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## INTRODUCTION

1. The past year has been a period of transition for the Office of the Special Rapporteur for Freedom of Expression, as the leadership of the Office has passed from one Rapporteur to another. As this report is being completed, my term as Special Rapporteur is coming to a close and the new Special Rapporteur for Freedom of Expression, Eduardo Bertoni, is taking office. In this time of transition, it seems appropriate to pause to reflect on the purpose and the accomplishments of the Office, as well as the challenges it will face in the future.

2. The Office has a permanent mandate, assigned by the Inter-American Commission on Human Rights, designed to promote and protect the full observance of freedom of expression and information in the hemisphere, given the fundamental role this right plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected and violations reported. This mandate, however permanent, is also dynamic, allowing the Office, under the leadership of the Special Rapporteur, to respond to the needs that arise in democracies.

3. It has been stated repeatedly that for the continued development of a stable democracy, elections in themselves are not enough. Other elements inherent to democratic society must also be fostered, such as recognition and respect for human rights, effective and independent legislative and judicial branches of government, a party system that facilitates open lines of communication between citizens and leaders, an active civil society, and, above all, wide-ranging freedom of expression and access to information to ensure that all citizens have the information they need to make decisions.

4. All of these elements are interconnected. Democracy has led to greater freedom of expression in comparison to previous decades when many countries in the Americas were under the rule of dictatorships or authoritarian governments. However, in many Latin American democracies today, the public institutions designed to act as checks on authorities and individuals are still weak. For example, in many cases the Judicial Power fails to investigate situations brought to their attention and punish guilty parties. Additionally, public institutions

have been weakened due, in part, to high levels of corruption. In countries affected by such problems, the press has become the main check on authorities and individuals alike by bringing to light illegal or abusive acts previously unnoticed, ignored or perpetuated by official control bodies. In doing so, the press, in turn, advances democracy through the exercise of freedom of expression.

5. It is in this dynamic context of democratic change and development that the Office of the Special Reporter evaluates freedom of expression in the hemisphere today. There are achievements and there are setbacks as the protection of freedom of expression affects and is affected by changes in other factors essential to democracy, including free elections, respect for human rights, and independent branches of government.

6. One of the most significant achievements of the Office of the Special Rapporteur in the first three years of its operation is the greater awareness of freedom of expression issues it has generated in the region, bringing freedom of expression to the forefront of the issues being discussed in the inter-American system. Due in part to the Office's work, some states have repealed laws that were restrictive of freedom of expression. In other countries, bills to repeal such restrictive laws have been introduced into the legislature, demonstrating an increasing recognition of the problems these laws create. Additionally, laws that are beneficial to freedom of expression, particularly those pertaining to the right to access to information, have recently been passed or are under consideration in several countries. Since the Office was created, the Commission and the Inter-American Court of Human Rights have promulgated a number of important freedom of expression decisions and issued precautionary or provisional measures to protect the rights of journalists in a number of cases. Additionally, there are currently over 40 cases pending before the Commission relating to freedom of expression.

7. There have been setbacks as well as successes in the past three years. Since the beginning of 1998, the year the Office was started, at least 39 journalists have been murdered as a result of their work, making the Americas one of the most dangerous areas in the world to practice journalism. The numbers of journalists killed have not always declined from year to year. In fact, in 2001, there were more journalists murdered as a result of their work than in each of the previous two years.

8. Several states in the region passed laws that placed additional limitations on freedom of expression, such as laws requiring membership in a professional association for the practice of journalism. Other states proposed legislation that, if passed, would prove damaging to freedom of expression. Numerous journalists throughout the region are in jail or facing legal actions as a result of their work.

9. In spite of the setbacks, however, I have no doubt that the process begun by the Office of the Special Rapporteur is an essential one that will produce even greater benefits in the future. The Office will continue to build upon the base of knowledge and experience of its first three years. It now has a network in place for the sharing of information, technical assistance and cooperation with non-governmental organizations, members of civil society, journalists and governments throughout the region. The Office has compiled jurisprudence on freedom of expression from various legal systems and developed mechanisms for guidance in the interpretation of Article 13 of the American Convention, such as the Declaration of Principles on Freedom of Expression, that will be applied to future cases. The Office has also established relationships with its counterparts in the United Nations and regional human rights systems in Europe, Africa and Asia to exchange strategies and collaborate on issues of common concern. Using this as a framework, the Office of the Special Rapporteur will continue to strive for the advancement of freedom of expression in the region in the years ahead.

10. The three and a half years that I have spent as Special Rapporteur have been exciting, challenging and productive. The successes of my Office could not have been achieved without the collaboration of members of civil society, human rights defenders, and governments throughout the region. I thank them and everyone who has contributed to the hemispheric struggle to promote and protect freedom of expression. Most especially, I thank the journalists who through their dedication to informing the public, enable democracy to function.

## CHAPTER I

### GENERAL REPORTS

#### A. Mandate and Competence of the Office of the Special Rapporteur for Freedom of Expression

1. The Office of the Special Rapporteur for Freedom of Expression is a permanent office, with functional autonomy and its own budget. The Inter-American Commission on Human Rights created the Office in exercise of its authority and competence. The Office operates within the legal framework of the Commission.<sup>1</sup>

2. The Inter-American Commission on Human Rights (IACHR) is an organ of the Organization of American States (OAS) whose principal function is to promote the observance and defense of human rights and to serve as an advisory body to the Organization on this subject. The Commission's authority derives mainly from the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States. The Commission investigates and rules on complaints of human rights violations, conducts on-site visits, prepares draft treaties and declarations on human rights and prepares reports on the human rights situation in countries in the region.

3. The Commission has addressed issues pertaining to freedom of expression through its system of individual petitions, ruling on cases of censorship,<sup>2</sup> crimes against journalists and other direct or indirect restrictions on freedom of expression. It has spoken out about threats against journalists and restrictions placed on the media in its special reports, such as the Report on Contempt (*Desacato*) Laws.<sup>3</sup> The Commission has also studied the status of

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<sup>1</sup> See Articles 40 and 41 of the American Convention on Human Rights and Article 18 of the Statute of the Inter-American Commission on Human Rights.

<sup>2</sup> See Inter-American Court of Human Rights. Case "The Last Temptation of Christ" (Olmeda Bustos et al. v. Chile), Judgment of February 5, 2001, VIII Article 13: Freedom of Expression, para. 61C; Francisco Martorell v. Chile in 1996 Annual Report of the Inter-American Commission on Human Rights.

<sup>3</sup> IACHR, Annual Report 1994, *Report on the Compatibility of desacato Laws with the American Convention on Human Rights*, OEA/Ser L/V/II.88, Doc. 9 Rev (1995).



freedom of expression and information through on-site visits and in its general reports.<sup>4</sup> Lastly, the Commission has also requested precautionary measures for urgent action to prevent irreparable harm to individuals.<sup>5</sup> In several cases, such measures were adopted to ensure full enjoyment of freedom of expression and to protect journalists.<sup>6</sup>

4. At its 97th regular session in October 1997, and in exercise of its authority under the Convention and its own Rules of Procedure, the Commission decided, by unanimous vote, to create the Office of the Special Rapporteur for Freedom of Expression (hereinafter “Office of the Special Rapporteur”). It was created as a permanent unit that is functionally autonomous and has its own operating structure. In part, the Office of the Special Rapporteur was created in response to the recommendations of broad sectors of society in different States throughout the hemisphere who shared a deep concern over the constant restriction of freedom of expression and information. Moreover, through its own observations regarding the situation of freedom of expression and information, the IACHR perceived serious threats and obstacles to the full and effective enjoyment of this right, which is so vital for the consolidation and advancement of the rule of law. At its 98<sup>th</sup> special session in March of 1998, the Commission determined what the general characteristics and functions of the Office of the Rapporteur would be and decided to establish a voluntary fund for economic assistance for the Office. In 1998, the Commission announced a public competition for the position of Special Rapporteur for Freedom of Expression in the Americas. After evaluating all the applications and interviewing several candidates, the Commission decided to appoint Argentine attorney Santiago Alejandro Canton as Special Rapporteur. He began his work on November 2, 1998.

5. In creating the Office of the Special Rapporteur, the Commission sought to stimulate awareness of the importance of full observance of freedom of expression and information in the hemisphere, given the fundamental role it plays in the consolidation and

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<sup>4</sup> See *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100 Doc.7 rev. 1, September 24, 1998, and *Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/II. 102 Doc.9 rev.1, February 26, 1996.

<sup>5</sup> Article 29(b) of the Rules of Procedure of the Commission states that: “In urgent cases, when it becomes necessary to avoid irreparable damage to persons, the Commission may request that precautionary measures be taken to avoid irreparable damage in cases where the denounced facts are true.”

<sup>6</sup> In this regard, it is worth pointing out, for example, that on November 21, 1999, the Commission asked the Government of Peru to adopt precautionary measures in favor of journalist Guillermo Gonzáles Arica, which were processed in the framework of case number 12.085. Also, on September 17, 1999, the IACHR asked the Mexican government adopt precautionary measures to protect the life and integrity of journalist Jesús Barraza Zavala.

advancement of the democratic system and in ensuring that other human rights are protected and violations reported; to make specific recommendations on freedom of expression and information to member States to promote adoption of progressive measures to strengthen this right; to prepare specialized reports and studies on the subject; and to respond quickly to petitions and other reports of violations of this right in an OAS member State.

6. In general terms, the Commission stated that the duties and mandates of the Office of the Rapporteur should include, among others: 1. Prepare an annual report on the status of freedom of expression in the Americas and submit it to the Commission for consideration and inclusion in the IACHR's Annual Report to the General Assembly of the OAS. 2. Prepare thematic reports. 3. Gather the information necessary to write the reports. 4. Organize promotional activities recommended by the Commission including, but not limited to, presenting papers at relevant conferences and seminars, educating government officials, professionals and students about the work of the Commission in this area and preparing other promotional materials. 5. Immediately notify the Commission about emergency situations that warrant the Commission's request for precautionary measures or provisional measures that the Commission can request from the Inter-American Court, in order to prevent serious and irreparable harm to human rights. 6. Provide information to the Commission about the prosecution of individual cases pertaining to freedom of expression.

7. The Commission's initiative in creating a permanent Office of the Special Rapporteur for Freedom of Expression enjoyed the full support of OAS member States at the Second Summit of the Americas. At the Summit, the Chiefs of State and Heads of Government of the Americas recognized the fundamental role that freedom of expression and information plays in human rights and in a democratic system and expressed their satisfaction at the creation of this Office. In the Declaration of Santiago, adopted in April 1998, the Chiefs of State and Heads of Government expressly stated that:

We agree that a free press plays a fundamental role [in the area of human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special

Rapporteur for Freedom of Expression, within the framework of the Organization of American States.<sup>7</sup>

8. At the same Summit, the Chiefs of State and Heads of Government of the Americas also expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. The Plan of Action from the Summit contains the following recommendation:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.<sup>8</sup>

9. At the Third Summit of the Americas held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Special Rapporteur for Freedom of Expression and added the following:

[Our Governments will] Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.<sup>9</sup>

## **B. The Office of the Special Rapporteur's Principal Activities in the Year 2001**

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

<sup>8</sup> Plan of Action, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

<sup>9</sup> Third Summit of the Americas, April 20-22, 2001, Quebec, Canada.

10. Since taking office in November 1998, the Special Rapporteur has participated in numerous events aimed at publicizing the creation and objectives of the Office. Widespread awareness of the existence of the Office of the Special Rapporteur will contribute to its ability to successfully carry out its assigned tasks. Activities to promote and publicize the Office's work mainly consisted of participating in international forums, coordinating activities with non-governmental organizations, advising states on proposing legislation related to freedom of expression and informing the public about the Office of the Special Rapporteur through the press. The main objectives of these activities were to increase the awareness among various sectors of society regarding the importance of the inter-American system for the protection of human rights, international standards governing freedom of expression, comparative jurisprudence on the subject and the importance of freedom of expression for the development of a democratic society.

11. The Office of the Special Rapporteur has become a strong proponent of legislative reform in the area of freedom of expression. Through its relationships with member States and civil society organizations, the Office has launched a collaborative effort in support of initiatives to amend laws restricting the right to freedom of expression and to adopt legislation that will enhance people's right to participate actively in the democratic process through access to information.

12. The Office of the Special Rapporteur employs various means to protect freedom of expression. In the course of its daily work, the Office:

13. Analyzes complaints of violations of freedom of expression received by the Commission and conveys to the Commission its opinions and recommendations with regard to opening cases. Follows up on cases open before the Commission pertaining to violations of this right. Requests that the Commission solicit precautionary measures from the member States to protect the personal integrity of journalists and media correspondents who are facing threats or the risk of irreparable harm. Makes recommendations to the Commission regarding hearings to be granted during regular sessions and participates with the Commission in hearings having to do with alleged violations of freedom of expression. The Office of the Special Rapporteur also

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

14. Since the creation of the Office, the Office of the Special Rapporteur has carried out advisory studies and made recommendations to some member States regarding the modification of existing laws and articles that impinge on freedom of expression. The objective in these situations is to make domestic legislation compatible with international standards to more fully protect enjoyment of this right. While preparing its thematic and annual reports, the Office of the Special Rapporteur corresponds with member States to request information on specific subjects related to freedom of expression.

15. The Office of the Special Rapporteur receives information through its informal hemispheric network on the status of freedom of expression in member States. Information is submitted by various organizations monitoring this right, journalists and other sources. In cases considered to involve a serious violation of freedom of expression, the Office of the Special Rapporteur issues press releases about the information it has received, expresses its concern to the authorities, and makes recommendations for reinstating this right. In other cases, the Office of the Special Rapporteur directly contacts government authorities to obtain further information and/or to request that the government take measures to rectify the harm that has been inflicted. The Office of the Special Rapporteur has set up a database comprising numerous press agencies, freedom of expression and human rights monitoring organizations, attorneys specializing in the field and universities, among others, for the dissemination of releases and/or any other information considered relevant.

16. Due to the Office of the Special Rapporteur's efforts to publicize its activities and mandate, diverse sectors of civil society have been able to approach the Office to protect their right to impart, disseminate and receive information.

## **2. Promotion and Dissemination Activities**

17. The following are the principal promotion and dissemination activities carried out by the Office of the Special Rapporteur in 2001.

18. In January 2001, the Special Rapporteur took part in the *Conference on the Role of a Free Press and Freedom of Expression in the Development and Consolidation of Democracies in Latin America and the Caribbean*, to which he was invited by the University of Miami, Florida. At that Conference, the Special Rapporteur described the principal activities of his Office and discussed the general status of freedom of expression in the Americas.

19. In March, the Special Rapporteur was asked to be a panelist at the *Mid-Year Meeting of the Inter-American Press Association* held in Fortaleza, Brazil. In April, he participated in the 111th special session of the IACHR in Santiago, Chile. On April 19-23, the Special Rapporteur attended the Third Summit of the Americas, held in Quebec City, Canada. At that Summit, the Heads of State and Government ratified the mandate of the Special Rapporteur and added the following: “[Our Governments will] Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.”

20. On the occasion of the World Press Freedom Day, in May the Special Rapporteur was invited by UNESCO to take part in the commemorative conference in Windhoek, Namibia, which was attended by the principal organizations devoted to the defense of freedom of expression. The central theme of the conference was evaluation of the status of freedom of expression in the world and the challenges ahead. In May, the Special Rapporteur traveled to Quito, Ecuador to take part in the conference *Freedom of Expression in America*, organized by the Postgraduate School of International Studies of the Central University. During that same month, Dr. Canton also took part, along with senior members of the IACHR, in the *Third Argentine Seminar on Supranational Legality*. That seminar was held in Córdoba, Argentina, organized by that city’s Bar Association. At both meetings, the Special Rapporteur described the general status of freedom of expression in the Americas and the principal concerns of his Office in this area.

21. In June, the Special Rapporteur, together with other senior members of the IACHR, took part in the OAS General Assembly held in San José, Costa Rica. In response to an invitation by the Inter-American Institute of Human Rights, Dr. Canton was a panelist, specializing in freedom of expression, in the Institute's annual *Interdisciplinary Course in Human Rights*.

22. In November 2001, Dr. Santiago Canton took part in the *International Seminar for the Promotion of Freedom of Expression* organized by Article XIX in London. There, he had the opportunity to meet for the fourth time with the other two rapporteurs on freedom of expression in the world, Abid Hussain (UN) and Freimut Duve (OSCE). At the end of the seminar, the three Rapporteurs issued a joint declaration on challenges to freedom of expression in the new century, including countering terrorism, regulating the Internet, and regulating broadcasting.<sup>10</sup>

23. In August 2001, Dr. Santiago Canton took office as Executive Secretary of the Inter-American Commission on Human Rights. At its 114th regular session, the IACHR announced a competition for the post of Special Rapporteur for Freedom of Expression. After evaluating all the applications and having interviewed several of the candidates, the Commission appointed Dr. Eduardo Bertoni, who will take up the post on May 2002.

## **2. Country visits**

24. In June 2001, the Commission conducted an on-site visit to Panama, in which Dr. Santiago A. Canton participated as Special Rapporteur for Freedom of Expression. In December 2001, the Commission conducted an on-site mission to Colombia, in which the Office of the Special Rapporteur for Freedom of Expression participated. In both these visits, reported on in Chapter II of this Report, activities and meetings took place with government authorities, the media, organizations devoted to the defense of freedom of expression, and other bodies in civil society, for the purpose of gathering information and analyzing the status of freedom of expression in those countries.

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<sup>10</sup> See annex, Joint Declaration Challenges to Freedom of Expression in the New Century.





## **CHAPTER II**

### **EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE**

#### **I. A. Introduction**

1. This chapter offers an analysis of the state of freedom of expression in the countries of the hemisphere. It also contains a list of the assassinations of journalists that took place during 2001, the circumstances surrounding those incidents and the alleged motives behind them, and the current status of the corresponding criminal investigations. In addition, it indicates, on a country-by-country basis, the main problems with respect to freedom of expression that are still a cause for concern to the Special Rapporteur; and it also describes the positive developments that took place in some of the hemisphere's countries in 2001.

#### **B. Evaluation**

2. The general situation in the hemisphere with regard to freedom of expression did not change significantly during 2001. The journalists, media, and societies of the Americas continue to encounter obstacles that prevent them from freely exercising the right of free speech. The assassination of journalists is still the most serious problem affecting freedom of expression and information in the continent. During the year 2001, in this hemisphere, nine journalists were murdered. In Bolivia, Brazil, Colombia, Costa Rica, Guatemala, Haiti, Mexico, and Paraguay, journalists lost their lives because they were doing their jobs. That figure is considerably higher than those reported in the previous two years.<sup>11</sup> The increase in the number of journalists killed during 2001 means more than just a violation of those individuals' basic right to life in pursuit of their professions; it also places all other media workers in a situation of extreme vulnerability and danger.

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<sup>11</sup> See: Annual Reports of the Special Rapporteur for Freedom of Expression, 1999 and 2000.

3. The Rapporteur observes with concern the high level of impunity in a large number of cases of crimes against journalists, both in cases in which the suspected perpetrators are agents of the state and in cases in which private individuals are suspected. The Commission has ruled that the failure to conduct serious, impartial, and effective investigations of such crimes and to punish the perpetrators and planners thereof does not merely constitute a violation of the right to due process of the law; it also represents a violation of the right to provide information and express ideas freely, thus giving rise to international responsibility on the part of the state in question.<sup>12</sup> In this connection, the Rapporteur quotes the provisions of the ninth principle of the Declaration of Principles on Freedom of Expression:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

4. This chapter includes a section (see table, page 65) that deals with assassinations of journalists. The circumstances surrounding these crimes and the progress that has been made in investigating them are analyzed in this section, and they are also described in the individual country sections.

