

CHAPTER V

INDIRECT VIOLATIONS OF FREEDOM OF EXPRESSION: DISCRIMINATORY ALLOCATION OF OFFICIAL PUBLICITY¹

A. Introduction

1. The murder of investigative reporters, a state's closure of a newspaper, vows of violence against journalists by security forces, or the refusal to allow certain television programs to air, are strong examples of direct violations of the right to freedom of expression. However, underlying these blatant violations are more subtle, and oftentimes more effective, indirect ways in which States curtail freedom of expression. Because such indirect violations are often obscure, quietly introduced obstructions, they do not compel investigation, nor do they receive the widespread censure that do other, more direct violations.

2. To call attention to these types of violations, the Office of the Special Rapporteur for Freedom of Expression has undertaken to study the use of official publicity as an indirect restriction on the free circulation of ideas. The discriminatory allocation of official publicity is only one possible manifestation of an indirect restriction to the right to freedom of expression. However, the Special Rapporteur for Freedom of Expression believes that this topic merits special attention in the Americas, where media concentration has historically promoted the abuse of power by governments in the placement of their advertising revenue.

B. Official Publicity

3. There are two types of government publicity: unpaid and paid. "Unpaid" publicity includes press releases, the texts of legislation or legislative body meetings, and information which carries government support but which may be paid for by a private party. There are often legal obligations for national media sources to release this publicity, as a condition of the media outlets' use of the state's available frequencies and airwaves. Such conditions are usually included in states' fundamental broadcasting and press laws. "Paid" publicity includes paid advertising in the press, on radio and on television, government-produced or -sponsored software and video material, leaflet campaigns, material placed on the Internet, exhibitions, and more.² Governments use paid publicity to inform the public about important issues (i.e. ads pertaining to health and safety concerns), to influence the social behavior of individuals and business (such as encouraging voter turnout in an upcoming election), and to generate revenue through various programs (oftentimes through state-owned industry). The use of the media to transmit information is an important and useful tool for states, and provides much-needed advertising profits for media outlets.

¹ This chapter was made possible through the assistance of Rachel Jensen, a second-year law student at Georgetown University, who provided the research and the preliminary drafting of this report, and of Andrea de la Fuente, a recent law graduate from Universidad Torcuato Di Tella, Argentina, who further assisted in the drafting of this report. Both were interns at the Office of the Special Rapporteur for Freedom of Expression during 2003. The Office thanks them for their contributions.

² United Kingdom Cabinet Office, *Government Printing and Advertising*, available at http://www.cabinet-office.gov.uk/central/1999/workgis/annex_a.htm.

4. Media outlets' production costs are high, and the most lucrative way to cover these expenses is through extensive advertising. Traditionally, government advertising budgets have comprised a substantial percentage of media outlets' total advertising investments. Generally, exact numbers of advertising expenditures are not available to the public. Yet, there are reports from many media outlets that they receive 40-50% of their revenue from the government. Government publicity can often provide the means for voices that, without the aid of government funding, would not be able to survive financially. The increasing consolidation and cross-ownership of media outlets means that smaller newspapers, radio and television stations are facing harder competition for available advertising revenue. The other major providers of revenue, large corporate advertisers, often only place ads in media sources that are favorable to their business interests, avoiding those outlets that report on financial scandal, environmental damage, or labor disputes. Government publicity can offset the vast communications resources controlled by corporate or wealthy interests, in that it can amplify the voices of local journalists and media, smaller media, and those media critical of corporations.³

5. Often, a large portion of domestic government expenditures are on advertising. There is very little public information about the criteria used in making allocation of advertising decisions. States distribute advertising to various media outlets often without legal restraint or overview. This results in selectivity of publicity placement. A state's decision to continue or to suspend advertising in a media source will have profound effects on the annual advertising revenue of that source.⁴

6. Historically, a sizable part of the productive capital of media outlets in the Americas has originated in the allocation by the States of official publicity. This fact, combined with the discretionary selectivity of publicity placement, creates the danger of self-censorship to avoid the financial hardships that might be faced by the media sources which are denied official publicity. A recent study of media ownership structures in 97 countries has found that:

(...) monopolies or concentrated ownership of the media industry that provide control over information to any individuals or organizations, public or private, will reduce the effectiveness of media coverage, and it now regularly intervenes in content decisions.⁵

7. In the framework of distribution criteria, there are both negative and positive discriminatory allocations of publicity. Negative allocation would be given to an individual or media outlet in order to induce them to not report unfavorably on those in power. Positive allocation requires the recipient to engage in favorable expression in order to receive government revenue.⁶ Both positive and negative discriminatory allocation can constitute an infringement on free speech; negative allocations are content-based forms of coercion that force media outlets to be silent on issues of public interest, whereas positive allocations may

³ Mark G. Yudof, *When Governments Speak: Toward a Theory of Government Expression and the First Amendment*, 57 *Tex. L. Rev.* 863, 866 (1979).

⁴ Marylene Smeets, *Americas Overview 2001*, available at: http://www.cpj.org/attacks01/pages_att01/acrobat_att01/AmericasOverviews.pdf.

⁵ World Bank Group, *World Development Report 2002*, 185-186.

⁶ Money Talks, Martin H. Redish, NYU Press (New York 2001), 205.

artificially distort a public debate by inducing some who otherwise would have taken a contrary position (or chosen not to speak at all) to support the government's views.⁷

8. Three types of government media subsidies, which can be analogized to positive allocations of government advertising, have been identified: categorical, viewpoint-based, and judgmental necessity.⁸

9. A categorical decision to award advertising is a viewpoint-neutral choice to fund a particular category, subject or class of expression (such as choosing to advertise in the medium of national newspapers, provincial television, or local radio frequencies). Such a decision may be consistent with freedom of expression, based on government goals, but if such a positive allocation is made according to discriminatory criteria, it violates freedom of expression.

10. In viewpoint-based decisions, the criteria for awarding funding is based entirely on the viewpoint expressed by a particular media outlet. Clearly this is the most blatant form of a violation of freedom of expression in official publicity.

11. Judgmental necessity pertains to the need of government officials to differentiate between a variety of media sources within one medium (in which national newspaper, among a group of papers with similar distribution and reach, will they place advertisements?). For such determinations to be in keeping with freedom of expression principles, they must be based on criteria "substantially related" to the prescribed viewpoint-neutral purpose.⁹ For example, if a state's goal was to promote sales of monthly passes on its city-wide public transportation system, it could legally choose to advertise only in newspapers largely distributed within that city. Newspapers from other regions that may have a very small distribution within that city would not be unfairly discriminated against by the government's choice not to advertise with them. The criteria of being a paper with a majority of your distribution within the city is substantially related to the program's viewpoint-neutral purpose of promoting use of its public transportation system, and thus, non-discriminatory.

⁷ *Id.* at 207.

⁸ *Id.*

⁹ *Id.* at 198.

C. Discriminatory Allocation of Official Publicity

12. There exists no inherent right to receive government advertising revenue. It is only when a state allocates advertising revenue in discriminatory ways that the fundamental right to freedom of expression is infringed. A state could deny advertising revenue to all media outlets, but it cannot deny publicity income only to specific outlets based on discriminatory criteria. Although states may make determinations to award advertising based on the percentage of the population reached by the source, frequency strength, and similar factors, determinations to award or cut off publicity based on coverage of official actions, criticism of public officials, or coverage that might hurt officials' financial contributors amount to penalizing the media for exercising the right to freedom of expression. It is possible that government advertising is so central to an outlet's operation that the denial of it will have as much adverse impact as would a fine or prison sentence. Because their hopes for advertising revenue hinge upon a favorable allocation of official publicity, media sources will be compromised and effectively forced into producing reports favorable to the ultimate publicity decision-makers.

13. Indirect obstruction through distribution of official publicity acts as a strong deterrent to freedom of expression. Although jurisprudence in this area is limited in the Inter-American System, the American Convention on Human Rights provides a legal framework against such indirect violations, establishing that discriminatory allocation of official publicity, based on the publication or broadcast of critical reports, is a violation of the guaranteed right of freedom of expression.

D. Inter-American Standards

14. The controlling legal document concerning human rights in the Americas is the American Convention on Human Rights. Concerning freedom of expression, the Convention states in Article 13(3):

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.¹⁰

15. The Declaration of Principles on Freedom of Expression was approved by the Inter-American Commission on Human Rights as a tool for interpreting Article 13 of the American Convention. The Declaration has been influential in reflecting the emerging regional standards on this issue. It states in Principle 13:

The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social

¹⁰ American Convention on Human Rights, in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/SER.L/V/I.4 rev. 8 (May 22, 2001), 9.

communicators to stifle the dissemination of information are incompatible with freedom of expression.¹¹

16. The Declaration of Chapultepec was developed by experts in freedom of expression. The Inter-American Press Association sponsored the Declaration and went to Latin American leaders asking for their support and signatures. Though not legally binding, the Declaration is a demonstration of the will and support of many leaders to upholding freedom of expression rights. It states explicitly in Principle 7 that:

Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.¹²

17. In an international recognition of the illegality of discriminatory allocation of official advertising, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, stated in a joint declaration:

Governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.¹³

E. The European Experience

18. The right against arbitrary allocation of government advertising has also been recognized by the European Court of Human Rights. In the case of *Vgt Verein gegen Tierfabriken v. Switzerland*,¹⁴ the company responsible for advertising on the national broadcaster had refused to broadcast a commercial which had been submitted by the applicant, an association for the protection of animals. The commercial, which intended to deter meat consumption in Switzerland, was refused for broadcast on the grounds that it was clearly political in character. The Court concluded that the restriction in question amounted to a violation by the State of Switzerland of the right to freedom of expression as guaranteed by Article 10 of the European Convention.¹⁵ In evaluating whether the interference was “necessary in a democratic society,” the Court expressed that:

¹¹ Declaration of Principles on Freedom of Expression, Principle 13.

¹² Declaration of Chapultepec, adopted by the Hemisphere Conference on Free Speech, Mexico City, March 11, 1994, Principle 7.

