



Office of the Special Rapporteur
for Freedom of Expression

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



Impunity, Self-censorship
and Armed Internal Conflict:
An Analysis of the State of Freedom
of Expression in Colombia



ORGANIZATION OF AMERICAN STATES — OAS

Document published thanks to the financial support of



OEA/Ser.L/V/II
Doc. 51
31 August 2005
Original: Spanish

Impunity,
Self-Censorship
and Armed
Internal Conflict:
An Analysis of
the State of Freedom
of Expression in
Colombia

Organization of American States
Inter-American Commission on Human Rights
Office of the Special Rapporteur for
Freedom of Expression

© 2005

OAS Cataloging-in-Publication Data

Impunidad, autocensura y conflicto armado interno : análisis de la situación de la libertad de expresión en Colombia / [preparado por la] Relatoría para la Libertad de Expresión, Comisión Interamericana de Derechos Humanos, Organización de los Estados Americanos

Impunity, self-censorship and armed internal conflict : an analysis of the state of freedom of expression in Colombia / [prepared by the] Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States.

p. ; cm. (OAS Official Records; OEA/Ser.L V/II)

ISBN 0-8270-4896-3

1. Freedom of the press—Colombia.
2. Journalists—Crimes against—Colombia.
3. Violence—Colombia.
4. Human rights—Colombia.
5. Civil rights—Colombia.

I. Organization of American States. Office of the Special Rapporteur for Freedom of Expression.
II. Series.

OEA/Ser.L V/II doc.51



ORGANIZATION OF AMERICAN STATES – OAS

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

For further information, the Office of the Special Rapporteur for Freedom of Expression may be contacted at:

1889 F St. N.W. • Washington D.C. 20006, USA
Phone: 202-458-3796 • Email: cidhexpression@oas.org
Web: <http://www.cidh.org/relatoria>

Document published thanks to the financial support of the *Agencia Española de Cooperación Internacional* (AECI).
Positions herein expressed are those of the Office of the Special Rapporteur for Freedom of Expression and the Inter-American Commission on Human Rights and do not reflect the views of *AECI*.

Index

EXECUTIVE SUMMARY	5
I. INTRODUCTION	9
II. METHODOLOGY OF THE REPORT	13
III. LEGAL FRAMEWORK OF THE REPORT	15
A. The importance of freedom of expression in democratic systems	15
B. The protection of freedom of expression in the Colombian judicial system	16
1. The framework of the Inter-American system for the protection of human rights	16
2. Constitutional framework	18
3. Judicial framework	18
IV. COLOMBIA'S ARMED INTERNAL CONFLICT IN CONTEXT	19
A. Introduction	19
B. Historic origins	20
V. ANALYSIS OF FREEDOM OF EXPRESSION IN COLOMBIA	23
A. Violence and impunity	23
B. Self-censorship	29
C. The Colombian Interior and Justice Ministry's <i>Journalist Protection Program</i>	32
D. The placement of official advertising	32
E. The crimes of libel and slander	33
F. Access to public information	35
G. Community radio	36
VI. RECOMMENDATIONS	39
VII. ANNEXES	41
A. List of individuals interviewed	41
B. Assassinations of journalists in Colombia, 1998-2005	43
REFERENCES	51

“Those who say something, they die.”

“The people are afraid to make accusations.”

“Self-censorship is a form of survival. I self-censor my work because I am afraid of losing everything - my job, my motivation, my family.”

“In the face of this situation, there is nothing else we can do but mortgage our independence.”

“In Colombia there exists a muzzled press, which has begun to sacrifice its freedom of expression in order to preserve its own life.”

–Testimonies collected by the Office of the Special Rapporteur for Freedom of Expression during a country visit to Colombia in April 2005.

Executive Summary

Colombia's armed internal conflict, now more than four decades old, is characterized by great complexity and high levels of violence. This, in turn, has had a pronounced effect on human rights, particularly freedom of expression. On numerous occasions, the Inter-American Commission on Human Rights and the Office of the Special Rapporteur for Freedom of Expression have expressed grave concern over the assassinations, threats, kidnappings, intimidation and other acts of violence occurring in Colombia, crimes whose victims have in recent years included a large number of journalists. It is within this context that the Office of the Special Rapporteur undertakes this analysis of freedom of expression in Colombia.

This work is the result of an analysis of the information the Office of the Special Rapporteur collected through its observation and monitoring of freedom of expression in Colombia, a process that culminated in an on-site country visit in April 2005. The present study aims to evaluate the government response to the violence and intimidation faced by journalists in Colombia and its policies designed to promote and protect freedom of expression.

Colombia's legal framework includes both international norms and domestic laws protecting freedom of expression. But in spite of these norms, the Office of the Special Rapporteur observes that the accusations of aggression and violence against journalists, human rights defenders and members of civil society organizations persist.

The investigation of the Office of the Special Rapporteur also highlights that a state of impunity continues for those committing crimes against journalists. This report repeatedly emphasizes that the chilling effect produced by threats and violence against journalists is amplified when the crimes go unpunished. In this realm, the Office of the Special Rapporteur has analyzed the status of a number of investigations conducted by the *Fiscalía General de la Nación* (Office of the Public Prosecutor). The Office of the Special Rapporteur's evaluation of

the Public Prosecutor's work – which is in line with that of a variety of civil society organizations and public interest groups – yields a number of concerns. The first stems from the weakening of the office in charge of investigating the assassinations of journalists. The second refers to the slow pace of the investigations in the majority of cases involving violations of freedom of expression, particularly assassinations. The investigations headed by the Public Prosecutor show no sign of advancement, which helps to generate a climate of profound mistrust with respect to the administration of justice.

This report also urges the Government to promote the incorporation of the international standards on freedom of expression at the judicial level. These standards constitute effective tools to protect and guarantee the legal norms on freedom of expression.

This investigation does take note of the marked decline in acts of violence against journalists in Colombia in recent years. The implementation of government programs to protect journalists has played a decisive role in strengthening this trend. In this sense, this report emphasizes the importance of the current Interior and Justice Ministry's *Journalist Protection Program*. The Office of the Special Rapporteur underscores that mechanisms of this sort, which have allowed for the physical protection of an important number of Colombian journalists, should be reinforced in order to make the implementation of these protective measures more effective.

At the same time, however, the Office of the Special Rapporteur has verified that the drop in the statistics on violence against journalists stems in part from self-censorship by journalists themselves. Colombia's climate of persistent violence and aggression contributes greatly to the silencing of journalists. During the visit, the Office of the Special Rapporteur also confirmed that in some regions, journalists are pres-

sured by illegal groups – and even representatives of the government – to divulge or suppress certain types of information.

In the same realm, the Office of the Special Rapporteur manifests in this report its deep concern over the stigmatization of those who criticize the government. The report takes note of the complaints received regarding high government officials, who have made public statements against the work of non-governmental organizations – both international and domestic groups – that seek to protect human rights. These declarations by government officials have undoubtedly fostered an increase in the tensions between the government and civil society.

The investigation also highlights the complaints that have been made in connection with the absence of transparency characterizing the process by which the government assigns official publicity. The Office of the Special Rapporteur is concerned that this lack of transparency could give rise to the use of official publicity as a tool to limit freedom of expression.

In the same way, the Office of the Special Rapporteur calls attention to a measure in the recently passed Code of Criminal Procedure allowing the Public Prosecutor to investigate cases of alleged slander or libel without prior judicial review, particularly if such investigations are undertaken at the behest of public officials.

The Office of the Special Rapporteur is aware of the advances made in freedom of expression made in Colombia in recent years. Consequently, this report highlights the importance of the programs of protection, and at the same time commends the government's efforts to facilitate access to public information and its policies aimed at promoting community radio. In this investigation, the Office of the Special Rapporteur urges the government to

continue with these efforts to strengthen democracy through policies designed to improve government transparency and to promote democratic participation by the population at large.

The Office of the Special Rapporteur concludes this report with a series of recommendations that call on the government to take measures necessary to

protect both the physical integrity of journalists and the infrastructure of the media. At the same time, the Office of the Special Rapporteur admonishes the authorities to undertake a serious, impartial and effective investigation against any acts of violence and intimidation committed against journalists and to try and punish those responsible.

I. Introduction

1. Between April 25 and April 29, 2005, a delegation from the Office of the Special Rapporteur for Freedom of Expression (hereinafter “the Office of the Special Rapporteur”) of the Inter-American Commission on Human Rights (hereinafter “the Commission”), part of the Organization of American States (hereinafter “the OAS”) (1), conducted an on-site country visit to Colombia at the invitation of President Alvaro Uribe. The delegation was headed by the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, and also consisted of Carlos Zelada, a lawyer at the Office of the Special Rapporteur, and consultant Montserrat Solano. The visit was carried out in response to the demands by diverse sectors of Colombian society with the aim of evaluating the state of freedom of expression in the country. (2)

2. During the visit, the Office of the Special Rapporteur’s agenda consisted of activities in the cities of Bogotá and Arauca (3) designed to analyze the conditions under which freedom of expression is exercised in Colombia. This agenda included meetings with high-ranking government officials, representatives of state bodies that develop programs to protect journalists threatened by the participants of the armed conflict, directors and editors of Colombian media, and civil society groups. (4) In addition, the Office of the Special Rapporteur conducted interviews during the on-site visit with around 60 journalists, human rights defenders and community leaders. These individuals hailed from a number of different regions, and some who are most affected by the armed conflict traveled to Bogotá and Arauca to meet with the Office of the Special Rapporteur’s delegation. At the end of the visit, the Office of the Special Rapporteur issued a press release with a preliminary analysis of the information collected. (5)

3. The Office of the Special Rapporteur wishes to underscore the cooperation of government officials during the delegation’s visit to Colombia. The Office of the Special Rapporteur was given all of the guarantees and assistance needed from the government to complete its work satisfactorily. In the same

way, the Office of the Special Rapporteur appreciates the support of civil society groups, journalists, human rights defenders and individuals, who all provided information and testimony for the preparation of the report.

4. After the visit to Colombia, the Commission requested that the Office of the Special Rapporteur prepare a study on the state of freedom of expression in Colombia. In accordance with Article 58 of its Rules of Procedure, the Commission sent a preliminary version of this report to the Colombian State in an effort to provide it with an opportunity to make the observations it felt were pertinent. The State presented its observations to the preliminary report on August 9, 2005. After considering the observations from the State and incorporating the changes it felt necessary, the Commission approved the definitive text of this report. This same text is presented here and is done under the Commission's power to publish reports and the Office of the Special Rapporteur's authority to promote and monitor the state of freedom of expression in OAS member States. In this sense, the current report is designed as a tool to assess both the state of freedom of expression in Colombia and the protection of those exercising this right. The report is the product of an analysis of the information gathered by the Office of the Special Rapporteur during a process of observation and monitoring that culminated in the on-site country visit of April 2005.

5. The exercise of freedom of expression in Colombia has been gravely affected in recent decades by the internal armed conflict⁽⁶⁾. On numerous occasions, the Office of the Special Rapporteur has expressed its grave concern for the assassinations, threats, kidnapping, intimidation and other acts of violence, whose victims have in recent years included a large number of journalists in Colombia. The Commission has also called attention to this type of situation in its most

recent annual reports, describing such circumstances as "the persistence of short-term or structural situations . . . that have a serious and critical negative effect on the observance and enjoyment of the fundamental rights enshrined in the American Convention on Human Rights." ⁽⁷⁾.

6. In general, the state of human rights in Colombia is considered to be one of the gravest in the hemisphere, primarily because of the impact of the internal armed conflict. The gravity of the situation stems from the continuous violation of human rights, particularly the right to life and the right to humane treatment. This has a direct effect on freedom of expression. In addition to the armed conflict, Colombia also confronts the problems of drug trafficking, abuse of power, and violence arising from social injustice and land disputes. These sources of violence have also caused deterioration in the state of human rights in Colombia.

7. As noted by the Commission's *Report on the Demobilization Process in Colombia*, the path to peaceful coexistence in Colombia is not simple. A string of governments have failed in their efforts to eradicate the violence or have had only partial success, and as a consequence, the factors generating the conflict persist ⁽⁸⁾. The violence in Colombia is therefore of great complexity and a long duration. In this realm, the Office of the Special Rapporteur finds the stability of Colombia's democratic institutions affected by profound social inequalities and high levels of violence that cannot be reduced merely to terrorism. The complexity of the situation requires extraordinary efforts to regain peace, and these efforts should be taken in compliance with international human rights norms, including those involving freedom of expression ⁽⁹⁾.

8. As will be analyzed in this report, Colombia has a legal framework to protect freedom of expression

that is in line with international norms. In spite of this, however, the Office of the Special Rapporteur continues to receive reports and accusations of aggression and violence against journalists, human rights defenders and members of civil society groups. According to a number of testimonies given to the Office of the Special Rapporteur during its recent visit, many of these acts may have been committed as reprisals for the exercise of freedom of expression.

9. As a result of its visit, the Office of the Special Rapporteur has identified two aspects of special concern in the area of freedom of expression in Colombia. The first of these relates to the climate of self-censorship that continues for journalists. The second involves the state of impunity that exists with respect to the assassinations of journalists. With respect to the latter point, it should be noted that the Colombian state, in its observations on this report, sustained that “Colombia is concerned by...the difficulties of identifying the physical and intellectual authors of crimes against journalists. Colombia would like to clarify that the impunity that exists is not due to state inaction, but to the difficulties in the investigation of this series of crimes.” The Office of the Special Rapporteur urges the State to ensure that the resources given to the Public Prosecutor’s Office are used effectively, and if necessary, to increase these resources in order to combat the impunity it recognizes.

10. In 2004, Colombia saw a notable drop in the acts of violence against journalists compared with previous years. In fact, in its 2004 annual report the Office of the Special Rapporteur did not find any assassinations linked to the practice of journalism. This coincides with a general decline in the statistics

on violence linked to the armed conflict in certain areas and with the implementation of programs of protection by the Ministry of the Interior and Justice. While this overall decline does signal progress, it is also driven in part by a different cause. As will be analyzed later in this report, the drop in the statistics of violence correlates in part to journalists’ self-censorship of their own work.

11. In addition to self-censorship, freedom of expression in Colombia is affected by the state of impunity that exists for those who commit crimes against journalists. The Office of the Special Rapporteur considers that this situation contributes greatly to the perpetuation of violence against journalists in Colombia.

12. In addition to the subjects already mentioned, this report contains other topics of importance for the state of freedom of expression in Colombia. The report is therefore divided into seven sections. Following this introduction is an explanation of the report’s methodology and an overview of the legal and historical frameworks. The fifth section contains a substantive analysis highlighting aspects of concern and areas in which progress has been observed. The report then provides a series of recommendations by the Office of the Special Rapporteur based on its observations of the state of freedom of expression in Colombia. Finally, the report contains three annexes detailing the officials and organizations interviewed, a list of journalists murdered since 1998 and reported to the Office of the Special Rapporteur, and a selection of cases from Colombia’s Constitutional Court (Annex C is available in Spanish only).

II. Methodology of the Report

13. The Office of the Special Rapporteur has relied on a broad spectrum of sources in the preparation of this report. To evaluate the domestic legal system, it analyzed the relevant codes, legal texts published by official entities, the jurisprudence of Colombian courts and other publications on the Colombian legal system. The Office of the Special Rapporteur also utilized reports prepared by government institutions, such as the Ombudsman, the Presidential Program for Human Rights, the Public Prosecutor and others. It also used data and information from non-governmental organizations specializing in human rights, and from individuals. In addition, the Office of the Special Rapporteur reviewed articles appearing in the press, as well as studies, investigations and reports prepared by international human rights organizations. The Office of the Special Rapporteur analyzed the situation based on the data it obtained and its own observations made while in the country.

14 Although the Office of the Special Rapporteur conducted its activities in the cities of Bogotá and Arauca, it also received information and testimonies about the state of freedom of expression in various regions of the country, particularly Norte de Santander, Antioquia and Putumayo.

15. It is important to note that this report, in general, does not identify individuals or the organizations where they work. This is done to protect those who shared valuable information and opinions that are included in this report. When relevant, however, the report does provide references to official documents, reports and sources that were consulted, and when express authorization was given, the source of testimonies is revealed.

16. The report also includes – in the majority of cases – specific references for facts or situations on which the Office of the Special Rapporteur has already reported. In the interest of brevity, these situations have not been described in the same detail as they were in earlier annual reports or press releases. Their reference and analysis, however, are an integral part of this analysis. In light of

this, the Office of the Special Rapporteur calls attention to these important precedents and their role as primary sources of information for the preparation of

this report and future studies on the state of freedom of expression in Colombia (10).

III. Legal Framework of the Report

A. THE IMPORTANCE OF FREEDOM OF EXPRESSION IN DEMOCRATIC SYSTEMS

17. As the Office of the Special Rapporteur has signaled in previous reports, the right of freedom of expression has an essential role in the development of democracy and the exercise of human rights (11). To this end, Principle 1 of the Declaration of Principles on Freedom of Expression notes that:

Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

18. The bodies of the Inter-American system have consistently emphasized the critical importance of this right. The global system of human rights, as well as the other regional systems designed to protect human rights, have also affirmed the essential nature of this right (12).