5. In this section, using the information received, the Rapporteur's office has prepared a general evaluation of the conditions prevailing for the exercise of free expression in each of the member states, identifying the main problems in each country, the positive steps that have been taken, and any setbacks that have occurred. In preparing this evaluation, the Rapporteur's office made use of information submitted by independent organizations active in the defense and protection of human rights and free speech, reports from independent

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<sup>12</sup> IACHR, Report No. 50/99, Case 11.739 (Mexico), April 13, 1999. In addition, the Inter-American Court of Human Rights has ruled that: "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."

journalists who have been directly affected, and information provided by OAS member states at the Rapporteur's request, among other sources.

6. In addition to the assassination of journalists, the Rapporteur notes that in several of the region's countries, techniques intended to silence the work of reporters and the media are still in common use. Physical and psychological threats and aggression; the harassment and intimidation of journalists and media companies; legal action initiated by the authorities with the aim of silencing the press: these practices are all used in several of our nations.

7. The Rapporteur notes that the arbitrary use of libel and slander laws against investigative journalists in order to silence criticism of public officials continued in several countries during 2001. Contrary to the jurisprudence of the inter-American system, approximately 17 countries still have *desacato*, or disrespect, laws on their statute books, and these are sometimes used to silence the media. The Rapporteur has maintained, on repeated occasions, that provided there is an independent judiciary and the civil courts are used, legal action is a valid tool for defending against abuses committed by journalists or the media. The Rapporteur notes, however, that lawsuits filed by public officials are often used as a form of intimidation to silence the work of reporters and the press.

8. Given the fundamental role that the right of free expression plays in a democratic society, punishments for reporting on matters of public interest can only be imposed in exceptional circumstances.<sup>13</sup> Specifically, a state's legitimate interest in punishing the publication or transmission of information must be sufficiently imperative to outweigh the basic interest of broad freedom of expression.<sup>14</sup> Publications that harm the reputation and privacy of public persons can only be punished through civil proceedings and only when the information was published with "actual malice."<sup>15</sup> Thus, as indicated in Principle 10 of the Declaration of

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<sup>13</sup> See Article 13.2 and 13.5 of the American Convention on Human Rights.

<sup>14</sup> See: Inter-American Court of Human Rights, Advisory Opinion OC-5/85, November 13, 1985 (Arts. 13 and 29 of the American Convention on Human Rights), para. 46, quoting Eur. Court H. R. *The Sunday Times case*, judgment of April 26, 1979, Series A No. 30, para. No. 59, pp. 35-36).

<sup>15</sup> See the tenth principle of the Declaration.

Principles on Freedom of Expression: “In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

9. With respect to access to state-held information and the right of habeas data, we have seen debates on this issue open up within the civil societies of several states. The enactment of laws to protect this right is vital to ensure the transparency of government actions and to protect society’s right of access to information.

10. As stated in previous reports, the Rapporteur still believes that member states need to display greater political willingness to work toward amending their laws and ensuring that their societies fully enjoy freedom of expression and information. Democracy requires broad freedom of expression, and that cannot be pursued if mechanisms that prevent its generalized enjoyment remain in force in our countries. The Special Rapporteur again underscores the need for states to assume a stronger commitment toward that right, in order to help consolidate the hemisphere’s democracies.

11. The Rapporteur’s office also points to the importance of the Internet and its relationship with broad freedom of expression and access to information. The Internet is a means of communication that allows individuals intense involvement in discussing and exchanging information about matters of interest to them. The global dimension of the Internet allows people to obtain information and to communicate instantaneously, irrespective of geographical limitations and without distinctions of race, gender, religion, or social origin. Both the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights offer broad interpretations of the scope of free expression. The Rapporteur urges states to implement mechanisms that will allow all citizens access to the Internet and also to refrain from regulating its content in any way that would violate the provisions of these two international instruments.

12. Finally, the Rapporteur would like to request that all the nations of the Americas, together with their civil societies as a whole, assist him submitting information on the general situation prevailing in their countries with respect to free speech.

### **C. State of Freedom of Expression in the Member States**

13. In order to perform country-specific evaluations, the Rapporteur's office has established a system of categories identifying the different methods used to restrict the right of freedom of expression and information. These categories are the following: assassinations, aggression and threats, detentions, judicial actions, intimidation, prior censorship, and legislation that violates free speech. In addition, each country's evaluation includes the positive developments that have taken place, including the adoption of laws and the existence of legislative bills favoring full enjoyment of the right of free expression.

14. The following pages summarize the information on freedom of expression in the member states that the Rapporteur's office received over the past year. It should be noted that the incidents referred to in this chapter do not in any way constitute a complete overview of how free speech is attacked and threatened in the hemisphere, nor do they include all the complaints and reports received by the Rapporteur's office. It is merely a series of examples, provided in an attempt to indicate the seriousness of the situation vis-à-vis the observance and enjoyment of free expression.

#### **Argentina**

##### **Aggression and Threats**

15. On April 6, 2001, photographer Rolando Andrade of the Argentine daily *La Nación* was attacked by two bodyguards in the employ of Miguel Etchecolatz, who had served as the chief of police in Buenos Aires under Argentina's last military dictatorship. The attack took place while Andrade was covering Etchecolatz's public trial for acts of intimidation.

According to the reports received, the police reacted with indifference to the assault on the photographer.<sup>16</sup>

16. During 2001, the Rapporteur's office was also told of several incidents involving *Río Negro* (a daily from Río Negro province) and its reporters, arising from its allegations of irregularities inside the provincial government. Among the incidents reported was a death threat made in early April 2001 against Jorge Gadano, the paper's correspondent in Neuquén, because of his investigations into irregularities in the handling of public funds.<sup>17</sup>

17. On May 8, 2001, an unidentified person entered the premises of the *FM Inolvidable* radio station in the city of Caleta Oliva, Santa Cruz, Argentina, and set fire to its transmitters. The station's owner, Antonio Barría, reported that this was the fourth attack it had suffered on account of its journalists' investigations into vehicle smuggling and drug trafficking at the port of Caleta Oliva.<sup>18</sup>

18. On June 22, 2001, Fabián Rubino, a journalist with radio station *Mitre*, was insulted and assaulted by a federal police officer. According to the information received, he was covering a demonstration and, when he attempted to enter the area, a police officer denied him access and, after a brief exchange of words, insulted and spat at him. Seeing Rubino's confusion, the sergeant pretended to be the injured party and, with help from another officer, handcuffed the journalist for allegedly resisting authority. A taxi driver came to Rubino's assistance and got in touch with *Radio Mitre*. Because the incident was being broadcast live, the officer relinquished. In addition, only a few days before, members of the gendarmes had violently attacked local journalists who were covering a protest event in Salta.<sup>19</sup>

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<sup>16</sup> This information was provided by the Association for the Defense of Independent Journalism (*PERIODISTAS*), an organization that defends free expression.

<sup>17</sup> This information was provided by the Inter American Press Association (IAPA).

<sup>18</sup> This information was provided by the Latin American human rights section of the International Federation of Journalists (IFJ).

<sup>19</sup> This information was provided by the Association for the Defense of Independent Journalism (*PERIODISTAS*), an organization that defends free expression.

19. On October 18, 2001, Martín Oeschger from *FM Paraná Radio San Javier* was attacked by members of the municipal workers' trade union. He was beaten and threats were made against his life. During the night of June 26, 2001, persons unknown sprayed the wall of his daughter's bedroom with gunfire. The next day, he received death threats over the telephone. It is assumed that these attacks were motivated by the reporter's investigations into corruption within the union.<sup>20</sup>

20. In December 2001, facing an outbreak of social unrest that ultimately led to his resignation and the deaths of 29 people, President Fernando de la Rúa declared a state of emergency across the entire country. The Argentine authorities deployed a police operation to implement the provisions of the state of emergency and halt the demonstrations. Against this backdrop of social protest, the police attacked and violently repressed the citizenry, including several journalists caught covering the demonstrations that took place in practically all corners of the country. As a result of the police repression, more than 25 reporters in different cities around the country suffered serious physical attacks, were harassed, or were arbitrarily arrested by the authorities.

21. In this context, press photographer Luis Cetraro from Santa Fe province was injured in the face and chest. Reporter Gustavo Aguirre and cameraman Roberto Sánchez from Santa Fe's *Canal 13* were also seriously injured. In La Plata, Buenos Aires, Fabián Rubinacci, a cameraman with *América TV* and a leader of the Buenos Aires Press Union, was shot in the forehead with a rubber bullet and had to be taken to hospital. On Sunday, December 23, members of the federal police motorcycle corps physically assaulted Pablo Piovano, a photographer with *Página/12*, and, when he attempted to photograph them, they also destroyed his camera. On Thursday, December 20, Claudio Berón, a reporter with the daily *La Capital* in the city of Rosario, was hit by gunfire while conducting an interview. With people running around in confusion, Berón received a gunshot wound to the lower back and had to be hospitalized. At midnight on that same day, Ignacio González Lowy, one of the directors of *Radio Méjico* and the editor of *Voces* magazine, and Marcelo Faure, a mobile-unit radio reporter, were arrested in the city of Paraná, Entre Ríos, while covering a demonstration by a

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<sup>20</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

22. In February 2002, the organization *PERIODISTAS* sent the Argentine government a report detailing the attacks and police repression suffered by journalists covering the social unrest of December 2001. The organization called on the Argentine State to investigate the incidents and demanded guarantees to protect journalists' professional activities. The report was received by Interior Minister Rodolfo Gabrielli, who asked that communications between the state and the organization be kept open in order to channel all allegations of attempts to undermine freedom of expression.<sup>22</sup>

### **Judicial Actions**

23. In April 2001 the journalist Marcelo Bonelli was indicted by a federal judge for the crime of violating fiscal secrecy—a charge carrying a prison term of between one month and two years—in a newspaper article. Bonelli published the results of his inquiries into the personal fortune of Víctor Alderete, a former public official facing some 20 charges of criminal misappropriation of public funds. In July 2001, the Federal Appeals Court overturned the indictment on the grounds that it represented a disproportionate restriction of free speech. The judges upheld “the timeliness and relevance to society of the information published; these data were not lacking in public interest, in that they did not merely deal with the personal wealth of a public official who managed a portion of the funds of the national budget, they also involved issues strictly relating to said budget during the years he held office.”<sup>23</sup>

24. On September 25, 2001, the Supreme Court upheld a ruling against *Noticias* magazine for damages inflicted on former president Carlos Saúl Menem by publishing details of his private life. The former Argentine president filed suit, claiming that his privacy had been

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<sup>21</sup> This information was provided by the Association for the Defense of Independent Journalism (*PERIODISTAS*), an organization that defends free expression. December 20, 2001; December 24, 2001.

<sup>22</sup> This information was provided by the *PERIODISTAS* association, an organization that defends free expression, and by the daily *Clarín* on February 6, 2002.

<sup>23</sup> This information was provided by the *PERIODISTAS* association, an organization that defends free expression, and by the daily *Clarín*.



invaded. Previously, the magazine's defense had argued that the information published was of general public interest and had convinced the first-instance court to reject the complaint. An appeal was filed and, in March 1998, Chamber H of the Civil Appeals Court overturned the first-instance ruling and ordered the magazine to pay compensatory damages totaling 150,000 pesos (at that time exactly equal to USD \$150,000). Although the magazine lodged an appeal, in a September 25 ruling the Supreme Court upheld the judgment.<sup>24</sup> In October 2001, the organization PERIODISTAS, with support from other international organizations active on free-speech issues, filed a complaint with the Commission in connection with this case.

### **Intimidation**

25. In June 2001 the Special Rapporteur received information about a clause found in the advertising contracts of the Bank of Chubut Province, a public agency, under which the bank could refuse to place advertising in media outlets that had criticized it or had published information deemed negative by its authorities. This information was revealed by the bank's director, Jorge Barcia, at a press conference specifically convened to express his annoyance with a local radio station that had broadcast details of alleged irregularities in how the bank was being run.<sup>25</sup>

26. As in previous years, the Rapporteur's office has received reports of intimidation and attacks on *El Liberal*, a daily paper published in Santiago del Estero province. According to these reports, the paper has suffered repeated harassment and persecution at the hands of the provincial government in response to allegations and critical opinions published on its pages. It has also been reported that the provincial government no longer buys advertising space in the paper.<sup>26</sup>

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<sup>24</sup> This information was provided by the *PERIODISTAS* association and the Committee to Protect Journalists (CPJ), which are organizations that defend free expression.

<sup>25</sup> This information was provided by the *PERIODISTAS* association, an organization that defends free expression.

<sup>26</sup> This information was provided by the *PERIODISTAS* association and the Inter American Press Association (IAPA), which are organizations that defend free expression.

## Other

27. On August 6, 2001, the Citizen Power Foundation filed an *amparo* suit against the Argentine Senate, demanding the publication of the senators' sworn statements of their net worth. The Foundation had asked the Senate's administrative secretariat for the same information in May of that year, but the request was denied. The public employees' ethics law requires that net worth statements be made public.<sup>27</sup>

28. In October 2001, the Criminal Appeals Court of the city of Buenos Aires overturned the indictment of Juan Manuel Trezza, a political leader who, in October 1999, physically attacked Daniel Tognetti, a journalist on the *Caiga quien Caiga* television program. According to the information received, the journalist was attacked at a political gathering. The incident was recorded by TV cameras and witnesses identified Trezza as the assailant. This evidence allowed the party leader to be indicted on charges of bodily harm. Two years after the incident, the 4th Chamber of the Criminal and Correctional Appeals Court of Buenos Aires threw out the evidence and overturned the proceedings.<sup>28</sup>

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<sup>27</sup> This information was provided by Citizen Power through the Public Interest Law Network of Palermo University in Buenos Aires.

<sup>28</sup> This information was provided by the *PERIODISTAS* association, an organization that defends free expression.

## **Bolivia**

### **Assassinations**

29. On July 29, 2001, Juan Carlos Encinas, a journalist with the La Paz newscast *Enlace de Canal 21*, was killed while covering a dispute between two organizations over control of a mining cooperative. He was 39 years old. According to the Federation of Press Workers of Bolivia (FTPB) and the Union of Press Workers of El Alto, a ballistics report issued by the technical judicial police revealed that the ammunition used was army issue. Other sources claimed that journalist was killed by gunshots fired by armed workers.<sup>29</sup>

### **Aggression and Threats**

30. In December 2001, the journalists O'Connor Daguino, Daniel Fernández, Roberto de la Cruz, and José Velasco from the dailies *El Diario* and *Los Tiempos* were threatened and attacked because of their investigations into corruption in the Bolivian police in connection with the assassination of a police officer in August 2001. According to the information received, the slain policeman had divulged acts of internal corruption involving Police Chief Walter Osinaga. Because of his investigations in this case, O'Connor Daguino, a reporter on the newspaper *El Diario*, was attacked by unknown persons while entering his home in the Villa Copacabana district. As a result of this incident, the journalist lost an eye. Daniel Fernández and José Velasco, both reporters with the same paper, were attacked by unknown assailants on the street. Around the same time, *Los Tiempos* also reported that one of its reporters had received threats and another was being intimidated by police chiefs, and that both incidents were related to their investigative work into this case. Journalist Roberto de la Cruz from *El Diario* and the photographer from the *Decano de la Prensa Nacional* also received anonymous telephone calls in which threats were made against their lives and those of their families. According to the information received, the individuals making the threats told the

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<sup>29</sup> This information was provided by the Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF), the World Association of Newspapers (WAN), and the Inter American Press Association (IAPA), which are organizations that defend free expression.

journalists that if they continued to publish stories about this dead policeman, “they would be in a lot of trouble.” The journalists feel they are being persecuted by the police.<sup>30</sup>

## **Intimidation**

31. On July 17, 2001, the *Ondas del Titicaca* radio station in Huarina was forced to stop transmitting. Reports claim that the station has been targeted for harassment and intimidation by the local military authorities.<sup>31</sup>

## **Brazil**

### **Assassinations**

32. On August 16, 2001, Mario Coelho de Almeida Filho, a journalist and manager of the newspaper *A Verdade*, was killed unidentified persons in the vicinity of his home. According to the information received, Coelho was murdered one day before he was due to testify in a criminal libel case brought by José Camilo Zito, the mayor of Duque de Caxias, and his wife, Narriman Zito. The libel suit arose from a story the journalist had published in *A Verdade* about the alleged embezzlement of municipal funds. Some months earlier, he had received a series of threatening telephone calls.<sup>32</sup>

### **Judicial Actions**

33. In May 2001, Mario Quevedo Netom, a journalist with the daily *Folha do Sul* in Vilhenam, Rondonia state, was sentenced to four months’ community service in a libel suit brought by judge Adolfo Theidoro Naujork Neto. The information received indicates that the judge was offended by the journalist’s reporting on local prison conditions.<sup>33</sup>

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<sup>30</sup> This information is based on reports from the Journalists against Corruption organization (PFC) and on articles published in the Bolivian newspapers *El Diario* and *Los Tiempos* in December 2001.

<sup>31</sup> This information was provided by the World Association of Community Radio Broadcasters (AMARC).

<sup>32</sup> This information was provided by the Committee to Protect Journalists (CPJ), Reporters without Borders (RSF), and the World Association of Newspapers (WAN), which are organizations that defend free expression.

<sup>33</sup> This information was provided by Brazil’s National Federation of Journalists (FENAJ).

34. In October 2001, a ruling ordering the daily *O Debate* of Santa Cruz do Rio Pardo to pay a sum of money was upheld. The conviction arose from a suit for “moral damages” filed by Judge Antonio José Magdalena, who felt affronted by articles dealing with his professional performance. According to the information received, the fine imposed exceeded the newspaper’s net worth, thus forcing it to close down. According to Sergio Fleury Moraes, the director of *O Debate*, the paper had been suffering judicial persecution for ten years. One lawsuit filed by the same judge in 1996 saw Moraes placed in prison for seven months.<sup>34</sup>

### **Prior Censorship**

35. In July 2001, the Rio Grande do Sul state government discredited journalist Luis Milman and urged the news magazine *IstoÉ* to refrain from publishing an article about alleged gaming irregularities committed by the Rio Grande do Sul government. According to the information received, the state government is being monitored by the Parliamentary Investigating Commission for Public Security on account of its possible ties with illicit gambling.<sup>35</sup>

36. On July 21, 2001, magistrate Ana Paula Braga Alencastro ordered the seizure of the July 22 edition of the daily *Tribuna Popular*. This decision arose from a lawsuit filed against the newspaper by Dali Pagel, the mayor of São Lourenço do Sul, for “the damage it inflicted on his moral integrity.” According to reports, the edition in question referred to the existence of criminal charges against Pagel for alleged irregularities in his administration. In seizing the edition, the magistrate argued that a newspaper cannot manipulate public opinion or denigrate a public figure.<sup>36</sup>

37. On November 13, 2001, a provisional injunction was issued preventing the dailies *Zero Hora* and *Diario Gaucha*, both based in the Rio Grande do Sul state, from

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<sup>34</sup> This information was provided by Reporters without Borders (France), the *PERIODISTAS* association, and the Inter American Press Association, which are organizations that defend free expression.

<sup>35</sup> This information was provided by the *PERIODISTAS* association.

<sup>36</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

publishing a story about Jairo Carneiro, the former treasurer of the Workers' Party (PT), that *Diario Gaucho* had written in May. The report named public figures and tied them in with acts of corruption. This act of censorship was requested by Diogene de Oliveira, the president of the Citizens' Insurance Club, and Daniel Vercosa, the club's director, who were named in the article. The ban also applies to the Parliamentary Investigating Commission for Public Security, an agency of the Legislative Assembly, which is in possession of a recording of the interview. The representatives of the media companies affected filed an "assault on instrument" remedy against the ban, arguing that it constituted prior censorship by forbidding the publication of information of public interest.<sup>37</sup>

### **Other**

38. In August 2001, the International Federation of Journalists, which includes Brazil's National Federation of Journalists (FENAJ), expressed its concern about the use of false press cards by intelligence agents intending to infiltrate civilian groups and asked the authorities to explain the situation. The daily *Folha de São Paulo* reported that press cards were being used by at least six intelligence operatives purporting to belong to nonexistent news services.<sup>38</sup>

### **Canada**

#### **Aggression and Threats**

39. In July 2001, Tahir Aslam Gora, a Pakistani print and radio journalist living in Toronto, received threatening telephone calls at the community radio station where he hosts an Urdu-language program, as well as anonymous e-mail threats. Gora had also been the victim of death threats and other acts of intimidation earlier in the year, presumably due to his critical stance on a number of issues relating to both Islamic religious practice and the local Muslim

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<sup>37</sup> This information was provided by the *PERIODISTAS* association, an organization that defends free expression.