¹³ International Mechanisms for Promoting Freedom of Expression Joint Declaration, November 2001. See Annex to the Report of the Office of the Special Rapporteur for Freedom of Expression 2001, OEA/Ser.L/II.114, Doc. 5 rev. 1, April 16, 2002.

¹⁴ Eur. Ct. H.R., Case of *Vgt Verein gegen Tierfabriken v. Switzerland*, June 28, 2001, Application No. 24699/94 R.

¹⁵ Article 10: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It is true that powerful financial groups can obtain competitive advantages in the area of commercial advertising and may thereby exercise pressure on, and eventually curtail the freedom of, the radio and television stations broadcasting the commercials. Such situations undermine the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.¹⁶

19. Though the *Vgt Verein gegen Tierfabriken* case refers to the prohibition of private political advertising, not of government advertising, it effectively struck down a law that led to the discriminatory allocation of advertising, supporting the idea that allocation of advertising, whether done by private or government entities, may not be grounded in clearly discriminatory criteria. In examining the contested measure in the light of the prohibition of political advertising as provided in section 18(5) of the Federal Radio and Television Act, the Court addressed the issue that the law applied only to radio and television broadcasts, and not to other media such as the press:

[W]hile the domestic authorities may have had valid reasons for this differential treatment, a prohibition of political advertising which applies only to certain media, and not to others, does not appear to be of a particularly pressing nature.¹⁷

20. In expounding the meaning of Article 10.2 of the European Convention,¹⁸ the European Court of Human Rights understood the requirement "prescribed by law" to prohibit insufficiently precise laws and unacceptable discretionary powers.¹⁹

21. Although the Court has not specifically addressed this issue in the context of government advertising, it has addressed the existence of unclear laws and overly wide discretionary powers as a violation of freedom of expression in the case of *Autronic A.G. v. Switzerland*.²⁰ In this case, the European Court questioned whether the broadcast license-granting laws of Switzerland were sufficiently precise since "they [did] not indicate exactly what criteria [were] to be used by the authorities in determining applications."²¹ The Court did not decide the issue in that case, dismissing it for other reasons, but warned that such license-granting laws that did not establish clear criteria could constitute a violation of freedom of expression.

22. The decision in *Herczegfalvy v. Austria*²² affirms the need of precise legislation to fulfill the "prescribed by law" requirement of Article 10 of the European Convention. In this case, the European Court did hold restrictions on the freedom of movement of psychiatric detainees to be insufficiently precise to fulfill the "prescribed by law" requirement of Article 10 (and Article 8), because they failed to specify the scope or conditions for the exercise of discretionary power. The European Court held that the lack of any indication as to the kind of restrictions permitted,

¹⁶ Case of *Vgt Verein gegen Tierfabriken v. Switzerland*, supra note 15, para. 73.

¹⁷ *Id.* para. 74.

¹⁸ See supra note 16.

¹⁹ Human Rights Practice R.O. June 2000, P. 10.1031

²⁰ Eur. Ct. H.R., Case of *Autronic A.G. v. Switzerland*, May 22, 1990, Application No. 12726/87.

²¹ *Id.* at 485.

²² Eur. Ct. H. R., Case of *Herczegfalvy v. Austria*, September 24, 1992, Application No. 10533/83, paras. 91-94.

their purpose, duration, and extent, and the lack of arrangements for the review of any restrictions imposed, led to the deficiency of a minimum degree of protection against arbitrariness.²³

23. Insufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. It is indeed when laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials that there exists a legal framework contrary to freedom of expression.

F. Legal Framework in Member Countries

24. This section is intended to provide an overview of the legal provisions on the allocation of official publicity in the countries of the OAS. The laws and legal standards mentioned below were compiled through searches of the online databases of each respective State, as well as through information received from a number of different sources.²⁴

25. In order to obtain a more accurate description of the legal framework on the allocation of official publicity in the countries of the Americas, in September 2003 the Office of the Special Rapporteur for Freedom of Expression issued a questionnaire to the Permanent Representatives of the OAS Member States inquiring about the laws in effect in each state on this issue. The questionnaires set out the laws found to be relevant and in effect regarding the allocation of official publicity, and gave the opportunity for the States to confirm, deny, or update such information.²⁵

26. The analysis of the information obtained by the Office of the Special Rapporteur reveals, in general, an absence of legislative provisions regarding the allocation of official publicity. This section only reports on the legal framework of the States which have adopted regulations on official publicity. In some countries, it was observed that, notwithstanding the absence of specific legislation in this regard, there exist provisions which may provide a remedy to a discriminatory allocation of official publicity.

27. The official response from Argentina to the questionnaire sent by the Special Rapporteur points out that National Law 22.285 of Broadcasting (*Ley 22.285 de Radiodifusión*) governs publicity rules under the competence of the Committee of Broadcasting (*Comité de Radiodifusión*, COMFER):

Law 22.285:

²³ Human Rights Practice R.O. June 2000, P. 10.1031.

²⁴ The Special Rapporteur receives information from independent organizations working to defend and protect human rights and freedom of expression and from directly concerned independent journalists, as well as information requested by the Office of the Special Rapporteur.

²⁵ To the date of the approval of this report by the Inter-American Commission on Human Rights for its inclusion in the IACHR's Annual Report, only the States of Argentina, Colombia, Costa Rica, Mexico, Nicaragua, Peru, and the United States, out of the total of the member States of the OAS, have submitted the information requested by the Special Rapporteur. The Republic of Trinidad and Tobago replied to the letter sent by the Special Rapporteur, and expressed that the State would provide the Office with the requested information at the earliest opportunity. The State of Bahamas requested further information on the request of the Special Rapporteur. The Special Rapporteur greatly appreciates the efforts of these States in gathering the requested information, and encourages all member States of the OAS to collaborate in the preparation of future studies by this Office in order to better take advantage of the conclusions derived from them.

Art. 69. Publicity Contracts. Publicity to broadcast shall be contracted by the bearer of services directly with advertisers; or with publicity agencies previously registered in the Federal Broadcasting Committee acting on behalf of identified advertisers.

Art. 72. Transmissions without charge. The bearers of broadcast services shall perform transmissions without charge in the following cases:

- a) That contemplated in Article 7; [referring to issues of national security]
- b) Mandatory national, regional, or local broadcasts, as ordered by the Federal Broadcast Committee;
- c) In the face of serious national, regional, or local emergencies;
- d) By requirement of the authorities of civil defense;
- e) To broadcast messages or warnings related to dangerous situations that affect the means of transportation or communication;
- f) To broadcast messages of national, regional, or local interest ordered by the Federal Broadcast Committee, up to one minute and thirty seconds per hour;
- g) For the broadcast of the programs foreseen in Article 20 [educational programs] required by the Minister of Culture and Education, as well as for the treatment of themes of national, regional, or local interest that the Federal Broadcast Committee authorizes, up to a maximum of seven percent (7%) of the daily broadcasts.

28. Article 12 of Decree No. 1771/91 modifies Article 72 b) of Law No., 22.285, allowing the Secretariat for Communications Media of the Presidency (*Secretaría de Medios de Comunicación de la Presidencia de la Nación*, SMC), in cases of urgency, to request COMFER to coordinate with the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CNC) the use of the compulsory national broadcasting system to allow messages to reach the stations.

29. Article 31 of Law No. 25.600 on Financing of Political Parties (*Ley 25.600 de Financiamiento de los Partidos Políticos*) provides that the State will grant spaces in the broadcasting media to the parties or alliances that put forward official candidates.

30. Decree No. 2507 of 2002 approved the statute for the State Association Télam (*Télam Sociedad del Estado*) for its operation under the jurisdiction of the SMC. The association is empowered to plan and contract publicity space and produce the official publicity requested by the different sectors of the national government.

31. Decisions concerning allocation of state advertising in Argentina are most often made by the administrative heads of the various government entities requiring advertising space. Other decisions are made by the executive branches of the various provincial governments. There appear to be no official national criteria for determining allocation of advertising. Some provinces have specific legislation allowing for oversight of government decisions.

32. In Bolivia, there are few legal norms specific to advertising and there appears to be no official oversight of government advertising practices. Bolivia's only law relating to

advertisements and announcements from the government is contained in an addendum to Article 43 of Law 1632, the Telecommunications Law, which states:

ADDENDUM TO ARTICLE 43, RANK OF LAW

Art. 67.- Radio stations must transmit free of charge in the following cases:

- a) As stipulated in the previous article.
- b) Serious national emergency, war or disruption of public order.
- c) Messages or notices related to the safeguard of human lives and ships, aircraft or naval or air devices in dangerous situations.
- d) Civic and literacy programs.
- e) Announcements of general interest, commercial free, up to ninety seconds per hour, upon the request of the General Telecommunications Directorate.²⁶

33. In December 2001, the Senate of Bolivia approved a new electoral code. Article 119 of the new code would require the media to register with the National Electoral Authority (*Corte Nacional Electoral*, CNE). The CNE would decide which media could publish election advertisements in the weeks prior to the voting, and thus which media would receive the large revenue such advertisements generated. The law would oblige political parties to deal only with these media or risk punishment, ranging from fines to suspension of a newspaper for a period to be decided by the CNE.²⁷ Media that did not charge the price set for the ads by Article 119 would also be punished. However, after extensive lobbying by journalism organizations, Congress approved a law on April 30, 2002, determining that Article 119 of the Electoral Code would not be in effect for the June 2002 general election.²⁸ Free press groups then sought the repeal of Article 119, so that it would not be enforced in future municipal or general elections. Such a repeal has not yet been accomplished.

34. In Canada, the only national law specifically dealing with advertising regulation concerns elections. The Broadcasting Act states:

10.(1) The [Canadian Radio-television and Telecommunications] Commission may, in furtherance of its objects, make regulations

(e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates²⁹

35. Provincial laws in Canada often go further, as evidenced by this law of Ontario:

²⁶ Law 1632, Law on Telecommunications, Article 43, Addendum, from <http://www.sittel.gov.bo/mlrldr.htm>. Article 43 of the Telecommunications Law elevates a number of articles of Supreme Decree No. 09740 (*Decreto Supremo* No. 09740) to the status of law, including the quoted passage from Article 67 of that decree.