19. To this end, the leaders of the Americans approved the Inter-American Democratic Charter on September 11, 2001, in which they declared the following:

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy (13).

20. The same idea has been reaffirmed by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”), which declared the following:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formulation of public opinion. It is also a **conditio sine qua non** for the development of

political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. (14).

21. More recently, the Inter-American Court of Human Rights has refined this notion, declaring that:

Without freedom of expression, democracy fades away, pluralism and tolerance begin to break down, the mechanisms of control and complaint by the citizenry begin to fail, and a fertile ground is laid for authoritarian systems to take root (15).

22. By allowing for the exchange of ideas, opinions and information, freedom of expression facilitates and fosters civic participation, contributes to tolerance and dignifies human beings. In addition to providing protection to other human rights, freedom of expression plays a key role in the oversight of government (16). Together, this makes freedom of expression a basic pillar of democratic systems.

B. THE PROTECTION OF FREEDOM OF EXPRESSION IN THE COLOMBIAN JUDICIAL SYSTEM.

1. The framework of the Inter-American system for the protection of human rights.

23. Within the Inter-American system's mechanisms for the protection of human rights, there are three documents of particular relevance to the right of freedom of expression. The first is the American Declaration of the Rights and Duties of Man (1948), which was followed by the American

Convention on Human Rights (1969). The most recent of these documents is the Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission in 2000 (17).

24. The American Declaration of the Rights and Duties of Man establishes in Article IV that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." The Inter-American Court, as well as the Inter-American Commission, have signaled that even though this instrument was adopted as a declaration, it is still a binding international obligation for member States of the OAS (18).

25. The right to freedom of thought and expression is guaranteed by the American Convention in Article 13 in the following way:

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

restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

26. Freedom of expression also contains two dimensions: individual freedom and social freedom. The Inter-American Court has noted that the scope of freedom of expression

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others (19).

27. It is important to note for the purposes of this analysis that the standards governing freedom of expression should be understood in conjunction with other rights enshrined in the American Convention, particularly Article 1(1) (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection).

28. Colombia ratified the American Convention on Human Rights on July 31, 1973 and is therefore bound to respect and guarantee the rights that the Convention recognizes, including freedom of expression.

29. With respect to the Declaration of Principles on Freedom of Expression, (20) the Inter-American Commission has noted that this document “constitutes a basic document for interpreting Article 13 of the American Convention on Human Rights” and “also incorporates international standards into the Inter-American system to strengthen protection of this right” (21).

30. The Office of the Special Rapporteur utilizes the Declaration of Principles as a methodological tool for the evaluation of the state of freedom of expression in member States. This Inter-American Commission highlighted this explanatory role played by the Declaration of Principles in its annual report of 2004. It noted that

since its adoption, the Declaration has emerged as a frame of reference for evaluating the possible violations of the freedom of expression in the Member States. Increasingly, the States, civil society organizations, and private persons invoke its principles to assess progress, regression or possible violations of this right, and

undertake possible actions to support this right (22).

2. Constitutional framework

31. The Political Constitution of Colombia guarantees the right to freedom of expression in Article 20. It provides the following

All persons have the freedom to express and disseminate their thoughts and opinions, to inform and receive truthful and impartial information, and to establish mass media.

The media is free and has social responsibilities. The right to correction under the same conditions is guaranteed. There will be no censorship.

32. In addition, Article 73 of the Political Constitution directly addresses the media:

Journalistic activity will enjoy the protection of its liberty and professional independence.

33. The Political Constitution also addresses the role of international treaties, in the second paragraph of Article 93:

The rights and duties enshrined in this Constitution will be interpreted in conformity with the international human rights treaties ratified by Colombia.

34. It is also worth mentioning the words of the Colombian Constitutional Court in Judgment C-010-00 of January 19, 2000:

The Court agrees with the petitioner that the doctrine of the Inter-American Court of Human Rights, the official judicial body

charged with interpreting the American Convention, is particularly relevant. As this Constitutional Court has ruled on a number of occasions, the Constitution's dictate in Article 93 that constitutional rights are duties that must be interpreted "in conformity with the international human rights treaties ratified by Colombia", means there is *no room for doubt that the jurisprudence of international bodies charged with interpreting such treaties is a relevant source for determining the meaning of the constitutional standards on fundamental rights* (23).

3. Judicial framework (24)

35. As it has signaled in its annual reports of recent years, the Office of the Special Rapporteur considers that the jurisprudence of OAS member States on international human rights standards makes a vital contribution to the understanding and strengthening of the hemisphere's right to freedom of expression (25).

36. The Office of the Special Rapporteur highlights the efforts of the Colombian Constitutional Court since its creation to incorporate international standards set forth by the Inter-American system on freedom of expression in its judgments.

37. In this context, the Office of the Special Rapporteur provides a selection of Colombian Constitutional Court decisions in this area in Annex C (26). The Constitutional Court, in accordance with Article 241 of the country's Constitution, "is entrusted with preserving the integrity and supremacy of the Constitution." This norm is undoubtedly a central axis for the analysis of freedom of expression in Colombia, given that the decisions of the Constitutional Court have provided a progressive interpretation of the Constitution itself, which in turn influences all of the country's courts.

IV. Colombia's Armed Internal Conflict in Context

A. INTRODUCTION

38. As was described in the legal framework portion of this report, the Office of the Special Rapporteur believes that any comprehensive analysis of freedom of expression in Colombia must take into account the armed internal conflict and the phenomenon of generalized violence. For this reason, the following paragraphs briefly explain the multiplicity of factors that contribute to the grave state of human rights in Colombia.

39. The Office of the Special Rapporteur feels it is important at the outset to recognize the State's efforts to suppress armed illegal groups and end the violence in Colombia. This effort, in addition to being a duty of the State, is of fundamental importance for the peace, stability and governability of Colombia, and it is shared by the State and civil society (27).

40. The Office of the Special Rapporteur also fully comprehends that there are a variety of actors participating in Colombia's armed internal conflict and it recognizes that the State has the right and obligation to guarantee the security of its citizens confronted with dissident armed groups and other criminal groups that threaten to destabilize the constitutional order. The fulfillment of these rights and obligations, however, does not justify the use of measures that compromise its respect of its obligations on international human rights and international humanitarian law.

41. The State's responsibilities can be compromised by direct action, as well as by omission and acquiescence, in cases in which individuals – such as members of paramilitary groups – participate in crimes through the support or tolerance of State agents. At the same time, the Office of the Special Rapporteur recognizes that a significant portion of the acts of violence afflicting the civilian population in Colombia are attributed to the guerrillas.

42. In the past four decades, Colombian society has suffered the grave consequences of a violence designed to silence the exercise of freedom of expression, among other freedoms. These acts have taken the form of massacres, executions, mutilations, kidnappings and threats that have afflicted the most vulnerable, and in many cases, these crimes directly target journalists, human rights defenders and community leaders.

43. The Office of the Special Rapporteur has condemned (28) and continues to condemn the violence perpetrated by dissident armed groups in violation of international human rights law and international humanitarian law, and it calls on the State to investigate, try and punish those responsible.

44. The State has the duty to adopt measures in order to prevent the commission of violent acts by private actors, whether they are guerrillas or paramilitaries. It also has the duty, once the crimes are committed, to investigate, try and punish those responsible.

45. The State alone is charged with implementing the law and maintaining order in its territory while simultaneously fulfilling corresponding international standards. While the Office of the Special Rapporteur recognizes the State's right and obligation to combat violence and crime, it also insists that the actions of the State comply with its international human rights obligations. It is within this context that the state of Colombia's freedom of expression is evaluated.

B. HISTORIC ORIGINS (29)

46. In this section, the Office of the Special Rapporteur aims to orient the reader with respect to the complex dynamic of the internal armed conflict currently afflicting Colombia and to place the problems of freedom of expression in context. It is therefore worth reiterat-

ing that the violence perpetrated by the players in the armed internal conflict – particularly the *Autodefensas Unidas de Colombia* (hereinafter “the AUC”) and the *Fuerzas Armadas Revolucionarias de Colombia* (hereinafter “the FARC”) – has translated into massacres, selective assassinations, kidnappings, forced disappearances and threats aimed directly at journalists, human rights defenders and community leaders.

47. After leaving behind the bipartisan civil wars of the 19th and 20th centuries, Colombian society confronted a period known as *La Violencia*, or the Violence, after a 1946 change in government shifted the power from the Liberal to the Conservative Party. In the 1950s, a violent confrontation occurred between the two political groups and the persecution of Liberal Party members in rural areas laid the foundation for the rise of armed groups. The fall of the military government of General Rojas Pinilla on May 10, 1957 then ushered in a period of reconciliation, during which Liberals and Conservatives participated in the government through the *Frente Nacional*, or National Front, and took turns in government in an effort to maintain stability. During this period, the armed resistance groups linked to the Liberal Party disbanded, laid down their arms and rejoined civil life.

48. In the 1960s, 1970s, and 1980s, new revolutionary groups organized and violence ensued. The period saw the emergence of the FARC, the *Ejército de Liberación Nacional* (hereinafter the “ELN”), the *Ejército Popular de Liberación* (hereinafter the “EPL”), the *Movimiento 19 de Abril* (hereinafter “the M-19”), the indigenous guerrilla group *Movimiento Armado Quintín Lame*, the *Autodefensa Obrera* (hereinafter “the ADO”) and movements that emerged as dissident groups of the aforementioned groups, like the *Ricardo Franco*, among others.

49. In response to this resurgence of violence, the State in 1965 promulgated – as a transitory provision under a state of emergency – Decree 3398. This

decree provided in Article 25 that “...all Colombians, men and women, not included in the call to obligatory service, may be employed by the Government in activities and jobs with which they would contribute to re-establishing normality” (30). The decree also indicated, at Article 33, paragraph 3, that “the Ministry of National Defense, through the authorized commands, may provide, when it considers it advisable, as private property, arms that are considered as being exclusively for the use of the Armed Forces” (31). Through this provision, groups of civilians armed themselves legally. The Decree became permanent legislation in 1968 (32) and the so-called “self-defense groups” were formed, with the support of the military forces and National Police.

50. These paramilitary self-defense groups had ties to economic and political sectors in some parts of the country and in the late 1970s and 1980s in particular, they gained new strength. During this period, the paramilitary established close ties with drug trafficking, and many of their key leaders became landowners, using violence to defend the drug business and their economic interests by attempting to extort and expropriate dissident armed groups. By the 1980s, it became clear that these groups were responsible for the commission of massacres and selective assassinations of civilians (33).

51. At the same time, successive governments attempted to negotiate peace agreements with dissident armed groups. In the early 1990s, several thousand members of the M-19, a faction of the EPL and the *Quintín Lame* demobilized as a result of the peace agreement they reached with the government. The FARC and the ELN did not demobilize, however, and by 2003 they had approximately 13,000 and 4,000 members respectively, according to figures from the Ministry of Defense. The paramilitary groups, meanwhile, continued to operate, despite legal prohibitions, and in the 1990s they were

responsible for a large number of political killings in Colombia. Around 1997, the paramilitary groups consolidated at the national level in a group organized into rural and urban units (*bloques*). This group, known as the AUC, publicly stated that its purpose was to act in a coordinated fashion against the guerrillas. By 2003, the AUC had approximately 13,500 members, according to the Ministry of Defense.

52. The presence of these illegal armed groups – both guerrillas and paramilitaries – has created a confusing combination of alliances and clashes with drug trafficking forces and official forces. In addition, after the relative success by the government in the offensive against drug cartels in the mid-1990s, these groups assumed the control of the initial phases of narcotics production. The FARC and the ELN – and since the 1990s, the paramilitary groups – also extort and kidnap. In recent decades, organized crime has also had an impact on national life, affecting elections and the operation of the judicial system in large parts of Colombia’s territory, among other elements of society.

53. The rising number of crimes against journalists has undoubtedly had a two-fold impact on the state of freedom of expression in Colombia. On one side, the violence looks to eliminate those who attempt to investigate abuses and irregularities and to ensure that their investigations do not come to light. But on the other side, the violence is designed to be a tool of intimidation directed at those conducting these types of investigations. As will be analyzed later in this report, this situation, together with the lack of a judicial resolution in the overwhelming majority of cases, is of deep concern to the Office of the Special Rapporteur.

54. In this respect, the Office of the Special Rapporteur again reminds the State of its obligation to adopt measures designed to prevent the commission of violence by these groups, as well as to investigate, try and punish those responsible.

55. The Office of the Special Rapporteur also claims as it own the entreaties of the Inter-American Commissions, which has repeatedly expressed its concern about the State's responsibility for the ties

and cooperation between some members of the security forces and paramilitary groups in the commission of crimes against the civilian population (34).

V. Analysis of Freedom of Expression in Colombia

A. VIOLENCE AND IMPUNITY

56. Since its creation in 1998, the Office of the Special Rapporteur – in both its annual reports and its press releases (35) – has reported on the individual cases of aggression against journalists in Colombia, particularly assassinations and threats against journalists and attacks that have resulted in the material destruction of the mass media.

57. It is important to highlight that the inclusion of these cases in the Office of the Special Rapporteur’s annual reports does not in any way presume the existence of any responsibility by the Colombian State in each of these attacks. It is done only to illustrate that journalism in Colombia continues to be a high-risk profession.

58. The Office of the Special Rapporteur views the State’s efforts through the *Journalist Protection Program* of the Interior and Justice Ministry to be of special importance. The actions of the State in this realm have undoubtedly proved to be essential in guarding those whose lives are at risk due to freedom of expression. The Office of the Special Rapporteur, however, calls special attention to the need for the government to strengthen the financing and logistical support of this program (36).

59. The Office of the Special Rapporteur also recognizes the activities of the Office of the Vice President of Colombia, which has spearheaded the *Programa de Lucha contra la Impunidad* (“Program to Confront Impunity”) and the *Comité Especial de Impulso de las Violaciones de Derechos Humanos e Infracciones al Derecho Internacional Humanitario* (“Special Committee on Violations of Human Rights and Infractions of International Humanitarian Law”). The Office of the Special Rapporteur expects these advances to facilitate the development of thorough and exhaustive investigations of attacks targeting journalists and communications media.

60. One of the statistics found worrying by the Office of the Special Rapporteur is the number of assassinations of journalists in Colombia. The data of the Office of the Special Rapporteur shows that at least 31 journalists have been killed in Colombia since 1998 as a result of their work. There are other cases of assassinations of journalists in this same period, but they have not been included in the total because the cases lack a clear connection between the killing and the journalistic work (37). It should be noted that the Office of the Special Rapporteur analyzes and verifies the information it receives to account for only those cases in which there are reasonable indications that the motive for killing the victim was his or her exercise of journalism.

Journalists assassinated in Colombia 1998-2005

Cases reported to the Office of the Special Rapporteur for Freedom of Expression (38)

Year	Cases
1998	9
1999	5
2000	3
2001	3
2002	5
2003	4
2004	0
2005	1
Total cases	30
Total journalists (39)	31

61. On repeated occasions, the Office of the Special Rapporteur has characterized the killing of journalists as the most brutal form of restricting freedom of speech in the hemisphere. On one hand, killings are designed to eliminate those journalists that conduct investigations on abuses and irregularities – whether at the hands of public officials, organizations or individuals – and to ensure that their investigations are never concluded and never subject to the public debate that they merit. On the other hand, the killing of journalists serves as a tool of intimidation through which a clear message is sent to all members of civil society who investigate or report abuses or irregularities. This practice endeavors to control the press by maintaining their silence or by making them accomplices in the abusive acts committed by individuals or institutions. It also, ultimately, aims to prevent society from being informed about these events (40).

62. During the 1999-2005 period, the Office of the Special Rapporteur also reported a total of 22 kidnappings, 69 threats and acts of intimidation and 8 cases of material destruction of mass media in its annual reports and press releases.

Other violations of freedom of expression in Colombia, 1999-2005.

Cases reported to the Office of the Special Rapporteur for Freedom of Expression (41)

Type of violation	Number of violations						
	1999	2000	2001	2002	2003	2004	2005
Kidnappings	4	7	0	3	5	2	1
Threats and acts of intimidation	8	11	6	20	7	13	4
Material destruction	1	1	1	3	1	0	1
Total cases	13	19	7	26	13	15	6

63. With respect to the murders of or aggressions against journalists, the Office of the Special Rapporteur highlights what is established by Principle 9 of the Declaration of Principles on Freedom of Expression:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. 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.

64. As part of its on-site country visit, the Office of the Special Rapporteur had an interview with officials from the *Unidad de Derechos Humanos*, or the Human Rights Unit, of the Office of the Public Prosecutor. The Office of the Special Rapporteur was informed about the status of the investigations into the killings of or violence against journalists.