<sup>38</sup> This information was provided by local organizations, the International Federation of Journalists, and Brazil's National Federation of Journalists (FENAJ).

community. Toronto police have investigated the death threats, but to date have not arrested or charged any suspects.<sup>39</sup>

## **Detentions**

40. On April 20, 2001, Charles East, an American photographer for the *Sipa* agency, was arrested in Quebec City while covering the Summit of the Americas for *Time* magazine. Policemen reportedly mistook East for a similarly-dressed demonstrator who had thrown stones at a policeman, although he wore a helmet with an inscription indicating that he was a member of the press. East was released after three days in detention, but continues to face charges for conspiracy to hide his identity by wearing a gas mask, conspiracy to participate in a riot, contempt for a police officer, at whom he is accused of having thrown stones, and resistance during his arrest.<sup>40</sup>

41. On June 24, 2001, the Royal Canadian Mounted Police (RCMP) seized video footage shot by reporter Todd Lamirande, of the *Aboriginal People's Television Network* (APTN), during a clash in Sun Peaks, British Columbia between protesters and local supporters of the proposed development of a ski resort in the area, which turned violent. The RCMP copied the tape and used it as evidence during a bail hearing for a person charged with mischief arising out of the protest. The RCMP later returned the original tape to Lamirande. The APTN is bringing legal action against the RCMP, alleging that Lamirande was illegally detained and that he was subject to an illegal search of his APTN vehicle and seizure of property, including the videotape.<sup>41</sup>

## **Legislation**

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<sup>39</sup> This information was provided by Canadian Journalists for Free Expression, an organization for the protection of freedom of expression.

<sup>40</sup> This information was provided by Reporters without Borders (RSF), an organization for the protection of freedom of expression.

<sup>41</sup> This information was provided by Canadian Journalists for Free Expression, an organization for the protection of freedom of expression.

42. On December 18, 2001, the Governor General of Canada Adrienne Clarkson promulgated anti-terrorism Bill C-36, after it was passed by the House of Commons and the Senate. Some nongovernmental organizations have criticized some provisions of the law, which may affect the protection of sources and the disclosure of information of public interest, as overly restrictive of freedom of expression. The main criticisms concern the broadness of the statute's language and the severity of the punishments for some infractions.<sup>42</sup> The Office of the Special Rapporteur recalls that restrictions on freedom of expression and access to information must be necessary to achieve a pressing governmental need and narrowly tailored to meet that need.<sup>43</sup> There is no doubt that preventing acts of terrorism is a completely legitimate and pressing governmental need. However, when restrictions on the disclosure of information are drawn in a manner that is over-broad or vague, they could restrict freedom of expression unnecessarily, causing damage to the democratic fiber of society. Additionally, punishments must be proportional to the seriousness of the infraction in order to minimize the limitation on freedom of expression.

## **Chile**

43. During 2000, as was noted in that year's Annual Report of the Special Rapporteur for Freedom of Expression, the Chilean State made a series of amendments to its laws governing free expression. The result of these amendments was the enactment of the new Press Law which repealed, *inter alia*, the provisions for prior censorship and the crime of *desacato*, or contempt, set forth in Article 6(b) of the State Interior Security Law. Nevertheless, Chilean law still contains provisions that restrict freedom of expression, such as Article 263 of the Criminal Code, which defines the crime of disrespect of authority.

## **Judicial Actions**

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<sup>42</sup> This information was provided by Reporters without Borders (RSF), an organization for the protection of freedom of expression.

<sup>43</sup> See Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, para. 46.



44. In November 2001, the Supreme Court lodged a complaint for disrespect of authority against the businessman Eduardo Yáñez. On November 28, 2001, Mr. Yáñez appeared as a panelist on the *Chilevisión* television channel's *El Termómetro* program. During the program he criticized the Chilean Supreme Court for the mistakes it had committed in two cases. As a result of Yáñez's statements, the Court filed suit under the disrespect provisions of Article 263 of the Criminal Code. On January 15, 2002, Mr. Yáñez was arrested and charged. The next day, Mr. Yáñez was able to make bail and was provisionally released, but the trial remained ongoing. If convicted of the charges against him, he could be sentenced to up to five years in prison.<sup>44</sup> The Rapporteur's office was quick to express its concern about these proceedings and recommended that the State of Chile repeal the provisions of Article 263 of its Criminal Code that establish the crime of disrespect of authority.<sup>45</sup>

45. The Inter-American Court has said that the protection of free expression must extend not only to favorable information and ideas, but also to those that "offend, shock, or disturb," because "such are the demands of that pluralism, tolerance, and broadmindedness without which there is no democratic society." Article 263 of Chile's Criminal Code is in conflict with the jurisprudence of the inter-American system, and its use constitutes a clear violation of the right to freedom of expression.

### **Prior Censorship**

46. On December 7, 2001, the state-owned company Metro S.A. refused to allow publicity posters for a human rights documentary called *Estadio Chile*—a reconstruction of what happened to the illegal detainees held in a Chilean sports stadium following the 1973 *coup d'état*—to be displayed on the platforms of the Santiago metro system. Company officials said they would not put up the posters "because of their political content" and because they could be "counterproductive for metro users." The information received indicates that the documentary was produced with funding from two government agencies, the National Arts Fund (Fondart)

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<sup>44</sup> In March 2002, at the IACHR's headquarters, Executive Secretary Dr. Santiago Canton met with Eduardo Yáñez, lawyers Ernesto Yáñez and Pablo Olmedo Bustos, and representatives of the World Press Freedom Committee. Additional details on his trial were provided at that meeting. He was at that time still being tried and, to attend the meeting, he had to apply for a special permit to leave the country, which was issued to him for a maximum absence of 20 days.

<sup>45</sup> See, in the annexes: Press Release N° 51/02, Office of the Special Rapporteur for Freedom of Expression, January 16, 2002.

and the Development Corporation (Corfo), together with other contributions. The documentary contains unpublished reports and pictures from the immediate aftermath of the September 1973 coup d'état in Chile, when the stadium was used as a detention center and torture facility. In addition, the film was awarded the grand prize at the Santiago Documentary Festival in November 2001.<sup>46</sup>

### **Positive Actions**

47. On October 19, 2001, the Chilean courts lifted the ban on distribution of journalist Alejandra Matus's work *El Libro Negro de la Justicia Chilena* ["The Black Book of Chilean Justice"] after more than three years of censorship. The decision was handed down by justice Rubén Ballesteros of the Santiago Appeals Court. The decision was based on the repeal of Article 6.b of the State Interior Security Law in May 2001 and the enactment of the new Press Law. The court's ruling also dismissed the charges against Bartolo Ortiz, general manager of the publisher Editorial Planeta, and editor Carlos Orellana, who were being prosecuted alongside Ms. Matus for the crimes of defamation and libel. In the same judgment, Ballesteros temporarily dismissed the bribery and contempt charges against Alejandra Matus. He also ordered the release of the 1000-plus copies of the book that had been confiscated from Editorial Planeta, thereby allowing it to be distributed freely in Chile's bookstores.<sup>47</sup>

48. During 2001, Chile's Film Rating Council (CCC) lifted its bans on the following motion pictures: "Everything You Always Wanted to Know About Sex," by Woody Allen; "Bilbao" and "Las edades de Lulú," by Juan José Bigas Luna; and "Pepi, Luci y Bom y otras chicas del montón," by Pedro Almodóvar. All these films had been banned by the CCC during the 1990s.<sup>48</sup>

49. On August 25, 2001, Chile amended its constitution to eliminate prior censorship, replacing it with a system for rating motion pictures. Thus, on March 5, 2001, the President of

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<sup>46</sup> This information was provided by the journalist Alejandra Matus and several free-speech organizations.

<sup>47</sup> This information was provided by the Press and Society Institute (IPYS), an independent organization for the defense and protection of free expression.

<sup>48</sup> This information was provided by the Press and Society Institute (IPYS), an independent organization for the defense and protection of free expression.

the Republic presented Congress with a draft Law on the Rating of Cinematographic Works, intended to regulate the screening of films in Chile.

50. With respect to prior censorship, the Commission sent the Inter-American Court its comments on Chile's report on its compliance with the judgment handed down by the Court on February 5, 2001, in the case of the film *The Last Temptation of Christ*. These comments analyzed whether the constitutional and legal amendments introduced by the Chilean State vis-à-vis the screening of motion pictures were in line with Article 13 of the American Convention.<sup>49</sup>

## **Colombia**

51. On December 7 to 13, 2001, at the invitation of President Andrés Pastrana Arango and in response to requests voiced by different sectors of Colombian society, the Rapporteur accompanied the Commission on a visit to Colombia, during which he worked to evaluate the conditions currently faced by journalists in that country. Following the visit, the Rapporteur issued a press release with his preliminary analysis of the information gleaned from that trip.<sup>50</sup>

52. During the visit, the Rapporteur's staff undertook a series of activities in the cities of Bogotá and Medellín, including meetings with state agencies responsible for protecting journalists, managers and editors of media outlets, independent organizations, and journalists from across the country, with the aim of analyzing the conditions under which journalism is practiced in Colombia. The information gathered will subsequently be processed, and the Rapporteur's office will issue a special report for inclusion in the IACHR's forthcoming country report on Colombia.

53. Without prejudice to the information to be published in this report on freedom of expression in Colombia, the Rapporteur expresses his grave concern about the assassinations,

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<sup>49</sup> See Chapter V.

<sup>50</sup> See, in the annexes: Press Release N° 49/01, Office of the Special Rapporteur for Freedom of Expression, December 13, 2001.

threats, attacks, kidnappings, intimidation, and other acts of violence that are a fact of life for a large number of journalists in the country.

54. During the visit, the Rapporteur's staff received information about approximately ten journalists who had been murdered. As of the date of this report, it has been impossible to determine how many of them were killed because of their professional activities. According to the Committee to Protect Journalists (CPJ), three journalists were killed in Colombia because of their reporting work. These journalists were Flavio Bedoya, José Duviol Vásquez Arias, and Jorge Enrique Urbano Sánchez.<sup>51</sup> According to Reporters Without Borders (RSF) and the Press and Society Institute (IPYS) and the report they drew up after their November 2001 mission to Colombia, twelve journalists were killed in that country. However, in four cases it has been established that the slayings had no connection to the journalists' work and, in another four cases, the motives for the crimes are still unclear.<sup>52</sup> Finally, the report confirms the same figure and the same names as CPJ.

55. Based on the reports cited and the information received from different sources before, during, and after the visit, the Rapporteur's office arrives at the same total number of cases, believing that there are reasonable grounds for concluding that the journalists were killed because of their professional endeavors. However, the Rapporteur believes that mention should also be made, without prejudgment, of other murders that took place during 2001 and that are still being investigated to determine the motives behind them and any connection to the journalistic profession. The inclusion of all the assassinations perpetrated in 2001 illustrates that in Colombia, journalism is a high-risk occupation.

56. The Rapporteur expresses his grave concern at a fact that he was able to corroborate during his visit: more than 90 percent of the murders committed in Colombia over recent years remain unpunished and, in some cases, investigations to identify the intellectual and material authors have not even commenced. The high level of impunity existing in Colombia helps perpetuate the violence against the profession of journalism.

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<sup>51</sup> See: Report of the Committee to Protect Journalists (CPJ), 2001.

<sup>52</sup> *Los grupos armados contra la libertad de prensa* ["Armed Groups Against Freedom of the Press"] by Reporters Without Borders (RSF) and the Press and Society Institute (IPYS), November 2001.

57. The Rapporteur underscores that it is the duty of the Colombian State to begin serious and impartial investigations, punish those guilty of the assassinations, and provide the victims' families with appropriate compensation. In this regard, the Rapporteur repeats the comments made in earlier reports:

The duty of States to investigate is an "obligation pertaining to a means or conduct," which cannot be considered as unfulfilled only because the investigation may have failed to produce a satisfactory result, but "it must be undertaken seriously and not as a simple formality doomed in advance to be futile." As regards the investigation, it "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."<sup>53</sup>

58. The Rapporteur's office also interviewed more than 30 journalists employed in the regions most seriously affected by the armed conflict. These areas of the country are fought over by combatants who see the press either as an obstacle or as a tool for achieving their goals. The most alarming reports came from the regions of Antioquia, Nariño, and Caquetá. Journalists reported that they constantly suffer from physical and psychological attacks, threats, and other forms of intimidation at the hands of armed rebels, paramilitary groups, and members of the armed forces. In this regard, they said that those involved in the armed conflict should refrain from identifying journalists as allies of their opponents.

59. The remoteness and isolation of some communities make the problem worse, since violence perpetrated against journalists and media outlets there does not receive the same coverage in the national press as when it happens in the main cities. This means that reporters in the provinces enjoy less protection because of the scant attention paid to attacks on them; on occasions, this situation has led to self-censorship, the closure of media outlets, and even the abandonment of the profession by journalists.

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<sup>53</sup> See: IACHR, Annual Report 1998. Report of the Office of the Special Rapporteur for Freedom of Expression, April 16, 1999, pp. 49-50.

60. The Rapporteur recognizes the efforts made by the Colombian authorities to guarantee the right of free expression by creating mechanisms to protect journalists, such as the Sub-Unit for Investigating Assassinations of Journalists of the National Human Rights Unit under the Office of the National Attorney General, and the Interior Ministry's Program for the Protection of Journalists and Members of the Media. These mechanisms have made it possible to protect the personal integrity of a large number of Colombian journalists. Irrespective of this, the Rapporteur recommends that the Colombian State grant increased funding to its government programs for defending and protecting free expression and that it also conduct awareness campaigns.

### **Assassinations**

61. On April 27, 2001, journalist Flavio Bedoya from the newspaper *Voz* was shot four times and killed in Tumaco, Nariño. According to reports, Bedoya had been receiving threats as a result of investigations he had published into clashes between different armed groups and, in particular, into the actions of paramilitary forces.<sup>54</sup> The journalist had reported these threats to the local authorities and to the Interior Ministry.

62. On July 6, 2001, journalist José Dubiel Vásquez, the manager of the radio station *La Voz de la Selva*, was shot twice and killed by two individuals in the city of Florencia, Caquetá. He had been working at the radio station since February 2001, when he was hired to replace reporter Alfredo Abad, who was killed on December 13, 2000.<sup>55</sup> This assassination has been tied in with his investigative reporting into acts of corruption involving local government officials and members of armed rebel groups.<sup>56</sup> The journalist had published a report into corruption involving Lucrecia Murcia, the former mayor of Florencia, and other local officials. In

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<sup>54</sup> This information was provided by the Foundation for Press Freedom (FLIP), the Committee to Protect Journalists (CPJ), the Inter American Press Association (IAPA), and the Press and Society Institute (IPYS), all of which are independent organizations that work to defend freedom of expression.

<sup>55</sup> This information was provided by the Foundation for Press Freedom (FLIP), the Press and Society Institute (IPYS), the Committee to Protect Journalists (CPJ), the Inter American Press Association (IAPA), and the World Association of Newspapers (WAN), all of which are independent organizations that work to defend freedom of expression.

<sup>56</sup> This information was provided by the Committee to Protect Journalists (CPJ), an independent organization that defends free expression.

turn, the radio station *La Voz de la Selva* conducted an investigation into possible irregularities in how public funds were handled by the governor of Caquetá, Pablo Adriano Muñoz. The governor sued the journalist for defamation and libel and accused him of endangering his life by publishing those allegations. Some days before his death, Dubiel Vásquez said that he felt threatened. The attorney representing the journalist in the libel suit, Carlos Alberto Beltrán, was forced to leave the city after an attempt was made on his life.<sup>57</sup>

63. When José Dubiel Vásquez was killed, his colleague Omar García was with him and was also injured. After beginning a probe into Vásquez's assassination, García received several threats by telephone and on the street. He was finally taken in by the Interior Ministry's Program for the Protection of Journalists and transferred to Bogotá. However, because his safety could not be assured there either, in August 2001, with help from international organizations, he left the country.<sup>58</sup>

64. Previously, in January 2001, journalist Alvaro Dussán of *La Voz de la Selva* had also reported threats made by the FARC and had been forced to take refuge abroad.<sup>59</sup> According to reports, *La Voz de la Selva*, a *Radio Caracol* network affiliate, had been declared a "military target" by the Revolutionary Armed Forces of Colombia (FARC). In addition, during 2001, journalist Ricardo Calderón of *Semana* magazine, sent to the city as a special correspondent, was forced to flee immediately after learning that his life was in danger.

65. On July 8, 2001, journalist Jorge Enrique Urbano Sánchez, the presenter of the local TV program *Amanecer Porteño* and manager of the *Emisora Mar Estéreo* radio station, received four fatal gunshot wounds in the seaport of Buenaventura, Valle department. According to reports, in his last radio broadcast Urbano Sánchez had denounced a local criminal gang. The journalist also served as the manager of Corporación Recrear, a company

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<sup>57</sup> *Los grupos armados contra la libertad de prensa* by Reporters without Borders (RSF) and the Press and Society Institute (IPYS), November 2001.

<sup>58</sup> *Ibid.*

<sup>59</sup> See: Annual Report of the Foundation for Press Freedom (FLIP), 2001.

responsible for maintaining green spaces, relocating street vendors, and evicting drug dealers. He had previously received death threats, which he attributed to these undertakings.<sup>60</sup>

## **Intimidation**

66. In October 2000, journalist Andrés Gil Gómez, cameraman Gustavo González from *RCN Televisión*, and their driver, Pedro Manuel Pinto, were abducted for several hours by armed rebel groups on the road from Medellín to Bogotá. More than a year after the incident, they report that the armed group that kidnapped them is still upholding a ban on their entry to that area. They also continue to receive intimidating telephone calls at their homes and places of business, and communiqués containing threats against them are transmitted over the Internet or passed on to them by colleagues. Their TV channel has been forced to assign them to other areas and only when absolutely necessary does it send other journalists into the area.

67. Investigative journalists in Bogotá claimed that dissident groups were pursuing a strategy intended to silence their work through assassinations, repeated intimidation, and forced displacement. They said this was a new strategy on the part of the fighters, aimed at destabilizing the country and hindering the peace process.

68. In addition, other investigative journalists and editors of the Human Rights and Peace sections of the Colombian capital's main dailies expressed their concern about the deteriorating quality of information published in the media and about the disappearance of major national newspapers and newscasts.

69. These journalists said they were alarmed at the reduction in the number of pages given to—and, in some cases, the complete elimination of—the Human Rights and Peace sections in the country's main newspapers, in which specialized reporters report on the armed conflict and investigate developments within it. They claim that the media company owners are not sufficiently interested in preserving or expanding these sections, and that all the information

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<sup>60</sup> This information was provided by the Committee to Protect Journalists (CPJ), the Foundation for Press Freedom (FLIP), and the Press and Society Institute (IPYS), which are organizations that defend free expression.



printed there is because of pressure from the journalists themselves and reporters' own commitments to the subject.

70. The Rapporteur promptly asked the media management community to support those sections, because the work of journalists in that area plays an essential role in shaping public opinion and also offers an example for other media outlets in the hemisphere to follow.<sup>61</sup> The Rapporteur now repeats that request, believing that it is vitally important for those journalists to continue to keep Colombian society apprised of developments in the armed conflict and informed about the country's human rights situation.

