituto Prensa y Sociedad (IPYS), June 10, 2003, 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.²⁷⁷

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.²⁷⁸

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.²⁷⁹

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.²⁸⁰

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.²⁸¹

²⁷⁷ Instituto Prensa y Sociedad (IPYS), , May 10, 2003, www.ipys.org.

²⁷⁸ Instituto Prensa y Sociedad (IPYS), June 5, 2003, www.ipys.org.

²⁷⁹ Correo, May 1, 2003, www.correoperu.com.pe.

²⁸⁰ *El Comercio* (Peru), February 4, 2003, www.elcomercioperu.com.pe ; Inter-American Press Association (IAPA) www.sipiapa.com.

²⁸¹ *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.²⁸²

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*²⁸³ 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.²⁸⁴

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.²⁸⁵

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.²⁸⁶

²⁸² *Listín Diario* (Dom. Rep.), January 30, 2003, www.listin.com.do; Inter-American Press Association (IAPA), March report, 2003, www.sipiapa.com.

²⁸³ *Los Nuevos Tiempos Digital*, “El Diablo ganó en la primera vuelta,” www.cafebambu.com, July 29, 2003.

²⁸⁴ Inter-American Press Association (IAPA), October 2003, www.sipiapa.com.

²⁸⁵ “Rechaza críticas de Fabra por cierre de programa,” *El Nacional* (Dominican Republic), www.elnacional.com.do, July 12, 2003. SIP, October 2003.

²⁸⁶ *Cadena de Noticias* (Dominican Republic), “Periodistas del Listín Diario protestan por cancelación sub director”, <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.²⁸⁷

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.²⁸⁸

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.²⁸⁹

URUGUAY

Positive judicial actions in defamation cases

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

²⁸⁸ *Listín Diario*, "Corte tiene tres fallos en caso Listín", September 17, 2003, www.listin.com.do.

²⁸⁹ Committee to Protect Journalists (CPJ), June 13, 2003, www.cpj.org. Inter-American Press Association (IAPA), October 2003 and letter of protest, August 5, 2003, www.sipiapa.com. International Freedom of Expression Exchange (IFEX), June 16, 2003, www.ifex.org. *Diario El Nacional*, June 11, 2003, www.elnacional.com.do, Inter-American Press Association (IAPA), June 11, 2003, www.sipiapa.com. *Cadena de Noticias*, www.cdn.com.do; *Los Nuevos Tiempos*, June 11, 2003, www.cafebambu.com; *Listín Diario*, June 12, 2003, www.listin.com.do. *Diario Hoy*, June 13 and 15, 2003, www.hoy.com.do. Inter-American Press Association (IAPA), October 2003, 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.²⁹⁰ 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.²⁹¹

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.²⁹²

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.

²⁹⁰ *La República* (Uruguay), April 23, 2003, www.larepublica.com.uy.

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

²⁹² Journalists against Corruption (*Periodistas Frente a la Corrupción*, PFC), February 26, 2003, www.portal-pfc.org. Inter-American Press Association (IAPA), March 10, 2003, 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.²⁹³ Javier Gutiérrez and Antonio Rodríguez of *El Regional* were assaulted in the state of Zulia.²⁹⁴

296. In Caracas, information was received concerning attacks on Héctor Castillo, photographer with *El Mundo*, and Johan Merchán, of *Televen*.²⁹⁵ 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.²⁹⁶

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.²⁹⁷

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.²⁹⁸ 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.²⁹⁹ 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

²⁹³ International Federation of Journalists (IFJ), January 24, 2003, in International Freedom of Expression Exchange (IFEX), January 24, www.ifex.org.

²⁹⁴ *Instituto Prensa y Sociedad* (IPYS), January 16, and January 2, 2003, www.ipys.org.

²⁹⁵ *Instituto Prensa y Sociedad* (IPYS), January 13, 2003, www.ipys.org.

²⁹⁶ *Instituto Prensa y Sociedad* (IPYS), August 21, 2003, www.ipys.org.

²⁹⁷ *Instituto Prensa y Sociedad* (IPYS), February 5, 2003, www.ipys.org.

²⁹⁸ International Freedom of Expression Exchange (IFEX), January 24, 2003, www.ifex.org.

²⁹⁹ International Freedom of Expression Exchange (IFEX), January 24, 2003, www.ifex.org.

and treat them with dignity, as they deserve,”³⁰⁰ 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.³⁰¹ The Special Rapporteur for Freedom of Expression condemned the incident in a press release of June 30, 2003.³⁰²

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.³⁰³

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.³⁰⁴

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

³⁰⁰ *Instituto Prensa y Sociedad* (IPYS), February 10, 2003, www.ipys.org.

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

³⁰² Press Release from the Office of the Special Rapporteur for Freedom of Expression 81/03, <www.cidh.org/relatoria/Spanish/Compren2003/ComPren8103.htm>.

³⁰³ *Instituto Prensa y Sociedad* (IPYS), October 15, www.ipys.org. Reporters Without Borders (RSF), October 17, 2003, www.rsf.fr.

³⁰⁴ Reporters Without Borders (RSF), June 27, 2003, 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.³⁰⁵

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.³⁰⁶ In particular, they argued that the recommendations of the Inter-American Commission are not binding.³⁰⁷ 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.³⁰⁸

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.³⁰⁹

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.³¹⁰ 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

³⁰⁵ Instituto Prensa y Sociedad (IPYS), May 5, 2003, www.ipys.org.

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

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

³⁰⁸ Instituto Prensa y Sociedad (IPYS), April 14, 2003, www.ipys.org. Inter-American Press Association, April 11, 2003, www.sipiapa.com.

³⁰⁹ Instituto Prensa y Sociedad (IPYS), April 14, 2003, www.ipys.org. Inter-American Press Association (IAPA), April 11, 2003, www.sipiapa.com.

³¹⁰ 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.³¹¹ On February 5, 2003 officials from MINFRA went to the offices of *Venevisión*³¹² 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*.³¹³

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

³¹¹ Committee to Protect Journalists (CPJ), January 23, 2003, www.cpj.org.

³¹² Inter-American Press Association (IAPA), February 6, 2003, www.sipiapa.com ; International Federation of Journalists, (IFJ), February 6, 2003, www.ifj.org.

³¹³ Committee to Protect Journalists (CPJ), January 23, 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).³¹⁴ 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.³¹⁵ 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.³¹⁶

³¹⁴ *Instituto Prensa y Sociedad* (IPYS), June 4, 2003, www.sipiapa.com.

³¹⁵ AMARC, July 15, 2003.

³¹⁶ AMARC, July 18, 2003; *Instituto Prensa y Sociedad* (IPYS), July 14, 2003, 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.³¹⁷

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.³¹⁸ 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.

³¹⁷ International Federation of Journalists, cited in International Freedom of Expression Exchange (IFEX), February 10, 2003, www.ifex.org.

³¹⁸ Committee to Protect Journalists (CPJ), October 7, 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>Nicanor Linhares Batista, 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>Luiz Antônio da Costa, 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>Luis Eduardo Alfonso Parada, 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>José Emeterio Rivas, 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>Guillermo Bravo Vega, 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>Jaime Rengifo Revero, 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>

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<p>German Antonio Rivas, 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>