²⁷ Reporters without Borders, *Bolivia Annual Report 2002*, available at: http://www.rsf.fr/article.php3?id_article=1379&var_recherche=%22official+advertising%22+bolivia.

²⁸ International Press Institute, *2002 World Press Freedom Review*, available at <http://www.freemedia.at/wpfr/Americas/bolivia.htm>.

²⁹ Broadcasting Act, 1991.

Official Notices Publication Act:

2.(1) Unless another mode of publication is authorized by law, there shall be published in *The Ontario Gazette*,

- (a) all proclamations issued by the Lieutenant Governor;
- (b) all notices, orders, regulations and other documents relating to matters within the authority of the Legislature that require publication; and
- (c) all advertisements, notices and publications that are required to be given by the Crown or by any ministry of the Government of Ontario, or by any public authority, or by any officer or person. R.S.O. 1990, c. O.3, s. 2 (...)

4.(1) The Queen's Printer for Ontario may establish a schedule of rates for publishing information in *The Ontario Gazette* and for purchasing subscriptions to it and copies of it. 2000, c. 26, Sched. J, s. 3.³⁰

36. In April 2001, the Chilean Senate approved the new Law 19733 on Freedoms of Opinion and Information and the Practice of Journalism (*Ley 19733 sobre las Libertades de Opinión e Información y Ejercicio del Periodismo*), known as the Press Law. The law eliminated Law 16643 on Publicity Abuses (*Ley 16643 sobre Abusos de Publicidad*), but does not specifically address allocation of official publicity. This Press Law explains the law on freedom of opinion and information and the regulations pertaining to the profession of journalism. The law deals with general provisions, the practice of the profession of journalism, formalities of the operation of the social communications media, violations, crimes, liability, and proceedings.

37. The Official response from the State of Colombia to the questionnaire sent by the Special Rapporteur referred to a number of laws in the country which are relevant to the allocation of official publicity.

38. Law No. 14 of 1991 establishes and regulates the functioning of the Television and broadcasting service in Colombia and establishes the National Institute of Radio and Television (*Instituto Nacional de Radio y Televisión, Inravisión*) and the National Television Council (*Consejo Nacional de Televisión*). Article 29 of Law No. 182 of 1995 establishes that:

Except for provisions in the Constitution and the law, the contents of television programming and advertising shall be freely expressed and transmitted, and are not subject to censorship or prior control. However, programming and advertising shall be classified and regulated by a section of the National Television Commission, so as to promote quality, guarantee compliance with the purposes and principles which govern television as a public service, protect the family and the more vulnerable segments of the population, particularly children and young people, assure harmonious and integral development, and promote Colombian broadcasting.³¹

39. Decree 182 of 1974 regulates public spending by the organs in charge of administering the funds of the Treasury. The official response from Colombia also mentioned Decree No. 1737 of 1998, which governs rules of austerity and efficiency in public administration.

³⁰ Official Notices Publication Act, R.S.O. 1990, c. O.3, s. 2.

³¹ Inter-American Press Association, *Press Laws of Colombia*, available at <http://www.sipiapa.com/projects/laws-col3.cfm>.

40. The official response from Costa Rica to the questionnaire sent by the Special Rapporteur shows that, although there are no specific laws in Costa Rica pertaining to the allocation of official publicity, there are a few norms which provide a framework for the distribution of official publicity by the government. Regarding privately owned media, the government can make allocation of publicity decisions through the procedure established by the Administrative Contracting Act (*Ley de Contratación Administrativa*), by means of the approval of an "Information and Publicity" budget in each Ministry. Regarding publicly owned media, the 1993 Organic Law of the National System of Radio and Cultural Television (*Ley Orgánica del Sistema Nacional de Radio y Televisión Cultural*) created a communications network composed of television, radio, and written media outlets, through which the State can distribute official publicity.

41. In Cuba, the role and duties of the press are spelled out in the Communist Party's Program Platform and the resolution approved at the Party's 1st Congress (1975) concerning mass media. Private ownership of news media is strictly prohibited under Article 53 of the National Constitution. The Constitution further stipulates that state ownership of the press and other mass communication media "ensures their exclusive use by the working people and in the interests of society."³² The Department of Revolutionary Orientation (DOR) under the Ideological Secretariat of the Communist Party of the State's Program Platform was created in the mid-1960s and handles propaganda and ideology for the government and designs and carries out official policy concerning the news media.³³ Due to these regulations, media are totally dependent on the state both for funding and for the right to operate.

42. In the Dominican Republic, there is no specific law regulating government allocation of advertising, but the Dominican Institute of Telecommunications is the established regulatory body that oversees telecommunications throughout the Dominican Republic and implements the General Telecommunications Law No. 153-98.³⁴ Under that law, the board of the Institute is charged with overseeing inappropriate activity in telecommunications, including private and government activity.

43. In Ecuador, there are no specific laws regulating government allocation of advertising. The Superintendent of Telecommunications regulates the media industries. A Special Committee was formed for oversight of all advertising in the Consumer Protection Law (*Ley de Defensa del Consumidor*) of 1990.³⁵

44. In Haiti, there are no specific laws regulating government allocation of advertising. The Haitian Constitution provides:

Article 28.1:

³² Inter-American Press Association, *Press Law Database*, available at <http://www.sipiapa.com/projects/laws-cub.cfm>.

³³ *Id.*

³⁴ *Instituto Dominicano de las Telecomunicaciones, Ley General de las Telecomunicaciones* No. 153-98, available at http://www.indotel.org.do/site/marco_legal/ley153-98.htm.

³⁵ Inter-American Press Association, *Press Law Database*, available at <http://www.sipiapa.com/projects/laws-ecu20.cfm>.

Journalists shall freely exercise their profession within the framework of the law. Such exercise may not be subject to any authorization or censorship, except in the case of war.³⁶

45. In Jamaica, the Broadcasting and Radio Re-Diffusion Act and the Television and Sound Broadcasting Regulations refer to advertising limitations in Sections 8 and 9 (i.e. alcohol advertising, etc.) but do not refer to restrictions or guidelines on government advertisements.³⁷

46. The official response from the government of Mexico provides information about agreements on general norms for government spending; norms regarding government spending on publicity, official publications, and communications media; and guidelines for the orientation, planning, authorization, coordination, and supervision of media strategies, programs, and campaigns of government entities and dependencies. Additionally, information on actual federal expenditures in 2003 was provided. This information was received by the Office of the Special Rapporteur as the drafting of this report was being concluded; the Office will analyze this information more fully in the future.

47. The official response from Nicaragua to the questionnaire sent by the Special Rapporteur points out that Article 68 of the Political Constitution of the Republic of Nicaragua states that:

The state shall ensure that media are not subjugated by foreign interests or any economic power monopoly. The law shall regulate this matter.

48. In Nicaragua, the Law of Government Contracting (*Ley de Contrataciones del Estado*) specifies in its Article 25 that the providers of the State must be registered in the Registry of Providers of the State, and must comply with legal requirements such as having fiscal solvency and a certificate of registration. The Official response from Nicaragua specifies that the records of government spending on advertising and allocation of publicity are of 700,000 Córdobas for the last trimester of 2003 (approximately U.S. \$45,841), and that an expenditure of 3,000,000 Córdobas (approximately U.S. \$196,400) is expected for 2004.

49. In Panama, there is no specific regulation on the allocation of government advertising. The Regulator of Public Services (*Ente Regulador de los Servicios Públicos*) is charged with directing public services of radio and television, and with making rules for publicity norms, according to Article 38 of Law 24, which regulates public services of radio and television and dictates other provisions.³⁸

50. The National Constitution of Paraguay does not specifically address the issue of the allocation of official publicity. However, its Article 27 states that:

The use of the news media is of public interest; consequently, their operation may not be closed down or suspended (...) Any discriminatory practice in the provision of supplies for the press is prohibited, as is interference with radio frequencies and obstruction, by whatever means, of the free

³⁶ Haitian Constitution, Title III, Chapter II, Section C: Freedom of Expression (1987).

³⁷ Jamaican Broadcasting Commission, <http://www.broadcastingcommission.org/broadcastinglaws/index.htm>.

³⁸ *República de Panamá, Ente Regulador de los Servicios Públicos*, Ley No. 24, 30 de Junio de 1999, available at http://www.ersp.gob.pa/leyes_decretos/Ley24.asp.

circulation, distribution and sale of newspapers, books, magazines, or other publications with responsible management or authorship.³⁹

51. Further, Law 1297 of 1998 of Paraguay prohibits all government institutions, including department administrations and municipalities, from carrying out any kind of paid propaganda in domestic or foreign communications media, except when they are related to publication of notices of biddings, general edicts, promotion of campaigns of rural and sanitary information and education, programs aimed at the promotion of the folklore and the national culture, or in the case of state or joint corporations competing in the market.⁴⁰

52. The official response from Peru to the questionnaire submitted by the Special Rapporteur indicated that the Ministry of Transportation and Communications is in charge of the design and execution of the policies of promotion and development of the radio broadcasting services. However, it is not empowered to regulate the regime of official publicity. The official response also establishes in relation to the existence of records of public spending on publicity that Law No. 27.806 on Transparency and Access to Public Information aims at achieving greater transparency in the administration of Public Finance.

53. In the United States, although there is no constitutional right of the media to receive government advertising revenues, if a publisher can show that a termination of advertising is a content-based penalty, it violates the free speech and press clause of the First Amendment of the U.S. Constitution.⁴¹ The relevant laws are:

United States Code

44 U.S.C. § 3702 - Advertisements not to be published without written authority

Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority.

44 U.S.C. § 3703 - Rate of payment for advertisements, notices, and proposals

Advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts. But the heads of the several departments may secure lower terms at special rates when the public interest requires it. The rates shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making publication.

Federal Acquisitions Regulations, 48 CFR 5

Subpart 5.5- Paid Advertisements

5.501 Definitions

As used in this subpart-

³⁹ National Constitution of Paraguay, Article 27.