65. During this meeting, officials from the Public Prosecutor noted that one of the chief difficulties faced in the investigations into the killing of journalists is the establishment of the intellectual author. The key obstacle, they said, is the lack of physical evidence and witness testimony, and this absence is further aggravated when the investigation is conducted in areas dominated by armed groups.

66. The Office of the Special Rapporteur is still concerned, however, by the insufficient State response in the face of the crimes, thanks to the complexity and quantity of these cases. The Office of the Special Rapporteur requests that the Government provide sufficient resources so that the investigations into these violations of freedom of expression are both exhaustive and serious.

67. In this same vein, the Office of the Special Rapporteur expresses particular concern for the *Sub-Unidad de Investigación de Asesinatos a Periodistas* (Sub-unit on the Investigation of Journalist Killings), part of the Human Rights Unit of the Office of the Public Prosecutor. The Office of the Special Rapporteur recognizes the efforts of Colombian authorities in the creation of this sub-unit specifically designed to protect the physical integrity of an important number of journalists (42). But the information collected during the visit of the Office of the Special Rapporteur from civil society organizations, and also from the Office of the Public Prosecutor itself, indicates that this sub-unit lacks prosecutors specifically assigned to the area of freedom of expression. This concerns the Office of the Special Rapporteur in light of the high number of cases of murder or violence against journalists that are still pending. The Office of the Special Rapporteur considers the employment of personnel assigned to this area to be of fundamental importance. The Office of the Special Rapporteur calls on the Colombian State to provide the Office of the Public Prosecutor with the budgetary resources necessary to investigate crimes of freedom of expression.

68. Prior to the aforementioned meeting, the Office of the Special Rapporteur sent the officials of the Public Prosecutor's Office a list of journalists killed in the period between 1998 and 2004 in an effort to find out the status of the investigations into these cases by this office. Each of the cases had been reported previously in the annual reports of the Office of the Special Rapporteur (43). In response, the *Dirección de Asuntos Internacionales* (Office of International Affairs) in the Public Prosecutor's Office presented a report to the Office of the Special Rapporteur on the investigations now underway into cases of violence against journalists. This report included a total of nine cases, of which eight involved alleged threats and one involved damage to private property. Of these cases, five were at that time in the preliminary investigation stages, two cases had been closed (although one

was closed only provisionally) and one was under a formal order of investigation (44). None of the cases had yet reached the trial phase. In addition, none of the cases in this document involved the assassination of a journalist (45).

69. The Office of the Special Rapporteur is aware that of the 31 journalists murdered in the 30 cases noted in its annual reports and press releases between 1998 and 2005, only six cases have reached the trial phase. Not one of these cases has seen all of the authors of the crime – both physical and intellectual – sentenced for the crimes.

70. The first of these cases is that of Jaime Garzón, a journalist killed in August 1999. In this case the paramilitary leader Carlos Castaño Gil was sentenced to 38 years in prison for his role as the intellectual author of the crime. Those who allegedly carried out the crime were absolved due to a lack of evidence.

71. The second case is that of Orlando Sierra, a journalist murdered in January of 2002. In this case, Luiz Fernando Soto Zapata was initially sentenced to 19 years and six months in prison for the execution of the crime. In May 2005, however, Luis Arley Ortiz Orozco and Francisco Antonio Tabares, both of whom carried out the crime, were sentenced to 28 years in prison. The investigation into the intellectual author of the crime remains in the preliminary stages.

72. The third case relates to the April 1998 death of journalist Nelson Carvajal Carvajal. Those who allegedly carried out the crime, as well as the intellectual authors, were absolved. The case was then filed with the Inter-American Commission and the petition was declared admissible on October 13, 2004 (46).

73. The fourth case is that of Amparo Leonor Jiménez, a journalist assassinated in August of 1998.

In this case, Libardo Humberto Prada Bayona was sentenced to 37 years in prison for carrying out the crime. The investigation into the intellectual author is in the preliminary stages.

74. The fifth case involves the September 1999 murder of journalist Guzmán Quintero Torres. Jorge Eliécer Espinal Velasquez and Rodolfo Nelson Rosado were each sentenced to 472 months in prison for the execution of the crime, but the investigation remains in the preliminary phase with respect to the crime's intellectual author.

75. The final case is that of Bernabé Cortés, a journalist assassinated in May 1998. In this case, Julio César Ospina Chavarro was sentenced to 40 years in prison for carrying out the crime, but there is no information on any investigation into the intellectual author of the murder.

76. The Office of the Special Rapporteur demands that the authorities continue their efforts to investigate these cases. It also verifies that not all of the physical and intellectual authors of these crimes have yet been tried and punished. In this same vein, the Office of the Special Rapporteur insists that the investigations that were closed be reopened and pursued further.

77. Of the 24 cases remaining murder cases – as highlighted in the graph below – 12 are in the preliminary stages, four are in the investigatory phase, two have been closed and one has been dismissed for lack of evidence. Five of the cases have not been pursued. This means that of the cases reported to the Office of the Special Rapporteur in the 1998-2005 period, only 20 percent have reached the trial phase and 40 percent are still in the investigative phase without any detentions.

The status of cases involving slain journalists in Colombia, 1998-2005 (47)

Phase	Number of cases
Preliminary stages	12
Investigatory phase	4
Dismissed for lack of evidence	1
Closed	2
Failure to pursue	5
Sentences delivered (48)	6
Total de cases	30
Total journalists (49)	31

78. The Office of the Special Rapporteur takes special note of this situation because, according to what could be verified during its visit, and after analyzing the information provided by various civil society organizations and the Public Prosecutor's Office, the majority of the journalist murders that have occurred in recent years have gone unpunished. Even worse, in some cases the investigations have not yet begun into the intellectual author or the perpetrator. The result is the same for cases involving threats or other aggression against journalists. The journalists and human rights defenders interviewed by the Office of the Special Rapporteur denounced the slow pace of many investigations into the murders of or violence against journalists. The Office of the Special Rapporteur also received numerous complaints during its visit regarding the lack of concrete results in these crimes' investigations. The fact that so many cases have gone unpunished has undoubtedly amplified the sense of intimidation fostered by the commission of these killings and threats.

79. The Office of the Special Rapporteur views this persistent picture of impunity in cases of violations of freedom of expression with deep concern. The Inter-American Court has defined impunity as the absence of an investigation, prosecution, capture, judgment and punishment of those responsible for violations of rights protected by the American

Convention, and indicated that impunity encourages the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin (50).

80. Accordingly, the Inter-American Court has emphasized that States have the duty to combat impunity, signaling that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

[. . .]

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention (51).

81. The Office of the Special Rapporteur recognizes the efforts of the Colombian authorities in the creation of mechanisms to protect journalists. It recommends, however, that the State push for investigations into murders of and attacks against journalists in such a way that these cases advance and ultimately punish those responsible for these acts.

82. The observations made by the Office of the Special Rapporteur on this climate of impunity are neither an isolated or recent occurrence. The Office of the United Nations High Commissioner for Human Rights (hereinafter “the UNHCHR”) has noted in its reports that:

The administration of justice [in Colombia] continues to suffer from serious weaknesses and deficiencies that help bolster the high rates of impunity for major human rights violations and breaches of international humanitarian law (52).

83. In the same vein, the U.N. Special Rapporteur on the Right to Freedom of Opinion and Expression indicated in a recent report on Colombia that

[L]ong and unjustified delays in the investigations of crimes, coupled with many unsolved cases of the murder of journalists, trade unionists, teachers and human rights defenders that may never successfully be concluded, have consolidated a deep-rooted culture of impunity, creating intimidation and increasing fear amongst the general public (53).

[. . .]

The Government should consider the fight against impunity as a main priority. Perpetrators of human rights violations must be brought to justice, regardless of their political affiliation. The judicial system must work with efficiency and impartiality while respecting domestic legislation consistent with the international laws (54).

84. The Office of the Special Rapporteur reminds the Colombian authorities that the State is obligated to combat impunity by all available legal means because impunity only encourages the chronic repetition of

human rights violations and the total defenselessness of the victims and their next of kin. The high level of impunity in Colombia undoubtedly contributes significantly to the perpetuation of violence against the work of journalists. In light of this, the State has the ongoing obligation to initiate serious and impartial investigations, to punish the perpetrators of these murders and provide the families of the victim with adequate reparation. In this sense, the Office of the Special Rapporteur reiterates what it has noted in previous reports:

The duty of States to investigate is an “obligation pertaining to a means or conduct”, which cannot be considered as unfulfilled only because the investigation may have failed to produce a satisfactory result, “but it must be undertaken seriously and not as a simple formality doomed in advance to be futile.” The investigation “must be meaningful and must be taken on by the State as its own legal duty, and not as a simple measure adopted for private interests, based on the legal initiative of victims or their family members or on inputs that have no evidentiary value, without any attempt on the part of the authorities to pursue an effective search for truth” (55).

85. The state of impunity also has an intimate relationship with the legal framework that Colombia is currently debating in regard to the demobilization of armed groups operating at the margins of the law (56). In this respect, the Inter-American Commission has already indicated the following:

The successful development of a process of demobilization of actors involved in a prolonged internal armed conflict that aspires to the non-repetition of crimes of international law, violations of human rights, and grave breaches of international humanitarian law

calls for the clarification of the violence and reparation of its consequences. Realistic expectations of peaceful coexistence under the rule of law should be based on measures that address the challenges posed by the construction of a culture of tolerance and *the rejection of impunity*. The international community has identified a series of guidelines with respect to truth, justice, and reparations that draw on the experiences of different societies and the principles of law reflected in the obligation of states to administer justice in keeping with international law (57).

86. The Office of the Special Rapporteur reminds the government that the grant of amnesties, pardons and other similar mechanisms to those that have armed against the State should be done in harmony with the State's obligation to clarify, punish and provide reparations for violations of human rights, including freedom of expression. The Office of the Special Rapporteur reiterates that no solution to the Colombian armed conflict can lead to impunity for these crimes and impede the search for the truth behind these violations, such as those affecting journalists. On this issue, the Inter-American Commission has indicated that

[t]he conditions under which the members of illegal armed groups join the demobilization process should be closely monitored to ensure it does not become a conduit towards impunity (58).

87. A legal framework that circumvents the delivery of justice could contribute to the aggravation of the current climate of impunity. A legislative reform that fails to establish clear conditions for the demobilization of armed groups at the margins of the law, and that is not in accord with the international obligations of the State, could have an adverse impact

on the investigations into violations of freedom of expression currently underway. The Office of the Special Rapporteur reiterates the views of the Inter-American Commission, which has said that the demobilization process must be accompanied by guarantees with respect to the international obligations of the State to provide access to truth, justice and reparations (59).

B. SELF-CENSORSHIP

88. In recent years, the Colombian State has managed to retake control of a number of geographic zones in the country, breaking the control that the armed groups had exercised in these regions. The dispute for the control of these territories, however, has increased the risks to journalists, as demonstrated by the events that unfolded in Arauca during April 2003.

89. At that time, 12 journalists left the Arauca region after having been informed of the existence of "black lists" containing their names and drawn up by the paramilitaries and guerrillas. The Office of the Special Rapporteur believes that the realignment of the actors in the conflict has meant that many journalists have been forced to resort to self-censorship on certain topics and in certain regions. They do not travel to dangerous locations and, due to acts of intimidation, they only report data from official sources. The Office of the Special Rapporteur has verified that journalists face a state of intimidation, particularly in the regions of Arauca and Norte de Santander.

90. In 2004 alone, 15 cases of kidnappings, retentions and threats suffered by journalists were reported to the Office of the Special Rapporteur (60). Other events can be added to this figured, including those occurring in Bogotá in May 2005, when three journalists received funeral flower arrangements on the occasion of their presumed burials (61).

91. In the interior of the country, the environment for the press presents even greater difficulties due to the stronger presence of the participants in the armed conflict. These regions are subject to territorial disputes by armed illegal groups, who view the press both as an obstacle and as a tool to advance their objectives.

92. One of the characteristics of the attacks on the press that has been verified in recent years is the pressure exerted against journalists, which in turn has prompted self-censorship and the internal displacement of journalists. During its visit, the Office of the Special Rapporteur received information indicating that journalists and media organizations were the targets of threats, violence and intimidation not only for their coverage of the armed conflict, but for their reports on organization crime or corruption.

93. The Office of the UNHCHR in Colombia expressed the same concerns in a 2005 report, noting that

[c]ertain journalists informed...that they had been pressured and intimidated by members of the Security Forces so that they would publish only favorable statistics or “battle reports,” and alleged that they had received threats after having published a version other than that provided by the authorities. As a result of such threats, three journalists had to shut down their news services or modify their reporting style (62).

94. The State noted in its response to this report that it considered “the inclusion of this unfortunate because it gives the sense that this is the general nature of the situation, when in reality these are isolated cases which are really the exception to the rule.” In this realm, the Office of the Special Rapporteur is concerned that in the last two years, these circum-

stances have forced the journalists Cristian Herrero Nariño, Claudia Julieta Duque Duque, Luis Alberto Garzón and Daniel Coronell (63) to abandon their homes and the country for security reasons.

95. Geographic distance and isolation of some locations further aggravates the problem because, in general, violence against journalists or communications media in remote areas is not disseminated by the national press in the same way as when such acts occur in large cities like Bogotá. Journalists in outlying regions said that they felt unprotected due to the scarce reporting on the attacks they suffered.

96. During its stay in Colombia, the Office of the Special Rapporteur conducted interviews with more than 60 journalists and human rights defenders working in the regions of the country most affected by the armed conflict. The journalists indicated to the Office of the Special Rapporteur that they are victims of never-ending physical and psychological aggression, threats and other acts of intimidation from dissident armed groups, paramilitary groups and members of the armed forces. In this sense, they highlighted the need for the participants in the armed conflict to abstain from their practice of identifying journalists as the allies of these groups’ opposition. As a result, the Office of the Special Rapporteur expresses its concern in circumstances in which journalists are considered “military objectives” in internal armed conflicts.

97. The Office of the Special Rapporteur also received numerous complaints about the stigmatization they endure because of their criticism of the government. The Office of the Special Rapporteur is aware of the public statements made by high government officials against the work of journalists and non-governmental organizations – both national and international in origin – seeking to protect human rights. This has undoubtedly prompted an increase in the tensions

between the Government and civil society (64). The trend can also have severe consequences in a country where one fact linking an individual and a particular armed group can put that individual's life at risk. As the Inter-American Commission has declared, this type of official declaration (*señalamiento*) "not only increases the risks human rights defenders face, but also could suggest that the acts of violence aimed at hushing them somehow enjoy the acquiescence of the Government" (65).

98. The Office of the Special Rapporteur also expresses its concern with this practice, which in reality promotes violence and resentment. In this sense, the Office of the Special Rapporteur evokes the call by its counterpart in the United Nations and insists that the Government adopt concrete methods "to prevent the use of stigmatization, especially on the part of its top officials, and the polarization of opinions, two elements that are poisoning the political debate and the exercise of pluralism" (66).

99. As part of its normal practice during country visits, the Office of the Special Rapporteur visited the interior of the country in a bid to gain a better understanding and analysis of the state of freedom of expression in Colombia. By doing this, the Office of the Special Rapporteur was able to verify the situations described earlier, particularly the fear that arises from the threats and crimes targeting journalists. This fear engenders self-censorship by both journalists and the media for whom they work, and even the closure of media outlets and the abandonment of the profession (67). The most worrying testimonies were received firsthand during the Office of the Special Rapporteur's visit to Arauca.

100. Below are some portions of some testimonies given by journalists who traveled from different regions to speak with the Office of the Special Rapporteur in Bogotá:

"I am very afraid of what might happen to me, to my family. For this reason I have chosen to censor my work."

"In the face of this situation, there is nothing else we can do but mortgage our independence."

"In Colombia there exists a muzzled press, which has begun to sacrifice its freedom of expression in order to preserve its own life."

101. Similar testimonies were given in Arauca:

"In Arauca, thinking and saying what you think is a crime that can be paid for even with death. Here, social protests have been criminalized."

"Those who say something, they die."

"Freedom of expression 'knocks softly' in Arauca because our families are still here."

"The people are afraid to make accusations. Here they tell us that the only ones that can protect human rights are government officials. The journalist who interviews a human rights defender is later threatened or accused by the authorities of being a terrorist. Given this, the only way we find relief is through the presence of international institutions."

"Being silent is the only means we have of survival."

"Self-censorship is a form of survival. I self-censor my work because I am afraid of losing everything - my job, my motivation, my family" (68).

102. Threats, physical and psychological aggression and harassment directed at communications media

and journalists constitute serious obstacles for the full exercise of freedom of expression and violate Article 13 of the American Convention on Human Rights. In effect, these acts – like assassinations – are designed to silence journalists and to prevent society from learning the truth about certain events. Principle 9 of the Declaration of Principles on Freedom of Expression refers to these types of acts as violations of the fundamental rights of individuals and restrictions on freedom of expression.

