

## CHAPTER V

### FREEDOM OF EXPRESSION IN PERU

#### A. INTRODUCTION

1. Respect for the right to freedom of expression is one of the key concerns of the IACHR, which has consistently dedicated a special chapter on this issue in its latest reports on the situation of human rights in several countries of the hemisphere.[1] In its 97th session, held in October 1997, the Commission established the Office of the Rapporteur for Freedom of Expression, whose mandate is to monitor, promote, and protect the freedom of expression in the Americas.[2] Mr. Santiago A. Canton, in his capacity as Special Rapporteur, participated in the Commission's delegation that visited the Republic of Peru November 9 to 13, 1998. The Special Rapporteur has prepared this chapter, at the request of the IACHR, based primarily on the information collected during the on-site visit and from other information and complaints received since that time. The Commission approved the text submitted and decided to include it as part of this Report.

2. This Chapter refers first to the importance of freedom of expression as a cornerstone of democracy and the rule of law, and second, to the protection provided to those who exercise this right in the legislation in force in Peru and the international standards. Third is an analysis on the situation of the dissemination of political dissent in Peru. It is followed by a chronology of the complaints received by the Commission in relation to the enjoyment of the right to freedom of expression in Peru. Finally are several conclusions and recommendations.

#### B. FREEDOM OF EXPRESSION AND RULE OF LAW

3. Freedom of expression is fundamental for the existence of a democratic society. The Inter-American Court of Human Rights has stated:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.[3]

4. The heads of state and government of the hemisphere, meeting at the Second Summit of the Americas held in April 1998 in Santiago, Chile, highlighted the importance of freedom of expression for the hemisphere and expressed their support for the creation of the Office of the Rapporteur for Freedom of Expression within the IACHR. In the Declaration of Santiago, the heads of state and government indicated:

We agree that a free press plays a fundamental role in this area and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We

commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.[4]

5. In a similar vein, the Plan of Action establishes:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.[5]

6. For its part, the Declaration of Chapultepec, adopted at the Hemispheric Conference on Freedom of Expression (Mexico City, 1994), sponsored by the Inter-American Press Association (IAPA) and signed by 20 heads of state and government[6], set forth the following principles:

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.

7. 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.

8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.

9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.

10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

7. On November 26, 1999, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, and the OAS Special Rapporteur for Freedom of Expression adopted a joint declaration, according to which[7]:

We recall that freedom of expression is a fundamental international human right and a basic component of a civil society based on democratic principles.

An independent and pluralistic media is essential to a free and open society and accountable government. Respect for freedom of the media in our Member States, although very different from country to country, leaves much to be desired.

Certain States have continued to exert and allow impermissible pressure on the media in their respective countries. The levels of harassment might be different but the general aim is the same: to suppress pluralism and open debate on issues of concern to citizens.

Freedom of expression is not only a fundamental human right in and of itself, but it has ramifications for economic development as well. The media has a corrective function by bringing to the public's attention corruption and inequitable practices.

The absence of free media can lead to economic stagnation and improper practices by both governments and businesses.

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.

The media should refrain from any advocacy of national, racial or religious hatred that constitutes incitement to violence or to any other similar action.

In many countries laws are in place, such as criminal defamation laws, which unduly restrict the right to freedom of expression. We urge States to review these laws with a view to bringing them into line with their international obligations.

We affirm that States must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression.

### **C. THE PROTECTION AFFORDED FREEDOM OF EXPRESSION IN PERU'S DOMESTIC LEGISLATION**

8. The legislation in force in Peru is among the most protective of the freedom of expression in relation to the other States of the hemisphere. The Peruvian Constitution expressly incorporates freedom of expression and information as one of the guarantees of the rule of law.

9. The Constitution of Peru guarantees the right to freedom of expression at Article 2(4), which establishes:

Every person has the right to the freedoms of information, opinion, expression, and dissemination of thought by the oral or written word or image, by any means of social communication, without prior authorization or censorship or impediment of any kind, and subject to the liabilities established by law.

Any act that suspends or closes any outlet of expression or that impedes its free circulation is an offense. The rights to inform and opine include the rights to establish communications media.

10. In addition, the Fourth Final Provision of the Constitution indicates:

Norms relating to those rights and freedoms recognized in the Constitution in keeping with the Universal Declaration of Human Rights and with the international treaties and agreements on the subject ratified by Peru.

11. The Constitution also expressly enshrines the action of habeas data as a constitutional guarantee. Article 200 of the Constitution provides:

The action of habeas data, which may be brought against an act or omission, by any authority, official, or individual who violates or threatens the rights referred to in Article 2, sections 5 and 6 of the Constitution.

12. Sections 5 and 6 of Article 2 of the Constitution provide that every person has the right:

5. To request, without stating a cause, the information required, and to receive it, from any public entity, in the time provided by law, with payment of the cost entailed in the request. An exception is made for such information as may affect privacy and information expressly excluded by law or for reasons of national security.

Bank secrecy and the privileged status of tax-related information may be lifted upon request by the judge, the Public Prosecutor, or an investigative commission of the Congress, as provided by the law, and always in relation to the case investigated.

6. To have information services, whether computerized or not, public or private, not supply information that infringes upon personal and family privacy.

13. Article 2(18) of the Constitution offers the legal framework for the protection of journalists' sources of information, as it notes that all persons have the right to:

keep to themselves their political, philosophical, religious, or any other convictions, and to maintain professional privilege.

14. Article 55 of the Peruvian Constitution provides that:

Treaties entered into by the State and that are in force are part of domestic law.

15. The international treaties ratified by the State are also part of the domestic legal order in force in Peru, which means that Article 13 of the American Convention can be directly invoked and applied to protect this right. Article 13 of the American Convention provides:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

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.

Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

16. In addition, in its capacity as a member State of the OAS, Peru is subject to the standards set forth in the American Declaration on the Rights and Duties of Man.[8] The Declaration establishes, at Article IV: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

17. The Commission notes, however, that the Criminal Code includes a provision on desacato, or contempt of authority, at Article 374, on indicating that:

One who threatens, defames, or otherwise offends the dignity or decorum of a public official because of the performance of his or her functions or at the time he or she is performing them shall be punished by imprisonment not to exceed three years.

If the offended person is the President of one of the branches of government, the punishment shall be no less than two years and no more than four years.

18. The Commission has already stated its views on the compatibility of desacato laws with the American Convention[9], and has established that such laws

are incompatible with the standards established in Article 13 of the Convention. Specifically, it stated:

the Commission finds that the State's use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13, and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life.[10]

19. As a result of this situation, the Special Rapporteur personally requested the President of the Council of Ministers of Peru, Mr. Alberto Bustamante Belaúnde, to undertake the steps required to bring the domestic legislation into line with Article 13 of the American Convention.

#### **D. DISSEMINATION OF EXPRESSIONS OF POLITICAL DISSENT IN PERU**

20. Respect for the freedom of expression in Peru is one of the issues of most concern to the Commission given its importance for maintaining democratic government. In addition to assisting in the protection of all other fundamental rights, freedom of expression plays a fundamental role in keeping government acts in check, as it exposes abuses of power and violations of the law committed to the detriment of the citizens.

21. In addition, freedom of expression is a fundamental human right with a dual dimension, individual and social. In this regard, the Inter-American Court has said that this dual dimension:

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

22. As the Commission concluded in Chapter II of this Report, the Judiciary has seen its autonomy and independence severely curtailed, along with its role as guarantor of the observance of human rights in Peru. As a result, there is no effective judicial review of the constitutionality and legality of the acts of the public authorities and the rule of law is weakened.[11]

23. In the face of this situation, the independent press has assumed the role of denouncing irregularities, making known and generating public discussion on acts that in practice are not being subjected to the democratic mechanisms of checks and balances and whose perpetrators, on occasion, find an ally or accomplice in such mechanisms. As a result of such reporting, the communications media and independent journalists have been victims of a series of pressures ranging from threats and smear campaigns to acts that constitute serious violations of human rights.