⁴⁰ *Honorable Cámara de Diputados de Paraguay*, <http://www.camdip.gov.py>.

⁴¹ Marc A. Franklin and David A. Anderson, *Mass Media Law*, Foundation Press, 1995, 164.

"Advertisement" means any single message prepared for placement in communication media, regardless of the number of placements.

"Publication" means-

(1) The placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium; or (2) The broadcasting of an advertisement over radio or television.

5.502 Authority

(a) Newspapers. Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302 (b)). Contracting officers shall obtain written authorization in accordance with policy procedures before advertising in newspapers. (b) Other media. Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

5.503 Procedures

(a) General. (1) Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions. (2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made by using electronic commerce or by using the Governmentwide commercial purchase card for micropurchases. (b) Rates. Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703) (...).

54. In Uruguay's main laws concerning freedom in the media, there is no mention of restrictions on government advertising. However, Law 16.320 states in Article 484 that:

State advertising must take into account the inland print media and this shall be obligatory wherever this is aimed specifically at residents of a particular city, region or province in the interior where print media is published and distributed, without prejudice to placement also in a national publication regarded as appropriate.⁴²

55. Venezuela has a variety of legislation concerning the media and the practice of journalism, including the Organic Law of Telecommunications of 1940, the Radiocommunications Regulations of 1980, and the Law on the Exercise of Journalism of 1994, to name a few. However, there appear to be no specific laws governing allocation of government publicity. Decree 808 of September 1985 approves the Standards for Coordination and Execution of State Publicity, which assigns the direction and coordination of government information programs to the "Central Information Office" in the President's office. This law provides that the information office should produce programs and information campaigns annually and sets down basic instructions for accounts and contracting.

G. Situations in Member Countries

56. The information provided above reflects that most OAS countries lack specific legislation on the issue of allocation of official publicity. The Special Rapporteur for Freedom of

⁴² *Poder Legislativo, República Oriental del Uruguay: Ley No. 16.320, Rendición de Cuentas y Balance de Ejecución Presupuestal Ejercicio*, available at <http://www.parlamento.gub.uy/Leyes/Ley16320.htm>.

Expression is concerned that this lack of regulation may create the danger of an excessive discretionary power in decision-making bodies which could give way to discriminatory allocations of official publicity.

57. This section is concerned with the reporting of information regarding instances of alleged discrimination in the distribution of official publicity. Although few cases concerning discrimination in allocation of official advertising have made it through the various legal systems of the Americas, several situations have been denounced in which a possible discriminatory practice has taken place. A few of these instances will be mentioned here.

58. The incidences reported illustrate situations in member States in which the allocation of official publicity to media organizations has allegedly been handled in a discriminatory way. This might entail that the allocation of publicity to media sources might have been reduced as a way of punishing the manifestation of criticism towards the government, or that the allocation of publicity might have represented a reward for a positive review.

59. As there are few official resources provided by the governments of the Americas concerning allocation of state publicity, it was necessary to compile reports of incidences of advertising cuts and alleged discrimination from non-official sources, such as watchdog groups, human rights organizations, and the media outlets themselves.

60. The Office of the Special Rapporteur for Freedom of Expression has received information regarding an alleged instance of discriminatory allocation of official publicity in Argentina, pertaining to the judicial action raised before the Supreme Court of Argentina by Mr. Julio Rajneri, the main shareholder of the publishing firm responsible for the daily newspaper *Río Negro* in the Province of Neuquén, Argentina. The claimant affirms that an instance of discriminatory allocation of official advertising took place when, after the newspaper had reported on allegations of corruption in the Neuquén provincial government, the Neuquén Lottery notified *Río Negro* that it would no longer purchase advertising space, as it had done during the previous years.⁴³

61. Another reported instance in Argentina refers to the declaration, by the Argentine National Lottery, on October 15, 2001, that it would no longer advertise on the radio program *La Danza de la Fortuna*. The program reports on the results of official wagers and games of chance. Prior to the advertising cut, journalist González Rivero had criticized Leandro Alciati on the air while commenting on the country's political situation. Alciati is president of the lottery organization and in charge of the allocation of advertising. Alciati denied any connection between González Rivero's comments and the withdrawal of advertising. He stated that the measure was strictly due to a normal reduction in the end-of-year advertising allocation, in addition to an almost seventy-five per cent reduction in the National Lottery's budget.⁴⁴

⁴³ *Periodistas Frente a la Corrupción (PFC), Suspenden Publicidad oficial al diario Río Negro*, ALERTA-ARGENTINA, <http://portal-pfc.org/perseguidos/2003/002.html>, 9 de enero de 2003; *Río Negro (Argentina), La SIP ya prepara un documento de adhesión a la presentación. El organismo continental de prensa trabaja con sus abogados. También la asociación periodistas*, www.rionegro.com.ar, 24 de enero de 2003.

⁴⁴ *Asociación para la Defensa del Periodismo Independiente (PERIODISTAS), Advertising withdrawn from radio programme*, 12 November 2001, available at <http://www.ifex.org/en/content/view/full/14991>.

63. Also in Argentina, on May 26, 2001, the Chubut Province Bank, a corporation with state-owned shares, revealed that a clause in its publicity contracts enabled it to refuse placing advertisements in media outlets that criticized the bank or published information that its authorities deemed negative. Bank Director Jorge Barcia revealed this when expressing his annoyance at radio station *LU17 Golfo Nuevo*, which had divulged information about alleged irregularities in the bank's administration of funds.⁴⁵

63. In June 2001, *El Liberal*, a newspaper in the province of Santiago del Estero, Argentina that had published criticism of the Women's Branch of the Justicialista party, claimed it was discriminated against in the granting of governmental advertising in a decision that was linked to political factions associated with governor Carlos Juárez, according to several watchdog media organizations.⁴⁶

64. *El Diario*, a Bolivian newspaper, reported on January 18, 2002, that the Pando Social Communications Media group denounced the Bolivian government's alleged threats to reporters that they would have to publish what the government wanted or they would be subject to a suspension of state publicity.⁴⁷

65. In Brazil, the daily *A Tarde de Bahía* was allegedly the object of discrimination in the allocation of official publicity in the state of Bahía. The Rede Bahía media group sued *A Tarde* journalist Marconi de Souza for libel in connection with an article he wrote on October 25, 2000, which reported a claim by Salvador city officials that 80% of the city government's advertising was placed with that media group. Rede Bahía belongs to the family of Antonio Carlos Magalhães, the state's former governor and Senate speaker.⁴⁸ According to *A Tarde*, in 1999 the state spent about U.S. \$33 million in official advertising, almost exclusively directed to Rede Bahía.⁴⁹ In Salvador, the state capital, opposition political parties denounced the alleged use of official advertising to reward media outlets belonging to the former governor's family.⁵⁰

66. In Canada, a state where government advertising is not as imperative to independent media survival, instances of discriminatory allocation of advertising tend to be local occurrences. In March 2003, a local public school board allegedly threatened to withhold advertising from newspapers or broadcasters that the board felt had reported its affairs inaccurately.⁵¹

⁴⁵ *Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), *Discriminatory administration of state publicity*, May 31, 2001, available at <http://www.asociacionperiodistas.org>.

⁴⁶ *Asociación para la Defensa del Periodismo Independiente* (PERIODISTAS), *Advertising withdrawn from radio programme*, November 12, 2001, available at <http://www.ifex.org/en/content/view/full/14991>.

⁴⁷ *El Diario* (Bolivia), *Medios pandinos denuncian atentados y acuden a la SIP*, January 18, 2002, available at <http://www.portal-pfc.org/libexp/docs/2002/010.html>.

⁴⁸ Reporters Without Borders (RSF), *RSF calls for an inquiry into the allocation of public sector advertising in Bahia*, January 31, 2001, available at <http://ifex.org/en/content/view/full/12569>.

⁴⁹ Claudio Abramo Weber, Programme in Comparative Media Law & Policy at Oxford University, *Brazilian Media*, available at <http://pcmlp.socleg.ox.ac.uk/mas/reports/abramo.shtml>.

⁵⁰ Reporters without Borders, *Brazil Annual Report 2002*, available at http://www.rsf.fr/article.php?id_article=1380&Valider=OK.

⁵¹ Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

67. In Colombia, *El Espectador*, a Bogotá newspaper, was largely financed by the government and its other advertisers through publicity revenue. In 2001, the Mayor of Bogotá allegedly punished the paper with advertising cuts when it was critical of a costly public project.⁵² The paper has since been forced to cut back on its editions and circulation.

68. During 2002 and 2003, many media outlets in El Salvador, especially television stations, have complained that official advertising often favors the pro-government media, which encourages journalists' practice of self-censorship.⁵³

69. In 2001, *TV Doce* of El Salvador suffered cuts in government advertising, as well as advertising by important business groups. In May 2001, the station suffered losses of between U.S. \$220,000 and \$350,000 due to the cuts in advertising, which owners insist occurred because of its critical reports.⁵⁴ Due to its financial situation, in March 2003, *TV Doce* cancelled "*Sin Censura*" ("Uncensored") the television program that had broadcast most of the criticism directed at the government.

70. In 1998 in Guatemala, then-president Alvaro Arzú Irigoyen deprived many publications of government advertising. Guatemalan journalists complained that if they printed favorable news, advertising revenue would flow in and if they printed bad news, the money would dry up.⁵⁵ In January 1998, the government banned all advertising by state agencies in the weekly magazine *Crónica* and the daily newspaper *El Periodico*.⁵⁶ Both *Crónica* and *El Periodico* had been critical of President Arzú's administration. The editors at *Crónica* claimed that private sector advertising was also seriously affected as a result of government pressure. This led, in December 1999, to the forced sale of *Crónica*.

71. In Haiti, there are reports by local human rights groups that radio stations allegedly censor content so as not to lose much-needed advertising funds.⁵⁷ These reports have not been confirmed or denied by the government.