C. THE COLOMBIAN INTERIOR AND JUSTICE MINISTRY'S JOURNALIST PROTECTION PROGRAM

103. During its visit, the Office of the Special Rapporteur met with representatives of the *Journalist Protection Program* run by Human Rights Office of the Ministry of the Interior and Justice. This program was created in 2000 and was the result of a joint effort between government and civil society to protect certain segments of the population that are particularly vulnerable to the actions of armed illegal groups.

104. The program relies on the *Comité de Reglamentación y Evaluación de Riesgos* (hereinafter “the CRER”), or the Committee for the Regulation and Evaluation of Risks, comprised of government and civil society representatives. The Committee’s purpose is to recommend the most suitable measures to protect an individual.

105. The CRER conducts studies of the requests for protection that it receives to determine the relevant risk and threat levels. For attacks against journalists or communications media, the program can implement either “soft” or “harsh” measures. The “soft” measures consist of self-protection classes given by the National Police and the *Departamento Administrativo de Seguridad* (hereinafter “the DAS”), or Administrative Security Department, and humani-

tarian aid provided at the federal level. The “harsh” measures consist of transportation, escort services, armed cars, passage out of the country and international humanitarian aid. Apart from these measures, victims may also receive economic assistance consisting of three months salary at minimum wage, which can be extended for up to six months.

106. The DAS or the National Police evaluate the risks present in an individual case. They then present the evaluation to the CRER, which analyzes the report and determines the type of measures – soft or harsh – that will be adopted.

107. Based on the information provided to the Office of the Special Rapporteur during its visit, a total of 447 journalists may have benefitted from the protection provided by the program in the 1999-2004 period. The Office of the Special Rapporteur recognizes the efforts of the Colombian State in creating a program aimed at guaranteeing the right to freedom of expression, which has allowed for the protection of the physical integrity of an important number of Colombian journalists.

108. The Office of the Special Rapporteur reiterates here the recommendation provided to the State during its visit to Colombia. The Office of the Special Rapporteur highlights the need to provide both political support and a greater budget to government programs that defend and protect freedom of expression, and also calls on the State to advertise these programs more broadly, particularly in the most isolated regions of the country (69).

D. THE PLACEMENT OF OFFICIAL ADVERTISING

109. During its visit, the Office of the Special Rapporteur also received complaints that government advertisements were awarded on a discre-

tionary basis, without clear parameters and with some indications of arbitrariness – particularly with respect to media that are openly critical of the government (70).

110. In this realm, it is important to highlight that Principle 13 of the Declaration of Principles of Freedom of Expression exhorts that the “arbitrary and discriminatory placement of official advertising” designed to pressure, punish, reward or provide privileges to journalists is a threat to freedom of expression and must be explicitly prohibited by law. Communications media have the right to conduct their work independently. The Office of the Special Rapporteur reaffirms that direct or indirect pressure aimed at silencing journalists is incompatible with freedom of expression.

111. Based on what could be verified by the Office of the Special Rapporteur during its visit, official advertisements play an important financial role for many regional media in Colombia. In many cases, the lack of financial resources has generated a dependency by communications media – particularly radio – on the placement of government advertisement by mayors, governors and other official bodies. It concerns the Office of the Special Rapporteur that this dependency, along with some officials’ use of government advertisements as a means for pressuring journalists, may seriously limit the practice of independent journalism.

112. The State is able to determine the placement of its advertisements in a number of suitable ways: based on the percentage of the population reached by a particular medium, the publication’s frequency, or other similar factors. The placement or removal of state publicity, however, based on a medium’s editorial views or its criticism of the government runs counter to freedom of expression.

113. The rights enshrined by international human rights instruments establish freedom from discrimination as a clear principle. Given this, any measure that discriminates against a publication because of its editorial position or criticism of the government constitutes an indirect restriction on freedom of speech. Such a policy could also lead to self-censorship, given that the placement of official advertisements – a financial necessity for some communications media – could impede reports on the abuse of power or news designed to fulfill the press’ watchdog role over government.

114. The Office of the Special Rapporteur has already called this issue to the State’s attention. In its 2003 Annual Report, the Office of the Special Rapporteur reported on the case of *El Espectador* newspaper, based in Bogotá (71). In addition, the Office of the Special Rapporteur distributed a questionnaire in September 2003 among the OAS member States’ Permanent Representatives – including Colombia – to request information about the existing laws of each State with respect to the placement of official advertisements (72).

115. During its visit, the Office of the Special Rapporteur also collected testimonies from journalists who asserted that they had received threats of a withdrawal in official advertisements because they had obtained a certain type of information. Of particular worry were the testimonies taken by the Office of the Special Rapporteur during a number of meetings in Arauca on the topic of government publicity. One radio journalist in this location noted that “official publicity is the only thing that allows us to subsist; we know that this often implies mortgaging our independence to the politicians and authorities, but we cannot put at risk the continuation of the radio station.”

116. This same situation was recently denounced in

studies by the *Fundación para la Libertad de Prensa*, or Foundation for Press Freedom, (73) and The Swedish NGO Foundation of Human Rights (74). The Office of the Special Rapporteur recommends that all state entities modify these practices and establish clear, fair, objective and non-discriminatory criteria to determine how official publicity will be allotted. The Office of the Special Rapporteur reminds the State that in no case may official advertising be used with the purpose of punishing or favoring a communications medium for its editorial stance or its criticism of the government.

E. THE CRIMES OF LIBEL AND SLANDER

117. When the Office of the Special Rapporteur was created, the Inter-American Commission gave it the competence to prepare specialized studies on freedom of expression, particularly those aimed at advising or recommending to States how to adopt their laws to existing international standards on freedom of expression (75). This section provides a brief overview of slander and libel under Colombian law, but the analysis is limited to how freedom of expression can be strengthened in light of such laws.

118. While Colombian law does not cover the crime of *desacato*, or contempt, the Office of the Special Rapporteur wishes to call attention to the existence of criminal levels of slander and libel – found in Articles 220 through 228 of the Penal Code – in connection with the recently approved Code of Criminal Procedure. Although the Office of the Special Rapporteur did not receive denunciations or concrete testimonies in this area, it considers that it is nonetheless important to remind the Colombian State of the international standards governing this area. The following considerations are relevant in the context of this study because an inadequate applica-

tion of such norms could produce a climate of persecution for journalists.

119. It is worth highlighting that in its previous reports, the Office of the Special Rapporteur has manifested its concern over the use of criminal defamation laws, such as libel and slander, that have the same purpose as *desacato* (76). In general, these crimes relate to communications that affect a person's honor or that falsely accuse a person of a crime, and in the Americas, many officials have used such crimes as a means to deter criticism. As the Office of the Special Rapporteur has signaled in previous reports, "[t]he possibility of abuse of such laws by public officials to silence critical opinions is as great with this type of law as with *desacato* laws" (77).

120. The Office of the Special Rapporteur considers a State to have fulfilled its obligations with respect to privacy of the people when it establishes statutory protection against intentional attacks on honor and reputation with civil penalties and when it passes laws that provide the right to rectification or response. With laws such as these, the State guarantees the protection of privacy of all people without providing room for the abuse of these powers in a way that prevents the freedom to form opinions and to express them. Such laws also guarantee the exchange of opinions and free democratic debate.

121. With respect to the Code of Criminal Procedure, the Office of the Special Rapporteur calls attention to the situations provided for in which the Public Prosecutor may undertake a preliminary investigation of slander and libel.

122. Under the Colombian Code of Criminal Procedure, the Public Prosecutor can conduct an investigation into the alleged facts of a crime without authorization by the judiciary. The Office of the Public Prosecutor, through the provisions in the

Code governing *Técnicas de indagación e investigación de la prueba y sistema probatorio*, or Investigatory techniques for evidence and the system of evidence, can authorize orders to conduct property searches, withhold mail, intercept communications, and other orders that require a hearing only after the order has been executed. It should be noted that in none of these cases is a distinction made for civil infractions like libel and slander. In this respect, Article 237 of the Code of Criminal Procedure currently in effect says the following:

Article 237. Subsequent judicial hearing.

Within 24 hours following the execution of orders of review for property searches, withholding of correspondence, interception of communications and recovery of information obtained through the Internet, and other similar measures, the prosecutor will appear before a presiding judge for a hearing on the legality of these actions.

During the hearing process, in addition to the prosecutor, only officials from the judicial police and those making sworn declarations seeking to obtain the order in question, or those who are executing the orders in the action, may appear.

The judge may, if deemed prudent, interrogate directly those who appear, and after listening to the prosecutor's arguments, decide at that time on the validity of the procedure (78).

123. It concerns the Office of the Special Rapporteur that this provision, which does not provide for prior hearings, could potentially be applied to investigations into cases involving crimes like slander and libel, particularly if the cases are brought by public officials. Under this legislative scheme, the improper use of these powers to conduct property searches, withhold correspondence and intercept communica-

tions could be used to create a climate of hostility for those who criticize public officials.

124. The Office of the Special Rapporteur believes that the improper use of these tools could result in an indirect violation of the international standards on freedom of expression – explained above – that prohibit the use of crimes of honor by public officials to silence criticism, such as laws governing the supposed crime of *desacato* (contempt). The Office of the Special Rapporteur therefore calls on the Colombian State to modify these laws in an effort to avoid their improper use against those who criticize the government.

F. ACCESS TO PUBLIC INFORMATION

125. One of the positive signs that should be emphasized in the realm of freedom of expression in Colombia is the process by which citizens can gain access to public information from various government agencies.

126. In this vein, it is worth highlighting the norms of Principle 4 of the Declaration of Principles on Freedom of Expression. This principle notes:

Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

127. In recent years the Office of the Special Rapporteur has followed the situation relating to access to public information in member States with particular attention. In its 2003 and 2004 annual reports, the Office of the Special Rapporteur included

chapters dedicated to the topic of access to public information in the hemisphere. Here, the Office of the Special Rapporteur has signaled that

without public access to state-held information, the political benefits that flow from a climate of free expression cannot be fully realized. At the Third Summit of the Americas, the Heads of State and Government recognized that the sound administration of public affairs requires effective, transparent, and publicly accountable government institutions. They also assigned the highest importance to citizen participation through effective control systems... [T]he Inter-American Court of Human Rights has stated that the “concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.” Access to information promotes accountability and transparency within the State and enables a robust and informed public debate. In this way, access to information empowers citizens to assume an active role in government, which is a condition for sustaining a healthy democracy (79).

128. A State’s failure to produce public information not only affects the functioning of government bodies, but also the public’s perception. When public information is not made available, the public does not view government agencies as public services from which they can request information, and this can impact the government’s legitimacy. In essence, when the public has no way to learn of internal changes made in the government, there is little incentive for the government to conduct oversight over its own functions.

129. The Office of the Special Rapporteur considers the efforts of the Communications Ministry, through a program known as *Agenda de Conectividad*, or Connectivity Agenda, to be of critical importance. Under this multi-agency program, the Government has developed a series of strategies designed to create favorable conditions under which citizens can take advantage of information and communications technologies.

130. In the same way, the so-called *Estrategia de Gobierno en Línea*, or Online Government Strategy, is of special interest to the Office of the Special Rapporteur. This program has helped to improve efficiency and transparency in the exercise of the government’s powers. The program is designed to facilitate the publication of government information on the Internet, the access to government services on line and the exchange of information between institutions. The Office of the Special Rapporteur recognizes the importance of guaranteeing the access to public information as a necessary tool for achieving a greater transparency in government activities and for combating corruption.

131. The Office of the Special Rapporteur recommends the continued advancement of these efforts to regulate access to public information in all government agencies, taking into account international standards in this area and the views of the public. The Office of the Special Rapporteur notes that the culture of secrecy in government bodies should be vigorously rejected in order to guarantee true transparency in government activities.

G. COMMUNITY RADIO

132. One additional area of progress that should be highlighted in the area of Colombian freedom of expression is a program on community radio being coordinated by the Communications Ministry.

133. Since its birth, the Office of the Special Rapporteur has given special attention to the exercise of freedom of expression via communal media. In its report on Freedom of Expression and Poverty, the Office of the Special Rapporteur emphasized the important role played by such programs in fomenting public awareness and pressuring for the adoption of measures that improve the quality of life for the segments of the population that are most vulnerable or that are living at the margins. The Office of the Special Rapporteur has noted:

[T]he traditional mass media are not always accessible for disseminating the needs and claims for society's most impoverished or vulnerable sectors. Thus, community media outlets have for some time been insisting that strategies and programs that address their needs be included on national agendas.

Radio stations that style themselves as community, educational, participatory, rural, insurgent, interactive, alternative, and citizen-led are, in many instances and when they act within the law, the ones that fill the gaps left by the mass media; they serve as outlets for expression that generally offer the poor better opportunities for access and participation than they would find in the traditional media (80).

134. As the Office of the Special Rapporteur has signaled on other occasions, community radio – which must act within a legal framework facilitated by the State – often serves the needs, interests, problems and hopes of populations that frequently face discrimination, marginalization and impoverishment by the broader society. Community radio, in effect

[facilitates] the free flow of information, fueling freedom of expression and dialogue

within communities and thus encouraging participation...[and] truly represent[s] the empowerment of marginalized sectors (81).

135. In the same vein, it is worth highlighting that Principle 12 of the Declaration of Principles on Freedom of Expression signals that radio and television frequencies should be assigned by using democratic criteria that guarantee equal opportunities for all to access such media.

136. In recent years, the Office of the Special Rapporteur has observed with satisfaction the opening of the electromagnetic spectrum to community radio in Colombia. During its visit, and in an effort to understand the initiatives relating to the assignment of frequencies and permits for community radio in greater detail, officials from the Office of the Special Rapporteur met with the Director of Access and Social Development in the Communications Ministry.

137. In this meeting, the Office of the Special Rapporteur learned that there are currently 415 community stations and another 440 municipalities have been invited to participate in a public auction currently underway. The Office of the Special Rapporteur views positively government programs to facilitate access to community radio broadcasts in municipalities lacking such services, and calls on the Government to continue its efforts to formulate policies, plans and programs with this aims (82).

138. The Office of the Special Rapporteur notes that, in light of the important role these community stations can play in the exercise of freedom of speech, it is important that non-discriminatory legal frameworks are established without delays that would impede the award of frequencies of community radio. The Office of the Special Rapporteur demands that the State take note of these considerations.

VI. Recommendations

139. In light of the aforementioned considerations, it is recommended that the State of Colombia:

1. Take the necessary measures to protect the physical integrity of journalists and the infrastructure of communications media. In particular, the Government should strengthen the *Journalist Protection Program* of the Interior and Justice Ministry, and it should make a concrete effort to avoid the harassment and displacement of those who work as journalists.
2. Conduct a serious, impartial and effective investigation into the violence and intimidation waged against journalists and communications media, and then try and punish those responsible. The adoption of measures for the strengthening of the judicial system is a priority in order to put an end to the unjustified delays in these investigations. The Government must also make the fight against impunity with respect to these crimes a priority.
3. Continue to condemn from the highest levels of the Government attacks against journalists in order to prevent any fomentation of these crimes and to avoid the development of a climate of stigmatization toward those who take a critical line against the Government.
4. Adopt the appropriate domestic legislation to conform the law with the parameters established in the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression with respect to slander, libel and the investigatory powers of the Public Prosecutor's Office found in the Code of Criminal Procedure.
5. Continue to guarantee the right of access to information in the hands of the State in order to promote transparency in government and to bolster democracy.

6. Continue the implementation of policies that incorporate the principles of democracy and equal opportunity, as has been done in the area of community radio.
7. Promote the incorporation of international standards on freedom of expression by judicial bodies so that these standards constitute effective tools for the protection and guarantee of the existing legal framework on freedom of expression.
8. Undertake campaigns directed at State agents and Colombian society to promote awareness of the importance of protecting and respecting freedom of expression.