24. Organizations of Peruvian civil society such as the Instituto de Prensa y Sociedad (IPYS: Institute for Press and Society) and the Asociación de Prensa Libre (Free Press Association), among others, have reacted pointing out that this situation has limited the freedom of expression in Peru. In addition, international press organizations, such as the Inter-American Press Association (IAPA)[12], the Committee for the Protection of Journalists[13], Reporters without Borders[14], and the International Press Institute[15], have also expressed their concern over the situation of freedom of expression in Peru. Human Rights Watch/Americas[16], among other non-governmental human rights organizations, has published reports that analyze in detail the problems derived from the situation of freedom of expression in Peru.

25. The situation has been a matter of concern not only for the organizations linked to the communications media and the promotion of human rights; it has also been the subject of consideration and responses by other states. Specifically, the Chamber of Deputies of Argentina[17] and the United States Senate[18] have expressed their concern over acts attributable to the State that limit the freedom of expression in Peru.

26. Similarly, the Commission, in its Annual Report for 1998, included Peru as one of the countries of the hemisphere with the most severe restrictions on freedom of expression.[19] In this regard, the Office of the Special Rapporteur stated, in that Report:

In Peru, limitations on the independence of the Judiciary have bred a climate of legal insecurity in regard to the practice of journalism. A wave of death threats and a systematic campaign of persecution and personal attack against journalists critical of the government have exacerbated the situation.

27. The Commission and its Rapporteur for the Freedom of Expression have received several complaints before, during, and since the on-site visit, which point to the existence of de facto restrictions on the exercise of the freedom of expression in Peru. These restrictions, as analyzed below, are the result of a series of systematic acts of harassment directed mainly against investigative journalists, press outlets, and opposition politicians.

28. The following sections evaluate certain activities of the Peruvian state organs and their impact on the exercise of freedom of expression in Peru. Specifically analyzed are the levels of tolerance of independent journalism, information available on acts of harassment by the State security forces, and the performance, by the Judiciary, of its role as the guarantor of fundamental rights.

#### 1. State tolerance and the effective exercise of the right to inform

29. During its on-site visit, the Commission met with President Alberto Fujimori, who expressed his personal conviction that there is absolute freedom of expression in Peru. Mr. Fujimori argued that this is seen daily, as confirmed in the dissemination of opinions critical of his person and of the performance of government officials.

30. The Commission notes that, in effect, some press outlets disseminate information and opinions unfavorable to the government. Nonetheless, claiming to gauge the freedom of expression based on the number of publications critical of the authorities is a fallacious exercise. Respect for freedom of expression should be considered in light of the direct and indirect restrictions on its exercise. The amount of information disseminated is insufficient to appreciate the enjoyment of this right. The value of the information is mainly in its content, not only its amount.

31. It should be noted that the media that appear to speak out with more freedom are the press and the radio, while television appears to have become completely stripped of its critical tone. In this regard, the former president of the Asociación de Radio y Televisión, Genaro Delgado Parker, has recently denounced that the television outlets do not enjoy the freedom to express themselves nor the necessary judicial guarantees. In addition, he indicated that a multi-million dollar publicity campaign has been undertaken that has made all the radio stations economically dependent on official advertising. In addition, he alleged that the Judiciary has been manipulated to silence independent companies, such as Frecuencia Latina.[20]

32. The exercise of the freedom of expression demands the dissemination of ideas and information free of consequences, except those specifically provided for by law to protect other fundamental rights that may be compromised. In this regard, the IACHR has noted that:

A State's refusal to conduct a full investigation of the murder of a journalist is particularly serious because of its impact on society.... At the same time, the murder of a journalist clearly has a "chilling effect", most notably on other journalists but also on ordinary citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts.[21]

33. While it is true that it is possible to publicly criticize the authorities in Peru, incidents involving independent journalists and other individuals create an atmosphere in which the effective exercise of this freedom is prejudiced by the fear of being penalized. These incidents include threats, attacks on physical integrity leading to the loss of life, harm to one's professional reputation and its consequences, and even criminal prosecution.

34. Several of the complaints presented in this report are an example of these negative consequences. The case of Mr. Baruch Ivcher is a sufficient example of this situation. Mr. Ivcher lost control of Channel 2, and his Peruvian citizenship, and his family was judicially persecuted, along with other persons related to Channel 2, due to his position critical of the authorities (see paragraph 115).

35. While the details of the case of Mr. Baruch Ivcher, in view of its characteristics, have been made known internationally, many other journalists have suffered grave consequences for exercising their profession. Several journalists have received death threats, and in some cases the threats have extended to their family members. The cases of journalists Gustavo Mohme Lloma, César Hildebrandt, Cecilia Valenzuela, and Angel Páez, while among the best-known in Peru, are by no means the only ones. The Commission has received several complaints of journalists who have received threats, directed against themselves and their family members.

36. In addition, the Commission has received information on kidnapping cases. In some cases, the persons involved have preferred to remain anonymous for fear of possible reprisals. In all these cases, the journalists, in their work, are clearly critical of the authorities.

37. Therefore, it should be concluded that while it is true that there are criticisms of the authorities, it is also true that these criticisms are seriously limited by the chilling effect and the serious consequences the independent press must contend with.

## 2. Systematic harassment

38. Before, during, and after the on-site visit, the Commission has received complaints alleging violations of the freedom of expression, which are detailed at the end of this chapter. The analysis of these reports confirms the systematic occurrence of harassment and persecution of some sectors of the investigative press and opposition politicians.

39. The complaints described refer to events that constitute limitations on the right to freedom of expression. The Commission notes that while some of the facts alleged may be considered isolated cases, it is not just a compiling of unrelated cases, for assessing them all together suggests the existence of a systematic effort to harass on the part of the intelligence services, security forces, and other organs of the Peruvian State.

40. The information also reveals that, as has happened in other countries of the hemisphere, most of the attacks on the press occur in the interior, where journalists are less protected than in urban areas. The lack of effective judicial guarantees together with the absence of any international media and the reduced presence of the national media renders journalists in rural areas defenseless in the face of abuses or illegal acts by the authorities.

41. In August 1999 in Huancavelica, the Office of the Political-Military Chief ordered the local media to submit the contents of the radio news programs. That same month, journalist Carlos Manuel Rosas Matos, in charge of the Radio Tigre newscast in Iquitos, reported that his program had been arbitrarily suspended. The motive for the shutdown of the radio program had been the editorial line of the persons responsible for the news. In addition, journalist Fernando Mejía Cornelio, the administrator of Radio Lennin Ruiz Dávila, both of Radio Palmera, and journalist Alberto Medina of Radio Central, of Bellavista, were accused of advocating terrorism for reading an MRTA proclamation on the air, even though he did so under threats by this armed dissident group. In addition, journalist Angel Durán was attacked and suffered a gunshot wound when on his way to interview the mayor of Alja.

42. The apparent involvement of the intelligence services and the security forces in the campaign of harassment has been laid bare on several occasions. In its 1998 Annual Report, the Commission expressed concern over information indicating that the intelligence services have participated in activities clearly violative of the freedom of expression. In particular, mention was made of the possible existence of secret plans to investigate and discredit investigative journalists and opposition politicians critical of the authorities.

43. Recently, the Special Rapporteur had access to documents, presumably from the National Intelligence Service, that recorded the results of the very close physical surveillance of journalist Guillermo Gonzales Arica of the Asociación Prensa Libre. In addition, the Asociación Prensa Libre publicly denounced the existence of several documents detailing operations to follow candidates and journalists during the 1995 election campaign. According to information received, the National Intelligence Service placed wiretaps on Ambassador Javier Pérez de Cuéllar, former Secretary General of the United Nations, and opposition congressman Carlos Chipoco and his family were under physical surveillance.