71. Jineth Bedoya Lima, a reporter on the daily *El Espectador*, was kidnapped at the gate of La Modelo prison in Bogotá in May 2000, an abduction witnessed by five police officers who failed to come to her assistance. She was brutally tortured and then released some hours later. That year the Commission asked the Colombian State to grant precautionary measures to protect this journalist's person. During the visit, she expressed her dissatisfaction with the progress made in the investigation of her case, which was still pending at the Sub-Unit for Investigating Assassinations of Journalists of the National Attorney General's National Human Rights Unit. According to the journalist's testimony and as subsequently corroborated by the Rapporteur, the investigation of her case is at a standstill and no progress whatsoever has been made. As of the date of this report, no arrest warrants had been issued. The Rapporteur's office received a list of the investigations into attacks on journalists being processed by the Sub-Unit for Investigating Assassinations of Journalists of the National Attorney General's Human Rights Unit. The official report notes that the investigation of this case is still at the preliminary inquiry stage and, to date, the Unit has only taken a statement from the victim.<sup>62</sup>

72. The journalist also reported that following this incident she was given a police escort and continued to work on the paper. However, two months later, one of the bodyguards

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<sup>61</sup>See, in the annexes: Press Release N° 49/01, Office of the Special Rapporteur for Freedom of Expression, December 13, 2001.

<sup>62</sup> "Case 807: kidnapping, threatening behavior, rape of Jineth Bedoya Lima, on May 25, 2000, in Bogotá. The National Prosecution Directorate assigned the investigation of this incident to the National Human Rights Unit in resolution 0907 of June 6, 2000. It is at the preliminary inquiry stage; a statement has been taken from the aforesaid journalist; and formalities are proceedings with a view to establishing the motivations for and perpetrators of these actions." Ongoing investigations at the National Human Rights and International Humanitarian Law Unit in which the victim was a journalist, Office of the Attorney General of the Nation, Colombia.

assigned to her was arrested and charged with theft. Jineth Bedoya Lima has received several offers to leave the country but she refuses to leave her job and continues to demand that the state conduct a serious and impartial judicial investigation. She maintains that she cannot trust the security mechanisms offered by the state, since she believes the state itself was responsible for her abduction. She did not accept a new assignment of bodyguards and, as of the date of this report, she continues to work without security.

73. In January 2001, journalist Claudia Gurisatti, a presenter with *RCN Televisión*, left the country after being informed of the existence of a plan to murder her. Gurisatti returned to Colombia in June 2001 and six months later, the threats were made anew and she decided to leave the country again.

74. On May 21, 2001, the police defused a car bomb loaded with explosives in front of the Bogotá offices of the weekly *Voz Proletaria*. Alvaro Angarita, a journalist on the magazine, said that the authorities arrived five hours after being notified. He also told the *Caracol* network that the bomb was aimed at Carlos Lozano, the magazine's editor and a member of the Commission of the Notables, a group that during 2000 offered recommendations for resolving Colombia's armed conflict.<sup>63</sup>

75. The newspaper *Voz* is the official organ of the Colombian Communist Party. Journalists in the region stated that since the arrival of the armed groups, followers of that party have been facing increased persecution and threats.

76. On April 19, 2001, the weekly *El Otro* in the city of Pasto was targeted in a bomb attack and suffered serious damage. Its editor, Ricardo Romero, attributed this attack to the serious allegations the magazine has published.

77. In April 2001, 20 copies of the newspaper *Voz* were burned, and threats were made to the effect that journalists working on the paper would suffer the same fate. *Voz* journalist Alfonso Pardo reported that in August 2001, General Pedraza publicly told the Office

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<sup>63</sup> This information was provided by the Committee to Protect Journalists (CPJ), the Press and Society Institute (IPYS), and the Foundation for Press Freedom (FLIP), which are organizations that defend free expression.

of the Attorney General that there were “guerrilla infiltrators” among the members of the newspaper profession. In September, reporters from the paper informed the authorities that they were being followed by individuals on motorcycles, only to be told that there were “no available resources” to provide them with protection.

78. On November 9, 2001, four journalists received serious threats from the group that calls itself the Southern Liberators Bloc of the United Self-Defense Forces of Colombia (AUC). The group threatened the lives of three reporters and a cameraman in a communiqué sent to their respective places of work. In that document, the armed group accused the journalists of doing their jobs “dishonestly” and urged them to leave the profession within the following 48 hours or they would “be executed.” The journalists who received these threats were Germán Arcos, a cameraman with *Caracol Televisión*, Oscar Torres, chief editor of the *Diario del Sur* and a correspondent for the *Noticiero de las Siete* newscast, Cristina Castro, a correspondent for the *Noticiero RCN* program, and Alfonso Pardo, a correspondent for *Semanario Voz* and a Peace Commissioner in the Nariño department. The Commission, at the Rapporteur’s request, asked the Colombian State to adopt precautionary measures to protect the lives and persons of these four journalists. The Colombian State acceded to the IACHR’s request and immediately extended the measures sought.

79. During his visit, the Rapporteur met with three of the threatened journalists, who had remained in Bogotá for security reasons. Alfonso Pardo reported that the threats against him had not stopped and that he had received suspicious telephone calls at his brother’s home in Bogotá. Cristina Castro and Germán Arcos were completing the formalities necessary to leave the country; however, they said that they were doing so only because of security concerns, and that what they wanted was to return to their hometowns. Oscar Torres left the country after the threats and settled in Paraguay. The journalists claimed that the city of Pasto failed to provide the minimum guarantees of security necessary to pursue journalism and that the media no longer report incidents of this kind because of fear of reprisals.

80. In November 2001, media workers in Nariño organized a day of protest to mark their repudiation of the threats received by several journalists in the space of just one week.<sup>64</sup> That same month, Oscar Torres, assistant editor of the daily *Diario del Sur*, fled the country. Torres's trip was carried out with support of the Interior Ministry's Program for the Protection of Journalists and the Foundation for Press Freedom (FLIP).

### **Other assassinations in Colombia**

81. According to the information received, uncertainties still exist regarding the motivation behind the following murders. As of the date of this report, investigations to establish whether or not they were related to the victims' journalistic activities were still ongoing. The Rapporteur has decided to list them; nevertheless, their inclusion neither prejudices the attacks nor confirms that they were direct attacks on freedom of expression. They do, however, illustrate the backdrop of violence against which journalists in Colombia must work and the problems encountered in determining and investigating the circumstances surrounding such assassinations and the reasons behind them.

82. On April 30, 2001, Carlos Alberto Trespalacios, the communications director of Medellín's municipal Sports and Recreation Institute (INDER), was shot three times and killed. Trespalacios had served as press agent for the mayor, Luis Pérez Gutiérrez, during the previous election.<sup>65</sup> Trespalacios did not work for a media outlet, but he did have a degree in journalism.

83. On May 3, 2001, Yesid Marulanda, a sports reporter with Cali's *Noticiero Notipacífico*, was killed by unknown persons while leaving the Santiago University in Cali, where he gave classes. The journalist's family says they are unaware of any prior threats. According to reports, Marulanda had led a media campaign against a low-cost housing program that had swindled some of its buyers.<sup>66</sup>

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<sup>64</sup> See: Annual Report, Foundation for Press Freedom (FLIP), 2001.

<sup>65</sup> This information was provided by the Foundation for Press Freedom (FLIP), an organization that defends free expression.

<sup>66</sup> This information was provided by the Foundation for Press Freedom (FLIP) and the World Association of Newspapers (WAN), which are organizations that defend free expression.

84. On May 18, 2001, the body of radio reporter Edgar Tavera Gaona was found in San Lorenzo in Güepsa municipality, Santander. According to the national police, the journalist was killed by the armed dissident group known as the Revolutionary Armed Forces of Colombia (FARC) because of his recent reporting about violent incidents in the area.<sup>67</sup>

85. On June 28, 2001, Pablo Emilio Parra Castañeda, a community leader and media worker, was shot twice and killed. He was the manager of the *Emisora Planadas Stereo* radio station and president of the Red Cross's municipal operations unit in the municipality of Planadas, Tolima. His killers, who had identified themselves as FARC fighters, left a sign on his body saying, "Informer."<sup>68</sup> Parra Castañeda enjoyed great standing in the region because of both his journalism and his community work.

86. On July 4, 2001, the journalist Arquímedes Arias Henao was killed on the premises of the radio station *Fresno FM Estéreo* when an unidentified individual came in to the station and shot him three times. He was the manager of that station and the owner of another, *Armonía FM Estéreo*, in the municipality of Palocabildo, Tolima.<sup>69</sup>

87. On July 16, 2001, the journalist Eduardo Estrada Gutiérrez was killed in San Pablo Sur de Bolívar. He was working to set up a community radio station and was the president of the town's Association for the Development of Communication and Culture.<sup>70</sup> However, another source claims that he was killed because he was about to participate on a negotiating panel between representatives of civil society and the National Liberation Army (ELN). For its part, the Central Magdalena Association of Community Radio Stations underscored his work in democratizing access to the media and, after its own investigation, the

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<sup>67</sup> This information was provided by the Foundation for Press Freedom (FLIP) and the Latin American human rights section of the International Press Federation, which are organizations that defend free expression.

<sup>68</sup> This information was provided by the Press and Society Institute (IPYS), the Inter American Press Association (IAPA), and the Foundation for Press Freedom (FLIP), which are organizations that defend free expression.

<sup>69</sup> This information was provided by the Foundation for Press Freedom (FLIP), the Committee to Protect Journalists (CPJ), the Inter American Press Association (IAPA), and the World Association of Newspapers (WAN), which are organizations that defend free expression.

<sup>70</sup> See: Annual Report, Foundation for Press Freedom (FLIP), 2001.

Inter American Press Association (IAPA) decided that the simple fact of working in community radio had cost this journalist his life.<sup>71</sup>

88. On December 23, 2001, the journalist Alvaro Alonso Escobar, owner of the weekly *La Región*, was killed in the town of Fundación, Magdalena department. Escobar also worked for the daily *El Informador*. Investigations revealed that the motive behind the murder could have been personal in nature, since the victim was murdered inside his home by an unidentified individual who had been allowed to come in. However, other versions suggest that the murder could have been a consequence of allegations the journalist had recently made about local government corruption. Rubén Peña, chief editor of *El Informador*, said that Escobar had told his wife that if anything happened to him, she was to report the incident to the relevant international organizations. The journalist's wife left town after the murder. Escobar was covering the region's municipal administrations and his work required that he travel extensively through areas largely controlled by armed rebel groups.<sup>72</sup>

## **Costa Rica**

### **Assassinations**

89. On July 7, 2001, Parmenio Medina, a radio reporter and the host of the program *La Patada on Radio Monumental*, was killed in Santo Domingo de Heredia. The information received notes that the journalist's radio show denounced acts of corruption. Prior to the murder, on May 9, 2001, persons unknown had shot at his house. After this incident he was granted police protection, but at his own request it was withdrawn in June.<sup>73</sup> Three months after Medina's murder, the former director of the Judicial Investigation Agency, Linneth Saborio, acknowledged that no clues had yet been found to indicate the perpetrators of the crime.<sup>74</sup>

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<sup>71</sup> *Los grupos armados contra la libertad de prensa*, by Reporters without Borders (RSF) and the Press and Society Institute (IPYS), November 2001.

<sup>72</sup> This information was provided by the Foundation for Press Freedom (FLIP) and the Press and Society Institute (IPYS), which are organizations that defend free expression.

<sup>73</sup> This information was provided by the Committee to Protect Journalists (CPJ), the International Association of Broadcasting (IAB), Reporters Without Borders (RSF), the Inter American Press Association (IAPA), and the World Association of Newspapers (WAN), which are organizations that defend free expression.

<sup>74</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

## **Other**

90. In November 2001, several human rights and free speech organizations expressed their concern at a draft executive decree under which the questions that journalists could ask the country's President at press conferences would be determined beforehand. Under the terms of the decree, the President would only respond to questions related to the issue at hand, leaving all other questions to be answered by letter, electronic mail, or fax.

91. The Office of the Special Rapporteur asked the Costa Rican government for information about this, and was told that the press office had been considering the possibility of implementing a procedure for addressing the journalists' concerns, but that the intention was not to undermine freedom of expression. The government of Costa Rica explained that the procedure had been deemed necessary to comply with an express ban on publicity under which the government would be placed for the six-month period leading up to the presidential election.<sup>75</sup>

## **Cuba**

92. During the year 2001, no changes in Cuba showed any political willingness on the part of that state to work toward greater respect for freedom of expression and information. As has been noted on other occasions, the absence of a plural democracy in Cuba translates, in practical terms, into systematic violations of free speech. The Cuban State continues to deny its citizens freedom of expression and free access to information. In addition, the legal system imposes countless obstacles on the ability to receive and publish information. The Cuban authorities continue to use tactics of harassment and intimidation against independent journalists in order to silence criticism of the government.

93. According to information received, a total of 29 journalists and other media workers were arrested on charges of contempt of authority during 2001. In addition, there have

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<sup>75</sup> Information provided by the Costa Rican government on November 20, 2001.

been countless cases in which independent journalists and the press have been intimidated or pressured. Additionally, as in previous years, several media workers have been forced to flee the country.<sup>76</sup> In Cuba, the state continues to enjoy a monopoly over information and absolute control thereof, thus denying the Cuban people the right of access to more than one source of information and opinion.

### **Aggression and Threats**

94. Between July and August 2001, Jorge Olivera Castillo, Graciela Alfonso, and Jesús Álvarez, three independent journalists and members of the *Manuel Márquez Sterling Society for Reporters*, a group that provides training courses for independent journalists, received intimidation in the form of acts of aggression and interrogations at the hands of the security forces, intended to silence their reporting.<sup>77</sup>

95. During October 2001, the *Manuel Márquez Sterling Society for Reporters* suffered harassment at the hands of the State Security Department (DSE). On October 12, two DSE agents arrived at the society's headquarters to inform its director, Ricardo González Alfonso, that a ban had been imposed on its 2001-2002 cycle of classes. On October 14, agents of the political police visited the homes of journalists Graciela Alfonso, Dorka de Céspedes, Aimée Cabrera Álvarez, Jorge Olivera Castillo—all active society members—to inform them that both attending and organizing classes were prohibited. On October 23, a DSE agent called at the home of Dorka de Céspedes to warn her about the illegal nature of the courses organized at the *Manuel Márquez Sterling Society*. On October 26, the police demanded that Ricardo González Alfonso put a halt to the classes. On October 29, a member of the DSE prevented a class from being held on the society's premises. The agent ordered Raúl Rivero, the director of the *Cuba Press* news agency and a journalism teacher at the society, to leave. Shortly after, a number of other individuals were expelled from the society's premises: Carmelo Díaz Fernández, director of the Independent Syndical Press Agency of Cuba (APSIC); Pedro Pablo Álvarez, general secretary of the Unitary Council of Workers of

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<sup>76</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>77</sup> This information was provided by the Inter American Press Association (IAPA), an organization that defends free expression.



Cuba; and the journalists Víctor Manuel Domínguez, Migda Graciela González Alfonso, and Adolfo Fernández Sainz. The journalist Carlos Castro was planning to attend the event but was halted at the door when he refused to submit to a search in public. Castro was hurried, against his will, into an official vehicle that dumped him in a small town some dozens of kilometers' distance away from Havana.<sup>78</sup>

96. On December 25, 2001, journalists Miley Delgado Bambino and Leste Téllez from the *Avilena Free Press Agency (APLA)* and Normando Hernández González, Carlos Brizuela, and Joel Blanco García of the *College of Journalists of Camagüey (CPC)* were beaten by police officers and plain-clothes agents as they were preparing to cover the opening of an independent library in the city of Florida. According to reports, the police action prevented the opening of the library, which is one of 80 across the country that operate outside state control.<sup>79</sup>

### **Detentions**

97. On April 9, 2001, the independent journalist Ricardo González Alfonso was placed under house arrest by the Cuban authorities. He is the correspondent in Cuba of the nongovernmental organization *Reporters without Borders (RSF)*, based in Paris, France. The National Revolutionary Police (PNR) arrested the journalist after his ex-wife accused him of having threatened her. González Alfonso was arrested at midday on Monday and released later that same day. The police found out he was a journalist only after he was arrested. That night, two police officers arrived at González Alfonso's house with a warrant for his house arrest; however, the warrant was missing an official stamp and was not signed. The journalist had suffered harassment at the hands of the Cuban authorities on several prior occasions, invariably in connection with his reporting work.<sup>80</sup>

98. On June 2, 2001, José Orlando González Bridón, a journalist and the general secretary of the *Confederation of Democratic Workers of Cuba* trade union (CTDC), was

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<sup>78</sup> This information was provided by Reporters without Borders (RSF), the Committee to Protect Journalists (CPJ), and the Inter American Press Association (IAPA), which are organizations that defend free expression.

<sup>79</sup> Inter American Press Association, December 27, 2001, and Reporters without Borders, December 28, 2001.

<sup>80</sup> Committee to Protect Journalists, April 9, 2001.

sentenced to two years in prison for distributing “false news.” On August 21, when the case was taken to appeal, the charges were changed to “defamation of institutions and organizations, and of heroes and martyrs,” and the punishment was reduced to a one-year prison term. Since 1999 the journalist has been writing articles for the *Cuba Free Press* webpage, based in Miami, Florida. He was arrested on December 15, 2000, for an article published on that website about the death of a trade union colleague. In the article, he reported that Joanna González Herrera, the CTDC’s national coordinator, had been murdered by her ex-husband and that the Cuban police had not prevented her death. He also broadcast this information from a Miami-based radio station. González was released on parole on November 22, 2001.<sup>81</sup>

99. On August 5, 2001, journalist Jadir Hernández Hernández was sentenced to house arrest in the town of Guines, which prevented him from doing his job as the correspondent for the independent agency *Havana Press*. He had received a series of threats over the preceding days.<sup>82</sup>

100. On August 22, 2001, Jesús Joel Díaz Hernández from the *Avileña Independent Journalists Cooperative (CAPI)* and Carlos Brizuela Yera from the *Camagüey Independent Journalists Cooperative (CPIC)* were arrested by State Security agents. The police confiscated four radios and two boxes of books they were carrying. The journalists were released eight hours later. They had also previously been arrested for their journalism work. Jesús Joel Díaz Hernández had been in prison from January 18, 1999, to January 17, 2001, for “posing a danger to society.” Carlos Brizuela Yera was arrested on May 1, 2001, and held for four days on suspicion of having written letters opposing the government.<sup>83</sup>

101. On August 22, 2001, Dorka de Céspedes of the *Havana Press* agency was arrested while preparing to cover a demonstration organized by civil associations not recognized by the authorities. She was threatened by about ten State Security agents before being released.<sup>84</sup>

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<sup>81</sup> RSF, Writers in Prison Committee (WiPC), CPJ, World Association of Newspapers, June 2, 2001.

<sup>82</sup> Inter American Press Association.

<sup>83</sup> Reporters without Borders.

<sup>84</sup> *Ibid.*

102. On August 29, 2001, the director of the *Free Eastern Press Agency (APLO)*, Milagros Beatón, along with her two minor daughters, received a summons from State Security. During her interrogation, she was offered the opportunity to leave the country and visit her exiled husband in the United States if she ceased to publish articles on a Miami-based website, surrendered her fax machine, and disbanded the agency.<sup>85</sup>

103. The Rapporteur has, on several occasions, condemned the exercise of state power through arbitrary and intimidating acts, such as detentions, intended to restrict individuals' basic freedoms and, in particular, freedom of expression. The Rapporteur urges the government of Cuba to desist from its systematic policy of oppressing all dissident opinions and to seek out ways to promote tolerance in the exchange of ideas and opinions, respecting the free flow of information.