Annexes

ANNEX A: LIST OF INDIVIDUALS INTERVIEWED

During its visit to Colombia, the delegation from the Office of the Special Rapporteur for Freedom of Expression interviewed the representatives of the following entities:

Officials

Bogotá

- Francisco Santos Calderón, Vice President of Colombia
- Martha Elena Pinto de Harth, Communications Minister
- Carlos Franco, Director of the Presidential Program for Human Rights
- Rafael Bustamante, Director of the Office of Human Rights, Interior and Justice Ministry
- Mónica Fonseca Jaramillo, Director of the Department of Human Rights and International Humanitarian Law at the Ministry of Foreign Relations.
- Jaime Araujo Rentería, President of the Constitutional Court
- Manuel José Cepeda Espinosa, Vice President of the Constitutional Court
- Volmar Pérez, Ombudsman
- María Victoria Polanco, Director of Access and Social Development, Communications Ministry
- Luis Camilo Osorio, Public Prosecutor
- Luis Fernando Santana, Deputy Public Prosecutor
- Yolanda Sarmiento, Director of the Office of International Relations and Human Rights, Office of the Public Prosecutor
- Elba Beatriz Silva, Head of the Unit on Human Rights, Office of the Public Prosecutor
- Amerigo Incalcaterra, Associate Director of the United Nations High Commissioner for Human Rights, Colombia
- Members of the House of Representatives

Arauca

- Officials from the offices of *Gobernación* and of the mayor
- Officials from the Regional Attorney General's Office (Procuraduría Regional)
- Members of the Police Department
- Officials from the Ombudsman's Office

Non-governmental organizations (NGOs)

- Fundación para la Libertad de Prensa
- Medios para la Paz
- Comisión Colombiana de Juristas
- Corporación Colectivo de Abogados "José Alvear Restrepo"
- Asociación Democrática para la Defensa de los Derechos Humanos
- Proyecto Colombia Diversa
- Inter American Press Association
- Non-governmental organizations in Arauca

Others

- Journalists, human rights defenders and civil leaders from different regions
- Universidad Nacional de Colombia
- Universidad Externado de Colombia

ANNEX B: ASSASSINATIONS OF JOURNALISTS REPORTED BY THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION, 1998-2005.

This section provides details on the 30 cases of murdered journalists reported by the Office of the Special Rapporteur for Freedom of Expression in its annual reports and press releases during the 1998 and August 2005 period. The information on the status of these investigations was collected during the Office of the Special Rapporteur's on-site visit to Colombia conducted in April 2005. The Office of the Special Rapporteur appreciates the information provided by government authorities, as well as by civil society organizations, in connection with the preparation of this report. Please note that with respect to the investigations, the names of the Colombian courts trying these cases have been left in Spanish.

INFORMATION ABOUT THE JOURNALIST	DATE AND PLACE	FACTS OF THE CASE	STATUS OF THE INVESTIGATION
Oscar García Calderón Reporter for the newspaper <i>El Espectador</i> . He was conducting an investigation on the links between bull runs and drug trafficking.	Bogotá, February 22, 1998	Killed by three shots near Colombia's Office of the Public Prosecutor.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
Nelson Carvajal Carvajal Journalist at Radio Sur. The crime, according to his colleagues, was linked to his investigations into corruption at the local government level.	Pitalito, Huila region, April 16, 1998	Shot 10 times by a man waiting at the exit of the school where the journalist was teaching.	ALLEGED INTELLECTUAL AUTHOR AND INDIVIDUAL WHO CARRIED OUT CRIME ABSOLVED. A judgment from December 15, 2000 by the Juzgado Único Penal del Circuito Especializado de Neiva absolved Fernando Bermúdez, Víctor Félix Trujillo and Alfonso Quintero Alvarado. This verdict was upheld by the Sala Penal del Tribunal Superior de Neiva. In Admissibility Report No. 54/04 of October 13, 2004, the Inter-American Commission on Human Rights declared petition 559-2002 admissible based on these facts.
Bernabé Cortés Journalist for <i>Noticias CVN</i> , part of the <i>Red Telepacífico</i> network. He was reporting on topics such as drug trafficking, corruption, and the recent negotiations between the government and the FARC regarding soldiers captured by the guerrillas.	Cali, Valle de Cauca region, May 19, 1998	Several men shot Cortés while he was traveling in a taxi near his office.	INDIVIDUAL WHO CARRIED OUT THE CRIME SENTENCED On May 2, 2002, the Juzgado Primero del Circuito Especializado de Cali sentenced Julio César Ospina Chavarro to 40 years in jail for the crimes of aggravated homicide (connected to this crime), fabrication, trafficking and illegal arms possession.

Amparo Leonor Jiménez Journalist for news programs <i>Q.A.P. y En Vivo</i> . In 1996 he conducted an investigation into threats from paramilitary groups to Carlos Arturo Marulanda, a former government official.	Valledupar, Cesar region, August 11, 1998.	Was killed by three shots fired by a motorcyclist.	CASE AGAINST INTELLECTUAL AUTHORS IN PRELIMINARY STAGES; INDIVIDUAL WHO CARRIED OUT CRIME SENTENCED On January 23, 2002, the Juzgado Penal del Circuito Especializado de Valledupar absolved Libardo Humberto Prada Bayona. This decision was appealed by the Public Prosecutor and the Ministry of the Public. The Sala Penal del Tribunal Superior de Valledupar reversed the judgment and sentenced Prada Bayona to 37 years in prison. The investigation into the alleged intellectual authors is currently ongoing.
Didier Aristizábal Galeano Journalist for <i>Radio Tolerar</i> and other radio stations. It is believed he was assassinated for helping the national police with the installation of their own news station.	Cali, Valle del Cauca region, March 2, 1998	Shot nine times by two individuals while exiting his car at the Universidad de Santiago at Cali, where he was teaching.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
José Abel Salazar Serna Radio announcer for <i>Juventud en Acción</i> . He allegedly called for peace and co-existence.	Manizales, Caldas region, March 14, 1998	Found dead in his apartment with 15 stab wounds.	The Office of the Special Rapporteur has no information on any advances made in the investigation of this murder.
Néstor Villar Jiménez Journalist and former representative in Congress	Villavicencio, Meta region, September 11, 1998	Killed by a number of gunmen.	The Office of the Special Rapporteur has no information on any advances made in the investigation of this murder.
José Arturo Guapacha Director of local bimonthly <i>Panorama</i> .	Tulúa, del Valle region, October 15, 1998	Killed by a bullet to the head by a man waiting for him at his mechanic's shop.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
Saúl Salazar Wastein Journalist for broadcaster <i>Mi Río</i> .	Medellín, Antioquia region, October 14, 1998	There is no information on the details of this murder.	The Office of the Special Rapporteur has no information on any advances made in the investigation of this murder.
Hernando Rangel Moreno Director of local publications <i>Sur 30 Días</i> , <i>Magdalena 30 Días</i> y <i>Región</i> . He was known to denounce corruption at the local government level.	El Banco, Magdalena region, April 11, 1999	Shot various times by an unknown assailant at the house of a friend.	INVESTIGATORY PHASE¹ This phase opened on December 17, 1999 with Fidias Zeider Ospino Fernández, mayor of El Banco (Magdalena), allegedly linked to the crime. On January 6, 2000, precautionary measures ² were ordered in connection with Ospino's alleged role as the intellectual author of the crime. On March 10, 2000 the Public Prosecutor's delegate to the Superior Court overturned this measure. The search for evidence continues.

¹ In Spanish, this phase is known as the *Etapas de Instrucción*.

² In Spanish, these precautionary measures are known as *Medidas de Aseguramiento*.

<p>Jaime Garzón</p> <p>Journalist and comedian for radio station <i>Radionet</i> and television station <i>Caracol Televisión</i>. He was known for intervening in peace negotiations in order to obtain the release of individuals kidnapped by guerrilla groups. He had also intervened to prompt the authorities to initiate conversations with the ELN.</p>	<p>Bogotá, August 13, 1999</p>	<p>Killed by two men traveling by motorcycle while he was driving to the radio station.</p>	<p>ALLEGED PERPETRATORS ABSOLVED GUILTY AND INTELLECTUAL AUTHOR SENTENCED</p> <p>On March 10, 2004 a judge absolved those who allegedly carried out the crime for lack of evidence and sentenced Carlos Castaño to 38 years in prison for his role as intellectual author. The Public Prosecutor agreed to reopen the investigation in 2004 after various groups called for a further probe into the crime's other intellectual authors and those who carried out the murder.</p>
<p>Guzmán Quintero Torres</p> <p>Editor at the newspaper <i>El Pílon</i>. Was also vice president of the Journalists' Circle of Valledupar and was a correspondent for both <i>Televisa</i>, a news program for the regional network <i>Telecaribe</i> and the <i>Fundación para la Libertad de Prensa</i>, or Foundation for Press Freedom</p>	<p>Valledupar, Cesar region, September 16, 1999</p>	<p>A masked man shot Quintero several times and then fled by motorcycle.</p>	<p>PRELIMINARY STAGES FOR THE INTELLECTUAL AUTHORS; THOSE WHO CARRIED OUT CRIME SENTENCED</p> <p>On Jan. 18, 2002 the Juzgado Penal del Circuito Especializado de Valledupar absolved Jorge Eliécer Espinal Velásquez and Rodolfo Nelson Rosado Hernández, the two men who allegedly carried out the murder. The Public Prosecutor appealed the decision and the verdict was reversed. On May 19, 2003, each man was sentenced to 472 months in prison. The investigation into the crime's intellectual authors is in the preliminary stages.</p>
<p>Rodolfo Julio Torres</p> <p>Journalist for Radio Fuentes in Cartagena. Prior to that he was a correspondent for <i>Radio Caracol</i> and for the publication <i>Meridiano</i> in Sincelejo. Torres' colleagues said the journalist was murdered because of his published work. He wrote about cock-fights and politics. A year before the murder a series of anonymous pamphlets accused him of belonging to the dissident armed group ELN.</p>	<p>San Onofre, Sucre region, October 21, 1999</p>	<p>Killed by six gunshot wounds to the head on the highway after being kidnapped by five men.</p>	<p>INVESTIGATION SUSPENDED</p> <p>The information received by the Office of the Special Rapporteur indicates that on September 21, 2000, the investigation was suspended because authorities had failed to identify those responsible for the crime.</p>

Pablo Emilio Medina Motta Cameraman for <i>TV Garzón</i> .	Gigante, Huila region, December 4, 1999	Killed by the FARC while he was covering an offensive by the armed group in the Gigante locality.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
Juan Camilo Restrepo Guerra Director of community radio station <i>Galaxia Estéreo</i> . His killing was a reprisal for his sharp criticism of the local government.	Ebéjico, Antioquia region, October 31, 2000	Shot by an alleged member of a far-right paramilitary group.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
Gustavo Rafael Ruiz Cantillo Journalist for <i>Radio Galeón</i> . He may have received threats from a right-wing paramilitary group calling for him to halt his reports about the city of Pivijay.	Pivijay, Magdalena region, November 15, 2000	Shot by three unidentified individuals in a plaza in the city. His colleagues say he was assassinated by a right-wing paramilitary group operating in the region.	DISMISSED FOR LACK OF EVIDENCE The information received by the Office of the Special Rapporteur indicates that on January 19, 2004 the Public Prosecutor dismissed the case for a lack of evidence after failing to link anyone to the crime. The process of identifying those responsible continues.
Alfredo Abad López Director of radio broadcaster <i>La Voz de la Selva</i> . Lopez was apparently assassinated by paramilitaries after beginning an investigation into the murder of a colleague two weeks before.	Florencia, Caquetá region, December 13, 2000	Shot by alleged members of an armed dissident group. The killers fired from a motorcycle while the journalist was saying goodbye to his wife at the door of his home.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase.
Flavio Bedoya Correspondent for Communist Party newspaper <i>Voz</i> and collaborator for the publication <i>El Faro</i> , in which he denounced corruption. He had received death threats after the publication of an interview with a commander of the FARC. He had also reported about combat between guerrillas and paramilitary groups near Tumaco. Police sources indicated that the paramilitaries could be responsible for the murder.	Tumaco, Nariño region, April 27, 2001	Killed by four shots while he was getting off a bus in the main streets of Tumaco.	PRELIMINARY STAGES The investigation is currently in the preliminary stages, in the evidence gathering phase..

<p>José Duviél Vásquez Arias</p> <p>News director for radio station <i>La Voz de la Selva</i>. The murder has been linked to investigations made by the journalist into corruption by local officials and members of armed dissident groups.</p>	<p>Florencia, Caquetá region, July 6, 2001</p>	<p>Killed by two bullets fired by two men on a motorcycle after he left the radio station. At the time of his death he was accompanied by journalist Omar García, who was left hurt by the same attack.</p>	<p>PRELIMINARY STAGES</p> <p>The investigation is currently in the preliminary stages, in the evidence gathering phase.</p>
<p>Jorge Enrique Urbano Sánchez</p> <p>Director of radio station <i>Emisora Mar Estéreo</i>. Also worked on the program <i>Amanecer Porteño</i>, which was broadcast by local television station <i>Telemar</i>. During his final television broadcast, Urbano denounced a local criminal gang. Prior to that he had received death threats that he attributed to his denunciations of crimes at a Buenaventura park.</p>	<p>Buenaventura, Valle del Cauca region, July 8, 2001</p>	<p>Unidentified gunmen killed him in the center of the port at Buenaventura. One of his friends was also hurt in the attack.</p>	<p>The Office of the Special Rapporteur has no information on any advances made in the investigation of this murder.</p>
<p>Orlando Sierra Hernández</p> <p>Assistant editor for newspaper <i>La Patria</i>. He was writing a column called "Meeting Point," in which he provided critical analysis of topics of regional and national interest, including corruption. In his weekly columns, Hernández also criticized leftist rebel groups and right-wing paramilitary groups.</p>	<p>Manizales, Caldas region, January 30, 2002</p>	<p>Shot in front of the newspaper office. He died two days later.</p>	<p>INDIVIDUAL WHO CARRIED OUT CRIME SENTENCED; PRELIMINARY STAGES FOR INTELLECTUAL AUTHORS</p> <p>Based on information received by the Office of the Special Rapporteur, Luis Fernando Soto was found guilty of murder and sentenced to 19 ½ years in prison by a judge in Manizales. On June 27, 2002 precautionary measures were ordered against Francisco Antonio Quintero Tabares, or Luis Miguel Tabares Hernández, (alias "Tilín") because of his alleged participation in this crime of aggravated homicide. On November 30, 2004, the Public Prosecutor's Office also captured Luis Arley Ortiz Orozco (alias "Pereque"). The latter two men were sentenced to 28 years in prison for participating in the killing. The investigation into the intellectual authors of the murder continues.</p>
<p>Héctor Sandoval (Camaraman) and Walter López (Chauffeur)</p> <p>Both worked at <i>RCN Televisión</i>.</p>	<p>Cali, Valle del Cauca region, April 11, 2002</p>	<p>The two were shot while covering a battle between the Colombian army and the FARC.</p>	<p>PRELIMINARY STAGES</p> <p>The investigation is currently in the preliminary stages, in the evidence gathering phase.</p>

<p>Efraín Varela Noriega</p> <p>Owner of <i>Radio Meridiano 70</i>. He broadcast two programs on news and opinion on <i>Radio Meridiano 70</i>, in which he criticized all of the groups involved in Colombia's 38-year-old civil war. In addition to being a journalist, Varela was a lawyer, professor and civil leader with particular interests in conflict resolution and human rights. Varela's professional activities made him the frequent target of threats from the paramilitaries as well as the guerrillas. His name had appeared in a list of individuals declared to be "military objectives" by the AUC paramilitary group. His widow said Varela had received threats two days before his death.</p>	<p>Arauca, Arauca region, June 28, 2002</p>	<p>Varela was driving home from a university graduation with his brother and brother-in-law in the Arauca region when his car was intercepted by a white truck. The journalist was forced to leave the vehicle and was then shot. The killers took his body and left it further down the highway. The brother and brother-in-law were not hurt.</p>	<p>INVESTIGATORY PHASE</p> <p>Based on information received by the Office of the Special Rapporteur, the National Unit on Human Rights on June 28, 2002 initiated the investigation and the search for evidence, including the testimonies of those who accompanied the journalist at the time of the murder. A resolution of July 30, 2002 ordered the opening of a formal investigation into Félix Cruz Bata Rosas' alleged links to the crime. On September 17, 2003 orders were given to conduct judicial inspections, to gather information from correspondence and to advance the verification work done by a technical investigation group at the Unit of Human Rights.</p>
<p>Mario Prada Díaz</p> <p>Founder and director of monthly newspaper <i>Horizonte Sabanero</i> (then known as <i>Horizonte del Magdalena Medio</i>). Prada's newspaper was dedicated to the coverage of themes in the areas of cultural, social and community development. He had published stories that implicated the government of Sabana de Torres for financial irregularities. A week before, the leader of a paramilitary force in the region warned him that the group would begin to kill journalists.</p>	<p>Sabana de Torres, Santander region, July 11, 2002</p>	<p>Prada was kidnapped from his home in the municipality of Sabana de Torres. The following morning, his body was found riddled with bullets near his home.</p>	<p>INVESTIGATION SUSPENDED</p> <p>The information received by the Office of the Special Rapporteur indicates that on June 25, 2003 the investigation was suspended because authorities had failed to identify those responsible for the crime.</p>
<p>Elizabeth Obando</p> <p>Responsible for distribution of the regional newspaper <i>El Nuevo Día</i>. She had been threatened by the leader of Division 21 of the FARC because of the September 21, 2001 publication of an article that criticized the FARC.</p>	<p>Roncesvalles, Tolima region, July 13, 2002</p>	<p>Obando was traveling by bus in Playarrica, in the Tolima region, when unidentified armed individuals intercepted the vehicle, forced her off the bus and shot her several times. She died from the gunshot wounds a few days later.</p>	<p>INVESTIGATORY PHASE</p> <p>The information received by the Office of the Special Rapporteur indicates that the Public Prosecutor took precautionary measures against Gustavo Bocanegra Ortégón, (alias "Donal") for his alleged role in carrying out the murder.</p>