44. The Office of the Rapporteur has received information linking the Intelligence Services with the campaigns to discredit journalists and members of opposition political parties. According to the information received, a group of journalists from the daily newspaper El Chato alleged that large sums were paid in exchange for publishing news items offensive to politicians and journalists.

45. The daily La República, one of the press outlets most critical of the government, has been subject to a constant campaign of harassment and discredit. The harassment includes death threats, and actions aimed at publicly discrediting its director, Gustavo Mohme Loma, including the appearance of clandestine publications that discredit the paper and the professionals who work there. (See para. ff.)

46. In late 1998 a web page appeared, maintained from Peru by an association called the Asociación Pro Defensa de la Verdad (Aprodev: Association in Defense of the Truth), whose objective is to discredit investigative journalists and opposition politicians. Among the journalists included on this web page are Gustavo Mohme Loma and journalists César Hildebrant, Edmundo Cruz, and Angel Páez. (See para. 8.) The content and tone of this page are similar to the campaign to discredit La República and other individuals.

47. The dissemination of information by publications, pamphlets, and web pages for the purpose of disseminating information aimed at calling into question other individuals who exercise their right to express themselves freely is not necessarily incompatible with the standards of the American Convention. Nonetheless, the Commission considers that the alleged link of these means with the intelligence services of Peru is of great concern, as it would reflect the will of some authorities to harass the journalists, especially the investigative journalists and opposition politicians.

48. The threats against some investigative journalists are also a characteristic of the campaign of harassment. Journalist Cecilia Valenzuela, host of a television program known for its critical spirit with respect to the government, has received death threats by telephone and in writing. On several occasions Ms. Valenzuela has exposed alleged acts of corruption by government and intelligence service officials.

49. The case of journalist Cecilia Valenzuela is not isolated. Many other journalists have informed the Commission that they have been threatened. These include, among others, César Hildebrant, Angel Páez, and Blanca Rosales. The vast majority of journalists threatened have upheld positions critical of the authorities and the intelligence services.

50. The intelligence services are not the only State agencies apparently involved in harassing journalists and members of the political class who publicly express their criticisms. The Commission has been informed that on several occasions some radio stations, especially from the interior, have been subject to pressures by the security forces in the region. For example, in the localities of San Martín, Huancavelica, and Iquitos, agents of the National Police or under the Political-Ministry Chiefs (Jefaturas Político Militares) engaged in activities aimed at intimidating journalists working with radio stations in the area. The activities range from the spontaneous appearance of members of the Police or Army who request information on the political affiliation of the owners and journalists, to requests that copies of the programs broadcast be sent, and the request to fill out a questionnaire, reporting on the media outlet's activities.

51. The information received suggests that there is a certain uniformity in the nature of the attacks suffered by those who express a certain type of idea or who make allegations against the government to the communications media, despite coming from different sources. This unity suggests prior planning, and does not appear to be a mere coincidence. First, the victims of the attacks are mainly investigative journalists and members of opposition political parties who express criticisms of the authorities, and more specifically of the Intelligence Services. Second, the Internet pages discrediting journalists are conceptually similar to and use language like the attacks in the print media and even certain threats. In addition, the headlines questioning the investigative journalists and opposition politicians in what was called the sensationalist press are similar from one daily paper to the next. Similarly, the documentation on activities of the intelligence services indicates that the smear campaigns have been used at least since 1994. The similarity of the attacks, the similarity in the activities of the persons attacked or threatened, and the continuity of these activities over time makes it difficult to assume that they reflect isolated events that are not the result of some planning.

### 3. The role of the Judiciary as guarantor of the freedom of expression

52. In Peru, the exercise of the freedom of expression is not protected, in practice, by effective judicial guarantees for the investigation and punishment of the abuses and crimes committed against journalists and to make reparation to the victims. This situation of impunity in the face of a specific case at the same time has a chilling effect on society as a whole. At the same time, on several occasions the judicial branch has been used by public officials to harass investigative journalists and opposition politicians.

#### a. The use of the judiciary to harass journalists

53. The Commission has received information that indicates that due to the lack of autonomy, irregularities, and shortcomings in the judicial branch, in many cases it is being used to harass investigative journalists and opposition politicians. The information available indicates that far from carrying out its protective function, the Judiciary was also being used as a mechanism of intimidation. Specifically, the Commission has received complaints that indicate that investigative journalists who have disseminated information prejudicial to the authorities have been subjected to

criminal prosecution. For example, journalist José Arrieta, who revealed facts that involve the responsibility of the intelligence services in cases such as that of Leonor La Rosa Bustamante, has been tried on charges of inducing an agent of the Intelligence Service to give false information. At present, Mr. Arrieta is in exile in the United States.

54. In addition, the director of *Caretas* magazine, Mr. Zileri Gibson, was tried for having published information on the activities of presidential adviser Vladimiro Montesinos, reporting that Montesinos worked for the government of President Fujimori. After his conviction in 1991, Zileri Gibson filed an appeal before the Supreme Court to have that judgment invalidated, arguing that Vladimiro Montesinos has publicly acknowledged his participation in public office since the outset of the Fujimori Administration. (See para. 80.) Businessman Baruch Ivcher and *Asociación Prensa Libre* journalist Guillermo Gonzales Arica have both been subject to prosecutions that appeared to be aimed at silencing criticism of the government.[22]

55. Integral respect for human rights depends on the review of legality, exercised by the courts with a view to ensuring freedom of expression and the protection of other rights bound up with it. In this framework, the right of investigative journalists and opposition politicians to disseminate ideas or to comment on the government's performance and on matters of public interest through the press merits special protection by the Judiciary and by the organs of the inter-American system for the protection of human rights.[23] The government's dominant position and the importance of public criticism of its performance in the context of democracy make it necessary for the government to refrain from having recourse to the courts to respond to attacks by its political adversaries.[24] In Peru, however, where the judiciary has seen its autonomy and independence seriously compromised, all indications are that the courts are used to intimidate and harass those who practice independent journalism.

b. Breach of the duty to investigate abuses and crimes against journalists

56. The failure to carry out an effective investigation into a crime against a journalist is especially grave in view of its impact on society. In addition, this type of crime has a chilling effect with respect to other attacks, abuses, and unlawful acts of all kinds. The Commission considers that this effect can only be avoided by decisive action on the part of the State to punish those who turn out to be responsible, as is its obligation under international law and domestic law. In this respect, the Commission has established that the failure to investigate seriously, prosecute, and punish the direct perpetrators and planners of the murder of a journalist is a violation of the right to inform and to express oneself publicly and freely, and therefore gives rise to the international responsibility of the State.[25]

57. Under domestic law and international law, the State has the obligation to guarantee human rights. Accordingly, the international responsibility of the State is triggered whenever it fails to take the steps necessary to prevent violations of fundamental rights, or, once consummated, whenever it fails to investigate, prosecute, and punish the persons responsible.[26] In this respect, the Inter-American Court has indicated:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[27]

58. In addition, one should recall the Principle of the Declaration of Chapultepec, which states:

Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.[28]

59. Along the same lines, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has stated its concern for impunity for crimes against journalists as a result of the exercise of their profession, and has recommended:

(a) that governments adopt the principle that there should be no statute of limitations for crimes against persons when these are perpetrated to prevent the exercise of freedom of information set forth in international human rights instruments;

(b) that governments refine legislation to make it possible to prosecute and sentence those who instigate the assassination of persons exercising the right to freedom of expression.[29]

60. The same concern has been shared by the United Nations Special Rapporteur for Freedom of Opinion and Expression, who has stated:

The governments should ... do everything possible to investigate acts or threats of violence, intimidation, or harassment against the personnel or offices of the communications media and bring the persons responsible to justice.[30]

61. It is worrisome that in response to the large number of alleged incidents of harassment of journalists in Peru, the persons affected cannot always rely on judicial protection as would make it possible to determine responsibilities, put a halt to the intimidation, and make reparation for the harm caused.