72. In Honduras, situations regarding the selective allocation of official publicity have been reported. Allegedly, a number of the major media outlets in this State are owned and operated by politicians, and independent media have repeatedly complained of discrimination in the placement of official government advertising.⁵⁸

⁵² Javier Dario Restrepo, *El Espectador: Agonía de un periódico*, December 2001, available at http://portal-pfc.org/recursos/biblio_periodismo_archivos/el_espectador_co.htm.

⁵³ Freedom House, *Annual Survey of Press Freedom 2002*, available at <http://www.freedomhouse.org/pfs2002/pfs2002.pdf>.

⁵⁴ Journalists Against Corruption (PFC), *Piden investigar a presidente Flores por injerencia en medios*, May 12, 2003, available at <http://www.ifex.org/en/content/view/full/49593>.

⁵⁵ Marylene Smeets, *Speaking Out, Speaking Out: Postwar Journalism in Guatemala and El Salvador*, available at <http://www.cpj.org/attacks99/americas99/americasSP.html>.

⁵⁶ Article XIX, *Submission on Guatemala's Second Periodic Report to the UN Human Rights Committee*, available at <http://www.article19.org>.

⁵⁷ Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

⁵⁸ Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

73. It has been reported that in June, 2002, the administration of *Channel 13* and *Radio Reloj* of Honduras protested that Executive Branch officials of the Government of President Ricardo Maduro "have tried to use publicity as a method of extortion against the media."⁵⁹ According to their denunciation, Government officials notified them that they had cut publicity to *Channel 13* and *Radio Reloj* because both media criticized a secret trip taken by President Maduro to Italy.

74. *Diario Tiempo* of Honduras also allegedly suffered a temporary suspension of state publicity for publishing news of the President's Italy trip. The daily paper suspended the reporter who broke the story, but there still exist publicity restrictions for that paper and the official who signs the publicity contracts affirms that "there are orders from above" that they will not allocate publicity to the newspaper.⁶⁰ It is alleged by media sources that those outlets that promote the work of the Government or the Presidential and mayoral figures enjoy the largest publicity contracts.

75. Another reported case was that of the magazine *Hablemos Claro*, which experienced a cutting of state publicity after it published, on January 14-20, 2003, a "Special Report" stating that the First Lady of the nation had solicited the president to ask for the resignation of the Minister of Culture.⁶¹

76. Miguel Pastor and Oscar Kilgore, mayors of the major cities of Honduras, Tegucigalpa and San Pedro Sula, respectively, and both competing presidential candidates, had allegedly employed strategies of restricting publicity in media that criticized their efforts at infrastructure work. Pastor is accused of pressuring owners of the communication media with threats of suspending all publicity to them if they criticized a series of taxes that were recently imposed.

77. In Mexico, prior to 1996, most newspapers stayed afloat with revenue they received from government advertisements. Also, most papers published *gacetillas* (paid government propaganda disguised as news stories).⁶² During most of the reign of the long-ruling Partido Revolucionario Institucional (PRI), the press skewed its political coverage in exchange for subsidies, tax incentives, and government advertising.⁶³ In 1996, the government abandoned, officially at least, its long practice of subsidizing favorable news coverage by spending heavily on ads. Though selective allocation of government advertisement is officially no longer a regular practice, the mostly private media still largely depends on the government for advertising revenue.

⁵⁹ Comité para la Libertad de Expresión (C-Libre), *Situación de la Libertad de Expresión en Honduras*, available at <http://probidad.org/honduras/libexp/2003/008.html>, "Situación de la Libertad de Expresión en Honduras".

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Joel Simon, *Breaking Away: Mexico's Press Challenges the Status Quo*, available at <http://www.cpj.org/attacks97/specialreports/sr-americas.html>.

⁶³ Marylene Smeets, Overview: The Americas, available at http://www.cpj.org/attacks00/pages_att00/acrobat_att00.html/Americas_countries.pdf.

78. In 2003, there were reports in the Mexican states of Chiapas and Baja California that the government had withdrawn advertising funds in response to unfavorable coverage. Governor Antonio Echevarría Domínguez, of Nayarit state, western Mexico, was accused of censoring the *Radio Korita* program "Consensos," which has been critical of his administration, through the discriminatory use of government advertising. On January 31, 2003, the radio station's signal was cut just as the "Consensos" program was scheduled to go on the air. Espinoza Vargas, the manager of *Radio Korita*, stated that he was told that cutting the signal was done under "the governor's orders" and that this was "a condition for the renewal of a year's worth of advertising."⁶⁴ Espinoza Vargas alleges that Nayarit state officials have in the past attempted to have his program taken off the air. Prior to the signal cut, Espinoza Vargas had reported on fraud in the housing authorities' administration of public markets.⁶⁵

79. The government of the Mexican state of Baja California was accused of withholding official advertising in *La Crónica* newspaper because the paper had published several complaints against irregularities in public administration that involved Governor Eugenio Elordoy Walther. *La Crónica's* owners alleged that because of their reports on the erratic purchase of vehicles, nepotism within the Government, and salary increases for employees in recent months, the State cancelled all government advertising in the newspaper and has made access to public information difficult for journalists.⁶⁶

80. During visits to the Mexican states of Chihuahua and Guerrero, the Special Rapporteur corroborated that official advertising was being placed in a discretionary way, without clear parameters and with certain signs of arbitrariness. The Rapporteur noted this situation with regard to the newspapers *El Sur* of Guerrero and *El Norte* of Juárez, both of which are openly critical of the government. The Special Rapporteur urged all state agencies to modify these practices and to establish clear, fair, and objective criteria for determining how to distribute official advertising. Additionally, the Special Rapporteur declared that in no case may official advertising be used for the intention of harming or favoring one means of communication over another.⁶⁷

81. In Uruguay, opposition representatives in Congress denounced irregularities in the allocation of official advertising that favored print and broadcast media that positively covered the governing Colorado party. ANTEL, the state-owned telecommunications monopoly and largest official advertiser, was the main target of the denunciations.

82. Journalists in Uruguay have consistently objected to the government's granting the directors of state agencies and enterprises complete discretion in their use of advertising budgets. They have also called for transparency in the distribution of state advertising, and have proposed the creation of an online database with detailed information on state advertising spending.

⁶⁴ Reporters without Borders, *Radio Programme Discriminated Against in Allocation of Government Advertising*, 5 February 2003, available at http://rsf.fr/article.php3?id_article=4879&var_recherche=%22advertising+revenue%22.

⁶⁵ *Id.*

⁶⁶ Inter-American Press Association, October 23, 2002.

⁶⁷ See Office of the Special Rapporteur for Freedom of Expression, Press Release 89/03, available at <http://www.cidh.org/Relatoria/English/PressRel03/PRelease8903.htm>.

83. After four years of a penal tribunal investigation, there have been two indictments of government officials in Uruguay for alleged illegal management of official publicity, using discriminatory criteria more than minimal technical criteria, to reward or punish media outlets.⁶⁸

84. In Venezuela, human rights monitors have alleged that throughout 2002 the State showed favoritism with government advertising revenues.⁶⁹

85. Venezuela's daily *La Opinión* in the state of San Carlos had all state advertising withdrawn from it in May 2002. The managing editor accused the state governor, Johnny Yánes Rangel, of attempting to bankrupt the paper.⁷⁰

⁶⁸ *Periodistas Frente a la Corrupción, Recopilaciones sobre Libertad de Expresión y de prensa en America Latina*, March 27, 2003, available at <http://www.portal-pfc.org/libexp/recopilaciones/2003/0327.html>.

⁶⁹ Freedom House, *Freedom of the Press 2003, A Global Survey of Media Independence*, Edited by Karin Deutsch Karlekar, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf>.

H. Conclusions

87. The multitude of alleged cases is evidence of the widespread nature of alleged indirect violations of freedom of expression. These possible indirect violations are promoted by the lack of legal regulations that provide adequate remedies for the discriminatory allocation of official publicity, as these legal voids give way to excessive discretionary power on behalf of the decision-making authorities.

88. The Special Rapporteur for Freedom of Expression urges and recommends that the OAS member States adopt laws which prevent discriminatory practices in the allocation of official publicity, as well as mechanisms for putting them into effect.

89. A legal framework establishing clear guidelines for official publicity distribution is imperative for continuing fair management of advertising revenue. In order to ensure freedom of expression in the future, states should discard insufficiently precise laws and avoid granting unacceptable discretionary powers to officials. The establishment of a mechanism for oversight of decisions would be instrumental in granting legitimacy to discretionary allocations made by officials.

90. In considering the adoption of such legislation, the States must keep in mind that transparency is vitally needed. The criteria used by government decision-makers to distribute publicity must be made public. The actual allocation of advertising and sum totals of publicity spending should also be publicized, to insure fairness and respect for freedom of expression.

91. As media sources have the courage to be vocal about discrimination in the allocation of official publicity, and as human rights organizations and domestic opposition political forces continue to bring attention to instances and regimes of discrimination, the local and international attention called to these acts will increase.

92. The Office of the Special Rapporteur for Freedom of Expression will continue to monitor the development of these practices.

CHAPTER VI

CASES OF FREEDOM OF EXPRESSION IN THE INTER AMERICAN SYSTEM

A. Cases before the Inter-American Commission on Human Rights

1. Cases declared admissible by the IACHR during 2003

REPORT Nº 60/03¹

ADMISSIBILITY

PETITION 12.108

MARCEL CLAUDE REYES, SEBASTIÁN COX URREJOLA,
AND ARTURO LONGTON GUERRERO

CHILE

October 10, 2003

1. On December 17, 1998, a group consisting of "ONG FORJA," "Fundación Terram," the "Clínica Jurídica de Interés Público" of Diego Portales University, and "Corporación la Morada" (Chilean organizations); the Institute of Legal Defense of Peru (Peruvian organization); "Fundación Poder Ciudadano" and the Association for Civil Rights (Argentinean organizations); and Chilean legislative representatives (*Diputados*) Baldo Prokurica Prokurica, Osvaldo Palma Flores, Guido Girardi Lavín and Leopoldo Sánchez Grunert (hereinafter "the petitioners") submitted a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR"). The complaint alleges violation by the State of Chile of Articles 13 (Freedom of Thought and Expression), 25 (the Right to Judicial Protection), and 23 (Right to Participate in Government) in relation to the overall obligations enshrined in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Inter-American Convention on Human Rights (hereinafter "the Convention") to the detriment of Marcel Claude Reyes, Sebastián Cox Urrejola, and Arturo Longton Guerrero (hereinafter "the victims").