<p>Luis Eduardo Alfonso Parada</p> <p>Correspondent for newspaper <i>El Tiempo</i> and co-director of news program Actualidad Informativa on radio station <i>Meridiano 70</i>. Alfonso was known for denouncing corruption and reporting on the armed conflict. The journalist was part of the Interior and Justice Ministry's <i>Journalist Protection Program</i>. The murder followed the June 28, 2002 assassination of the owner of <i>Meridiano 70</i>.</p>	<p>Arauca, Arauca region, March 18, 2003</p>	<p>Two suspects shot the journalist as he arrived at the <i>Meridiano 70</i> radio station.</p>	<p>PRELIMINARY STAGES</p> <p>The information received by the Special Rapporteur indicates that the investigation has yielded 12 declarations but it has failed to produce information on the profiles of the individuals described or on the motives and authors of the crime.</p>
<p>José Emeterio Rivas</p> <p>Director of radio program <i>Las Fuerzas Vivas</i> on the station <i>Calor Estéreo</i>. The journalist had been the target of threats, for which he was under the protection of the Interior and Justice Ministry's <i>Journalist Protection Program</i> in January 2001 and had been assigned an escort. During the week of his death, however, Rivas was traveling without his security escort. Days before the murder, Rivas had complained of an attempted attack on his life.</p>	<p>Barrancabermeja, Santander region, April 7, 2003</p>	<p>His body was found along with that of a student on the side of a road leading to Barrancabermeja.</p>	<p>INVESTIGATORY PHASE</p> <p>After reversing the charges against the alleged authors of the crime in October 2004, the Public Prosecutor closed the investigation, which came after the probe had been extended to two witnesses and the former mayor, Julio César Ardila. The Public Prosecutor must now decide which action must be taken.</p>
<p>Guillermo Bravo Vega</p> <p>Journalist from the program <i>Hechos y Cifras</i>. In 2000, the journalist denounced irregularities in the sale of a public regional company, <i>Licorería del Huila</i>, to the private company Licorsa.</p>	<p>Neiva, Huila region, April 28, 2003</p>	<p>Shot three times by a paid assassin, who entered Bravo's home at night.</p>	<p>PRELIMINARY STAGES</p> <p>The investigation is currently in the preliminary stages, in the evidence gathering phase.</p>

<p>Jaime Rengifo Revero</p> <p>Director of bimonthly <i>El Guajiro</i> and director and presenter for the radio program <i>Periodistas en Acción</i>.</p> <p>The journalist had not received threats, but at the beginning of April his name appeared painted on the façade of the mayor's office: "Death to Jaime Rengifo." In his program, he reported his listeners' denunciations of public companies, local authorities, the army and the police. Right before his death he had begun denouncing violence and corruption arising from crime, local mafias and paramilitary groups. .</p>	<p>Riohacha, Guajira region, April 29, 2003</p>	<p>Shot five times at the hotel where he had been living for three years by a person registered under the name of Luis Alfredo Gómez.</p>	<p>PRELIMINARY STAGES</p> <p>The investigation is currently in the preliminary stages, in the evidence gathering phase.</p>
<p>Julio Hernando Palacios Sánchez</p> <p>Directed the morning radio program <i>Radio Periódico El Viento</i> on <i>Radio Lemas</i>. He dedicated a segment of his program to denouncing local corruption.</p>	<p>Cúcuta, Norte de Santander region, January 11, 2005</p>	<p>Two armed motorcyclists shot him while he was driving to work. In spite of his injuries, Palacios returned to his home by car and his family took him to the hospital. He died two hours after arriving at Hospital San José in Cúcuta.</p>	<p>The Office of the Special Rapporteur has no information on any advances made in the investigation of this murder.</p>

References

- 1 The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights in 1997 in order to strengthen the activities undertaken in observance of Articles 13 and 41 of the American Convention on Human Rights. During its 98th special session, the Commission defined the mandate of the Office of the Special Rapporteur for Freedom of Expression and decided to designate a “Special Rapporteur to the Inter-American Commission of Human Rights for the Freedom of Expression.” The Office of the Special Rapporteur was created and defined based on the belief that it was a mechanism that contributed to the promotion and protection of freedom of speech and democracy in the hemisphere.

- 2 The Office of the Special Rapporteur’s on-site country visits, in particular, aim to establish a dialogue that facilitates the search for solutions and mechanisms permitting the creation of a favorable environment for the exercise of freedom of expression of member States of the OAS.

The Office of the Special Rapporteur analyzes the state of freedom of expression in the Americas through individual cases arising in the human rights bodies of the Inter-American system. At the same time, the Office of the Special Rapporteur conducts its work through on-site country visits and the preparation of general and special reports. The Office of the Special Rapporteur also participates in special audiences that the Inter-American Commission on Human Rights holds with groups interested in freedom of expression or specializing in this area.

- 3 The Arauca region is located in eastern Colombia and borders Venezuela. It has seven municipalities: Arauca, Tame, Saravena, Arauquita, Fortul, Cravo Norte and Puerto Rondón.

- 4 Annex A of this report contains a list of officials and organizations interviewed.

- 5 See Press Release 121/05 of April 29, 2005, *Preliminary Observations upon concluding his official visit to Colombia: The Special Rapporteur for Freedom of Expression expresses serious concern about self-censorship and persistent impunity*. Available at: <http://www.cidh.oas.org/relatoria/artListCat.asp?catID=1&IID=1>

- 6 In its observations to the preliminary version of this report, the State noted that the term “armed internal conflict” does not reflect “the current conditions in the country.” It said “the cardinal premise of the Colombian state is the acceptance of the existence of a terrorist threat.”

The Inter-American Commission has used the term “armed internal conflict” in a number of reports in order to characterize the violence in Colombia. In its most recent annual report, the Inter-American Commission reiterated that “in 2004 the enjoyment of fundamental human rights in the Republic of Colombia continued to be negatively impacted by the consequences of the internal armed conflict.” See: IACHR, Chapter IV “Human Rights Developments in the Region,” Annual Report 2004, Vol. II, OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, para. 6.

It can also be noted that in its *Third Report on the Human Rights Situation in Colombia*, the Inter-American Commission noted that “Colombia, unlike other States that all too frequently

choose to deny the existence of such hostilities within their territory for political or other reasons, has openly acknowledged the factual reality of its involvement in such a conflict and the applicability of Article 3 common to the four 1949 Geneva Conventions, the 1977 Additional Protocol to the Geneva Conventions of August 12, 1949 Relating to the Protection of Victims of Non-International Armed Conflicts, and other customary law rules and principles governing internal armed conflicts." See: IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II/102 Doc. 9 rev. 1, 26 February 1998, Chapter IV, "Violence and Violations of International Human Rights and Humanitarian Law," para. 20.

Available at: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>

The Inter-American Commission has highlighted this same position its *Report on the Demobilization Process in Colombia*. See: IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, 13 December 2004, Chapter II, "Context: Origin and Characteristics of the Internal Armed Conflict in Colombia." Available at: <http://www.cidh.org/countryrep/Colombia04eng/toc.htm>

- 7 The Inter-American Commission on Human Rights includes a chapter on the state of human rights in member States in its annual report to the General Assembly of the OAS. This practice is designed to provide the OAS with updated information on the state of human rights in countries that have been the object of special attention by the Commission, and in some cases, to inform the OAS of events that may have arisen, or that may have been in development, since the close of the previous report. There are five criteria preestablished by the Commission to identify the OAS member States whose human rights practices merit special attention which consequently should be included in Chapter IV of the annual report.

The fifth of these criteria include, for example: grave situations of violence that hinder the proper application of the rule of law; serious institutional crises; institutional reforms with negative consequences for human rights; or grave omissions in the adoption of the provisions necessary for the effective exercise of fundamental rights. In its 2004 annual report, the Commission again found that the situation in Colombia fit within the criteria described above. See: IACHR, Chapter IV, "Human Rights Developments in the Region," Annual Report 2004, Vol. II, OEA/Ser.L/V/II.122 Doc. 5, rev. 1, 23 February 2005, para. 2 and 6-52.

- 8 IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, 13 December 2004, Executive Summary, para. 3. Available at: <http://www.cidh.org/countryrep/Colombia04eng/toc.htm>

- 9 *Ibid.*, para. 2.

- 10 The Office of the Special Rapporteur's has followed the state of freedom of expression in Colombia in each of its annual reports. See: IACHR, Chapter III "Evaluation of Freedom of Expression in the Hemisphere," Annual Report 1998, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/102 Doc. 6 rev.,

16 April 1999, pp. 52-4. IACHR, Chapter II "Assessment of the Situation of Freedom of Expression in the Hemisphere," Annual Report 1999, Vol. III "Report of the Rapporteur for Freedom of Expression 1999," OEA/Ser.L/V/II/106 Doc. 3 rev., 13 April 2000, pp. 54-57 and 64-66; IACHR, Chapter IV "Evaluation of the Situation of Freedom of Expression in the Hemisphere," Annual Report 2000, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/111 Doc. 20 rev., 16 April 2001, para. 18-20, 92-107 and pp. 162-63; IACHR, Chapter II "Evaluation of the State of Freedom of Expression in the Hemisphere," Annual Report 2001 Vol. II "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/114 Doc.5 rev. 1, 16 April 2002, para. 51-88 and pp. 94-96; IACHR, Chapter II "Evaluation of the State of Freedom of Expression in the Hemisphere," Annual Report 2002, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003, para. 59-95 and pp. 83-4; IACHR, Chapter II "Evaluation of the Status of Freedom of Expression in the Hemisphere," Annual Report 2003, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/118 Doc. 70 rev. 2, 29 December 2003, para. 56-75 and p. 90; IACHR, Chapter II "The Situation of Freedom of Expression in the Hemisphere," Annual Report 2004, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression 2004," OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, para. 54-63.

Between its creation and August 2005, the Office of the Special Rapporteur's has also issued a total of 20 press releases about the state of freedom of expression in Colombia.

- Press Release 06/99, 1 April 1999: *Special Rapporteur Expresses Concern for Threats to a Colombian Journalist.*
- Press Release 12/99, 13 August 1999: *Special Rapporteur for Freedom of Expression Condemns the Killing of a Colombian Journalist.*
- Press Release 14/99, 12 October 1999: *Special Rapporteur for Freedom of Expression Condemns Killing of a Colombian Journalist.*
- Press Release 15/99, 27 October 1999: *Special Rapporteur for Freedom of Expression Condemns the Kidnapping of a Colombian Journalist.*
- Press Release 16/99, 12 November 1999: *Special Rapporteur for Freedom of Expression Expresses Concern for the Kidnapping of Journalists.*
- Press Release 18/99, 1 December 1999: *Special Rapporteur for Freedom of Expression Condemns the Killing of Colombian Journalists.*
- Press Release 20/99, 8 December 1999: *Special Rapporteur for Freedom of Expression Repudiates Assassination of Colombian Journalist.*
- Press Release 42/01, 1 May 2001: *The Special Rapporteur for Freedom of Expression Condemns the Killing of a Colombian Journalist.*

- Press Release 43/01, 10 July 2001: *Special Rapporteur for Freedom of Expression Condemns the Murder of Four Colombian Journalists*.
- Press Release 46/01, 9 November 2001: *Special Rapporteur for Freedom of Expression Expresses Serious Concern over Death Threats to Four Colombian Journalists*.
- Press Release 49/01, 13 December 2001: *Concern on the Part of the LACHR Rapporteur for Freedom of Expression over the Assassinations of Journalists in Colombia*.
- Press Release 52/02, 31 January 2002: *The Special Rapporteur Condemns a Serious Attack on a Journalist and an Attack on a Broadcaster in Colombia*.
- Press Release 59//02, 2 July 2002: *Special Rapporteur for Freedom of Expression Condemns Murder of Colombian Journalist*.
- Press Release 71/03, 18 March 2003: *Special Rapporteur for Freedom of Expression Condemns Murder of Colombian Journalist*.
- Press Release 76/03, 1 May 2003: *Special Rapporteur for Freedom of Expression Condemns Assassinations of Two Journalists in Colombia*.
- Press Release 115/05, 14 January 2005: *The Office of the Special Rapporteur for Freedom of Expression deplores the assassination of Colombian journalist*.
- Press Release 117/05, 16 March 2005: *The Office of the Special Rapporteur of the LACHR deplores attack against transmission towers in Colombia*.
- Press Release 120/05, 22 April 2005: *Special Rapporteur for Freedom of Expression to Carry Out Official Visit to Colombia*
- Press Release 121/05, 29 April 2005: *Preliminary Observations upon concluding his official visit to Colombia: The Special Rapporteur for Freedom of Expression expresses serious concern about self-censorship and persistent impunity*.
- Press Release 123/05, 18 May 2005: *Office of the Special Rapporteur for Freedom of Expression expresses serious concern about threats to three Colombian journalists*.

The texts of these documents are available at <http://www.cidh.oas.org/relatoria/index.asp?IID=1>

- 11 The fundamental role that freedom of expression plays in a democratic system has been highlighted in all of the Office of the Special Rapporteur's annual reports, and more recently, in the country reports that have been published as part of the Office of the Special Rapporteur's work in monitoring freedom of expression in the hemisphere. The text of these reports on the state of freedom of expression in Paraguay, Haiti, Panama, Venezuela and Guatemala can be found at: <http://www.cidh.oas.org/relatoria/listDocuments.asp?categoryID=1&IID=1>
- 12 The regional systems for the protection of human rights and the global system concur on the essential role that freedom of expression plays in the consolidation of a democratic society.

The European Court of Human Rights has expounded on the importance of freedom of expression in a democratic society, noting that:

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfillment. . . [I]t is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'... [T]his freedom is subject to exceptions, which must, however, be construed strictly and the need for any restrictions must be established convincingly.

See: ECHR, *Case of Perna v. Italy*, Report on Judgments, May 6, 2003, para. 39; ECHR, *Case of Scharsach and Nevs Verlagsgesellschaft mbH v. Austria*, Report of Judgments, 13 November 2003, para. 30; ECHR, *Case of Dichand and Others v. Austria*, Report of Judgment, 25 February 2002; ECHR, *Case of Lehideux and Isorni v. France*, Judgment of 23 September 1998, para. 55; ECHR, *Case of Otto-Preminger-Institute v. Austria*, Report of Judgment, 20 September 1994, para. 49; ECHR, *Case of Castells v. Spain*, Report on Judgment, 23 April 1992, para. 42; ECHR, *Case of Oberschlick v. Austria*, Report on Judgment, 23 May 1991, para. 57; ECHR, *Case of Muller and Others v. Switzerland*, Report on Judgment, 24 May 1988, para. 33; ECHR, *Case of Lingens v. Austria*, Report of Judgment, 8 July 1986, para. 41; ECHR, *Case of Barthold v. Germany*, Report on Judgment, 25 March 1985, para. 58; ECHR, *Case of Handyside v. The United Kingdom*, Report on Judgment, 7 December 1976, para. 49.

- 13 The U.N. Human Rights Committee and the African Commission of Human and People's Rights have ruled along these same lines. See: U.N. Human Rights Committee, *Aduayom and Others v. Togo* (422/1990, 423/1990 and 424/1990), views of 12 July 1996, para. 7.4; African Commission of Human and People's Rights, *Media Rights Agenda, Constitutional Rights Project v. Nigeria*, Communication Nos. 15/93, 128/94, 130/94 and 152/96, Decision of 1 October 1998, para. 54.

The Inter-American Democratic Charter, Article 4. The Charter was adopted by the General Assembly at its special session held in Lima, Perú on September 11, 2001.

- 14 I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, para. 70.
- 15 I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*, Judgment of July 2, 2004. Series C, No. 107. para. 116. See also: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C, No. 111, para. 86. Both cases available in Spanish only. Please note that the translation here is not an official translation of the Inter-American Court of Human Rights.