## **E. CHRONOLOGY OF COMPLAINTS REGARDING THE FREEDOM OF EXPRESSION**

62. In order to illustrate the situation that the Commission has described, following is a presentation, in chronological order, of some complaints alleging attacks on freedom of expression. It should be noted that the specific facts

highlighted in the following paragraphs do not constitute an exhaustive list of the attacks committed against journalists and press outlets in Peru; nor do they set forth the entire catalogue of complaints and information received by the Commission. It is, rather, a series of examples, aimed at reflecting the gravity of the situation as regards freedom of expression in Peru. Finally, the Commission is analyzing complaints on violence against and harassment of journalists in Peru in its individual case system.

63. On August 28, 1997, journalist Tito Pilco Mori, owner of the radio station Frecuencia Popular, was found seriously wounded, alongside his motorcycle, in the city of Rioja. Six days later he died in a Lima hospital. While working as a journalist, Tito Pilco was consistently critical of the administration of justice in his region. Initial investigations determined that he had been in an accident. Nonetheless, two witnesses reported that Pilco Mori was beaten by several persons.

64. Initially, the investigation of this case was entrusted to prosecutor José Manuel Monteverde; yet Tito Pilco's family members had doubts as to his impartiality, as they considered him one of the persons potentially responsible. In response to their protests, the case was transferred on to prosecutor Pablo Arévalo Flores, who in September 1997 archived it, considering that there were no "elements indicative of the criminal nature of these events." Pressure from the family and media led to the re-opening of the investigation in October 1998. At the same time, his family began to receive threats.

65. In March 1999, prosecutor Eduardo Macedo Zapata, whose assistant was Monteverde, decided to archive the case definitively. In April, Pilco's widow filed a complaint appeal against this resolution, and the superior prosecutor for San Martín, Antonio Ruiz Sánchez, issued a resolution ordering that the case file be remitted to the Office of the Supreme Prosecutor for Internal Oversight. In making this decision, Sánchez considered the report from the Office of the Human Rights Ombudsman, which set forth the details of the preparation of the crime and the alleged mastermind. In May, the Executive Commission of the Public Ministry issued a resolution terminating the services of provisional judges Eduardo Macedo Zapata and his assistant José Manuel Monteverde Tuesta. The case is presently before the Criminal Court of Rioja, entrusted to Judge Rubén García.

66. In March 1998, prosecutor Alejandro Espino Méndez, of the Office of the 44th Provincial Prosecutor for Criminal Matters of Lima sought to initiate proceedings against journalist José Arrieta. The charge is having induced José Luis Bazán, former agent with the Army Intelligence Service, of providing a false version of the attack on the home of Congressman Javier Diez Canseco. In January 1998 Arrieta was to leave the country, when he was informed that there were plans to involve him in a legal proceeding. José Arrieta was responsible for the revealing reports broadcast on the program Contrapunto, on Channel 2, which revealed to Peruvian and international public opinion the torture to which former intelligence agent Leonor La Rosa had been subjected by members of her own institution, as well as the murder of her colleague Mariela Barreto Riofano. This journalistic team also revealed reports on a vast network of the intelligence services to wiretap opposition politicians, journalists, businesspersons, judges, and Ambassador Javier Pérez de Cuéllar, the former Secretary-General of the United Nations and former presidential candidate.

67. In May 1998, journalist Cecilia Valenzuela, host of the program *Aquí y Ahora*, of Andina de Televisión (ATV), received death threats by telephone. She was hosting a television program that reported on alleged revelations of corruption cases in the government, and reports linked to the National Intelligence Service (SIN). In addition, important aspects of the negotiation of the peace agreement with Ecuador were called into question. Like other independent journalists, Valenzuela has told the Office of the Special Rapporteur of her serious difficulties getting work as a result of the fear of reprisals on the part of media organizations.

68. The director of the daily newspaper *La República*, Gustavo Mohme Llama, has received repeated death threats, and both he and the newspaper he directs have been and continue to be the targets of a campaign that reflects a clear effort to defame and discredit the newspaper and the journalists on its staff. *La República* is one of the publications most critical of the current government. In November 1998, Mohme Llama was threatened by telephone by someone who identified himself as a member of the *Comando 5 de abril*, and told to refrain from publishing anything in his paper about the IACHR's visit to Peru.

69. In December 1998, journalist Angel Páez Salcedo, chief of *La República*'s investigative unit and a correspondent with the daily paper *Clarín*, of Argentina, received a death threat by telephone as well as anonymous threatening letters for his reports involving government officials and high-ranking military officers. In his work, he has reported several cases of corruption allegedly committed by members of the military high command and persons close to the President of Peru, such as adviser Vladimiro Montesinos and members of the military involved in arms purchases. Sources in the Armed Forces warned him of a plan to assassinate him. In addition, he has been the victim of a campaign of slander and defamation by the sensationalist press.

70. Mohme Llama, Páez Salcedo, and other journalists from *La República* have been victims of a smear campaign promoted through a new publication called *República*, which appeared in May 1999. With no mailing address, no telephone, and under the direction of a person whose identity is not known, *República* copied the logo and format of the daily newspaper *La República*. *República* appeared only once, due to a resolution of the National Institute for the Defense of Competition and Intellectual Property, which prohibited its circulation. In its place appeared *Repudio*, which had the same content and same intent to smear reputations.

71. In September 1999 a new defamatory tabloid appeared in the southern city of Puno called *República del Gran Sur*, with the same objective of ridiculing *La República* and its director. The persons defamed lodged a complaint and demanded an exhaustive investigation.

72. The hostile attitude toward *La República* continued in October 1999 when more than 150 offensive faxes blocked the paper's phone lines. The faxes were replete with offensive references, using the same language as other well-known sensationalist newspapers. In addition, the newspaper received numerous phone calls with threats and insults aimed at editor-in-chief and publisher Blanca Rosales.

73. In late 1998, a web page appeared, maintained from Peru by a self-styled *Asociación Pro Defensa de la Verdad (APRODEV)*, with contents and tone very similar to the editorials in some of the tabloids mentioned. This Internet site also

focuses on discrediting politicians and investigative journalists. Among the journalists included on these web pages are the editor-in-chief of La República, Gustavo Mohme, and César Hildebrant, Edmundo Cruz, and Miguel Angel Páez.

74. In November 1998, journalist Johny Eduardo Pezo Tello was jailed on terrorism charges after reading a letter from the Movimiento Revolucionario Tupac Amaru (MRTA) on his program. He received a phone call from a member of the MRTA who forced him to read the letter, threatening him that if he did not read it, he and his family would run serious risks. Pezo Tello tried to leave the radio station and report the incident to the police, but two men awaiting him outside warned him to do what they were requesting. In the face of these circumstances, he read the communique, but not without first apologizing to his audience and clarifying his opposition to the MRTA's principles. The arrest was repudiated internationally right away, and the Office of the Special Rapporteur provided the relevant information to the Peruvian authorities to help bring about a positive outcome in this case. Pezo Tello was finally released after spending 58 days in jail.