2. The petitioners allege that the State of Chile violated the right to freedom of expression and free access to state-held information, when the Chilean Committee on Foreign Investment omitted to release information about a deforestation project the petitioners wanted to evaluate. Also, the domestic courts' refusal to admit the subsequent case against the State allegedly constitutes a violation of the right to judicial protection.

3. The State of Chile argues that the actions of the Committee on Foreign Investment complied with the requirements of Article 13(1) and the response of the courts was thus proper. The State also argues that the petitioners failed to exhaust the remedies available in Chile before their recourse to the Inter-American Commission.

4. After reviewing the positions of the parties in the light of the admissibility requirements set out in the Convention, the Commission decided to declare the case admissible as it relates to the alleged violations of Articles 13 and 25 in relation to the general obligations enshrined in Articles 1 and 2 of the American Convention.

¹ Commissioner José Zalaquett, of Chilean nationality, did not take part in the discussion and voting on the present report, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

REPORT Nº 73/03
ADMISSIBILITY
PETITION 12.213
ARISTEU GUIDA DA SILVA
BRAZIL
 October 22, 2003

1. On September 23, 1999, the Inter-American Press Association (IAPA) lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") against the Federative Republic of Brazil (hereinafter "Brazil" or "the State").
2. The petitioner claimed that Mr. Aristeu Guida da Silva, a journalist by profession, was murdered on May 12, 1995, for reasons associated with the exercise of his professional activities.
3. The State provided information about the judicial proceedings pending at the domestic level in connection with the murder of Mr. Aristeu Guida da Silva.
4. Having examined the petition, the Commission decided, in accordance with Articles 46 and 47 of the American Convention, and with Articles 30, 37 and related articles of its Rules of Procedure, to declare the petition admissible as regards alleged violations of Articles 4, 13, 8, 25 and 1(1) of the American Convention on Human Rights.

2. Cases declared inadmissible by the IACHR during 2003

REPORT Nº /03
 INADMISSIBILITY
 PETITION 453/01
 ELÍAS SANTANA AND OTHERS
 VENEZUELA
 October 23, 2003

1. On July 1, 2001, the Inter-American Commission on Human Rights (hereafter "the Inter-American Commission", "the Commission", or "the IACHR") received a petition submitted by Cecilia Sosa Gómez against the Republic of Venezuela (hereafter "the State" or "the Venezuelan State") arguing that, by virtue of Judgment 1013 issued by the Constitutional Chamber of the Supreme Tribunal of Venezuela on June 12, 2001, the State violated her right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), the right to judicial guarantees (Article 8), the right to private property (Article 21.1), and the provisions relating to restrictions regarding interpretation (Article 29.a and b) and to the scope of restrictions (Article 30), all contained in the American Convention on Human Rights (hereafter the "American Convention" or "the Convention"), contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them, as well as Article 19 of the International Covenant on Civil and Political Rights. Mrs. Cecilia Sosa attached to her petition a list of persons, with their name, nationality and signature, who declared their adherence to the complaint submitted by the petitioner to the Commission.
2. On July 16, 2001, the Commission received a petition submitted by Elías Santana, acting on his own behalf and as representative of the organization known as "*Queremos Elegir*" [roughly "We Want to Vote"], together with Mrs. Marieta Hernandez, a broadcaster and columnist with the newspaper *Tal Cual* and a founding member of that association, and the lawyer Hector Faundez Ledesma, a columnist with the newspaper *El Nacional* and President of the *Centro por la Democracia y el Estado de Derecho* (Center for Democracy and the Rule of Law), complaining that the State of Venezuela, by means of that same Judgment 1013, had violated the right to judicial guarantees (Article 8), the right to freedom of thought and expression (Article 13), the right of reply (Article 14), political rights (Article 23.1.a and c), the right to equal protection (Article 24), the right to judicial protection (Article 25), and provisions relating to restrictions regarding interpretation (Article 29) and the scope of restrictions (Article 30), contained in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in

Article 2 on the duty to adopt legislative measures to give effect to them. On July 20, 2001, the Commission, in accordance with Article 29.d of its Rules of Procedure, decided to open file P-0434/2001 Cecilia Sosa and file P-0453 Elías Santana, and to process them together under the same case, P-0453/2001.

3. On July 20, 2001, the IACHR received a petition on behalf of the nongovernmental association "*Bloque de Prensa Venezolana*"² [roughly "Venezuelan Press Front"], represented by members of its Board of Directors, Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera, who were acting as well in their personal capacity as media editors, and Asdrubal Aguiar Aranguren, as their legal representative, in which they complained that the Venezuelan State, by means of the same court judgment number 1013, had violated the right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), and the provisions relating to restrictions regarding interpretation (Article 29.a, b, c and d) and the scope of restrictions (Article 30), recognized in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them. Consequently, on August 6 the Commission decided to open the file P-0474/2001, and to process it together with that of Cecilia Sosa and Elías Santana (P-0453/2001). Hereafter, these persons are referred to collectively as "the petitioners".

4. For its part, the State argued that the petitioners do not meet the requirements of Article 46 (1.d) of the American Convention, and that consequently the Commission must declare the petition inadmissible, pursuant to Article 47.a. The State rejected the charge that it had violated Article 14 of the Convention, because on September 11, 2000, the director of *Radio Nacional de Venezuela* granted Elías Santana the right to make a correction or reply, which would be broadcast by three stations belonging to *Radio Nacional de Venezuela*. In its response to the petition, the State also insisted on the differentiation between factual information and opinions, arguing that in the present case the object of the complaint was a simple opinion rendered by the President on the statements made by Mr. Santana to the newspaper *El Nacional*. On the basis of this distinction, the State argued that the right of reply applied only to inaccurate or offensive statements or information, and not to opinions. Finally, the State argued that the operative portion of the court judgment did not violate Article 13 of the American Convention.

5. After examining the positions of the parties, the Commission concluded that it was competent to examine the petitions submitted by some of the petitioners, and that these were inadmissible, in light of Articles 46 and 47 of the American Convention.

² The *Bloque de Prensa Venezolana* is a nongovernmental association constituted on September 23, 1958, embracing most of the owners, editors and directors of national and regional newspapers and magazines of permanent circulation within Venezuela.

3. Precautionary Measures granted by the IACHR during 2003

Guatemala

1. On March 18, 2003, the Commission granted precautionary measures on behalf of María de los Ángeles Monzón Paredes, a Guatemalan journalist who has done crucial work on issues related to the observance and protection of human rights, and of her family. The information available indicates that she has received threats in the wake of publishing articles on the situation of the Azmitia Dorantes family—the petitioner in a case before the IACHR—and the assassination of indigenous leader Antonio Pop. In addition, in the early morning hours of March 2, 2003, unknown persons entered her home, checked her vehicles, and removed property of hers, allegedly to make it look like a robbery. In view of the risk to which the beneficiaries are exposed, the Commission asked the Guatemalan State to adopt the measures needed to protect the life, personal integrity, and freedom of expression of María de los Ángeles Monzón Paredes and to investigate the threats against her. In response, the State reported on the implementation of perimeter security measures for her and her family. Later, the IACHR learned that Ms. Monzón had continued receiving death threats.

2. On July 24, 2003, the Commission granted precautionary measures on behalf of Juan Luis Font, director of the daily newspaper “*El Periódico*” and the newspaper’s technical and administrative staff. The information available indicates that beginning in February 2003, several investigative journalists from the newspaper received threats brought on by the exercise of their activity, and that, according to certain witnesses, its director has been in imminent danger. In addition, it is alleged that on July 11, 2003, two men entered the facilities of “*El Periódico*” inquiring after Mrs. María Luisa Marroquín, director of printing facilities, after which they attacked with firearms and wounded the security agent who had received them. On June 24, 2003, a dozen armed individuals who passed themselves off as agents from the National Civilian Police and the Public Ministry took control of the residence of José Rubén Zamora, journalist and president of “*El Periódico*,” and abused members of his family. As a result of these events and the threats received subsequently, Mr. Zamora had to leave the country. In view of the risk to which the beneficiaries are exposed, and the context of violence against journalists, the IACHR asked the Guatemalan State to adopt the measures needed to protect the lives and personal integrity of the beneficiaries.

3. On August 15, 2003, the Commission granted precautionary measures on behalf of Héctor Haroldo Sánchez Valencia, a journalist with *Guatevisión*. The information available indicates that on August 12, 2003, an email was received at the offices of that channel conveying death threats to over a dozen persons, including him, and that he was alerted by reliable sources of the death threats against him because of his coverage of the Ríos Montt case, with which several sectors were displeased. In view of the risk to which he is exposed, the IACHR asked the Guatemalan State to adopt the measures needed to protect the life and personal integrity of Héctor Haroldo Sánchez. On December 3, 2003, the Commission lifted the precautionary measures at the express request of the petitioner.

4. On September 22, 2003, the Commission granted precautionary measures to Jorge Eduardo Springmuhl Samayoa, general manager of the newspaper “*Nuestro Diario*,” and his family. The information available indicates that Jorge Andrés Springmuhl Flores, Jorge Eduardo Springmuhl’s 17-year-old son, was kidnapped on August 20, 2003, in zone 15 of Guatemala City by three armed men. The kidnapping is part of a pattern of threats and acts of

intimidation directed against Jorge Eduardo Springmuhl Samayoa. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Guatemalan State to adopt the measures needed to protect the life and personal integrity of Jorge Eduardo Springmuhl Samayoa and his family. In response, the State reported on the implementation of measures to carry out the requests of the IACHR. On December 5, 2003, the Commission communicated to the parties that it was lifting the precautionary measures at the request of the petitioner.