- 16 IAHCR, *Justice and social inclusion: The challenges of democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 2, 29 Dec. 2003, Chapter VII: Freedom of Expression in Guatemala, para. 385. Available in Spanish only at: <http://www.cidh.org/relatoria/listDocuments.asp?categoryID=10>
 - 17 It is worth noting that the member states of the OAS - by virtue of their ratification of the OAS Charter - have an obligation to respect and ensure the provisions on human rights incorporated into this instrument. See: OEA AG Res. AG/RES. 314 (VII-0/77), 22 June 1977; OEA AG/RES. 370 (VII-0/78), 1 July 1978; OEA AG/RES. 1829 (XXXI-0/01), 5 June 2001; See also: I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989. Series A, No. 10. paras. 43-46; and IAHCR, Report No. 48/01, Case 12.067, *Michael Edwards and Others (Bahamas)*, Annual Report of the Inter-American Commission on Human Rights 2000, para. 107.
 - 18 The American Declaration constitutes a legal obligation for all OAS member States, including in particular those States that have not ratified the American Convention on Human Rights. See: I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989. Series A, No. 10. paras. 43-46. In addition, the Commission has established that the rights to life, liberty and due process have reached the status of customary international law. See: IAHCR Report No. 19/02, *Alfredo Lares Reyes and Others (United States)*, Annual Report of the Inter-American Commission on Human Rights 2001, para. 46.
 - 19 I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70.
 - 20 The Inter-American Commission approved the Declaration of Principles outlined by the Office of the Special Rapporteur during its 108th ordinary session in October 2000. The text of this document can be found at: <http://www.cidh.org/relatoria/showarticle.asp?artID=26&IID=1>
 - 21 IAHCR, Chapter II, Annual Report of the Special Rapporteur for Freedom of Expression 2000, OEA/Ser.L/V/II/111 Doc. 20 rev., para. 3.
 - 22 IAHCR, Chapter II "The Situation of Freedom of Expression in the Hemisphere," Annual Report, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression 2004," OEA/Ser.L/V/II.122, Doc. 8 rev. 1, para. 2.
 - 23 Colombia's Constitutional Court, Judgment C-010-00, 19 January 2000. Emphasis added.
 - 24 Prior to the start of its official visit, the Special Rapporteur for Freedom of Expression was invited to participate as a speaker at the *Third Meeting of Constitutional Jurisdiction* organized by the Colombian Constitutional Court on April 20-22, 2005. The Special Rapporteur, Eduardo Bertoni, gave a speech entitled "International Law and Judicial Control: The Importance of Constitutional Courts in the Application of International Law." This section and Annex C (available in Spanish only) served as the basis for the development of Mr. Bertoni's speech.
 - 25 In its 2003 and 2004 annual reports, the Office of the Special Rapporteur included special sections on the domestic jurisprudence of member States that has taken into account - implicitly or explicitly - international norms for the protection freedom of expression. These reports are available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1> and <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>
- As part of this work, the Office of the Special Rapporteur, prior to 2003 and 2004, included two judgments from Colombia's Constitutional Court. The 2002 Annual Report included a judgment from the Constitutional Court (Judgment C-1024-02 of November 26, 2002) respecting the standard enshrined in Principle 2 of the Declaration of Principles on Freedom of Expression. The case in question involved a challenge to Article 22 of Legislative Decree No. 2002 of 2002, which allegedly created zones where foreign journalists could not carry out their work. The Constitutional Court noted that "among its guarantees on freedom of expression, the Political Constitution guarantees the right to inform and receive truthful and impartial information, and it also establishes that there will be no censorship and that the mass media will be free, with social responsibility." There is therefore "no doubt that limitations on the freedom of the press, whether they restrict or impede access to information or to places giving rise to events that may be the subject of journalistic investigation done to inform the domestic or the foreign public, may not be set forth in the law when there is no state of emergency, as it violates the aforementioned constitutional norms." The Court ultimately ruled that "while it is true that Article 22 of the decree does not establish a direct restriction on press freedom, it is no less true that this law's provisions requiring foreign journalists to advise (the government) of their intention to move through or remain in a zone of 'rehabilitation,' as well as provisions requiring up to eight days for the issuance of this request, constitutes an obvious restriction on this freedom that is inadmissible under the Political Constitution."
- In another chapter of the same report focusing on freedom of speech and poverty, the Office of the Special Rapporteur for Freedom of Expression cited another decision of Colombia's Constitutional Court (Judgment T-456-92 of July 14, 1992). The petitioner in this case requested that the judge overturn an order by the Mayor's Office in Honda denying the request of the petitioner and other citizens to hold a political and electoral march on Feb. 29 in this town's streets. The Court ruled that "only the legislature may establish the cases in which the right of assembly and protest can be limited." It went on to say: "While the law does not expressly cover announcements or notices of public meetings, as other European and Latin American constitutions do, the powers

given to the legislature under the 1991 Constitution allow it to regulate announcements made to the government, to determine the cases in which this is required, and the form in which the date, time and place of the meeting or protest must be made. It is important to emphasize that the announcement, under the 1991 Constitution, may not be used as a basis under which the meeting or protest is prohibited. Its goal is to inform the authorities so that they may take measures that are conducive to maintaining the rule of law without obstructing the normal development of community activities in any significant way.

- 26 Annex C provides a selection of the most representative cases of the Colombian Constitutional Court on the issues discussed in this section. Available in Spanish only.
- 27 IACHR, Chapter IV, "Human Rights Developments in the Region," Annual Report 2004, OEA/Ser.L/V/II.122, Doc. 8 rev. 1, para. 8.
- 28 The Office of the Special Rapporteur has expressed its concern for the attacks on freedom of expression perpetrated by armed illegal groups in a number of press releases. See: Press Release 06/99, 1 April 1999: *Special Rapporteur Expresses Concern for Threats to a Colombian Journalist*; Press Release 42/01, 1 May 2001: *The Special Rapporteur for Freedom of Expression Condemns the Killing of a Colombian Journalist*; Press Release 43/01, 10 July 2001: *Special Rapporteur for Freedom of Expression Condemns the Murder of Four Colombian Journalists*; Press Release 46/01, 9 November 2001: *Special Rapporteur for Freedom of Expression Expresses Serious Concern over Death Threats to Four Colombian Journalists*; Press Release 49/01, 13 December 2001: *Concern on the Part of the IACHR Rapporteur for Freedom of Expression over the Assassinations of Journalists in Colombia*; Press Release 71/03, 18 March 2003: *Special Rapporteur for Freedom of Expression Condemns Murder of Colombian Journalist*; Press Release 121/05, 29 April 2005: *Preliminary Observations upon concluding his official visit to Colombia: The Special Rapporteur for Freedom of Expression expresses serious concern about self-censorship and persistent impunity*.

The texts of these documents are available at: <http://www.cidh.oas.org/relatoria/index.asp?IID>
- 29 The historical analysis included in this section is drawn from the *Third Report on the Human Rights Situation in Colombia*, published by the Inter-American Commission in 1999, and the more recent *Report on the Demobilization Process in Colombia*, published at the end of 2004. The documents are found at: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm> and <http://www.cidh.org/countryrep/Colombia04eng/toc.htm>, respectively.
- 30 Decree No. 3398 of December 24, 1965, "By which the national defense is organized" ("Por el cual se organiza la defensa nacional").
- 31 *Id.*
- 32 Law 48 of 1968, "By which some legislative decrees are adopted as legislation, powers are granted to the President of

the Republic and the assemblies, and reforms are introduced to the Substantive Labor Code and other provisions are issued." ("Por la cual se adoptan como legislación permanente algunos decretos legislativos, se otorgan facultades al Presidente de la República y a las asambleas, y se introducen reformas al Código Sustantivo del Trabajo y se dictan otras disposiciones.")

- 33 Among the criminal acts perpetrated by the paramilitary groups at that time was the massacre of 19 merchants traveling from Cúcuta to Medellín in a caravan of vehicles of 1987. The merchants and drivers were stopped in Puerto Boyacá by a paramilitary group acting with the sponsorship and collaboration of the official forces in the area. The Inter-American Court of Human Rights established the responsibility of the Colombian State for the massacre in light of its role in the formation of these groups under the legislation then in force and the direct participation of members of the National Army in the commission of acts violating the American Convention:

Based on the evidence submitted in this proceeding, the Court considers that, at the time of the relevant facts in the instant case, the "paramilitary" group that disappeared the 19 tradesmen had close ties to senior officers of the law enforcement bodies of the Magdalena Medio region, and received support and collaboration from them.

This Court considers that it has been proved . . . that members of law enforcement bodies supported the "paramilitary personnel" in acts that preceded the detention of the alleged victims and the crimes committed against them. It has been proved . . . that the senior military commanders and the "paramilitary personnel" believed that the first 17 alleged victims sold arms and merchandise to the guerrilla groups in the Magdalena Medio region. This alleged relationship with the guerrilla and the fact that these tradesmen were not paying the "taxes" charged by this "paramilitary" group for transiting through the region with merchandise, caused the "leaders" of the "paramilitary" group to hold a meeting, at which the decision was taken to kill the tradesmen and seize their merchandise and vehicles. It has been proved . . . that this meeting was held with the acquiescence of some members of the Army, since they agreed with the plan. There is even some evidence indicating that some members of the Army took part in the said meeting.

See: I/A Court H.R., *Case of 19 Tradesmen v. Colombia*, Judgment of 5 July 2004, Series C, No. 109, paras. 134-5.

This massacre of civilians by paramilitary groups, with the collaboration of the state, was followed by the January 18, 1989 assassination – by the same paramilitary group – of the members of a judicial commission that had traveled to the area to investigate the fate of the 19 merchants. The alleged responsibility of state agents in this massacre, known as the La Rochela massacre, is being examined by the IACHR. See: IACHR, Admissibility Report No. 42/02, *Mariela Morales*

Caro, et al. (*"La Rochela Massacre"*) (Colombia), Annual Report 2002. After the La Rochela massacre, the State began to adopt measures, including legislation, to counter the armed control exerted by paramilitary groups in several parts of Colombia.

- 34 IAHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, 13 December 2004, para. 51. Available at: <http://www.cidh.org/countryrep/Colombia04eng/toc.htm>
- 35 Available at: www.cidh.org/relatoria
- 36 For more on this program, see subheading C in this section.
- 37 Details on each of these murders reported to the Office of the Special Rapporteur can be found in Annex B.
- 38 These figures are based on the annual reports of the Office of the Special Rapporteur, 1998-2004, and press releases put out by the Office between 1998 and August 2005. The number of cases reported reflects only those of which the Office of the Special Rapporteur has knowledge. It is possible that other violations exist.
- 39 The number of journalists is greater than the total number of cases because the killings of Hector Sandoval and Walter López were reported as the same event.
- 40 IACHR, Annual Report 1998 Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," 16 April 1999, pp. 49-50.
- 41 These figures are based on the annual reports of the Office of the Special Rapporteur between 1999 and August 2004, and the press releases of the Office of the Special Rapporteur, between 1999 and August 2005. It is likely that other violations occurred during the same period that were not reported to the Office of the Special Rapporteur.
- 42 See: Press Release 49/01, 13 December 2001: *Concern on the Part of the IACHR Rapporteur for Freedom of Expression over the Assassinations of Journalists in Colombia*. It can be found at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=67&IID=1>
- 43 See: IACHR, Chapter III, "Evaluation of the Freedom of Expression in the Hemisphere," Annual Report 1998 Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression 1998," OEA/Ser.L/V/II/102 Doc. 6 rev., 16 April 1999, pp. 52-54; IACHR, Chapter II "Assessment of the Situation of Freedom of Expression in the Hemisphere," Annual Report 1999 Vol. III "Report of the Rapporteur for Freedom of Expression 1999," OEA/Ser.L/V/II/106 Doc. 3 rev., 13 April 2000, pp. 64-66; IACHR, Chapter IV "Evaluation of the Situation of Freedom of Expression in the Hemisphere," Annual Report 2000 Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression 2000," OEA/Ser.L/V/II/111 Doc. 20 rev., 16 April 2001, pp. 162-63; IACHR, Chapter II "Evaluation of the State of Freedom of Expression in the Hemisphere," Annual Report 2001 Vol. II "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/114 Doc.5 rev. 1, 16 April 2002, pp. 94-96; IACHR, Chapter II "Evaluation of the State

of Freedom of Expression in the Hemisphere," Annual Report 2002, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003, pp. 83-4; IACHR, Chapter II "Evaluation of the Status of Freedom of Expression in the Hemisphere," Annual Report 2003, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II/118 Doc. 70 rev. 2, 29 December 2003, p. 90; IACHR, Chapter II "The Situation of Freedom of Expression in the Hemisphere," Annual Report 2004, Vol. III "Annual Report of the Special Rapporteur for Freedom of Expression 2004," OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, pp. 72-75.

- 44 Please note that in Spanish, the preliminary investigation stage is known as the *etapa de investigación preliminar*, while the formal investigatory phase is known as the *etapa de instrucción*.
- 45 This data is based on the information presented by Official Letter No. 002435 of the Office of the Public Prosecutor and delivered to the Office of the Special Rapporteur on April 29, 2005 at the end of its visit to Colombia.
- 46 See: IACHR, Admissibility Report No. 54/04, *Nelson Carvajal Carvajal*, Petition 559-2002. Available at: <http://www.cidh.org/annualrep/2004eng/Colombia.559.02eng.htm>
- 47 Details of these cases can be found in Annex B, which details the period between 1998 and August 2005.
- 48 The Office of the Special Rapporteur has included in the category of cases with "sentences delivered" the six cases in which verdicts of guilty or absolved were given with respect to the physical or intellectual author of the crime. As has been noted in the text of the report, two of these cases resulted in verdicts of absolution. In the case of Jaime Garzón, the presumed physical author was found not guilty (the intellectual author was sentenced), while the case of Nelson Carvajal Carvajal involved the alleged physical and intellectual authors. In the four remaining cases, the guilty verdicts involved some of the participants. It should be noted that investigations continue into the remaining physical or intellectual authors of these crimes in only some of these cases.
- 49 The number of journalists is greater than the number of cases because the murders of Héctor Sandoval and Walter López were reported as one event.
- 50 See: I/A Court H.R., *Case of the "Gómez-Paquiyaui Brothers" vs. Perú*, Judgment of July 8, 2004, Series C, No. 110, para. 148. I/A Court H.R., *Case of Myrna Mack Chang vs. Guatemala*, Judgment of November 25, 2003, Series C, No. 101, paras. 156 and 210. I/A Court H.R., *Case of the "Street Children" vs. Guatemala (Villagrán-Morales et al.)*, Reparations Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C, No. 77, paras. 99-100. I/A Court H.R., *Case of the "Panel Blanca" vs. Guatemala (Paniagua-Morales et al.)*, Judgment of March 8, 1998, Series C, No. 37, para. 173. See also: I/A Court HR, *Case of Bamaca-Velásquez vs. Guatemala*, Judgment of November 25, 2000, Series C, No. 70, para. 211; I/A Court H.R., *Case of Loayza-Tamayo vs. Perú*,

Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998. Series C, No. 42, paras. 168 and 170.

- 51 I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*, Judgment of July 29, 1988. Series C, No. 4, paras. 174 and 176.
- 52 United Nations, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2002/17, para. 243.
- 53 United Nations, *Civil and Political Rights, Including the Question of Freedom of Expression. Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Addendum, Mission to Colombia*. E/CN.4/2005/64/Add.3, 26 November 2004, p. 2.
- 54 *Id.*, para. 79. Along these same lines, a recent report from the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists) has signaled that “a number of international human rights protection bodies have recognized that impunity in Colombia is structural and systematic, particularly in cases involving violations of human rights and international humanitarian law.” See: *Comisión Colombiana de Juristas, Colombia: En Contravía de las Recomendaciones Internacionales sobre Derechos Humanos. Balance de la Política de Seguridad Democrática a la Situación de Derechos Humanos y Derecho Humanitario*. August 2002-August 2004. p. 107.
- 55 IACHR, Annual Report 1998 Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression 1998,” OEA/Ser.L/V/II/102 Doc. 6 rev., 16 April 1999, pp. 49-50.
- 56 In its observations on this report, the State noted that the *Ley de Justicia y Paz*, or Law of Justice and Peace, approved in June 2005, “enshrines as a principle the right to truth, justice, reparation and due process.”

It is worth noting that the Inter-American Commission has signaled the following:

Establishing the truth about what happened during the conflict, searching seriously for justice through the determination of the responsibility of the perpetrators vis-à-vis the victims, and the reparation of the damage caused – far from generating obstacles for the agreements that can lead to peace building – constitute basic pillars of its strength.

Regarding the Law of Justice and Peace in Colombia, the IACHR notes that the determination of the historical truth regarding what happened during the last few decades of the conflict does not appear as an objective. Nor does the determination of who has sponsored paramilitarism or of the degree of involvement of different participants in the perpetration of crimes against the civilian population by action, omission, collaboration or acquiescence.

The adopted bill concentrates upon the mechanisms

to establish individual criminal responsibility in individual cases and involves demobilized members of illegal armed groups receiving procedural benefits. However, its provisions fail to establish incentives for a full confession of the truth as to their responsibility in exchange for generous judicial benefits received. Consequently, the established mechanism does not guarantee that the crimes perpetrated will be duly clarified, and therefore in many cases the facts may not be revealed and the perpetrators will remain unpunished. The provisions of the law might favor the concealment of other conduct that, once brought to light at a future date, could benefit from the same alternative penalties. [...]

Regarding the seriousness and complexity of the crimes perpetrated, the short time limits and procedural stages provided for in the legal mechanisms to investigate and prosecute the demobilized individuals benefiting from the law also fail to offer a realistic alternative to establish individual responsibility in full measure. This circumstance will prevent the uncovering of what happened to many of the victims, thus frustrating the reparations process they are entitled to. The investigation of serious violations of human rights requires adequate time limits and the opportunity for necessary procedural activity.