75. In December 1998, the team of journalists from Panamericana Televisión, headed up by journalist Olinda Merzthal, was attacked by a council member from the municipality of Villa María del Triunfo, Ricardo Merino Carranza, and by a woman identified as Martina Sánchez Flores. According to the information received, the press team was covering a strike by workers when the council member and the woman tried to stop the videotaping and beat Olinda Merzthal and Jesús Quispe, the driver. The attack was recorded by cameraman Jorge Rojas, and reported at the local police station, where, moments later, council member Merino Carranza denounced that he had been attacked by the journalists. Panamericana Televisión began the actions to make a complaint and then the mayor publicly apologized, and undertook to begin an investigation.

76. In March 1999, journalist José Luis Linares Altamirano was shot by two hooded persons at his home in Jaén. Linares is part of the staff of journalists working at Radio Marañón. One day later, reporter Homero Marín Salazar was the victim of an assault at his home. In the early morning hours the following Sunday, unknown persons entered the home of reporter Olinda Pérez Díaz, and took only clothes. That same day suspicious phone calls were placed to Radio Marañón. The station's director, Luis Távara Martín, expressed his concern because he thought it was a scare campaign possibly by local power groups uncomfortable with his programming.

77. In April 1999, about 15 people forcibly entered the facilities of Radio Estudio 99, of the province of Satipo, causing serious damage in the control room and transmission equipment. In addition, they made grave threats to journalist Fernando Santos Rojas, director of the news program Libertad de Prensa. At the moment of the attack, they also found announcer César Felipe and reporter Abel Robles Véliz, who were able to identify some of the assailants as leaders of the Santa Rosa Merchants Association of the Satipo Market, an organization that supports the provincial mayor, Arturo Durand Panes. That same day the mayor granted an interview to the radio station he owns, Radio Nueva Señal, suggesting that Santos Rojas's news program would not air that evening.

78. According to Santos Rojas, the purpose of the attack was to silence him; he recalled that it was not the first time he had received threats from the authorities. In the last election campaign, Santos Rojas received death threats from

one of the mayor's brothers. In August, a meeting was held involving the journalists, the mayor, and the Instituto Prensa y Sociedad, after which the authorities agreed to put a halt to the attacks; no new confrontations have ensued since.

79. In May 1999, journalist Enrique Zileri Gibson, director of *Caretas* magazine, filed a motion before the Plenary Chamber of the Supreme Court, seeking review of the 1991 judgment against him for reporting on the public functions of presidential adviser Vladimiro Montesinos. Montesinos denied that he performed any public functions and filed a claim against the journalist in 1990. The judgment included a sentence of one year conditional imprisonment and the payment of US\$ 10,000. In April 1999, Montesinos appeared on television alongside President Fujimori, making reference to the rescue of the hostages at the Japanese embassy in 1997 and declared: "I've been living here (National Intelligence Service) for nine years, twenty-four hours a day, as President Fujimori knows, dedicated exclusively to performing the functions of the post." After this acknowledgment of his activity as a public official, Zileri asked that the case be reviewed, since he considered it sufficient proof of his innocence.

80. In August 1999, Eduardo Cenepo Eljarratt, director of the weekly *El Clarín*, of Pucallpa, was called by Lt. Col. Jorge Martínez Fernández to "clarify, support, and demonstrate" information published in a weekly referring to an interview with the mayor of the district of Yurúa, Fidel Soria Rodríguez, and the municipal director, Hecker Cárdenas. In the interview, both denounced irregularities committed by Peruvian Army Major Luis Muñoz Loarte. The official communication indicates that the interview in question "harms the institutional image" of the Army, and so requires an "exhaustive investigation under the Constitution and the pertinent laws."

81. In August 1999, the Political-Military Chief of the city of Huancavelica, by means of an official note, ordered the communications media to provide it with all news material from the radio stations immediately after it was broadcast. The official note, sent to the administrators of each media outlet, stated "... you are ordered to send this Jefatura, daily, as of this day, the news that has already been broadcast by your radio station. By decision of higher-ranking officers, we are to monitor all newscasts broadcast in this Emergency Zone." The document was signed by Infantry Captain A. Delgado Ruiz and bore the seal of the Secretariat of the Political-Military Command of Huancavelica. According to the testimony of one of the administrators, the official note was distributed by two soldiers of the Peruvian Army. The journalists in the area rejected the measure, which they considered to violate the freedom of expression, and decided not to obey the order. The mayor of Huancavelica, Federico Salas, also spoke out against the measure. A few days later, the of Sub-Zonal National Security Command N-8 of the Central Region issued a communique reporting that Peruvian Army Captain Adolfo Delgado Ruiz had been relieved of his post, sanctioned, and reported to the 2nd Judicial Zone of the Army.

82. In August 1999, Carlos Manuel Rosas Matos, director of the daily *Tigre Informa* of Radio Tigre, in Iquitos, reported that his program had been arbitrarily shut down. Prior to this measure, the directors of the radio station were pressured by members of the Army to keep their employees from continuing to report on crimes allegedly committed by high-level military commanders. In July, Rosas Matos and Luis Chanamé, co-director of the radio station, commented on a report published in *La República* accusing the chief of the Fifth Military Region, Gen.

Enrique Sotero Navarro, of nepotism. That day Rosas picked up that report by Internet, for he was not able to get any copies of La República at the newstands. The newspaper vendors said all the copies had been bought early in the morning by members of the military. The deputy manager warned the journalists that if they didn't tone down the information, the program would be canceled; this happened the next day. According to Rosas, the military officers were bothered by the revelation of a secret meeting in which the political tendencies of the Iquitos press had been analyzed. In June, Rosas had made public a document supposedly written by a colonel in which Tigre Informa was characterized as "dangerous" to the interests of the Armed Forces and in which the director was accused of being a communist.

83. In August 1999, Ricardo Bullón Mattos, a news director with Radio Señorial in the city of Huancayo, was found liable, in the trial court, of defamation and slander, and was barred from working as a journalist for two years for having disseminated a report that revealed irregularities in the performance of the president of the Sociedad de Beneficiencia, a charitable organization, of Huancayo, Janina Soria de Véliz, on his program. The sentence included a two-year prison sentence, suspended, the payment of 15,000 nuevos soles (approximately US\$ 4,500.00) in civil damages, and 120 days salary as a fine, to be paid to the State.

84. Although the Congress approved Law No. 26,937 in March 2000, confirming the optional nature of the membership of journalists in professional associations, one of the bases of the judgment is the fact that Bullón is not affiliated with any organization. The ruling considers, moreover, that the preponderance of freedom of expression over the right to honor is only admissible within certain limits, and should apply exclusively to professional journalists. The judgment assures that the membership of journalists is compulsory in the country, under Law No. 23,221 of 1980, which created the Colegio de Periodistas of Peru. Ricardo Bullón filed a motion challenging that ruling. Nonetheless, in September the Superior Court of Huancayo affirmed the judgment on the offense of defamation, overturning the part related to the crime of slander.[31]

85. In September 1999, two journalists from Caretas magazine were assaulted during a birthday celebration for the former mayor of the district of Los Organos, Manuel Garrido Castro. Journalist Kela León and photojournalist Paul Vallejos were working on an investigation related to alleged irregularities in the appointment of the mayor. During a demonstration in support of the former mayor, two people jumped the reporter, snatching away his camera, beating him, and removing him from the place. His colleague sought help from former mayor Garrido Castro and current mayor Pablo Benites, with no response. After he identified himself as a journalist with Caretas, another man took away his credential and expelled him. The journalists lodged a complaint with the police, in which they noted that they recognized one of the assailants as council member Alberto Jibaja, from the Movimiento Reconstrucción Efectiva, who was summonsed to testify.

86. In September 1999, Juan Sánchez Oliva, director of the radio news program Quassar, in the city of Huaraz, reported that he and his family had been the victims of constant threats and attacks for six months. He maintained a critical line on the local government. According to the information received, César Augusto Oliva, Juan Sánchez Oliva's brother, was severely beaten by six persons in military dress, armed with rifles, and hooded. The next day, another of his brothers received a threat by phone. In August, Sánchez Oliva received a death threat in public.