Haiti

5. On January 7, 2003, the Commission granted precautionary measures on behalf of journalist Michèle Montas, the director of Radio Haiti and widow of journalist Jean Dominique, who was assassinated in April 2003. The information available indicates that on December 25, 2002, two armed men showed up at the beneficiary's residence and shot one of her two security guards, Mr. Maxime Seide, as the guards tried to cut them off. The attack is allegedly related to her active work to clarify the facts in the assassination of her husband, just as the judge in charge of the investigation was to rule on concluding the preliminary investigation. In view of the risk to which the beneficiary is exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life and personal integrity of Ms. Michèle Montas. Subsequently, on December 19, 2003, the IACHR learned that the beneficiary had left the territorial jurisdiction of the Haitian State, and so proceeded to inform the parties that it had lifted the precautionary measures.

6. On May 29, 2003, the Commission granted precautionary measures on behalf of journalist Liliane Pierre-Paul, director of programming for Radio Kiskeya and Charles Emile Joassaint, a radio correspondent. The information available indicates that on April 30, 2003, the beneficiary received an ultimatum signed by members of several popular organizations, including "Domi nan Bwa," threatening to disseminate an appeal to French President Jacques Chirac to free up payments to Haiti. The note, accompanied by a rifle bullet, includes not only threats against the journalist, but also against French nationals in Haiti, and sets May 6, 2003 as the deadline for carrying out the demands set forth. Mr. Charles Emile Joassaint has become a target of threats made in writing and by telephone. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life, personal integrity, and exercise of the freedom of expression of Liliane Pierre-Paul and Charles Emile Joassaint. In response, the State reported that the National Police of Haiti had already adopted measures to strengthen security for the journalist and for the radio station premises, and to investigate the threats.

7. On September 25, 2003, the Commission granted precautionary measures on behalf of Choubert Louis, Léon Jean Sainthyl, Mercurieu Aubain, Jean Wilkerson Alexis, Souffrant Bonivard, Charles Dunet, Pierre Francky Roland, Magalie Felix, Eric Galleus, and Esaie Raymond, all residents of Cité Soleil. The information available indicates that the beneficiaries have been subject to threats because they organized an event held July 12, 2003, in Cité Soleil, with the participation of a series of civil society organizations known as the "Group of 184." During that event the participants were attacked as other residents of the city threw stones at them, and the beneficiaries fear further reprisals by gangs that operate in Cité Soleil. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Haitian State to adopt the measures needed to protect the life and personal integrity of Choubert Louis, Léon Jean Sainthyl, Mercurieu Aubain, Jean Wilkerson Alexis, Souffrant Bonivard, Charles Dunet, Pierre Francky Roland, Magalie Felix, Eric Galleus, and Esaie Raymond.

Venezuela

8. On October 3, 2003, the Commission granted precautionary measures on behalf of Gustavo Azocar Alcalá, correspondent for the daily newspaper *El Universal*, in the state of Táchira. The information available indicates that Mr. Alcalá has been harassed on numerous occasions, including one time when firearms were shot at his vehicle, on May 29, 2003, in front of his home. In addition, it is noted that as of July 2003, he received a steady flow of phone calls, emails, and anonymous messages with death threats. In view of the risk to which he is exposed, facing, the Commission asked the Venezuelan State to adopt measures to protect the rights to life, personal integrity, and freedom of expression of journalist Gustavo Azocar Alcalá.

9. On October 3, 2003, the Commission granted precautionary measures to protect the right to freedom of expression in relation to the government's seizure of certain operating equipment at the television station *Globovisión*. The information available, in the context of an administrative proceeding, indicates that personnel from the National Telecommunications Commission (CONATEL) seized broadcast equipment at various facilities of the *Globovisión* channel, giving rise to the potential restriction on the continuity of the operations of that media outlet. In view of the situation and its possible consequences, the IACHR asked the Venezuelan State to suspend the seizure measure and to return the equipment seized, in order to guarantee the right to freedom of expression, and it called the parties to a hearing. On October 21, 2003, the Commission held the hearing as scheduled, and determined that the seizure of the equipment, considered in isolation and by itself, did not appear to place the persons affected at imminent risk of suffering irreparable harm in the enjoyment of their rights, considering that the television station continued to broadcast news, although its live broadcasts were seriously affected or delayed. Nonetheless, according to the information received, the representatives of *Corpomedios G.V. Inversiones, C.A. (Globovisión)* filed an action for constitutional protection (*acción de amparo constitucional*) before the First Court for Contentious-Administrative Matters, which was pending resolution, since on October 8, 2003, the Committee on Operation and Restructuring of the Judiciary had suspended the President of that Tribunal and one other member for 60 days. Accordingly, on October 24, 2003, the IACHR asked the Venezuelan State to adopt measures aimed at ensuring urgently a simple and prompt remedy before competent and impartial judges or tribunals to protect against acts that the petitioners allege violate their fundamental rights related to the administrative procedure brought against *Globovisión*. On October 28, 2003, the State reported that it had forwarded the request for precautionary measures to the Supreme Court of Justice.

B. Cases before the Inter-American Court on Human Rights

1. Cases sent to the Court during 2003

Costa Rica

Case of “*La Nación*” newspaper³

³ See *supra* Provisional Measures

10. On January 28, 2003, the Inter-American Commission on Human Rights submitted to the Inter-American Court an application against the Costa Rican State in relation to the case of “La Nación” newspaper (Case 12,367), the facts of which refer mainly to the violations committed by the Costa Rican State on having convicted Mauricio Herrera Ulloa and having declared him to be responsible for four criminal offenses, for offensive publications constituting defamation, with all of the legal and practical effects thereof. Those effects include having entered the criminal conviction of Mauricio Herrera in the Judicial Registry of Criminals, having ordered that the link at “La Nación Digital,” on Internet, between the last name Przedborski and the articles written by Mauricio Herrera Ulloa be taken down, and having intimidated Mr. Fernán Vargas Rohrmoser to carry out the judgment, with the express warning of the possibility that he might be found to have committed the crime of disobedience of the judicial authority.

11. The Commission considered in its application that those acts violate Article 13 (freedom of thought and expression) of the American Convention on Human Rights, in relation to Articles 1(1) (obligation to respect the rights) and 2 (duty to adapt domestic legislation) of the Convention. Accordingly, the Commission asked the Court, in keeping with Article 63 of the American Convention, to order the Costa Rican State to adopt the measures of reparation indicated in the application. (See *supra* Provisional Measures.)

12. On May 19, 2003, the Costa Rican State submitted a brief by which it filed preliminary objections in relation to this case. The preliminary objections of the Costa Rican State are based on the requirement of prior exhaustion of domestic remedies set forth at Article 46 of the American Convention. The Inter-American Commission presented the Court its written arguments on the preliminary objections invoked by the State, in keeping with Article 36(4) of the Court’s Rules of Procedure. In this respect, the Commission argued that the preliminary objections invoked by Costa Rica should be rejected since they lack any legal or factual basis. The IACHR argued that the objection of non-exhaustion of domestic remedies, invoked by the State during the processing of the case before the Inter-American Court, should be rejected, since it is claiming that remedies should be exhausted that are not adequate or effective, for failure to raise the objection in timely fashion before the Commission, and because it ignores the fact that the Commission adopted an express decision on admissibility in Report No. 128/01 on this case.

2. Provisional Measures adopted during 2003

Luisiana Ríos et. al.

13. The Court held a public hearing on February 17, 2003, where it heard statements by Armando Amaya and Luisiana Ríos, and the arguments of the Inter-American Commission on Human Rights and Venezuela regarding the provisional measures ordered. On February 20, 2003, the Court issued an Order wherein it resolved:

1. To find that the State has not effectively implemented the provisional measures that the Inter-American Court of Human Rights ordered in its November 27, 2002 Order.
2. To again order the State to adopt forthwith all measures necessary to protect the life and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argemis Uribe.

3. To again order the State to allow the applicants to participate in the planning and implementation of the protection measures and, in general, keep them informed of the progress made on the measures that the Inter-American Court of Human Rights ordered.

4. To again order the State to investigate the facts denounced, which gave rise to the [...] measures, so as to identify and punish those responsible.

5. To order the State and the Inter-American Commission on Human Rights to take, by no later than March 21, 2003, the necessary steps to create a suitable mechanism to coordinate and monitor the measures [...].

6. To order the State to report to the Inter-American Court of Human Rights, by no later than February 28, 2003, on the measures it has taken pursuant to the [...] Order.

7. To order the Inter-American Commission on Human Rights to present to the Inter-American Court its observations on the State's report, within one week of notification thereof.

8. To order the State that, subsequent to its communication of February 28, 2003 [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; and to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of receiving them.

[...]

14. The IACHR petitioned the Court to expand the provisional measures ordered for Luisiana Ríos *et al.* in the Court's November 27, 2002 Order and later reiterated in a February 20, 2003 Order. The Commission was seeking protection of the life, safety and freedom of expression of Noé Pernía, a reporter with Radio Caracas Televisión, Carlos Colmenares, a cameraman with RCTV, and Pedro Nikken, an RCTV reporter. The precautionary measures adopted by the IACHR had had no effect in correcting the attacks on freedom of expression or the threats and assaults on the life and safety of the RCTV media personnel being protected; according to information the Commission had received, the three journalists had been physically assaulted while performing their functions.

15. On October 2, 2003, the President of the Inter-American Court issued an order wherein he decided:

1. To again order the State to adopt, without delay, all necessary measures to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe

2. To order the State to adopt, without delay, all necessary measures to protect the life, safety and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken.

3. To order the State to allow the beneficiaries of the protection measures to participate in their planning and application and, in general, keep them informed of the progress of the measures ordered.

4. To order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

5. To order the State to report to the Inter-American Court of Human Rights on the measures taken to comply with the present Order, no later than October 16, 2003.

6. To order the Inter-American Commission on Human Rights to submit its comments on the State's report to the Inter-American Court of Human Rights within a week of being notified thereof.

7. To order the State, subsequent to its first report (*supra*, operative paragraph five), to continue reporting to the Inter-American Court of Human Rights, every two months, on the measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of receiving them.