## **Ecuador**

### **Aggression and Threats**

104. In August 2001, the Rapporteur's office was informed about the existence of a group called the "White Legion" that had made death threats against several individuals and groups in Ecuador, including several journalists, for opposing Ecuador's involvement in the Plan Colombia.<sup>86</sup>

### **Judicial Actions**

105. In July 2001, Fernando Rosero, a deputy for the Ecuadorian Roldosista Party (PRE), filed two lawsuits against Jorge Vivanco Mendieta, assistant editor of the Guayaquil daily *Expreso*. These legal actions were based on a report in which the journalist had criticized armed forces generals for not asserting their right of defense against Rosero's accusations

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<sup>85</sup> *Ibid.*

<sup>86</sup> This information was provided by the International Center for Journalists (ICFJ).

regarding the scandal surrounding to the purchase of weapons from Argentina in 1995 while the country was at war with Peru. The two suits included a civil action for libel and insults, in which the deputy sought damages totaling USD \$1,000,000, and a criminal action.<sup>87</sup>

106. On July 25, 2001, Malena Cardona Batallas, a journalist with *Televisión Manabita* in Portoviejo, was sentenced to a month in jail and a fine of 80 sucres for “serious nonlibelous insults” against Deputy Roberto Rodríguez. Mr. Rodríguez filed suit against her because, during an interview, she had asked him about his alleged involvement in a case of fraud. The sentence was upheld on appeal in December 2001. As of the date of this report, the sentence has not been carried out. In December 2001, the journalist informed the Rapporteur’s office of her intention to file an appeal with the Supreme Court of Justice. Other journalists—including Margarita Pérez of *Metropolitano*, Miriam Chávez of *La Hora Manabita*, and Roberth Cedeño of *Televisión Manabita*—claim to have been verbally threatened by Roberto Rodríguez.<sup>88</sup>

## **El Salvador**

### **Judicial Actions**

107. In March 2001, Deputy Francisco Merino filed a complaint for “crimes against honor” against four journalists from the daily *La Prensa Gráfica* and one from the daily *El Mundo*. The defendants from *La Prensa Gráfica* are the journalists Alfredo Hernández, Mauricio Bolaños, Gregorio Morán, and José Zometa, who had reported accusations made against Merino by Judge Ana María Guzmán Morales. According to information received, this judge was investigating a case in which the deputy was involved and she claimed that he had threatened her. Merino also filed suit against Camila Calles of *El Mundo* on the same grounds.<sup>89</sup>

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<sup>87</sup> This information was provided by the Press and Society Institute (IPYS), an organization for the defense and protection of free expression.

<sup>88</sup> The Rapporteur’s office obtained information about this incident directly from the journalist Malena Cardona. Information was also provided by the Press and Society Institute (IPYS), Reporters without Borders (RSF), the International Center for Journalists (ICFJ), and the daily *Crónica Roja*.

<sup>89</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

## Guatemala

108. During the year 2001 there were no major changes to Guatemala's domestic laws or practices that would have led to greater respect for freedom of expression. As was noted in the Rapporteur's Annual Report for the year 2000, the existence of a *de facto* monopoly in the ownership of television stations is still a cause for concern. This issue has been publicly denounced by Guatemala's Attorney for Human Rights, leading figures within society, and nongovernmental organizations.<sup>90</sup> It was also described by the Special Rapporteur during his April 2000 trip to the country as a serious obstacle to Guatemalan society's right of access to several sources of information reflecting a range of ideas and opinions. The Rapporteur again notes that the existence of this *de facto* monopoly has a serious impact on the Guatemalan people's freedom of expression and right to information. Information received indicates that private monopolies follow policies aimed at shaping public opinion on behalf of government sectors, thus hindering the work of independent journalism.<sup>91</sup>

109. Media monopolies are prohibited by the Constitution of the Republic of Guatemala, Article 130 of which provides that:

Monopolies and privileges are banned. The state shall restrict the operations of companies that absorb or tend to absorb, to the detriment of the nation's economy, the output of one or more industrial fields or of a single commercial or agricultural activity.

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<sup>90</sup> *Prensa Libre* (daily), *Necesario que Gobierno Actúe* ["Government Must Act"], May 9, 2001; *The New York Times*, *The Monochromatic Media of Latin America*, May 7, 2001.

<sup>91</sup> IACHR, 113th Session; Hearing with: the daily *La Hora*; the World Association of Community Radio Broadcasters; Guatemalan Federation of Radio Schools; Social Commission of the Episcopal Conference; Association of Journalists of Guatemala; Latin American Federation of Journalists; Executive Committee for Communication; the CERIGUA agency; and AMARC, Guatemala. During the presentation the IACHR was told about the particular situation of the journalist María de los Angeles Monzón, who was removed as the host of the *Punto de Encuentro* program on *Radio Sonora* on September 7, 2000. The journalist claims she was fired because she refused to obey orders from the company's owners prohibiting her from interviewing certain "left wing" members of the Portillo administration and representatives of the opposition. Monzón said she had suffered similar pressure for several months prior to her dismissal, with the result that several issues of public interest were censored and she was prevented from interviewing a number of leading figures from the nation's political circles for the program. Monzón also claimed that her dismissal was part of a policy of harassing independent journalists pursued by a *de facto* monopoly that controls the media and is indirectly backed by the state. As evidence of the existence of this monopoly, the petitioner provided information documenting the connections and interdependence between the Minister for Communications, Infrastructure, and Housing and former director of *Radio Sonora*, Luis Rabbé Tejada, and his brother-in-law Angel Remigio González, the owner of Guatemala's four broadcast television channels and a dozen radio stations, including *Radio Sonora*. Monzón lodged her complaint with the Attorney for Human Rights, Guatemala's ombudsman, on September 18. On that occasion, the ombudsman concluded that there was insufficient evidence to indicate a violation of the petitioner's human rights, defining the case as a labor dispute.

110. In turn, Article 13 of the Radiocommunications Law states that:

The Ministry of Communications and Public Works shall be charged with preventing abuses in the granting of concessions for the commercial exploitation of radio and television stations, and it shall regulate the use of repeaters and link systems, in order to restrict the operations of those companies that tend to absorb this activity to the detriment of the state and of third parties.

111. The Rapporteur points out that concessions for television channels and broadcasting spectrum allocations should take on board democratic guidelines to ensure that all the sectors that make up a society are represented.<sup>92</sup> Auctions that involve solely economic criteria or that award concessions without giving all sectors an equal chance are incompatible with democracy and with the right of free expression and information enshrined in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression.<sup>93</sup>

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<sup>92</sup> See: Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, paras. 34 and 56. With respect to the existence of media monopolies, the Inter-American Court has ruled that:

It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists... the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view.

The Court has further stated that:

Given the broad scope of the language of the Convention, freedom of expression can also be affected without the direct intervention of the State. This might be the case, for example, when due to the existence of monopolies or oligopolies in the ownership of communications media, there are established in practice "means tending to impede the communication and circulation of ideas and opinions."

<sup>93</sup> See the tenth principle of the IACHR's Declaration of Principles on Freedom of Expression.

## **Assassinations**

112. On September 5, 2001, Jorge Mynor Alegría Armendáriz was murdered. Unidentified individuals shot the journalist six times, killing him in front of his home. Alegría Armendáriz hosted the program *Línea Directa* on *Radio Amatique* in the town of Puerto Barrios, Izabal, which he used to denounce cases of corruption and to criticize the authorities. According to the information received, on several occasions death threats had been made against him, which he also denounced on his radio show. The day after this assassination, another journalist with the same radio station, Enrique Aceituno, presented his resignation after receiving threats against his life.<sup>94</sup> In September 2001, the Attorney for Human Rights determined that this assassination was politically motivated and decided it was probably organized by local officials as a reprisal for the journalist's reporting on corruption issues.<sup>95</sup>

## **Aggression and Threats**

113. In March 2001, the journalists Sylvia Gereda, Luis Escobar, Enrique Castañeda, and Walter Martín Juárez Ruiz of the daily *El Periódico* suffered threats and attacks after publishing stories about suspicions of embezzlement at the National Mortgage Credit Bank (CHN) in which the bank's president was suspected of playing a major role. According to the information received, the journalists were followed and kept under surveillance by individuals unknown. In addition, Juárez Ruiz was intercepted in his car and threatened by two armed individuals wearing masks who told him to abandon his investigations.<sup>96</sup>

114. In June 2001, the Association of Journalists of Guatemala reported that several of its members were receiving death threats and suffering other forms of intimidation. As examples, the Association described the threats made against journalist Julio César del Valle of

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<sup>94</sup> This information was provided by the Committee to Protect Journalists (CPJ) and Reporters without Borders (RSF), both organizations that defend free expression.

<sup>95</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization that defends free expression.

<sup>96</sup> This information was provided by Reporters without Borders, the Committee to Protect Journalists, *Defensoría Maya*, the Association of Journalists of Guatemala, and International PEN's Writers in Prison Committee.

the program *Usted tiene la palabra* on *Radio Única* and Marvin Herwing, director of the *Regional Informativo* newscast on *Radio Novedades* in the city of Zacapa.<sup>97</sup>

115. On July 10, 2001, the Center for Informational Reports on Guatemala (Cerigua) received a telephone threat intended for its director, Ileana Alamilla. Some days later, one of the center's journalists received a similar call.<sup>98</sup>

116. In July 2001, threats were made against the lives of the journalists Juan Carlos Aquino and Marvin Alfredo Herin González of the *Regional Informativo* newscast on Zacapa's *Radio Novedades*.<sup>99</sup>

117. On August 1, 2001, at least four journalists were physically assaulted by police officers while covering a street demonstration against tax hikes.<sup>100</sup>

## Legislation

118. As regards the adoption of progressive legislature measures for protecting and upholding full enjoyment of free expression, the Rapporteur notes with pleasure the decision taken by the Constitutional Court on January 23, 2002, provisionally declaring the Law on Obligatory Professional Associations to be unconstitutional. The new law rules that membership in an association is obligatory for all professions except journalists. As will be recalled, on November 30, 2001, the Guatemalan Congress approved the Law on Obligatory Professional Associations, requiring that all practicing journalists have a university degree and be members of the College of Journalists, provisions that were in contravention of the Inter-American Court's rulings on free expression.<sup>101</sup> The Rapporteur hopes that in compliance with the inter-American system's established standards, the Guatemalan State will embrace the

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<sup>97</sup> This information was provided by the Association of Journalists of Guatemala (APG).

<sup>98</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>99</sup> This information was provided by Amnesty International and the Latin American human rights section of the International Federation of Journalists.

<sup>100</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization that defends free expression.

<sup>101</sup> *Prensa Libre*, Thursday, January 24, 2002.



Court's resolution and make it permanent, thereby invalidating the requirement of obligatory membership in a professional association in order to pursue a career in journalism.

119. Additionally, in April 2001 the Guatemalan State sent Congress a bill on information access, intended to regulate both the right to information held by the state and the right to pursue habeas data action. Guatemalan civil society played a major role in drafting the bill, which arose from a commitment assumed by the state following the Special Rapporteur's visit to Guatemala in April 2000. Reports indicate that the bill is still with Congress pending its approval. The Rapporteur hopes that a law respectful of the relevant international standards is enacted soon, thereby upholding the right of access to information.

## **Haiti**

120. Between February 19 and 22, 2002, the Rapporteur's office accompanied the Commission's Executive Secretariat on a visit to Haiti to observe and gather information on the prevailing situation with respect to freedom of expression in that country and to draw up a preliminary evaluation for preparing future visits there by the IACHR.

121. In light of the information received before, during, and after this visit, the Rapporteur believes that there are serious obstacles to full enjoyment of free expression in Haiti. First of all, two journalists have been killed over the past two years. A series of irregularities in the investigations of these assassinations has undermined the work of the justice system. The investigations have been carried out against a worrying backdrop of intimidation and persecution against the judges and witnesses involved in the cases. In addition, recent years have seen numerous attacks on journalists and different media outlets. The Rapporteur is concerned that the victims of these attacks do not enjoy the minimal judicial protection necessary to clear up the incidents and make amends for the harm caused.

## **Assassinations**

122. Brignol Lindor, news editor of the private radio station *Radio Echo 2000* in the town of Petit-Goâve, was murdered on December 3, 2001. He was attacked with machetes and

stones by a group of demonstrators while on his way to the station. The journalist had received a series of threats from certain local officials after inviting members of the opposition to speak on his radio program. These acts of intimidation were reported to the authorities, but, according to sources, the Haitian National Police took no preventive steps in connection with the allegations.<sup>102</sup>

123. Information provided by the Association of Haitian Journalists indicates that at a press conference held prior to the assassination, the deputy mayor of Petit-Goâve, Dumay Bony, had called on the population to set up surveillance brigades to support the police in implementing its “zero tolerance for terrorism” policy. In addition, the deputy mayor had called on the population to go after Brignol Lindor because the journalist had been plotting against the people’s interest in order to promote the Democratic Convergence political party. In the aftermath of Lindor’s slaying, the deputy mayor denied the allegations accusing him of instigating the crime. However, the Association of Haitian Journalists reported that an eye-witness to Lindor’s murder, Mr. Love Augustin, claimed to have heard demonstrators refer to the deputy mayor’s speech and the enforcement of “zero tolerance” with respect to the journalist as the crime was being committed.<sup>103</sup> On February 14, 2002, the police arrested Sedner Sainvilus, a member of the local committee (*Administration de la Section Communale*, ASEC) of the Fanmi Lavalas party. Sainvilus denied all involvement in the assassination and denied that he was a member of the Domi nan Bwa organization, the members of which had claimed responsibility for the assassination.<sup>104</sup>

124. The Special Rapporteur condemned this crime and asked the Haitian State to launch a serious, impartial, and effective investigation of the incident and to punish those responsible.<sup>105</sup>

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<sup>102</sup> This information was provided by Reporters without Borders and the International Federation of Journalists, which are organizations that defend free expression.

<sup>103</sup> Information based on the investigation into Lindor’s assassination conducted by the Association of Haitian Journalists, *Report on the Mission to Petit-Goâve*, Port-au-Prince, December 12, 2001. The Association of Haitian Journalists interviewed police officers, members of Democratic Convergence, members of the Domi nan Bwa organization, residents of Petit-Goâve, and other sources.

<sup>104</sup> See: Haitian News Briefs, on <http://haitisupport.gn.apc.org>.

<sup>105</sup> See, in the annexes: Press Release No. 48/01, Office of the Special Rapporteur for Freedom of Expression.

125. During the visit, the Rapporteur was also informed about progress with the investigation into the April 2000 assassination of journalist Jean Léopold Dominique. The Rapporteur noted a series of irregularities in the investigation, including threats and acts of intimidation against judges and witnesses.<sup>106</sup> The investigation was assigned to judge Claudy Gassant after another two judges recused themselves from the case after receiving death threats.<sup>107</sup> One of the persons suspected of involvement in this assassination is Senator Dany Toussaint, who on several occasions has ignored summonses served on him, invoking parliamentary immunity. In addition, Judge Gassant has conducted investigations into a number of political leaders and other Haitian citizens and has received numerous death threats.<sup>108</sup> According to reports, on June 8, 2001, a plot was uncovered to murder Judge Claude Gassing and Senator Prince Pierre Monsoon, a member of the Fanmi Lavalas party who has been calling for justice ever since the journalist Jean Dominique was killed. The absence of effective protective measures to ensure Judge Gassant's personal safety forced him to resign on June 13, 2001; the resignation was, however, not accepted by the Minister of Justice.<sup>109</sup>

126. In light of the judge's defenselessness, on June 6, 2001, the Commission asked the Haitian State to adopt precautionary measures to protect his life and person.<sup>110</sup> In spite of the precautionary measures requested by the IACHR, the intimidation of Judge Gassant continued, as did the threats against him.<sup>111</sup> His judicial mandate expired on January 4, 2001, and the government did not renew it. Finally, security concerns forced Gassant to leave the country.<sup>112</sup> The case was assigned to Judge Josiarn Agnant. As of the date of this report, the new judge continues to pursue his investigations and issue summonses. As a part of this, he has summoned Senator Toussaint to make a statement.

127. Different groups of journalists informed the Rapporteur of their concern about the

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<sup>106</sup> See: Special report of the Inter American Press Association (IAPA), January 2001, *Haiti: The Case of Jean Léopold Dominique*, on <http://www.impunidad.com/cases/jeanleopoldE.html>.

<sup>107</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>108</sup> National Coalition for Haitian Rights, Alert, February 4, 2001, on [www.nchr.org](http://www.nchr.org).

<sup>109</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>110</sup> See Chapter V.

<sup>111</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>112</sup> Report of the National Coalition for Haitian Rights, February 7, 2002.

numerous obstacles hindering a serious and impartial investigation of Jean Dominique's murder. Among these, they note that parliament took five months to reject the lifting of Senator Toussaint's parliamentary immunity that Judge Gassant had requested, arguing that more information was needed. Several human rights organizations have also asked the country's president to renew Gassant's mandate and to provide him with guarantees of personal security in discharging his duties. According to the information received on April 1, 2002, President Aristide renewed Judge Gassant's mandate in the case of Jean Dominique.<sup>113</sup>

128. On repeated occasions, the Rapporteur has stated that the assassination of journalists is the most brutal way of curtailing freedom of expression. It is media workers who make the keenest use of this right and, as a result, any attack on or aggression against their person constitutes a grave assault on free speech. Such attacks have a paralyzing effect on society by preventing journalists from performing their duty of reporting on matters of public interest, which often include investigations into abuses, irregularities, and corruption on the part of public officials.

129. Under the American Convention and other international legal instruments, states are obliged to conduct effective investigations into these assassinations and punish their perpetrators. The Inter-American Court has ruled that such investigations:

Must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.<sup>114</sup>

130. In connection with this, the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression provides that:

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<sup>113</sup> Haitian Press Network, April 18, 2002

<sup>114</sup> Inter-Am.Ct.H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 177.

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

131. The Commission has ruled that a state's failure to carry out an effective and complete investigation of the assassination of a journalist and to pursue criminal action against the planners and perpetrators thereof is particularly serious because of the impact it has on society. Crimes like this serve to terrify other journalists and the citizenry in general alike, in that they give rise to apprehension about denouncing abuses, illegal acts, and outrages of all kinds. This effect can only be avoided if states take decisive action in punishing those guilty of assassinating media workers. In this way states can send their societies a strong, direct message, indicating that there will be no tolerance of those who perpetrate such serious violations of the right of free expression.<sup>115</sup>

### **Aggression and Threats**

132. At a January 9, 2001, press conference, leaders of organizations with ties to the Fanmi Lavalas party made public death threats against Liliane Pierre-Paul, the director and joint owner of the *Kiskeya* radio station, and Max Chauvet, the editor of the daily newspaper *Le Nouvelliste*. According to reports, these organizations had a list of 129 leading figures from Haitian society who had been identified as government opponents, including the two journalists. Reports also indicate that after the press conference, a container of gasoline was hurled into the yard of the *Kiskeya* radio station.<sup>116</sup>

133. On April 20, 2001, around 300 armed individuals attacked radio stations—*Lumière*, *Vision 2000*, and *Vision Nouvelle*—in Ménélas, to the north of Port-au-

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<sup>115</sup> IACHR, Report No. 50/90, Case No. 11.739, Mexico, OAS/Ser/L/V/II. Doc. 57, April 13, 1999.

<sup>116</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

Prince. During the attack the security guard of the *Vision Nouvelle* radio station was killed, and the watchmen at *Lumière* were injured. In addition, the reports state that the radio stations themselves were vandalized, causing damage estimated at USD \$200,000 to their radio equipment. These stations had previously received threats over the telephone.<sup>117</sup>

134. On June 9, 2001, the news director of radio station *Signal FM* in Port-au-Prince, Roosevelt Benjamin, received several threats after signing off from his weekly program *Moment Vérité* (“Moment of Truth”). Mr. Benjamin reported that the threats were related to information broadcast on his program about possible ties between the Majority Civil Society Movement—a recently created political organization—and persons close to senators from the Fanmi Lavalas party.<sup>118</sup>

135. On August 9, 2001, the journalists Liberus Renald and Claude François of the *Rotation FM* radio station in Belladères were physically attacked and then detained by police officers during a police raid on the station’s facilities. On that occasion, the journalists refused to surrender a cassette belonging to the station and containing a statement made by a former soldier who had allegedly attacked police installations. The journalists were held for three hours at the main police station in Belladères.<sup>119</sup>

136. On August 27, 2001, Confident Fedner, a journalist with *Radio Sacré-Coeur* in the city of Thiotte, received death threats after reporting on the radio about alleged irregularities in the city’s municipal government. Reports indicate that the journalist received the first threat on July 17 from one of the mayor’s security guards. Since then, Fedner reports, he has been suffering harassment by groups with links to the mayor.<sup>120</sup>

137. On October 2, 2001, journalist Jean Ronald Dupont from *Radio Maxima FM* received a bullet wound to the head while covering a demonstration in Cap-Haitien. That same

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<sup>117</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>118</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization that defends free expression.