Another act of violence occurred in early September, when the windows of his sister's home were broken.

87. Sánchez Oliva has requested the Prefecture of the department of Ancash to take steps to provide safeguards for his and his family's physical integrity, but since none was taken, he was forced to hire a private security service. In addition, a tabloid began to be published that defamed and threatened Sánchez Oliva and other journalists. The tabloid stated: "You are shielding yourself by portraying yourself as a journalist victimized by the dictatorship, and you know well that you are the next victim..." In addition, the threat referred to Sánchez as a "criminal," "evil-doer," "swindler," "extortionist," "high-life," and "son of a bitch," along with other offensive references to his person. After this, prefect Walter Vásquez undertook to provide personal safeguards for Juan Sánchez Oliva.

88. At the same time, Angel Durán, a colleague of Sánchez Oliva, also received threats by telephone. He stated he recognized the voice of Fredy Moreno, Minister of the Presidency and former president of the Transitory Council for Regional Administration (CTAR) of Chavín. Durán had accused Fredy Moreno of unjust enrichment and corruption. A few days later, Radio Ancash and the daily paper La Prensa, which belonged to Fredy Moreno, attacked him several times, describing him as a "pseudo-journalist," "demented," and "blackmailer."

89. From 1997 to 1999, Durán has had to face 14 proceedings brought by Moreno, among others one for the unlawful practice of journalism. He was absolved of all the accusations. In 1998, he was kidnapped by unknown persons and left unconscious. Before the kidnapping, Durán and his colleagues from Radio Video Stereo were threatened by telephone, with no effective response from the authorities.

90. On November 10, 1999, Durán was shot in the right thigh while on his way to interview the mayor of Aija, Germán Hizo Requenaporti. The Special Rapporteur had the opportunity to communicate by telephone with Durán while he was in the hospital recovering from his wounds, and to convey to him the Rapporteur's concern and support. In addition, Durán requested the assistance of the Office of the Rapporteur and of the Office of the Human Rights Ombudsman.

91. In September 1999, journalist Juan Sausa Seclén, a correspondent for La República and reporter with Radio Marañón, of Jaén, received death threats by telephone. He was forced to go into hiding until given the guarantees needed to protect his physical integrity and to freely practice his profession.

92. At the same time Father Luis Távara Martín reported an action to impede the September 28, 1999 issue of La República from being distributed in the city. Several sources stated that both incidents likely had a common origin: the publication of a report in La República on the activities of a former member of the "Colina" paramilitary group.

93. In September 1999, Father Pedro Anccori, parish priest of the San Juan Bautista church, owner of Radio La Voz del Allinccapac, in the district of Macusani, was summonsed by the commissar of the province of Carabaya to submit the radio station's documentation. That summons came after the radio station had reported that members of the National Police of Peru were responsible for the assassination of a youth. Other high-level authorities came forth to demand the

radio station's license. Through an official signed note, Anccori answered Lieutenant Juan Chávez, commissar of Carabaya, that the radio station's documentation was in order, and giving notice that he would only turn over that information in response to a judicial order.

94. In September 1999, Jorge Salazar, executive director of the Instituto Prensa y Sociedad of Lima, received a threat by telephone in which he was told: "Son of a bitch, stop discrediting the country abroad. We know your steps. We're going to kill you." The Instituto Prensa y Sociedad has received threatening phone calls for some time now. The message would appear to be related to a mention made of the director of the Instituto Prensa y Sociedad on an Internet page. There, he was characterized as the lorito, "big mouth," who discredited the government, the Armed Forces, and the country abroad. The same article was disseminated by the sensationalist newspaper El Tío, last May.

95. In October 1999, journalist Fernando Mejía Cornelio and the administrator of Radio Lennin Ruiz Dávila, both of whom worked with Radio Palmera, and journalist Alberto Medina of Radio Central, of Bellavista, were detained. The three were accused of terrorism for having broadcast an MRTA proclamation on their radio stations. Prior to the transmission, journalist Fernando Mejía apologized to the audience, explaining that he was forced to read the text, since he had received death threats, and made it clear that he does not share the ideas of the MRTA. Nonetheless, minutes after having disseminated the proclamation, the journalists and the administrator of the radio station were arrested for advocating terrorism, interrogated at the police station, and then released.

96. A group of police from the Dirección Nacional Contra el Terrorismo (DINCOTE) arrived that same day in Bellavista to transfer the detainees to Tarapoto and begin the judicial proceedings against them. After the quick response of the Instituto Prensa y Sociedad, the journalists were released, as the arrest warrant was switched to an order to appear before the court. In addition, the Office of the Rapporteur was informed of this arrest and proceeded to take the necessary steps with the Peruvian authorities, requesting the immediate release of the journalists.

97. In October 1999, José Olaya, director of the daily El Tío, was threatened with death by an anonymous phone call. Several years ago, Olaya survived an attempted homicide.

98. In October 1999, after resigning en masse for failure to be paid, several workers from the daily newspaper El Chato denounced that Rafael Documet, the owner, had received a large sum of money, for ten months, for including notes in his newspaper offensive to opposition politicians and investigative journalists. According to Richard Molinares, publisher of the newspaper, the headlines were sent to Documet every day by people related to the Armed Forces and the government. Another employee of the paper said that she had heard Documet say the headlines came from the government. In late October, the Office of the Rapporteur learned that Mr. Hugo Borjas, former editor of El Chato, was kidnapped by unknown persons for several hours. The kidnappers warned him to shut up. In the wake of these events, the journalists publicly sought personal guarantees from the authorities, and through the Office of the Ombudsman. In addition, they sought the support of independent human rights and freedom of expression organizations.

99. On November 18, 1999, the Commission received a petition for precautionary measures to protect journalist Guillermo Gonzales Arica. Gonzales Arica was said to be subject to harassment by agents and organs of the Peruvian State because of his work as a journalist. In this respect, on November 21, 1999, the Commission decided to request precautionary measures from the Peruvian government in order to preserve Gonzales Arica's fundamental rights.

100. Gonzales Arica is a member of the Asociación Prensa Libre, formed in August 1999 by journalists Anel Townsend, Mabel Barreto, María Elena Belaúnde, Rosana Cueva, Iván García Mayer, Luis Iberico, David Montoya, and Bruno De Olazábal. From its formation, the association has uncovered several cases that point to the Peruvian intelligence services and other authorities as being responsible for crimes, acts of corruption, and abuses of authority.

101. Journalists from the Asociación Prensa Libre have reported that in the wake of these investigations, their phone lines are being wiretapped by the National Intelligence System (SIN).

102. This group of journalists undertook an investigation into the operational plans of the Army Intelligence Service of Peru (SIE), against Luis Castañeda Lossio and Alberto Andrade Carmona--both of whom were candidates for the Peruvian presidency. As a result of this journalism, the Supreme Council of Military Justice is said to have undertaken an investigation, on its own initiative, into the documents on which the investigation was based. In this respect, the military jurisdiction was said to have concluded that the material was false, and that consequently the journalists from the Asociación Prensa Libre had committed the offense against the public trust and against its judicial function. The conclusions of the military court were referred to the National Elections Board (JNE), which determined on September 7, 1999, that it did not have the capacity to carry out these investigations. In addition, the JNE forwarded the complaint to the Asociación Prensa Libre and the criminal investigation from the military courts to the Public Ministry. Even though the military courts are not authorized to define what civilian conduct constitutes criminal activity, the complaint of the JNE was passed on to the Executive Commission for the Public Ministry. As a result of this procedure, journalist Guillermo Gonzales Arica has been summonsed by the National Directorate of the Judicial Police to clarify points related to the complaint filed by the State for the offense against the public trust.