8. To notify the State and the Inter-American Commission on Human Rights of the present Order.

16. On November 21, 2003, the Inter-American Court decided:

1. To ratify the October 2, 2003 Order of the President of the Inter-American Court of Human Rights.

2. To again order the State to adopt, without delay, all measures necessary to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe.

3. To order the State to adopt and maintain all measures necessary to protect the life, personal safety and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken, journalists with Radio Caracas Televisión (RCTV).

4. To order the State to allow the beneficiaries of these protection measures to participate in their planning and implementation and, in general, keep them informed of the progress regarding the measures ordered by the Court.

5. To order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

6. To order the State to report to the Inter-American Court of Human Rights on the measures adopted to comply with this Order, no later than November 28, 2003.

7. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report, within one week of being notified thereof.

8. To order the State, subsequent to its first report [...], to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to the State's reports within six weeks of being notified thereof.

9. To notify the State and the Inter-American Commission on Human Rights of the [...] Order.

17. On December 2, 2003, the Inter-American Court of Human Rights adopted an Order to the following effect:

1. To reiterate that the State has not effectively implemented the various provisional measures that the Inter-American Court of Human Rights ordered in case [...].

2. To declare the State to be in noncompliance with its duty under Article 68(1) of the American Convention on Human Rights.

3. To declare that the State did not comply with its duty to report to the Inter-American Court of Human Rights on implementation of the measures the Court ordered.

4. Should the current situation persist, to report to the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights and

Article 30 of the Statute of the Inter-American Court on Human Rights, concerning a State's failure to comply with the decisions of the Inter-American Court of Human Rights.

5. To again order the State to adopt, without delay, all measures necessary to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía and Pedro Nikken.

6. To again order the State to allow the beneficiaries of these protection measures to participate in their planning and implementation and, in general, keep them informed of the progress regarding the measures ordered by the Inter-American Court of Human Rights.

7. To again order the State to investigate the facts stated in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.

8. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with this order, no later than January 7, 2004.

9. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its comments on the State's report, within 15 days of notification thereof.

10. To order the State, subsequent to its first report referenced in operative paragraph eight *supra*, to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on

Human Rights to submit its observations on the State's reports within six weeks of their receipt.

11. To notify the State and the Inter-American Commission on Human Rights of the [...] Order.

18. As the Inter-American Court is monitoring implementation of the measures ordered in the present case, the Commission has repeatedly conveyed to the Court its serious concern over the fact that the State has done nothing more than repeat information already presented to the Court and has provided no information to show actual compliance with the provisional measures the Court ordered. It has also underscored the need to press for all measures necessary to fully protect the persons specifically named in the Court's orders of November 27, 2002 and November 21, 2003.

Marta Colomina and Liliana Velásquez

19. In the case of Marta Colomina and Liliana Velásquez, the Commission sought provisional measures so that the Court would order the State to protect the life, personal safety and freedom of expression of journalists Marta Colomina and Liliana Velásquez, who were the victims of an attempt on their lives in the early morning hours of June 27, 2003, while on their way to the TELEVEN television station for their daily show "*La Entrevista*".

20. On July 30 2003, the Presidente of the Court resolved:

1. To order the State to adopt, without delay, all measures necessary to protect the life, personal safety and freedom of expression of journalists Marta Colomina and Liliana Velásquez.

2. To order the State to allow the beneficiaries of the protection measures to participate in their planning and implementation and, in general, keep them informed of the progress made on the measures ordered.

3. To order the State to investigate the facts reported in the complaint that gave rise to the present measures, in order to identify and punish those responsible.
4. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with this Order, no later than August 8, 2003.
5. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report within one week of notification thereof.
6. To order the State that, subsequent to its first report [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; and to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of their receipt.

21. On September 8, 2003, the Court issued an Order for Provisional Measures in the present case, wherein it resolved:

1. To ratify the July 30, 2003 Order of the President of the Inter-American Court of Human Rights.
2. To order the State to adopt and maintain all measures needed to protect the life, personal safety, and freedom of expression of journalists Marta Colomina and Liliana Velásquez.
3. To order the State to allow the beneficiaries of the protection measures to participate in their planning and implementation and, in general, keep them informed of the progress made on the Court-ordered measures.
4. To order the State to investigate the facts reported in the complaint and that gave rise to the present measures, so as to identify and punish those responsible.
5. To order the State to report to the Inter-American Court of Human Rights, by September 15, 2003 at the latest, on the measures it has taken to comply with the [...] Order.
6. To order the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the State's report within one week of notification thereof.
7. To order the State that, subsequent to its first report [...], it continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted; to order the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of their receipt.
8. To notify the State and the Inter-American Commission on Human Rights of this Order.

22. On December 2, 2003, the Court issued another Order for Provisional Measures, wherein it decided:

1. To reiterate that the State has not effectively implemented the provisional measures that the Inter-American Court of Human Rights ordered in the September 8, 2003 Order.
2. To declare the State to be in noncompliance with its duty under Article 68(1) of the American Convention on Human Rights.
3. To declare that the State has not yet complied with its duty to report to the Inter-American Court of Human Rights on implementation of the measures the Court ordered.
4. Should the current situation persist, to report to the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court on Human Rights, concerning a State's failure to comply with the decisions of the Inter-American Court of Human Rights.
5. To reiterate to the State that it is required to effectively implement the measures ordered by the Inter-American Court of Human Rights in its September 8, 2003 Order for protection of the lives, personal safety and freedom of expression of Marta Colomina and Liliana Velásquez.
6. To again order the State to allow the applicants to participate in the planning and implementation of the protection measures and, in general, keep them informed of the progress made with the measures ordered by the Inter-American Court of Human Rights.
7. To again order the State to investigate the denunciations that prompted adoption of these provisional measures, in order to identify and punish those responsible.

8. To order the State to report to the Inter-American Court of Human Rights on the measures adopted pursuant to [...] Order, by no later than January 7, 2004.
9. To order the Inter-American Commission on Human Rights to present the observations it deems pertinent on the State's report, within 15 days of being notified thereof.
10. To order the State, subsequent to its first report (*supra* operative paragraph eight), to continue to report to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to continue to present its observations on those reports within six weeks of their receipt.
11. To notify the State and the Inter-American Commission on Human Rights of this Order.

CHAPTER VII

FINAL CONSIDERATIONS AND RECOMMENDATIONS

1. Freedom of expression and access to information are fundamental to the democracies of the Hemisphere. Through the exercise of freedom of expression and access to information, society can avoid and prevent improper behavior by public officials.

2. The importance of freedom of expression in our Hemisphere has been reaffirmed during the year 2003. The Declaration of Santiago on Democracy and Public Trust, unanimously approved by the Ministers of Foreign Affairs of the Member States of the OAS, recognizes that democracy is strengthened by the full respect for freedom of expression, access to information and free dissemination of ideas. It further recognizes that all sectors of society, including the media, through the information they provide to citizens, can contribute to an environment of tolerance for all opinions, promote a culture of peace, and strengthen democratic governance. This declaration follows the plans of action adopted during the Summits of the Americas, and particularly, during the Third Summit of the Americas held in 2001.

3. The Plan of Action of the Third Summit of the Americas established the need for States to ensure that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws.

4. However, notwithstanding the constant reference to the need to respect and guarantee freedom of expression in the Hemisphere, the exercise of this freedom cannot be characterized as full and free of obstacles. As this report clearly reveals, acts of aggression and reprisals for the exercise of this freedom, including murders and the misuse of anti-defamation laws to silence opposition, have continued to take place during 2003.

5. Several States are currently considering the possibility of adopting laws on access to information. However, in contrast to the situation in 2002, none of the States passed laws on this subject this year. It is important to note that, during its last period of ordinary sessions, the General Assembly of the Organization of American States (OAS) approved Resolution AG/RES. 1932 (XXXIII-0/03), which establishes that "states are obliged to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application."

6. Most countries of the Hemisphere still maintain "*desacato*" (insult or contempt of public officials) laws. In spite of repeated recommendations, only one State has repealed these laws during 2003. Many countries of the Hemisphere have demonstrated a clear intention to intimidate journalists by initiating judicial proceedings against them. Many public officials or government leaders use criminal libel, slander, and defamation laws in the same manner as *desacato* laws, with the intention of silencing journalists who have produced articles that criticize the government on matters of public interest.

7. The problematic issues mentioned in this report—the safety of journalists, the existence and enforcement of restrictive legislation, the dearth of effective procedures for

obtaining access to information, and the lack of effective channels for participation by socially-excluded or vulnerable sectors—have been the prime concern of the Office of the Special Rapporteur for Freedom of Expression since its inception. Thus, with a view to safeguarding and strengthening freedom of expression in the Hemisphere, the Special Rapporteur for Freedom of Expression reiterates the recommendations made in previous reports:

- a. Conduct serious, impartial, and effective investigations into murders, kidnappings, threats, and acts of intimidation against journalists and other media personnel.
 - b. Bring those responsible for the murder of, or acts of aggression against, reporters and other media personnel to trial by independent and impartial courts.
 - c. Publicly condemn such acts in order to prevent actions that might encourage these crimes.
 - d. Promote the repeal of laws defining *desacato* as a crime, since they limit public debate, which is essential to the functioning of democracy, and are not in keeping with the American Convention on Human Rights.
 - e. Promote the amendment of criminal defamation laws to prevent them being used in the same way as the *desacato* laws.
 - f. Enact laws allowing access to information and complementary rules governing their implementation in accordance with international standards.
 - g. Promote policies and practices that effectively permit freedom of expression and access to information, along with equal participation by all segments of society in such a way that their needs, views, and interests are incorporated in the design of and decisions about public policies.
 - h. Finally, the Special Rapporteur recommends that the member States bring their domestic law into line with the parameters established in the American Convention on Human Rights and that Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression be fully implemented.
8. The Rapporteur thanks all the States that have worked with him this year, as well as the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support. Lastly, the Rapporteur thanks all those independent journalists and other media personnel who, day after day, fulfill their important function of keeping society informed.