<sup>119</sup> This information was provided by the World Association of Newspapers, an organization that defends free expression.

<sup>120</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

day, *Radio Métropole* correspondent Jean-Marie Mayard was attacked by a group linked to the Fanmi Lavalas party. Information received indicates that Mayard was the tenth journalist in 2001 to be threatened or attacked by government-party sympathizers and in whose case no investigation was conducted.<sup>121</sup>

138. On October 12, 2001, journalist Jean Robert Delciné of *Radio Haïti Inter* was insulted, physically attacked, and threatened with a firearm by police officer Yrvens César while showing his press credentials during a police operation in Cité Soleil, Port-au-Prince. The officer confiscated the reporter's tape-recorder before releasing him.<sup>122</sup>

139. On November 17, 2001, journalist Francine Leonard of *Radio Métropole* was attacked and threatened by members of the Fanmi Lavalas party. The journalist attributed the attack to her critical reporting about the government party.<sup>123</sup>

140. On November 25, 2001, journalist Evrard Saint-Armand from *Radio Kiskeya* was threatened and detained by police officers. He had witnessed a clash between the police and a young man, in which the latter died. According to the information received, the police beat the journalist during his interrogation and accused him of having caused the young man's death. The Association of Haitian Journalists reported that the officers "knew that Saint-Armand was at the scene of the incident in his capacity as a journalist." He was released some hours later, after his professional gear had been destroyed.<sup>124</sup>

141. On November 29, 2001, members of the pro-government organization OP (Popular Organizations) made death threats against the journalist Jean-Marie Mayard, a correspondent of Saint-Marc's *Radio Métropole*. According to reports, his assailants stated that "the journalist was guilty of not disseminating pro-government news." Mayard was later briefly detained, for no apparent reason, by police officers from the Intervention and Order

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<sup>121</sup> This information was provided by Reporters without Borders (RSF) and the World Association of Newspapers (WAN), which are organizations that defend free expression.

<sup>122</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>123</sup> This information was provided by the International Federation of Journalists.

<sup>124</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

Maintenance Company (CIMO). That same day, members of the OP attacked and threatened journalist Ernst Ocean of *Radio Vision 2000*, accusing him of working for the opposition Democratic Convergence party.<sup>125</sup>

142. Following the attack on the presidential palace carried out by a group of former soldiers on December 17, 2001, journalists and the media in general have faced a new wave of attacks and threats. According to reports, some stations have been forced to turn off their transmitters indefinitely for security reasons, while others have suspended their news coverage.<sup>126</sup> The radio station *Caraïbes* ceased broadcasting after its offices were stoned and its journalists threatened.<sup>127</sup> According to information received, some 25 journalists have left the country as a result of threats made since the events of December 17, 2001.<sup>128</sup>

143. On December 17, 2001, some 12 journalists were attacked by supporters of the Fanmi Lavalas party during a demonstration against the attempted coup d'état. The assaulted journalists included photographer Thony Bélizaire of *Agence France Presse (AFP)*, Patrick Moussignac, Gérin Alexandre, and Jean-Elie Moléus, the director of *Radio Caraïbes FM* and reporters for that station, respectively, and the president of the Association of Haitian Journalists, Guyler Delva. In addition, two vehicles belonging to the *Telemax* TV channel and *Radio Métropole* were attacked in the vicinity of the presidential palace. The demonstrators, who were armed with sticks and guns, forced the journalists to withdraw amid threats.<sup>129</sup>

## Intimidation

144. In January 2001, the radio stations *Caraïbes FM*, *Kiskeya*, and *Rotation FM* received threats over the telephone. According to reports, on December 23, 2001, *Radio Caraïbes* was forced to suspend its transmissions for three weeks after receiving daily threats

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<sup>125</sup> *Ibid.*

<sup>126</sup> Communiqué from Reporters without Borders and the Damocles Network, submitted to OAS Assistant Secretary General Luigi Einaudi on January 29, 2002; Report of the National Coalition for Haitian Rights, February 7, 2002.

<sup>127</sup> This information was provided by the InterPress Service news agency: *Ola de violencia contra periodistas* ["Wave of Violence against Journalists"], January 9, 2002.

<sup>128</sup> This information was provided by the Haitian Press Federation and the Association of Haitian Journalists, both of which are organizations that defend free expression.

<sup>129</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.



from groups associated with the Fanmi Lavalas party in which they were informed that “if they didn’t close down the program they would be forced to.” The telephone threats were made after the weekly political news program *Ranmase*, during which members of the opposition criticized the government and expressed doubts about the legitimacy of the November 26 elections.<sup>130</sup> Carlos Sainristil, the station’s programming director, also reported that he and other journalists had received telephone threats over recent months. Similarly, Amos Duboirant, the director of radio station *Rotation FM* in the town of Lascahobas, reported on December 28 that his station was receiving threats and intimidation after reporting sanitation problems in the local area.<sup>131</sup>

145. Most of the attacks on journalists, as well as those on other media workers and radio stations, have not been investigated and the perpetrators remain unpunished. The Haitian authorities’ failure to pursue a serious, impartial, and effective investigation of these violent and intimidating attacks discourages media workers from reporting acts of violence and intimidation and fuels their mistrust. The state has the obligation of upholding the human rights enshrined in the American Convention. The state therefore incurs in international responsibility if it does not take the steps necessary to prevent violations of basic rights or, once such violations have been committed, to investigate them and prosecute and punish the guilty.<sup>132</sup>

146. The Rapporteur underscores once again that the right of free expression, in addition to guaranteeing the right to practice journalism, also ensures society’s right to receive information. States may incur in international responsibility when they fail to uphold this right.

## **Honduras**

147. The Rapporteur again expresses his concern about a series of circumstances that are endangering the journalism profession and the right of free expression in Honduras.

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<sup>130</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>131</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>132</sup> Article 1.1 of the American Convention on Human Rights stipulates that:

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.

According to reports, over 2001 several journalists have suffered reprisals for pursuing a journalistic line that is independent and critical of the authorities.

148. In February 2001, the IACHR held a hearing for a group of independent Honduran journalists, accompanied by the Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH). At that hearing, the journalists made allegations regarding threats, intimidation, and legal action taken against them in order to silence their investigations and keep them from publishing allegations in the press. In November 2001 the Commission held another hearing for other members of the same group of Honduran journalists and human rights workers, who again expressed their concern about the state of freedom of expression in their country. On that occasion they submitted a report describing instances in which journalists have been threatened, intimidated, and dismissed because of their independent journalist activities and their criticism of irregularities in the public administration. According to this information, among the journalists fired from their jobs were at least four who had helped prepare the February 2001 hearing at the IACHR. According to the report of the National Commissioner on Human Rights, Leo Valladares, who is recognized as an independent authority on the reporting of violations of human rights in this country:

(...) in the year 2001, what had appeared to be isolated incidents against the Right to Information became systematic. It was an unusual year for the Honduran press, the anonymous harassment of 1999 gave way to direct harassment and dismissals, with full names. This report states that during the year 2001 there were at least eight direct dismissals of journalists and three pre-notifications followed by reintegration in the communications media and three actions of direct harassment against freedom of expression, directed towards an equal number of journalists, by the College of Journalists of Honduras (CPH) (...)<sup>133</sup>

149. In this context, the Office of the Special Rapporteur was informed of the concentration of ownership of the media and the “existence of an oligopoly that exerts control

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<sup>133</sup> See *Primer Informe Nacional sobre el Derecho a la Información y la Libertad de Expresión en Honduras, Año 2002*. (First National Report on the Right to Information and Freedom of Expression in Honduras, Year 2002). Comisionado Nacional de los Derechos Humanos (National Commissioner on Human Rights), Honduras.

over news policies and advertising budgets” and constitutes “a key part of the country’s political and economic power.”<sup>134</sup>

150. Another issue raised at the hearing with the IACHR was the incompatibility of some domestic laws with international free speech standards.

### **Intimidation**

151. The Rapporteur notes his concern at the fact that several of the journalists who attended the hearings at the IACHR and gave their opinions about freedom of expression in Honduras have since lost their jobs.

152. On April 15, 2001, the journalist Thelma Mejía, chief editor of the daily *El Herald*, was fired. According to the information received, the journalist was forced by management to tender her resignation. She contacted the Rapporteur’s office and reported that the company had asked for her resignation, claiming that she was not in tune with the paper’s editorial policies. “They accused me of defending freedom of expression and denouncing censorship,” said the journalist. “They told me that the paper’s owner did not like the fact that I did not showcase official news from the government on the first page.” The journalist had participated in drawing up the report submitted to the Commission in February 2001.<sup>135</sup>

153. In early May, Manuel Torres Calderón, opinion page chief of the daily *El Herald*, was dismissed by his employers. Like journalist Thelma Mejía, Torres had helped draw up the report submitted to the Commission in February 2001.

154. In early October 2001, Renato Alvarez, the former director of *Centro de Noticias de Canal 63*, was dismissed, presumably because of political pressure from the government party. Alvarez had attended the Commission hearing in February 2001 to denounce the state of free expression in Honduras. The background to his dismissal from *Canal 63* was the a story

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<sup>134</sup> Document presented by COFADEH at the hearing.

<sup>135</sup> This information was provided by the journalist herself, by other independent Honduran journalists, and by members of the Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH).

broadcast about the warrant issued for the arrest of businessman Victor Bendeck, a liberal deputy in the Central American Parliament and owner of the *Canal 13* television station and the *Radio Reloj* radio station. Bendeck had been accused of fraud.<sup>136</sup>

155. In late October 2001 Félix Antonio Molina, a news editor and presenter with *Canal 63*, was fired. He had attended the Commission hearing in February 2001.<sup>137</sup>

156. The Rapporteur's office has also been informed about public persecution and smear campaigns against other independent journalists and even representatives of United Nations agencies: these campaigns have been carried out through the "*Pildoritas*" column in the daily *La Tribuna*—which belongs to the President of the Republic—and through other media outlets and publications with ties to government employees. The journalists targeted by these smear campaigns include Thelma Mejía, Manuel Torres Calderón, and Félix Antonio Molina, who are accused of having informed the office of the Special Rapporteur in February 2001 about the state of free expression in Honduras, with funds from the United Nations Development Programme (UNDP), an agency of the United Nations in Tegucigalpa. According to the information received, the aim of these smear campaigns is to undermine a journalist training program and a Permanent Forum for Strengthening Democracy that the UN agency is promoting.<sup>138</sup>

## Legislation

157. In July 2001 the National Congress introduced a draft bill for a new Criminal Code containing provisions that could subvert freedom of expression and information. Article 372 provides for a prison term of between four and seven years for any person who "reveals facts, reports, or documents that refer to political affairs or state economic, military, security, or defense matters and that as such should remain secret."<sup>139</sup>

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<sup>136</sup> Hearing of November 16, 2001, before the IACHR.

<sup>137</sup> COFADEH.

<sup>138</sup> COFADEH.

<sup>139</sup> Hearing of November 16, 2001, before the IACHR.

158. In early May 2001, the College of Journalists of Honduras (CPH) presented Congress with a draft bill that would abolish the requirement that all journalists belong to a professional association. The president of the CPH, Elán Reyes Pineda, explained that the proposal was drawn up after a group of journalists, in February 2001, informed the Rapporteur's office of violations of free expression in the country and denounced the practice of requiring obligatory membership in a professional association. However, the final version of the draft as adopted on May 17, 2001, did not eliminate the compulsory membership requirement; instead, it eliminated the requirement that journalists belong to the CPH. As a result, journalists not affiliated to the CPH have to belong to another professional association in order to practice journalism legally.<sup>140</sup>

159. The Report of the National Commissioner on Human Rights states:

(...) in Honduras the governments have maintained two basic attitudes with respect to the functions of the press: one of a restrictive character, centered on the promulgation of laws aimed at regulating and controlling its functioning; and another, characterized by alignment with journalists most supportive of their political positions. Relations with the press have been more restrictive than tolerant in nature (...) <sup>141</sup>

## **Mexico**

### **Assassinations**

160. On February 19, 2001, journalist José Luis Ortega Mata, editor of the weekly *Semanario de Ojinaga*, received two gunshot wounds to the head and was killed. According to reports, some days previously he had published information about drug trafficking in the region.<sup>142</sup>

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<sup>140</sup> This information was provided by independent Honduran journalists and COFADEH.

<sup>141</sup> See *Primer Informe Nacional sobre el Derecho a la Información y la Libertad de Expresión en Honduras, Año 2002*. (First National Report on the Right to Information and Freedom of Expression in Honduras, Year 2002). Comisionado Nacional de los Derechos Humanos (National Commissioner on Human Rights), Honduras.

<sup>142</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

## Threats and Attacks

161. On November 1, 2001, Fabián Antonio Santiago Hernández, a journalist with *El Liberal del Sur* in the Veracruz state, was attacked by Luis René Morales Romero, a municipal councilor from Coatzacoalcos. According to the information received, the councilor was carrying a bladed weapon and he attacked the journalist when asked about his involvement in a case of alleged embezzlement.<sup>143</sup>

162. On November 6, 2001, a death threat was made against the journalist and writer Sergio Aguayo. He had published a book titled *La Charola* ["The Badge"] in which he accused the Mexican intelligence services of involvement in political assassinations.<sup>144</sup>

163. In early November 2001, Francisco Guerrero, the editor of the Morelos state edition of *La Jornada*, reported that he was being watched by persons unknown and that members of his domestic staff had been accosted on the street and harangued into handing over documents belonging to him. The documents in question referred to the alleged existence of a Morelos state government plan to keep a watch on members of opposition parties and nongovernmental organizations. In addition, reports also claim that around the same time, the manager of *La Jornada* was attacked, because of an article her paper had published implicating a judicial official in an assassination.<sup>145</sup>

## Legislation

164. The Rapporteur's office has been informed that on December 1, 2001, the Mexican government sent Congress a draft bill for a law on access to public information. The text of the Federal Law of Transparency and Information Access provides that all autonomous government bodies, the executive, legislative, and judicial branches, and public universities will be subject to its terms. In September 2001, the Ministry of the Interior launched a public

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<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

consultation process to gather opinions regarding the enactment of a law governing access to information held by the state. To this end, in October 2001 representatives of 75 Mexican academic institutions, nongovernmental organizations, and media corporations set up a technical committee to propose a draft law on access to public information.

165. The Rapporteur notes with pleasure the launch of a debate on the question of access to information within Mexican society. As the Rapporteur has stated before, access to information held by the state is a vital tool in building transparent public administrations. The Rapporteur hopes that the Mexican State continues with its efforts and enacts a law that guarantees the right of information access in accordance with the applicable standards of the inter-American system.

## **Nicaragua**

### **Threats and Attacks**

166. On August 1, 2001, Eloísa Ibarra from the daily *El Nuevo Diario* was assaulted by President Arnoldo Alemán. The journalist reports that while asking the president about the famine affecting the north and northeast of the country, he squeezed her wrist violently and called her an “unrepentant Sandinista.” In a press release the president’s office denied these allegations and accused *El Nuevo Diario* of pursuing “an odious smear campaign against the president and government officials.”<sup>146</sup>

### **Intimidation**

167. On June 29, 2001, the newspaper *El Nuevo Diario* denounced the suspension, by the government, of all official advertising since the middle of June. According to the paper, the authorities also ordered the cancellation of several subscriptions maintained by ministries and public agencies. According to the information provided, these measures were in response to the paper’s critical stance and its constant denunciations of corruption. It was also claimed

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<sup>146</sup> The Rapporteur’s office was informed about this incident in a letter from the Nicaraguan Human Rights Center (CENIDH). The incident was also reported by Reporters without Borders.

that the state, by means of the government-run *Canal 6*, had called upon the population to refrain from buying *El Nuevo Diario* and instead purchase a newspaper with an editorial line more in tune with the government. As a result of these measures, *El Nuevo Diario* has been forced to reduce its purchases of newsprint and the number of its pages.<sup>147</sup>

168. Protecting broad freedom of expression requires that states do not restrict it through indirect measures that prevent the media from performing their duty of providing information. States must not use public funds to manipulate media contents, such as by using the official advertising budget in a discriminatory fashion and rewarding those media outlets that uphold a pro-government line.<sup>148</sup>

## **Panama**

169. The Rapporteur continues to view with concern the use of defamation and libel suits by some public officials in Panama. The filing of such charges is intended to silence criticisms made by some journalists and media outlets about how government officials and personalities perform their public duties. According to the information received, as of the date of this report a total of 90 criminal suits against journalists for defamation and libel were pending before the Panamanian courts. Such suits affect one out of every three journalists in Panama, and 70 percent of them are initiated by public officials.<sup>149</sup> In turn, the government of Panama informed the Rapporteur's office that there were actually 145 ongoing suits for defamation and libel; the government also explained that 37 of them involved 28 journalists and in the remainder the charges were filed against private citizens.<sup>150</sup>

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<sup>147</sup> The Rapporteur's office was informed about these events in a letter from the Nicaraguan Human Rights Center (CENIDH). It was also reported by Reporters without Borders and the Inter American Press Association.

<sup>148</sup> See the thirteenth principle of the Declaration.

<sup>149</sup> Octavio Amat, "*Los riesgos de los periodistas en democracia*" ["The Risks of Journalists under Democracy"], *El Panamá América*, May 28, 2001.

<sup>150</sup> Note from the Permanent Mission of Panama transmitting comments by the nation's Attorney General on Vol. III of the Annual Report of Inter-American Commission on Human Rights to General Assembly, with reference to the Report of the Special Rapporteur on Freedom of Expression, OEA/Ser.G/CP/doc.3443/01 add.1, May 31, 2001.



170. Of these 145 cases, five were initiated by the attorney general, José Antonio Sossa Rodríguez.<sup>151</sup> In addition, the Rapporteur also notes with concern reports alleging the existence of a smear campaign, led by Attorney General Sossa, against those journalists who criticize public officials.<sup>152</sup> The attorney general has called the decriminalization of defamation and libel “totally absurd,” alleging that the idea “is an invention of the Rapporteur’s office.”<sup>153</sup>

171. The decriminalization of defamation and libel has its basis in the jurisprudence of the inter-American human rights system. The Commission has stated that public figures must be exposed to criticism because of the importance of free debate on matters of public concern.<sup>154</sup> A public figure is entitled to protect himself from intentional attacks on his honor or reputation “through civil actions and by implementing laws that guarantee the right of reply.”<sup>155</sup> The enforcement of criminal defamation and libel laws to protect the reputation and honor of public figures constitutes a violation of Article 13 of the American Convention, in that the punishment is disproportionate in comparison with the importance of open debate.<sup>156</sup>

172. Enforcement of defamation and libel laws has been and continues to be one of the chief concerns of the Rapporteur’s office. During the Commission’s visit to Panama in June 2001, the Rapporteur and other members of the Commission held a meeting with Attorney General Sossa at which that concern was voiced.

173. The Rapporteur believes that the State of Panama has not shown the political will to repeal its laws criminalizing statements that are offensive to public officials. During 2000, the Panamanian State informed the Rapporteur’s office of its plans to amend its legislation and repeal those provisions, which are also known as *desacato* contempt laws. However, as of the

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<sup>151</sup> *Ibid.*

<sup>152</sup> See: Jorge Giannareas, “Una Denuncia sin Precedente” [“An Unprecedented Complaint”], *La Prensa*, June 13, 2001 (interview with former IACHR President Claudio Grossman).

<sup>153</sup> Betty Brannan Jaén, “Sossa calificó de ‘absurdo y totalmente descabellado’ que el relator, Santiago Canton, abogue por la despenalización generalizada de la calumnia e injuria” [“‘Absurd and completely ridiculous’ for Rapporteur Santiago Canton to want to decriminalize defamation and libel: Sossa”], *La Prensa*, June 3, 2001.