See: *IACHR issues statement regarding the adoption of the “Law of Justice and Peace” in Colombia*, Press Release No. 26/05, 15 July 2005. Available at: <http://www.cidh.org/Comunicados/English/2005/26.05eng.htm>

- 57 IACHR, *Report on the Demobilization Process in Colombia*, 13 December 2004, OEA/Ser.L/V/II.120 Doc. 60, para. 10. Emphasis added.
 - 58 *Id.*, para. 98. Amnesty International has also made declarations in this context, indicating that “[a]ny legal framework for the demobilization of members of illegal armed groups, be they paramilitaries or guerrillas, must respect victims’ right to truth, justice and reparation, tackle the endemic problem of impunity, ensure that combatants are not reintegrated into the conflict, and include measures to bring to justice all those responsible for supporting the illegal armed groups militarily and financially, including members of the security forces.” It also noted that the “Law of Justice and Peace clearly disregards these fundamental principles. Supporters for the law argue that a compromise must be made between peace and justice. But the dichotomy between peace and justice is a false one.” See: Amnesty International, *Colombia: President Uribe must not ratify impunity law*, Press Release, 13 July 2005. Available at: <http://web.amnesty.org/library/Index/ENGAMR23012005?open&of=ENG-COL>
- See also: *Colombia: Justice and Peace Law will guarantee impunity for human rights abusers*, Press Release, 26 April 2005. Available at: <http://web.amnesty.org/library/Index/ENGAMR230122005?open&of=ENG-COL>

The UNHCHR, Louise Arbour, has noted in this context that in the effort “to advance toward a lasting peace, it is possible to foresee judicial benefits for the members of armed groups, operating at the margins of the law, who collectively lay down their arms and sign peace agreements with the government. It is necessary, however, that these benefits hinge on an effort to contribute effectively to justice, the clarification of the truth and the reparation of damage done to the victims...The measures needed to dismantle the illegal structures that allowed these groups to make social, political and economic economics should also not be pushed aside.” See: *Rueda de Prensa del 13 de Abril 2005 con ocasión de la presentación del Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre la situación de los derechos humanos en Colombia*. Available in Spanish only at: <http://www.hchr.org.co/publico/comunicados/2005/comunicados2005.php3?cod=22&cat=58> (The translations of these comments are not official).

Furthermore, the director of the Office of the UNHCHR in Colombia, Michael Frühling, has stated that “the obligation to respect and ensure human rights - stipulated in Article 2 of the International Covenant on Civil and Political Rights and in Article 1 of the American Convention on Human Rights, instruments ratified by Colombia..., is not complied with when the national authorities adopt internal legal norms which can be used to justify impunity. See: Office in Colombia of the UNHCHR, *Intervención del señor Michael Frühling, Director de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, en el II Encuentro Nacional de víctimas de crímenes de lesa humanidad y violaciones de los derechos humanos*, 23 June 2005. Available in Spanish only at: <http://www.hchr.org.co/publico/pro-nunciamentos/ponencias/ponencias.php3?cod=66&cat=24> (The translations of these comments are not official).

More recently, on the occasion of the approval of the Law of Peace and Justice, the Director of the Office of the UNHCHR in Colombia noted that the law does not include “the advisable essential elements for establishing a transitional justice, which – in order to achieve a sustainable peace – provides incentives and offers benefits to the armed illegal groups that demobilize and cease hostilities while adequately guaranteeing the rights of the victims and the rights to truth, justice and reparation. The law offers very generous judicial benefits, such as a sharp reduction in prison sentences and broad possibilities for probation to those who have committed grave crimes, while failing to make an effective contribution to the clarification of the truth and reparation. For these reasons, it could open the door to impunity.” See: Office in Colombia of the UNHCHR, *Consideraciones sobre la ley de “Justicia y Paz”*, Press Release, 27 June 2005. Available in Spanish only at: <http://www.hchr.org.co/publico/comunicados/2005/comunicados2005.php3?cod=35&cat=58> (The translation here is not official).

- 59 IACHR, *Report on the Demobilization Process in Colombia*, 13 December 2004, OEA/Ser.L/V/II.120 Doc. 60, paras. 10-14.

- 60 Among the journalists who endured kidnappings and retentions by armed groups in 2004 were the following: *Radio Nova* reporter Julien Fouchet, who was retained in Santa Marta; Inés Peña of *Enlace 10*, who was kidnapped and tortured in Barrancabermeja; Luis Carlos Burbano Carvajal of *Caracol Noticias Televisión* and his cameraman, Mauricio Mesa Lancheros. The Office of the Special Rapporteur received reports of threats against Garibaldi López and Diego Waldrón of *Calor Estéreo*, Barrancabermeja; the newspaper *El Nuevo Día*, in Ibagué; and Luis Alberto Castaño, an independent journalist. The journalist Jorge Elías Corredor Quintero, director of the program *El Pregón del Norte*, was targeted in an attack that killed his stepdaughter. In June 2004, journalists Olga Lucía Cotamo and Angela Echeverri of channel RCN in Cúcuta received a threatening pamphlet signed by the ELN. The Office of the Special Rapporteur was also informed of threats made against journalist and human rights defender Ademir Luna in the Magdalena Medio region, and of those against columnist Luis Eduardo Gómez, a columnist who may have been threatened by officials in the Arboletes municipality. The Office of the Special Rapporteur also learned of threats to Silvio Sierra Sierra, who was threatened in the city of Popayán, and to Geovanny Serrano, who was the target of intimidation by unidentified individuals. On October 2, 2004, *Semana* magazine denounced threats made to its journalists in an editorial, but it was not possible to identify the origin of the threats.

See: IACHR, Chapter II “The Situation of Freedom of Expression in the Hemisphere,” Annual Report 2004, Vol. III “Annual Report of the Special Rapporteur for Freedom of Expression 2004,” OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, paras. 54-63.

- 61 The three journalists threatened were Hollman Morris, Daniel Coronell and Carlos Lozano Guillén. In the case of Coronell, the funeral wreaths also lamented the death of his wife and daughter. See: Press Release 123/05, 18 May 2005: *Office of the Special Rapporteur for Freedom of Expression expresses concern about threats received by Colombia journalists*. The press release is available at: <http://www.cidh.oas.org/relatoria/index.asp?ID=1>
- 62 U.N., *Report of the High Commission for Human Rights on the situation of human rights in Colombia*, 28 February 2005, E/CN.4/2005/10, Annex III, para. 18.
- 63 In August 2005, journalist Daniel Coronell and his family decided to leave Colombia. See: *El Tiempo* (Bogotá), *El periodista Daniel Coronell se va del país por amenazas contra su vida y la de su familia*, 14 August 2005. Available in Spanish only at: http://eltiempo.terra.com.co/hist_imp/HISTORICO_IMPRESO/judi_hist/2005-08-14/ARTICULO-WEB-NOTA_INTERIOR_HIST-2182844.html
- 64 On the morning of April 26, 2005, the Office of the Special Rapporteur had a meeting with military and civilian officials in Arauca. At this meeting, the government of the region, Julio Acosta Bernal, noted that “the organizations working to defend human rights that come to work in Arauca are alien to the region’s reality. The only ones who really defend the

human rights of the people of Arauca are us, the habitants of Arauca, and not these non-governmental organizations that tear up their clothing defending the human rights of a few, but when good people are killed they say nothing.” With respect to the problems facing journalism in Arauca, the governor said that “[o]ne of the key mistakes of the journalists in Arauca is when they denigrate others, for this reason they make enemies. In addition, when someone is threatened, nothing will happen to him. If someone wants you dead, however, that person is not going to say anything.”

In the same meeting, officials from the Office of the Ombudsman told the Office of the Special Rapporteur about the severe limitations experienced by journalists and human rights defenders in their exercise of freedom of expression. Governor Acosta responded by saying that “[i]t is important that journalists have limits. The whole world has the right to be afraid if they are ‘expressive.’ For those who denounce the entire world, it is they who face the risks.”

- 65 The Inter-American Commission has indicated that this practice of official accusations (*señalamientos*) consists of declarations made to the public accusing individuals of being collaborators with the guerrilla. In general, these accusations precede grave acts of violence, and in some countries of the region, such accusations have led to the commission of systematic violations of human rights. In response to this, the State signaled that it disagreed with the conclusions of paragraph 97.

The Inter-American Commission has also indicated that during 2004 it continued to receive complaints about the use of “judicial set-ups” that are designed to harm or hush human rights defenders who are involved in, among other things, the documentation of human rights abuses, provision of legal defense of persons facing criminal charges, representation of victims before the courts and the accompaniment of communities at high risk. See: IACHR, Chapter IV “Human Rights Developments in the Region,” Annual Report 2004, Vol. II, “Annual Report of the Inter-American Commission on Human Rights 2004,” OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, para. 34-38.

- 66 U.N., *Civil and Political Rights, Including the Question of Freedom of Expression. Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Addendum, Mission to Colombia*, E/CN.4/2005/64/Add.3, 26 November 2004, para. 92.
- 67 In the 2004 *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, the High Commissioner warned that “the measures adopted in Arauca have not created favourable conditions for the full exercise of freedom of the press and the right of the population to be informed in a true or impartial way. For this reason many journalists have shown an increase in self-censorship, which they define as ‘self-regulation in order to survive.’” See: U.N., *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, 17 February 2004, E/CN.4/2004/13, para. 98.

In this same vein, the High Commissioner’s 2005 report reiterated that “[t]he Office received complaints from various journalists and social communicators who reported that they carry out their work in a climate of indirect censorship, intimidation and obstruction to accurate information. . . . In addition, impunity continued in cases of threats against journalists. These events have contributed, in various regions, to a situation of self-censorship that has existed for several years, along with the uncritical use of official sources, the provision of inaccurate information, and violation of the right to information.” See: U.N., *Report of the High Commissioner for Human Rights on the situation of human rights in Colombia*, 28 February 2005, E/CN.4/2005/10, Annex III, para. 17.

The same situation has been confirmed by the reports of *Fundación para la Libertad de Prensa*, or Foundation for Press Freedom. The group has noted that “[t]he state of press freedom cannot be viewed merely from a quantitative vantage point. The threats, attempted killings or kidnappings of which some journalists have been the victims in the past three years have forced other reporters to take measures, such as self-censorship, so that they do not suffer the same violations. This phenomenon has a correlation with the decline in the direct attacks on the press.” See: FLIP, *Diagnóstico de la Libertad de Prensa en Colombia. Primer Semestre de 2004*, p.1. Available in Spanish only at: <http://www.flip.org.co/informes/indice-informes.htm>

Colombia’s *Asociación Democrática para la Defensa de los Derechos Humanos*, or Democratic Association for the Defense of Human Rights, has highlighted the same issues. The group noted that during a visit it “corroborated that the journalists of the Arauca region prefer not to report on the news from their own region when this news involves participants in the conflict because they fear reprisals. For this reason, the news with increasing frequency is provided by media from other cities rather than by Arauca’s own journalists.” See: ASDEH, *Arauca, Preocupación Internacional, Informe Libertad de Prensa Abril 2005*, p. 9. Available in Spanish only at: <http://www.asdeh.org>

- 68 It is important to note that the majority of the journalists in Arauca work in radio. The region does not have its own print media.
- 69 The Inter-American Commission has made comments along these same lines, noting that “[w]hile there is still room for further progress in this area, and even though some cases have met with difficulties or backsliding in implementing the mechanisms of protection, it is a programmatic and institutional initiative that merits the continued recognition of the IACHR.” See: IACHR, Chapter IV “Human Rights Development in the Region,” Annual Report 2004, Vol. II “Annual Report of the Inter-American Commission on Human Rights 2004,” OEA/Ser.L/V/II/122 Doc. 5 rev. 1, 23 February 2005, para. 9.
- 70 In its 2003 Annual Report, the Office of the Special Rapporteur included a chapter in which it analyzed the topic of government advertisement placement. The report is available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&ID=1>

- 71 This newspaper was basically financed by the State and other advertisers through their advertising budgets. In 2001, the mayor of Bogotá allegedly punished the newspaper for its criticism of a costly government project by suspending its advertising. Based on the information received by Office of the Special Rapporteur, the newspaper was forced to reduce the number of editions it published and the size of its distribution. See: IACHR, Chapter V “Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity,” Annual Report 2003, Vol. III “Annual Report of the Special Rapporteur for Freedom of Expression 2003,” OEA/Ser.L/V/II/118 Doc. 70 rev. 2, 29 December 2003, para. 67. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>
- 72 The questionnaires covered laws that were seen as in force and pertinent with respect to the allotment of official publicity. The official response to the questionnaire sent by the State of Colombia to the Special Rapporteur referred to the following laws: No. 14 of 1991 (establishing and regulating the functions of television and radio services in Colombia, and creating the *Instituto Nacional de Radio y Televisión*, or National Institute of Radio and Television, and the *Consejo Nacional de Televisión*, or National Television Council), Article 29 of Law No. 182 of 1995 and Decree 1982 of 1974 (regulating public spending of the bodies charged with administering Treasury funds). The official response of Colombia also mentioned Decree No. 1737 of 1998, which established austerity and efficiency provisions in public administration.
- 73 FLIP, *Estado de la Libertad de Expresión en Colombia 2004. A pesar de una leve mejoría, la situación sigue siendo grave*, p. 27. Available only in Spanish.
- 74 The Swedish NGO Foundation for Human Rights, *Freedom of Expression in Colombia: Violence, Impunity and Self-Censorship – a constructive approach*, p. 25.
- 75 CIDH, Chapter I, “General Reports: Mandate and competence of the Office of the Special Rapporteur for Freedom of Expression,” 2002 Annual Report, Vol. III, “Annual Report of the Special Rapporteur for Freedom of Expression 2002,” OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003.
- 76 IACHR, Annual Report 2004, Vol. III, “Annual Report of the Special Rapporteur for Freedom of Expression 2004,” Chapter VI.
- 77 IACHR, Chapter V “*Desacato* Laws and Criminal Defamation,” Annual Report 2002, Vol. III “Annual Report of the Special Rapporteur for Freedom of Expression 2002,” OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003. para. 17.

In the Inter-American system, the protection of honor is subject to the considerations of Article 13 of the American Convention, which are echoed in Principle 10 of the Declaration of Principles on Freedom of Expression. In light of this, privacy laws should neither inhibit nor restrict the investigation into and diffusion of information in the public interest. In addition, the protection of reputation – when the offended person is a public official, public person or individual who might have voluntarily been involved in areas of public interest – should be protected

only through the use of civil penalties. These cases should also require evidence that the dissemination by the journalist was made with the intention of inflicting damage or full awareness that the news reported with gross negligence in its search for truth or falsity.

This principle clearly introduces a “dual protection” of honor, under which there is greater tolerance of criticism about public officials and public figures who have been voluntarily exposed to greater scrutiny by society. The protection of honor in such cases should be civil in nature in light of the fact that criminal sanctions could inhibit the oversight of the government necessary in a democratic society. This principle also adopts the standard of actual malice, which allows only for civil sanctions on the press coverage of public officials and only when the cases involve the knowing dissemination of false information with the intent of causing damage or with gross recklessness with respect to the truth. In light of this principle and its theories sustaining it, the imposition of criminal sanctions on press coverage of public officials acting in an official capacity would be contrary to the criteria of necessity and proportionality found in democratic societies.

- 78 Italics have been added.
- 79 See: IACHR, Chapter IV, “Report on Access to Information in the Hemisphere,” Annual Report 2003, Vol. III, “Annual Report of the Special Rapporteur for Freedom of Expression 2003,” OEA/Ser.L/V/II/118 Doc. 70 rev. 2, 29 December 2003, para. 13. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>
- 80 See: IACHR, Chapter IV, “Freedom of Expression and Poverty,” Annual Report 2002, Vol. III, “Annual Report of the Special Rapporteur for Freedom of Expression,” OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003, paras. 38-39.
- 81 See: IACHR, Chapter IV, “Freedom of Expression and Poverty,” Annual Report 2002, Vol. III, “Annual Report of the Special Rapporteur for Freedom of Expression,” OEA/Ser.L/V/II/117 Doc. 5 rev. 1, 7 March 2003, paras. 38-39.
- 82 UNESCO defines community radio in accord with the word “community,” which refers to the basic unity of social and horizontal organization. In this way, community radio is usually considered to be a complement to the operations of traditional media, and as a participatory model of media administration and production. See: UNESCO, World Communication Report, 1998, p. 148.

In the same vein, Article 3 of the 1981 Decree notes that “the community service of radio broadcasts is a participatory and pluralistic service, oriented toward satisfying the communications needs of the municipality that it covers; [they are also oriented toward] the facilitation of the exercise of the right of information and the participation of citizens through the realization of radio programs for different sectors of the municipality, in a way that promotes social development, peaceful co-existence, democratic values, the construction of citizenship and the strengthening of cultural and social identities.”