103. Personnel from the National Police of Peru made visits to two radio stations in San Martín, without any judicial order, and asked the directors to provide personal information on the owners and staff, with a special interest in learning their political affiliations. In addition, they presented a questionnaire on the journalism work of the radio station.

104. After this incident, the provincial chief of the National Police stated that there had been a misunderstanding on the part of his commissars. Hugo Ushiñahua Panduro, owner of Radio Red Univisión Satélite of Nueva Cajamarca de Rioja denounced that members of the police also went to his radio station with a questionnaire on its journalism work. In addition, Teófilo Mori Mendoza, the owner of Radio Rioja, stated that he had received a similar visit.

105. The provincial chief of the National Police stated that this incident was misunderstood by his commissars. According to commander Samuel López, his

instructions had been aimed at seeking a rapprochement with the media to launch an informational campaign. Several journalists from the area have agreed in noting the hostile climate with respect to some authorities, especially from the localities of Rioja and Nueva Cajamarca, in the department of San Martín. After these incidents, a verbal arrangement was reached between the authorities and journalists, and to date there have been no new attacks.

106. In September 1999, the Minister of Interior, César Saucedo Sánchez, issued a resolution by which he ordered the Public Prosecutor [Procurador Público] for Judicial Matters of the National Police of Peru to pursue criminal charges against Hugo Meza Layza for practicing journalism without a professional license, and disseminating allegedly false information on judicial corruption. In 1998, the Peruvian Congress had passed a law reiterating the optional nature of membership in professional associations for those who work as journalists. This resolution is based on the complaint that Capt. Wilmer Delgado Vásquez brought against Hugo Meza in June 1999 for the alleged offense against the public administration, and others.

107. Meza's last investigation was related to the allegedly illegal activities of Captain Vásquez and his links to groups of criminal bands. Vásquez found out about the investigation and began a campaign of threats and intimidation against Meza. According to the information received, an investigation by the daily paper La República confirmed Meza's accusations and took stock of other irregularities in which Vásquez might be involved.

108. The Commission has submitted the case involving the violation of fundamental rights of Mr. Baruch Ivcher Bronstein to the Inter-American Court. Mr. Ivcher Bronstein, a naturalized Peruvian citizen, was the majority shareholder, director, and chairman of the board of directors of Channel 2, a television station. This channel put out information critical of the Peruvian government and the Armed Forces and made public the acts of torture inflicted on former SIE agent Leonor La Rosa Bustamante, by Army officers. It also disseminated the sworn statement by adviser to the National Intelligence Service Vladimiro Montesinos Torres. Later, the Peruvian State arbitrarily stripped him of his citizenship. Peruvian legislation requires one be a Peruvian national in order to be the controlling shareholder of a television station. As a result of being stripped of his nationality, Baruch Ivcher lost administrative control of Frecuencia Latina-Canal 2, and had all of his rights as majority shareholder suspended. The Commission submitted the application for the Court to decide on the alleged violations of Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 20 (right to nationality), 21 (right to property), and 25 (judicial protection).

## **F. CONCLUSIONS AND RECOMMENDATIONS**

109. The foregoing analysis indicates that the effective exercise of freedom of expression in Peru is seriously compromised by the systematic use of the intelligence services and the security forces as instruments of harassment and persecution of investigative journalists and opposition politicians, with the passive and active collaboration of the judiciary. In addition to the activities of these state organs one should consider the political authorities, who, at the highest levels, have categorically denied the existence of serious problems with respect to the freedom of expression.

110. Continuity over time, the similarity in the harassment campaigns, and the similarity in the activities to investigate or press charges against the victims leads to the conclusion that there is planning to seriously limit the freedom of expression in Peru.

111. In other words, the abusive action of the intelligence services and security forces, the refusal of the political authorities to acknowledge the problem, and the active and passive collaboration of a judiciary with serious limitations on its independence, constitute the three fundamental pillars on which the current scheme of harassment and persecution of the freedom of expression in Peru is based.

112. The analysis reveals that the conditions required for the full exercise of the right to freedom to express opposition political ideas or criticism of the government's performance through the press. The Commission considers that the limitations created by the consequences of the exercise of freedom of expression are a serious obstacle to the normal functioning of democracy in Peru. The right to express dissent from acts of government, to denounce irregularities, and to express political views through the press are fundamental for the existence of a democratic state.

113. The Commission is particularly concerned by the effect of these restrictions in the context of the electoral process. The importance of respect for the freedom of expression and information reaches its high point when the citizens need the information required to vote for those who will be responsible for the conduct of government affairs. The State must guarantee the right of those who participate in elections, either as candidates or as voters, to transmit and receive information so as to make it possible for the inhabitants of Peru to enjoy political rights.

114. Based on the foregoing, the Commission makes the following recommendations to the Peruvian State:

1. To adopt specific urgent measures to bring a halt to the attacks on investigative journalists and opposition politicians, and any citizen or person who exercises his or her right to call into question the authorities and to express their political ideas, or other ideas.
2. To take the steps needed to prevent the exercise of freedom of the press from being limited through indirect mechanisms prohibited by Article 13 of the American Convention.
3. To strengthen the institutional mechanisms of control over the national intelligence services so that they not be used to intimidate those who criticize acts of government.
4. To take the steps needed to bring the domestic legislation into line with the American Convention by derogating Article 374 of the Criminal Code, on desacato.
5. To take the steps needed to ensure autonomy, independence, and impartiality in the judiciary, so that it can perform its role of protecting the freedom of expression, consistent with the standards of international law.

6. To ensure that the institutions and agents of the state respect the international and domestic provisions regarding freedom of expression, in particular, Article 13 of the American Convention and the principles of the Declaration of Chapultepec.

7. To carry out promotion activities aimed at state agents and at Peruvian citizens in general to create awareness of the importance of respecting and protecting freedom of expression.

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[1] See IACHR, Report on the Situation of Human Rights in the Dominican Republic, 1999; Third Report on the Human Rights Situation in Colombia, 1999; and Report on the Situation of Human Rights in Mexico, 1998.

[2] Presentation of the Annual Report of the Inter-American Commission on Human Rights 1998. Presented by the Chairman of the Commission, Professor Robert K. Goldman to the Committee on Political and Juridical Affairs of the Permanent Council.

[3] Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalist (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 70.

[4] In "Documentos Oficiales del Proceso de Cumbres de Miami a Santiago," Office of Summit Follow-up, Organization of American States, p. 41.

[5] *Id.*, p. 54.

[6] As of the date of the adoption of this report, it had been signed by Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, Uruguay, and the United States. The Declaration of Chapultepec was also signed by political leaders, writers, academics, constitutional law experts, and representatives of the media of the Americas.

[7] This meeting of UN and OAS rapporteurs and the representative of the OSCE was held in London, under the auspices of the non-governmental organization Article XIX.

[8] The American Declaration was adopted by the Ninth International Conference of American States in Bogotá, Colombia, in 1948.

[9] IACHR, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995), pp. 210-233. Annex D. See also Annual Report of the IACHR, 1998, Vol. III, Report of the Special Rapporteur for Freedom of Expression, p. 37.

[10] *Id.*

[11] See Chapter II, *supra*.

[12] The Miami-based Inter-American Press Association (IAPA) brings together the leading newspapers of the hemisphere. The IAPA has noted, in its Freedom of the Press Report 2000, that: "... Reasons for the grim situation of press freedom in Peru and the international concern are: the seizure of Channel 2 more than two years ago; the criminal prosecution of its owner Baruch Ivcher, his family and colleagues; Peru's withdrawal from the jurisdiction of the Inter-American Human Rights Court; the public abuse of the editor of La República, Gustavo Mohme, who is also an opposition congressman, and other journalists at that paper; the closing of news programs, as well as a creative range of attacks and intimidation against journalists in the interior of the country."