<sup>154</sup> IACHR, Report on the Compatibility of *Desacato* Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, doc. 9 rev., February 17, 1995, 208-223, 218.

<sup>155</sup> *Ibid.*, 223.

<sup>156</sup> *Ibid.*, 220-223.

date of this report, Panama had made no progress or changes in this regard. Instead, as reported by numerous independent journalists, threats against free expression in the form of lawsuits filed by public officials against journalists have increased significantly.

## **Detentions**

174. On December 5, 2001, Evelia Aparicio de Esquivel, the mayor of David, ordered the arrest of journalist Luis Gaitán Villareal for a period of 48 hours on the grounds that he had been disrespectful toward her. Gaitán is the editor of the *Informe Especial* TV program, the editor of the *www.chirinet.com* web magazine, and a correspondent for the daily *El Siglo*. The journalist had made allegations regarding corruption in the local government, the illegal use of traveling expenses, the misplacement of municipal funds in David, and other irregularities. The mayor accused him of referring to her with insulting words. His arrest was based on Article 386 of the Judicial Code, which allows certain state representatives to order a person placed in prison for disrespecting their office, without first requiring a trial. The journalist was arrested on December 6 and released a few hours later by the sixth judge of the Chiriquí judicial circuit, who admitted an appeal on the grounds of insufficient evidence.<sup>157</sup>

## **Judicial Actions**

175. On May 16, 2001, proceedings for crimes against honor were initiated against Miguel Antonio Bernal Villalez, an independent journalist. Bernal Villalez was accused by the former director general of police for reporting the decapitation of four prisoners who had attempted to escape from the penitentiary on Coiba island. He was accused of having affected “the honor and dignity of a public institution, namely the National Police.” If found guilty, the journalist could be sent to prison for 18 months and be disqualified from holding public office for two years. Bernal Villalez filed an application for the proceedings to be declared null and void; this was rejected in July and is currently on appeal.<sup>158</sup>

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<sup>157</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>158</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization that defends free expression.

176. On May 23, 2001, Marcelino Rodríguez of the daily *El Siglo* was convicted of the crime of defamation and libel. The suit was filed by Administration Attorney Alma Montenegro de Fletcher because of a series of articles he had published naming her as the owner of a house acquired under dubious circumstances. After verifying that his information was incorrect, the journalist retracted his story and published a clarifying note. In spite of this, he was sentenced to 16 months in prison, commutable to a fine of \$1,000 and disqualification from holding public office for the same period.<sup>159</sup>

177. On September 20, 2001, Ubaldo Davis and Herbert Rattray of the satirical weekly *La Cáscara News* were arrested for publishing humorous material alluding to the private life of President Mireya Moscoso and other public officials. The next day, Joel Díaz, another journalist on the weekly, was also arrested. The three journalists were released on September 21, but as of the date of this report they were still facing criminal charges. President Moscoso and one of the officials filed suit against the three journalists for “defamation and libel” and for “attacking the juridical security of the state.” The first charge is punishable by a prison term of up to two years, while the second charge carries a punishment of up to 20 years in prison. Another two journalists from the publication, Delmiro Quiroga and Ramón Boutrich, were detained for a few hours and interrogated about the case, but no charges were filed against them. At the same time as these events were taking place, the National Media Directorate placed a ban on publication of the weekly on the grounds that it had not complied with the formalities required by law for registering a new newspaper.<sup>160</sup>

### **Prior Censorship**

178. On September 8, 2001, *Radio Soberana Civilista*, belonging to the radio broadcaster Alonso Pinzón, suddenly ceased transmissions as Pinzón and his collaborators were harshly criticizing the government and denouncing instances of corruption and attempted fraud in the Arnulfista Party’s internal elections. The transmission breakdown occurred when

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<sup>159</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>160</sup> This information was provided by the World Association of Newspapers (WAN), Reporters without Borders (RSF), and other press sources.

the journalist was giving details about maneuvers that government officials had allegedly planned to ensure Mireya Moscoso's reelection as president of the Arnulfista Party. After the interruption, the station engineer went to inspect the transmitters and saw that the doors had been forced and the electricity had been cut off. In addition, the radio station received a notice demanding payment of arrears, in spite of the fact that it had entered into a payment agreement with the Elektra Noreste electric company a year earlier.<sup>161</sup>

## **Positive Actions**

179. On January 22, 2002, the nation's executive promulgated the Law on Transparency in the Public Administration, which provides for habeas data action. This new legislation empowers all individuals to request the information about them held by the state. It also provides that officials who refuse to hand over such information shall be subject to punishments including fines and dismissals.<sup>162</sup> Chapter V of the law defines the types of information that are restricted and confidential. The scope of such restrictions within this context must not be set on a discretionary basis by the state; they should instead be expressly established by law, intended to protect a legitimate goal and necessary for a democratic society. As the Rapporteur has stated before, access to information held by the state is a vital tool in building transparent public administrations. The Rapporteur welcomes the initiatives taken by the Panamanian State in introducing legislation to provide access to public information.

## **Paraguay**

### **Assassinations**

180. In January 2001, the journalist Salvador Medina Velázquez was killed in the town of Capiibary, San Pedro department. According to the information received, threats had previously been made against Medina Velázquez, and the motive behind the murder was the corruption allegations he had made over the local *Ñemity* community radio station. Medina had

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<sup>161</sup> This information was provided by the Latin American human rights section of the International Federation of Journalists (IFJ).

<sup>162</sup> *La Prensa, El Panamá América*.

published several articles denouncing the existence of a local mafia and, in his investigations, he had identified a gang of suspected smugglers with ties to the National Republican Association, better known as the *Partido Colorado*. On October 16, 2001, Milcíades Mayling was sentenced to a 25-year prison term for carrying out the assassination, although the individuals responsible for planning it remain unknown. However, according to reports, after that conviction Medina's family began to receive threats. One of Salvador Medina's brothers was abducted for the space of a few hours and his other brother, Pablo, a correspondent for the daily *ABC Color* in Curuguaty and the main instigator of the trial, received death threats.<sup>163</sup>

### **Threats and Attacks**

181. In May 2001, Séver Del Puerto, a journalist who covers legal affairs for *Radio Cáritas*, received death threats on account of his investigation into corruption involving politicians with ties to the government and representatives of the judiciary. According to the reports received, Del Puerto took refuge on the premises of *Canal 9*, claiming to have documentary and audiovisual proof of the crimes he was investigating. He also made claims to the press and presented the public prosecution service with evidence from his investigation. At the same time, the journalists Roberto Augsten of *Ultima Hora* and Héctor Riveros of *Radio 10 de Marzo* were also harassed for spreading information related to his investigations. Augsten reported that his personal computer was stolen and Riveros, who also knew about the investigation, was attacked in his home.<sup>164</sup>

182. On August 15, 2001, the journalist Aldo Eustacio Lezcano, the correspondent for *ABC Color* in Paraguarí, received a death threat from a local government official after he published press articles criticizing that official's performance at his job.<sup>165</sup>

### **Judicial Actions**

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<sup>163</sup> This information was provided by the Union of Journalists of Paraguay, the Committee to Protect Journalists (CPJ), the Inter-American Press Association (IAPA), and Reporters without Borders (RSF), which are organizations that defend free expression.

<sup>164</sup> This information was provided by Reporters without Borders (RSF), an organization that defends free expression.

<sup>165</sup> This information was provided by the Union of Journalists of Paraguay.

183. On September 25-26, 2001, journalist Telmo Ibañez, the correspondent of the daily *ABC Color* in Concepción, received several threatening telephone calls and reported that a car with tinted windows and no license plate was watching the office where he worked. The journalist reported the incident to the local police. These threats were made a few days after the journalist was ordered to pay a fine for aggravated libel after he had published an article involving a number of municipal councilors in irregularities that were committed by the mayor of Concepción, Genaro Domínguez, and noted by the Comptrollership of the Nation.<sup>166</sup> In October 2001, the Union of Journalists of Paraguay reported that the Supreme Court of Justice had announced that it was intervening in the legal proceedings brought against the journalist in order to hear the merits of his conviction.

### **Other**

184. During 2001, the Rapporteur received information regarding the situation prevailing among Paraguay's community radio stations. The country has more than 170 community broadcasters, which, over recent years, have been pursuing the formalities necessary to straighten out their legal status. Given the legal uncertainty under which these stations operate, the Network of Community Radio Stations of Paraguay filed a constitutional challenge with the Supreme Court of Justice against the regulations applicable to community broadcasters and the way in which frequencies are allocated in the sector.<sup>167</sup> The Rapporteur underscores the importance of progressive policies intended to provide all sectors of society with a forum for expression on a nondiscriminatory basis, thus guaranteeing the availability of multiple sources of information and encouraging broad freedom of expression and information.

### **Positive Actions**

185. On September 13, 2001, the Paraguayan Senate repealed Law 1728 on Administrative Transparency and Free Access to Information, which had been heavily criticized

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<sup>166</sup> This information was provided by Reporters without Borders (RSF) and the Union of Journalists of Paraguay, which are organizations that defend free expression.

<sup>167</sup> Network of Community Radio Stations, December 17, 2001.

for limiting full enjoyment of free expression. The executive branch of government concurred with the legislature's decision. The repeal arose from criticisms voiced by both the Paraguayan press and a number of international organizations active on free speech issues. The executive promulgated the law in July 2001 in order to promote transparency within the government and to ensure access to information. However, the legislation gave rise to concern in certain quarters since several of its articles imposed restrictions on the media's right of access to information held in official documents, thus hindering government transparency. The circumstances under which the authorities could reject requests were also too broad.<sup>168</sup> The Rapporteur believes that repealing this legislation was a positive action of the part of the Paraguayan State, and he urges Paraguay to continue working to draft laws that guarantee full enjoyment of free expression.

186. In late August 2001, civil society organizations belonging to the Alliance for the Defense of Freedom of Expression and the Right to Information<sup>169</sup> sent the Chamber of Deputies a new draft bill for a Law on Free Access to Public Information. The Rapporteur hopes that the Paraguayan State enacts an information access law that is in accordance with international standards governing freedom of expression.

## **Peru**

### **Threats and Attacks**

187. On April 13, 2001, the journalist Clemente Yatas Ayala of *Frecuencia Popular Radio* was physically attacked by former governor Ney Delgado Zuñiga and suffered a series of injuries and bruises. The journalist had reported alleged connections between the official and misappropriations of funds during the government of former president Alberto Fujimori. The journalist notes that prior to this incident, he had received several threats from the ex-governor.<sup>170</sup>

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<sup>168</sup> The law prevented public scrutiny of any ongoing investigation into actions by a public official or into government procurement that could give rise to speculation. Information furnished by the Committee to Protect Journalists, July 30, 2001.

<sup>169</sup> The Alliance for the Defense of Freedom of Expression and the Right to Information was created by the Union of Journalists of Paraguay and involves the Paraguay Human Rights Coordination Office, the Association of Users and Consumers, the electricity sector trade union Sitrande, and the *Comunica* association of community radio stations.

<sup>170</sup> Press and Society Institute (IPYS).

188. On October 31, 2001, Juan Carlos Hidalgo Sayán, a cameraman with *Canal N* television was violently attacked by the members of the national police and the local patrol from the municipality of El Rímac; the incident occurred as he was filming the eviction of a group of market traders. His camera was also momentarily confiscated.<sup>171</sup>

189. On December 17, 2001, journalist Elizabeth Huamán Perales, a correspondent for *América Televisión Canal 4* in Huancayo, was physically attacked while covering President Alejandro Toledo's visit to the city. The attack was allegedly carried out by individuals with ties to the *Perú Posible* political party, who attacked her and confiscated her camera.<sup>172</sup>

### **Judicial Actions**

190. In June 2001 the journalists Jesús Alfonso Castiglione Mendoza, Martín Gómez Arquíño, and Hugo González Henostroza were sued for defamation and libel by retired Colonel Ildorfo Cueva Retuerto in the city of Huaraz. The origin of the suit was information gathered by the journalists and published by the daily *Liberación* on March 19, 2001, questioning the appointment of the retired colonel to the position of prefect of Ancash region because of human rights violations. Alonso Castiglione, a journalist with the magazine *Caretas*, was also included in the same suit after he published, in that magazine, a letter expressing doubts about the appointment. According to reports, the journalists were acquitted of the charges of libel and defamation on August 17, 2001.<sup>173</sup>

### **Legislation**

191. As this report went to press, the Peruvian Congress was studying a bill that would introduce legislation to abolish the crime of *desacato* contempt by repealing Article 374 of the Criminal Code. The Rapporteur expressed his satisfaction at that bill's existence in the

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<sup>171</sup> Latin American human rights section of the International Federation of Journalists, October 31, 2001; Press and Society Institute, October 29, 2001.

<sup>172</sup> Latin American human rights section of the International Federation of Journalists, December 19, 2001.

<sup>173</sup> Press and Society Institute (IPYS) and Reporters without Borders (RSF).



Annual Report for the year 2000, when he urged the authorities to adopt the proposal since the elimination of *desacato* crimes would represent a major step forward with respect to freedom of expression in Peru and would set an example for other states in the region.<sup>174</sup> The Rapporteur emphasizes the need for legislative steps to be taken to repeal Peru's *desacato* laws, which, as has been pointed out on several occasions, clearly restrict the right of free expression.

## **United States**

### **Detentions**

192. On July 20, 2001, Vanessa Leggett was taken into the custody of a federal detention center after being found guilty of contempt of court for refusing to hand over notes and tapes that would reveal her confidential sources in a grand jury investigation of a high-profile murder case. Ms. Leggett is a writing instructor in Houston, Texas, and had gathered the subpoenaed materials while conducting research for a book about the case.<sup>175</sup> On January 4, 2002, the journalist was released after being in prison for more than five months.<sup>176</sup>

### **Judicial Actions**

193. In April 2001, David Carson and Edward H. Powers, Jr., publisher and editor of *The New Observer*, were charged with ten misdemeanor counts of criminal defamation in Wyandotte County, Kansas, for statements made in *The New Observer* about Carol Marinovich, the mayor/chief executive officer of the Unified Government of Wyandotte County/Kansas City, and her husband, a District Court judge. If found guilty, they face a fine of \$2,500 and a sentence of up to one year's imprisonment.<sup>177</sup>

### **Intimidation**

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<sup>174</sup> See: Annual Report of the Special Rapporteur for Freedom of Expression, 2000.

<sup>175</sup> This information was received from Reporters without Borders (RSF), the Committee to Protect Journalists (CPJ), the Inter American Press Association (IAPA), and various media sources.

<sup>176</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization for the protection of freedom of expression.

<sup>177</sup> This information was provided by the International Press Institute (IPI).

194. In May 2001, the Justice Department subpoenaed the telephone records of *Associated Press* journalist John Solomon, showing the calls made to and from his home from May 2 to May 7, 2001. Mr. Solomon had written an article that appeared on May 4, in which he quoted an anonymous judicial source regarding information obtained through a federal wiretap.<sup>178</sup>

195. In the wake of the terrorist attacks on the World Trade Center and the Pentagon on September 11, some nongovernmental organizations have expressed concern about actions by the US government that may threaten freedom of expression. Such actions include pressure on media organizations and foreign governments to suppress news or alter the content of certain broadcasts, limiting reporters' access to some information.<sup>179</sup>

196. On December 12, 2001, the Commission issued a Resolution on Terrorism and Human Rights, in which it conveyed its condolences and expressed its solidarity with the people and the government of the United States, as well as the people and governments of other countries whose citizens were victims of the attacks. The Commission stated clearly that "[t]errorism must not go unpunished. States have the right and indeed the duty to defend themselves against this international crime within the framework of international instruments that require domestic laws and regulations to conform with international commitments." The Commission is currently preparing a Report on Terrorism and Human Rights "to assist States in adopting laws and regulations that accord with international law."

## Legislation

197. Some freedom of expression and civil liberties organizations have criticized the anti-terrorism legislation introduced after September 11 as allowing the government to interfere unduly with private communications.<sup>180</sup> The USA Patriot Act, signed into law by President

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<sup>178</sup> This information was provided by Reporters without Borders (RWB) and the Inter American Press Association (IAPA), both organizations for the protection of freedom of expression.

<sup>179</sup> (IAPA), "Report on violations of press freedom in the United States," October 17, 2001; (CPJ), October 23, 2001.

<sup>180</sup> *Ibid.*; (RSF), "Internet Privacy Threatened by the War Against Terrorism," September 19, 2001; American Civil Liberties Union, "USA Patriot Act Boosts Government Powers While Cutting Back on Traditional Checks and Balances."

George W. Bush on October 26, 2001, grants law enforcement officials greater authority to conduct telephone and Internet surveillance.<sup>181</sup> The Office of the Special Rapporteur recalls that governmental interferences with individuals' right to exchange ideas and information freely must be necessary to achieve a pressing governmental need and narrowly tailored to meet that need.<sup>182</sup> As stated above, preventing acts of terrorism is clearly a legitimate and pressing governmental need. The US government should be cautious, however, in ensuring that the benefits of the increased surveillance powers are not outweighed by the harm caused to freedom of expression.

### **Bolivarian Republic of Venezuela**

198. Between February 5 and 8, 2002, the Rapporteur's office accompanied the Commission's Executive Secretariat on a visit to the Bolivarian Republic of Venezuela to observe and gather information on the prevailing situation with respect to freedom of expression in the country and to draw up a preliminary evaluation for preparing a on-site visit there that the Commission is to make during 2002. The visit was also in response to requests made by different sectors of civil society concerned about recent events *vis-à-vis* freedom of expression in the country.

199. Without prejudice to the information that will ultimately be published in the freedom of expression chapter in the Commission's country report, the Rapporteur expresses his concern about the recorded increase in the number of acts of physical violence and harassment suffered by journalists and some media outlets. During this visit, the Rapporteur was able to detect a mood of intolerance and political polarization which, if it continues, could threaten full and responsible enjoyment of free expression and the maintenance of the rule of law for upholding democratic institutions.

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<sup>181</sup> See: UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001, Public Law 107-56, 107th Congress, Title II, §§ 201-225.

<sup>182</sup> See: Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, para. 46.

200. The Rapporteur's office received information indicating that numerous journalists, camera operators, and photographers have suffered from physical and verbal aggression. These media workers described their reluctance to identify themselves as such when covering government events, out of fear of reprisals or of being attacked. They also stressed how important it was for both the government and the rest of civil society to refrain from identifying them as allies of the opposition; only in that way can they perform their task of keeping Venezuelan society informed without suffering arbitrary consequences or acts of intimidation.

201. It should also be reported that government officials and certain sectors of civil society alike expressed their concern about the fact that some media outlets are being used as mere tools of political opposition to provide a loud voice of dissent against the government of President Hugo Chávez Frías, undermining the task of providing society with truthful, impartial, and timely information.

202. In connection with this, the Rapporteur would like to point out that private media outlets cannot be required to provide truthful, impartial, and timely information since this would constitute prior censorship, which is forbidden by the American Convention. Debating and exchanging ideas is the main mechanism for seeking out truth based on a plurality of ideas, opinions, and information. The Rapporteur holds that a plurality of opinions arises from the number of distinct ideas disseminated within society over different media.

203. In light of this situation, the Rapporteur would like to note that in the interest of strengthening Venezuela's democracy and fully guaranteeing free expression and the rule of law, the Venezuelan State must work to provide an atmosphere that guarantees enjoyment of free speech within the framework of the law. It must also seek out channels for understanding that will allow it to better tolerate criticism and scrutiny of government undertakings, thus ensuring full enjoyment of freedom of information and expression.

## **II. Judicial Actions**

204. The Rapporteur's office has received information indicating that summary administrative proceedings begun by the Venezuelan National Telecommunications Commission (CONATEL) in connection with the programming and advertising carried by several television stations, together with tax inspection proceedings, are being used to intimidate certain media companies. According to these reports, over 2001 and into January 2002, the CONATEL state agency sent the *Venevisión* television corporation more than 100 citations relating to the content of its newscasts. Similar summary administrative proceedings have been initiated against other television companies: *RCTV*, *Globovisión*, and *Vale TV*.