[13] The New York-based Committee for the Protection of Journalists (CPJ) is an independent, non-profit organization that works to safeguard freedom of the press worldwide. With respect to the situation of freedom of press in Peru, in its report Attacks on the Press in 1998 it noted: "... in Peru there is clear evidence of government involvement in a campaign against the press that has included jailings,

detentions, threats, and constant surveillance." On the World Press Freedom Day, the CPJ named Alberto Fujimori one of the 10 enemies of the press of 1999. "These 10 individuals have been disastrous for independent journalism," said Ann K. Cooper, Executive Director of the CPJ.

[14] Reporters without Borders is a non-governmental association based in Paris, France, whose purpose is to defend freedom of the press and protect journalists. In its annual report for 1999, it noted: "In Peru, there is a proliferation of threats and intimidation of the press. It appears that the secret services are the instigators of a defamation campaign waged by several communications media against opposition journalists."

[15] The International Press Institute is a global network of journalists, editors, and media executives dedicated to freedom of the press and to improving journalism practices. In its World Press Freedom Review for 1998, it noted that in Peru: "Throughout the year, journalists were subjected to a systematic campaign of persecution, as President Alberto Fujimori sought to intimidate and control the press in preparation of a bid for a third term in office. In addition to threats and physical attacks, favorite methods of intimidation were the use of trumped-up tax evasion charges and government-sponsored newspaper articles - published in several tabloids - questioning the character and patriotism of certain journalists."

[16] Human Rights Watch is a non-governmental organization in the United States based in New York dedicated to defending human rights worldwide. With respect to freedom of expression in Peru, it noted, in its World Report 1999: "...the campaigns of hostility and intimidation of independent media, inspired by the Government, continued paralyzing the free expression of political opinions...."

[17] On November 24, 1999, the Honorable Chamber of Deputies of Argentina unanimously approved the following statement: "To express its consternation and profound concern over the attitude adopted by the Peruvian State on stripping Mr. Baruch Ivcher Bronstein of his nationality for the purpose of removing Channel 2, "Frecuencia Latina," from his control, thereby restricting his freedom of expression, when Channel 2 reported serious human rights violations and corruption." Among the grounds for the resolution, it is noted that the freedom of expression is: "A fundamental right for supporting the democratic system, considering that it is the citizens who, with their vote, must periodically pass judgment on their rulers. As representatives of the Argentine people and members of a State that says it is committed to democracy and world peace, we cannot turn our heads away in the face of such a grave act of violence, which not only harms the journalist in question, but also deprives the entire sister people of Peru of critical elements for judging their own representatives."

[18] On November 8, 1999, the U.S. Senate approved Resolution No. 209, which expresses concern over interference with freedom of the press and the independence of Peru's legal and electoral institutions, and considering: "Whereas the Department of State's Country Report on Human Rights Practices for 1998, dated February 26, 1999, concludes, with respect to Peru, that 'government intelligence agents allegedly orchestrated a campaign of spurious attacks by the tabloid press against a handful of publishers and investigative journalists in the strongly pro-opposition daily La República and the other print outlets and electronic media'; ... Whereas on July 13, 1997, Peruvian immigration authorities revoked the Peruvian citizenship of Baruch Ivcher, the Israeli-born owner of the Channel 2 television station; and Whereas Baruch Ivcher subsequently lost control of Channel 2 under an interpretation of a law that provides that a foreigner may not own a media organization, causing the Department of State's Report on Human Rights Practices for 1998 to report that threats and harassment continued against Baruch Ivcher and some of his former journalists and administrative staff . . . In September Ivcher and several of his staff involved in his other nonmedia businesses were charged with customs fraud. The Courts sentenced Ivcher in absentia to 12 years imprisonment and his secretary to 3 years in prison. Other persons from his former television station, who resigned in protest in 1997 when the station was taken away, also have had various charges leveled against them and complain of telephone threats and surveillance by persons in unmarked cars': Now, therefore, be it Resolved,

#### SECTION 1.

#### SENSE OF THE SENATE ON ANTIDEMOCRATIC MEASURES BY THE GOVERNMENT OF PERU.

It is the sense of the Senate that--

- (1) the erosion of the independence of judicial and electoral branches of the Government of Peru and the blatant intimidation of journalists in Peru are matters of serious concern to the United States;
- (2) efforts by any person or political movement in Peru to undermine that country's constitutional order for personal or political gain are inconsistent with the standard of representative democracy in the Western Hemisphere;

(3) the Government of the United States supports the effort of the Inter-American Commission on Human Rights to report on the pattern of threats to democracy, freedom of the press, and judicial independence by the Government of Peru; and

(4) systematic abuse of the rule of law and threats to democracy in Peru could undermine the confidence of foreign investors in, as well as the creditworthiness of, Peru."

[19] See Annual Report of the Inter-American Commission on Human Rights 1998, Volume III. Report of the Special Rapporteur for Freedom of Expression, pp. 30-34.

[20] See *infra* reference to the Ivcher case.

[21] IACHR, Report No. 50/99, Case 11.739 (Mexico), April 13, 1999, para. 52.

[22] See paras. 49, 40, and 41 of the Chronology of Complaints in fine.

[23] See, e.g., Eur Court HR, *Lingens v. Austria* A 103 (1986), *Observer and Guardian v. UK*, A216, para. 41 (1991), *Thorgierson v. Iceland* A 239, para. 67 (1992).

[24] See Eur Court HR, *Castell v. Spain* A 236 (1992), para. 46.

[25] IACHR, Report No. 50/99, Case 11.739 (Mexico), April 13, 1999, para. 56.

[26] Article 1(1) of the American Convention on Human Rights establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[27] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 176.

[28] See Principle No. 4 of the Declaration of Chapultepec, adopted by the Hemispheric Conference on Free Speech, held in Mexico City, March 11, 1994. In addition, the IAPA organized the Hemispheric Conference "Unpunished Crimes Against Journalists," held in Guatemala City July 30 to August 1, 1997. That conference resolved as follows:

TO REPUDIATE the murder of and all physical violence directed against journalists as one of the greatest crimes against society, in that it restricts freedom of expression and, as a result, all other rights and freedoms;

TO REPUDIATE acts of commission or omission by those who have the responsibility to investigate and mete out punishment for those crimes but fail to do so, allowing the guilty to go unpunished, thus making the matter even more serious;

TO DEMAND that the authorities carry out their duty to prevent, investigate and mete out punishment for these crimes and to make good for their consequences.

[29] UNESCO, Resolution No. 120 of November 12, 1997.

One should also recall the words of UNESCO Director General Federico Mayor: "The fundamental freedoms are very vulnerable, and none more so than freedom of expression and freedom of the press, which are constantly being curtailed by censorship, imprisonment and sometimes death.... Journalists are the living embodiment of these freedoms and we must stand by them, protect them and support them with all the strength and resources we can muster. This year the list of violations of every kind, including the murder of some 50 journalists, makes it only too clear, once again, that no region of the world is spared. These violations are the work of governments, but also of organized crime and extremist groups wishing to intimidate a profession that could stand in their way.... UNESCO will take action whenever action is necessary, since any setback for freedom of expression and freedom of the press is a setback for democracy." Message issued May 3, 1998, by the Director General of UNESCO on occasion of the celebration of World Press Freedom Day.

[30] United Nations, document cited, para. 28.

[31] In this regard, the Inter-American Court was of the opinion that compulsory membership in an association prescribed by law is incompatible with Article 13 of the American Convention on Human Rights. The Court understood that the compulsory membership of journalists in an organization prescribed by law denies "any person access to the full use of the news media as a means of expressing opinions or imparting information."