205. On May 17, 2001, CONATEL informed *Vale TV* that administrative proceedings had been launched to determine the existence of possible grounds for revoking the network's broadcasting license. It was CONATEL itself that on December 3, 1998 reserved frequencies for *Vale TV* and authorized it to begin transmissions. On October 25, 2001, the Rapporteur's office asked the State of Venezuela for information regarding the current situation of *Vale TV*.

206. On October 18, 2001, proceedings began against *Globovisión*, which could lead to sanctions under the Telecommunications Law. The proceedings began after the station broadcast, on September 29, 2001, a statement from a taxi-driver regarding the assassination of nine of his colleagues; only one had actually been killed and, some time later, *Globovisión* transmitted a rectification. The state agency CONATEL began proceedings under Articles 53 and 59 of the Radiocommunications Regulations, which prohibit the transmission of "false, deceitful, or biased news" and require truthfulness in broadcast information. The punishment can range from a monetary fine to the temporary or permanent cancellation of the station's license.

207. Prior to these events, at a public ceremony held on October 4, President Hugo Chávez Frías had accused *Globovisión* of opposing "the peaceful and democratic revolution" in Venezuela. The Caracas daily *El Nacional* reported that according to statements made by the president, frequency concessions were a matter of state; it then offered a warning: "There

should be no cause for surprise if, for reasons of national interest, those concessions are reviewed.”<sup>183</sup>

208. The Rapporteur noted in a press release<sup>184</sup> his concern at the existence and enforcement of legislation that contravened international free-speech standards. Article 53 of Venezuela’s Radiocommunications Regulations establishes that: “Broadcast stations are absolutely forbidden to transmit: (...) (j) False, deceitful, and biased news or reports (...); (k) Information encouraging speculation or containing deceitful statements or dubious warnings.” Article 59 of those same regulations also provides that: “Broadcast news and information must come from reliable sources that offer a guarantee of seriousness and precision. In general, information must be succinct and limit itself to reporting the facts in question, avoiding personal interpretations and comments.”

209. CONATEL’s administrative proceedings also make reference to Article 58 of the Bolivarian Constitution of Venezuela, which reads: “Communication is free and plural, and it entails the duties and responsibilities set forth in law. All persons have the right to timely, truthful, and impartial information, free of censorship, in accordance with the principles of this Constitution.” The Rapporteur has on several occasions made statements regarding this article and its incompatibility with the freedom of expression guaranteed by Article 13 of the Convention. The right to information covers all information, even that which, in opposition to “truthful,” could be considered “erroneous,” “untimely,” or “incomplete.” The doctrine of “truthful” information represents a backward step for freedom of expression in the hemisphere, in that the free flow of information would be restricted by its prior assessment, in contravention of the broad view taken of this right within the inter-American system.

210. Initiating proceedings based on legislation that follows this truthful information doctrine poses a serious threat to full enjoyment of freedom of expression. In this regard, the Inter-American Court has stated that:

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<sup>183</sup> This information was provided by the Committee to Protect Journalists (CPJ), an organization that defends free expression.

<sup>184</sup> See, in the annexes, Press Release No. 45/01, Office of the Special Rapporteur for Freedom of Expression.

One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor.

211. The Rapporteur has on several occasions said that a state's use of legislation that violates free expression restricts the development of democracy by curtailing the free debate of ideas and opinions.<sup>185</sup>

### **III. Intimidation**

212. In May 2001 a fire destroyed the premises of the daily *La Opinión* in the Cojedes state. The Oviedo family, which owns the paper, accused the state governor, Jhony Yanez Rangel, of starting the fire; the governor, in turn, placed the blame on the family.<sup>186</sup>

213. On May 18, 2001, the radio program *Responda, Mundial pregunta* was taken off the air. The program's host, Fernando Silva, reported that upon being notified of the shutdown, he was told that the orders had come from above. Silva claimed that the measure was the result of allegations made on his program about fraudulent hirings on the part of the mayor of Caracas, former minister Alfredo Peña.<sup>187</sup>

214. The Rapporteur's office received information on the use of public sector advertising purchases to undermine or influence the editorial line of some media companies, including the dailies *El Universal*, *El Nacional*, *Tal Cual*, and *La Razón*. The Rapporteur notes that state agencies must establish clear, fair, and objective guidelines for deciding where official publicity is to be placed. In no instance may official advertising be used with the intent of harming a media outlet or of favoring one over another.

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<sup>185</sup> See the seventh principle of the Declaration.

<sup>186</sup> This information was provided by the Press and Society Institute (IPYS), an organization that defends free expression.

<sup>187</sup> *Ibid.*

#### IV. Legislation

215. On June 12, 2001, the Supreme Court issued a ruling denying journalists and other media commentators the right to reply and condemning the ideological leanings of columnists. This resolution arose from the dismissal of a remedy lodged by the journalist Elías Santana, who had claimed the right of reply on President Hugo Chávez's radio program *Alo Presidente*.

216. This ruling had a major impact on the human rights and free speech communities, both in Venezuela and abroad. The Rapporteur's office received numerous statements of concern from different quarters, expressing alarm at what this ruling could mean for free expression and democracy alike.

217. One of the basic notions behind these instruments and the rights they enshrine is the full enjoyment, on a nondiscriminatory basis, of the right of free expression and the right of reply. In this respect, the Commission has ruled that member states must eliminate provisions that discriminate against individuals and keep them from fully participating in their countries' political, economic, public, and social life. The American Convention protects the right of nondiscrimination as a basic pillar in strengthening and upholding the hemisphere's democratic systems.<sup>188</sup>

218. The exclusion of any sector of society from exercising the rights guaranteed by the Convention hinders the broad development of democratic, pluralistic societies and exacerbates intolerance and discrimination. In the case of María Eugenia Morales de Sierra from Guatemala, the Commission said that, "a norm that deprives a portion of the population of some of its rights—for example, because of race—automatically injures all the members of that race."<sup>189</sup> Thus, for example, denying media workers the right to reply would constitute a limitation of a right enshrined in the American Convention with respect to a part of the population—in this case, journalists and similar professions.

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<sup>188</sup> See: American Convention on Human Rights, Chapter I, General Obligations: Article 1: Obligation to Respect Rights, and Chapter II, Civil and Political Rights, Article 13: Freedom of Thought and Expression.

<sup>189</sup> See: IACHR, Case 11.625, María Eugenia Morales de Sierra, Guatemala, January 19, 2001.



## **Other**

219. The Rapporteur notes with concern the disproportionate and indiscriminate use of official broadcasts in the media. Several sectors of civil society told the Rapporteur's office that the frequency and duration of these broadcasts were "abusive," in that they did not always serve the public interest.

220. The Rapporteur's office was also informed about the absence of mechanisms to provide Venezuelan society with access to state-held information. Article 28 of the Venezuelan Constitution ensures access to personal data held in both state and private records as well as access to all kinds of documents that are of interest to the community. In practice, however, this right is curtailed. The Rapporteur has made statements on several occasions about the importance of the right of access to information as a way to strengthen democracy and ensure transparency through oversight of the workings of government. The IACHR has on a number of occasions underscored the importance of guaranteeing mechanisms that allow effective access to information held by the state.

221. The Rapporteur was also told about the existence of a draft bill on programming content that could contain provisions that would undermine free expression, in particular by allowing prior censorship. The Rapporteur again points out that the jurisprudence of the inter-American system holds that the prior censorship of any statement, opinion, or information must be prohibited and that, in accordance with Article 13 of the American Convention, liability must be established on a post-facto basis.

## Assassinations of Journalists

### JOURNALISTS KILLED DURING 2001

JOURNALIST	PLACE AND DATE	INCIDENT	V. BACKGROU ND	STATUS OF INVESTIGATION
Salvador Medina Velázquez, Chairman of the board of the <i>FM Ñemety</i> community radio station. Aged 27.	Capiibary, San Pedro, PARAGUAY  January 5.	Shot several times in an ambush.	VI. Threats had previously been made against him. Velázquez had put out several news stories reporting on corruption in the area.	In October 2001, Milcíades Mayling was sentenced to a 25-year prison term for carrying out the assassination. The individuals who planned it are still unknown. Following the conviction, threats were made against the journalist's family. One of the journalist's brothers was abducted for two hours, and his other brother, Pablo, a correspondent for the daily <i>ABC Color</i> in Curuguaty and the main driving force behind the criminal trial, received death

				threats.
José Luis Ortega Mata, editor of the <i>Semanario de Ojinaga</i> . Aged 37.	Ojinaga, MEXICO  February 19.	Shot twice in the head.	Some days prior to his slaying, he had published information about drug trafficking in the region.	The Rapporteur's office has no information about how the investigation of this assassination is progressing.

JOURNALIST	PLACE AND DATE	INCIDENT	VII. BACKGROUND	STATUS OF INVESTIGATION
Flavio Bedoya, correspondent of the newspaper <i>Voz of the Communist Party</i> . Aged 52.	Tumaco, Nariño, COLOMBIA  April 27.	Shot four times.	The journalist had received threats because of his investigations into clashes between armed rebel groups and, in particular, on the actions of paramilitary forces. The journalist had reported the threats to the local authorities and to the Interior Ministry.	The Sub-Unit for Investigating Assassinations of Journalists of the National Attorney General's Human Rights Unit reported that: "proceedings are at the preliminary inquiry stage, with evidence being gathered."
José Duviél Vásquez Arias, news editor of radio station <i>La Voz de la Selva</i> .	Florencia, Caquetá. COLOMBIA  July 6.	Shot twice.	He had been working at the radio station since February 2001 as a replacement for reporter Alfredo Abad, killed on	The Rapporteur's office has no information about how the investigation of this assassination is progressing.

			<p>December 13, 2000.</p> <p>The assassination is suspected of having to do with the journalist's investigations into corruption among local officials and members of the armed rebel groups. One of the journalist's investigations involved the former mayor of Florencia, Lucrecia Murcia, and other local officials. The radio station had also conducted an investigation into possible irregularities in how public funds were handled by the governor of Caquetá, Pablo Adriano Muñoz. As a result of this investigation, the governor sued Vásquez for defamation and libel. Some days before</p>	
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			his death, the journalist told some of his colleagues that he felt threatened. The journalist's attorney in the libel trial, Carlos Alberto Beltrán, suffered an attempt on his life and had to leave the city.	
<b>JOURNALIST</b>	<b>PLACE AND DATE</b>	<b>INCIDENT</b>	<b>VIII. BACKGROUND</b>	<b>STATUS OF INVESTIGATION</b>
Parmenio Medina Pérez, host of the radio program <i>La Patada de Radio Monumental</i> .	San José, COSTA RICA  July 7.	Shot several times.	This renowned journalist had been broadcasting his show for 28 years. He used it to denounce acts of corruption and voice criticism of official excesses. On May 9, 2001, persons unknown shot at his home. Following this, the journalist was assigned a police guard; one month later, however, he asked for it to be suspended.	In October 2001, the former director of the Judicial Investigation Agency, Linneth Saborio, acknowledged that no clues had yet been found to indicate the perpetrators of the crime.

Jorge Enrique Urbano Sánchez, manager of the <i>Emisora Mar Estéreo</i> radio station.	Buenaventura , Valle COLOMBIA  July 8.	Shot four times.	During his last radio broadcast, he had denounced a gang of local criminals. The journalist also served as the manager of Corporación Recrear, a company responsible for the upkeep of gardens, relocating street traders, and evicting drug dealers. He had previously received death threats, which he attributed to these undertakings.	The Rapporteur's office has no information about how the investigation of this assassination is progressing.
Juan Carlos Encinas, journalist with the <i>Enlace de Canal 21</i> newscast. Aged 39.	La Paz, BOLIVIA  July 29.	Shot and killed while covering a conflict between two organizations over control of a mining cooperative.		According to the Federation of Press Workers of Bolivia (FTPB) and the Union of Press Workers of El Alto, a ballistics report issued by the technical judicial police revealed that the ammunition used was army issue.

				<p>Other sources claimed that journalist was killed by gunshots fired by armed workers.</p> <p>The Rapporteur's office has no information about how the investigation of this assassination is progressing.</p>
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JOURNALIST	PLACE AND DATE	INCIDENT	IX. BACKGROUN	STATUS OF INVESTIGATION
Jorge Mynor Alegría Armendáriz, host of the program <i>Línea Directa</i> on <i>Radio Amatique</i> .	Puerto Barrios, Izabal GUATEMALA September 5.	Shot six times in front of his home.	The journalist used his program to denounce corruption and criticize the local authorities. He had received death threats on several occasions and had reported them on his radio program.	The day after this assassination, Enrique Aceituno, another journalist with the same station, presented his resignation after receiving threats against his life.  In September 2001, the Attorney for Human Rights determined that his assassination was politically motivated and decided it was probably organized by local officials as a reprisal for the journalist's reporting on the corruption issue.
Brignol Lindor, news editor of radio station <i>Echo 2000</i> and host of a	Petit-Goâve, HAITI December 3.	The journalist was attacked with machetes and stones by a group of	He had received numerous threats from local officials after inviting members of the	The Rapporteur's office has no information about how the investigation of this assassination



political talk show called <i>Dialogue</i> .		demonstrators and supporters of the government party while on his way to the station.	opposition to appear on his show.	is progressing.
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\* The descriptions of these incidents reflect developments as of the date of this Annual Report (April 2002).

## CHAPTER III

### REPORT ON ACTION WITH RESPECT TO *HABEAS DATA* AND THE RIGHT OF ACCESS TO INFORMATION IN THE HEMISPHERE<sup>190</sup>

#### A. Introduction

1. The right to freedom of expression consists of aspects that are fundamental to the development and strengthening of democratic societies. Freedom of expression consolidates all other freedoms within a democracy by facilitating the participation of members of society in the decision-making processes; by providing a tool for building a more tolerant and stable society; and by enhancing the dignity of individual human beings, through the right to expression and the exchange of ideas, opinions, and information. Freedom of expression therefore provides a framework within which the conflicts inherent in any society can be debated and resolved without destroying the social fabric, and a balance between stability and change can be maintained. In the words of the Inter-American Court of Human Rights, “freedom of expression allows open discussion of moral and social values and facilitates political discussion, which is crucial for democratic values”.<sup>191</sup> Thus, when freedom of expression is obstructed, democracy loses its collective and permanent social dimension, and is reduced merely to a formal institutional arrangement in which social participation is not effective.

2. The Special Rapporteur, and the international community in general, recognize the importance of ensuring the right of access to information as a means of implementing policies of transparency and strengthening constitutional democracies. In pursuance of the mandates issued by the Heads of State and Government at the Third Summit of the Americas, held in Québec City, Canada, in April 2001, the Rapporteur has undertaken to conduct an annual exercise to monitor the adoption of new laws and regulatory systems allowing the right of access to information and the action of *habeas data* to be exercised.

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<sup>190</sup> The Special Rapporteur wishes to thank the journalists María Seoane of the Buenos Aires, Argentina, newspaper *El Clarín* for the investigation she conducted for this report in the section on existing legislation in each of the OAS member countries.

<sup>191</sup> Inter-American Court of Human Rights, *Baruch Ivcher*, Case No. 74. Judgment of 6 February 2001, para. 143(e).

3. In this chapter, the Special Rapporteur reports on laws and practices in the 35 member countries of the Organization of American States with respect to the right of access to information and the action of *habeas data*.<sup>192</sup>

4. To this end, an official request for information was issued to the states using a standardized questionnaire, which included questions, *inter alia*, on current constitutional and legal provisions, application criteria, specific aspects of recourse, statistics, and draft legislation.

5. A similar effort was made to seek unofficial information from national and international nongovernmental organizations (NGOs). The aim of the Special Rapporteur for Freedom of Expression here was to obtain a picture of the actual situation, as well as the official version thereof; the two did not coincide in many of the cases presented in this report.

6. Of the 35 member countries of the Organization of American States, only 10 replied to the questionnaire sent by the Special Rapporteur through the representatives of each country.

7. Responses to the questionnaire revealed in particular the absence of constitutional and legal provisions to guarantee access to public information in many countries of the hemisphere. In the absence of more specific legislation, some states adapt generic provisions protecting, for instance, such broad categories as "individual freedoms". Without systematic prosecution, such provisions clearly are of little use in applying a norm as specific as *habeas data*. Some countries have legislation designed for this purpose, but since the language is ambiguous, information continues to be denied by government agencies abusing their discretionary authority.

8. From a formal point of view, clear differences can be observed between countries that have already developed constitutional and legal provisions and those still

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<sup>192</sup> During the Third Summit of the Americas the Heads of State and Government undertook to support "the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations".

operating on the basis of general norms, such as "*amparo*" or "freedom of expression and opinion" to protect the right to information. Since work in this area in most of the member countries is still in its early stages, the Special Rapporteur recommends that states seek to introduce legislation guaranteeing both rights effectively.

9. The following paragraphs provide a brief description of the legal framework for the right of access to information and the action of *habeas data* followed by a presentation of the information gathered with respect to domestic provisions in this area in the 35 member countries.

## **B. Legal Framework**

10. Article 13 of the American Convention on Human Rights and the IACHR Declaration of Principles on the Freedom of Expression are taken as the framework for legal interpretation. The Special Rapporteur also consulted, among other sources, the Inter-American Press Association (IAPA), the Model Law on Access to Administrative Information for the Prevention of Corruption developed by the Anticorruption Office of the OAS, the principles of access to information for nongovernmental organizations, Article 19, and comments from the nongovernmental organizations Center for National Security Studies, Human Rights Watch, and other independent organizations dedicated to the protection of human rights and freedom of expression.

### **1. Right to information within the framework of the freedom of expression**

11. Article 13.1 of the American Convention on Human Rights provides that the right to freedom of expression and information: 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.<sup>193</sup>

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<sup>193</sup> American Convention on Human Rights, Article 13.

12. With respect to the scope of the freedom of expression and information, the Inter-American Court of Human Rights has stated that:

Those subject to the Convention have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive, and impart information and ideas of all kinds ... the freedom of expression and information requires, on the one hand, that no one be arbitrarily hindered or prevented from expressing his own thoughts, and therefore represents a right of every individual. But it also entails a collective right to receive any information and to have access to the thoughts of others<sup>194</sup>

13. The right of access to information is an indispensable requisite for the very functioning of democracy. In a representative and participatory democratic system, the citizenry exercises its constitutional rights and, inter alia, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information.

Public disclosure of information enables citizens to monitor public administration, not only confirming its adherence to the law, which government officials have sworn to obey and uphold, but also by exercising the right of petition and the right to obtain transparent accountability.<sup>195</sup>

14. The absence of participation by society in terms of access to information that directly affects its members prevents the full development of democratic societies, increasing the potential for corrupt conduct in the administration of government and spawning policies of intolerance and discrimination. The inclusion of all segments of society in the processes of communication, decision-making, and development, is fundamental to ensuring that the needs, opinions, and interests of individual citizens are taken into account in the processes of policy design and decision-making. The interest that Article 13 of the Convention is designed mainly

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<sup>194</sup> *Ibidem*, para. 30.

<sup>195</sup> OAS, Model Law on Access to Administrative Information for the Prevention of Corruption. Regional Technical Workshop: Guatemala, November 2000.

to protect is the formation of public opinion through the free exchange of information and healthy criticism of public administration. This is clearly reflected in the Court's advisory opinion with respect to mandatory association membership for journalists:

The concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard... It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.<sup>196</sup>

15. Given the importance assigned to the right to information as a principle inherent in participation by and accountability to society, the Special Rapporteur has called upon the member states to incorporate laws concerning access to information and effective mechanisms for exercising such access within their legal systems, empowering society as a whole to express opinions, reasoned or in reaction to public or private policies and actions that affect its members.

## **2. Access to public information**

16. As explained above, a fundamental consideration in the strengthening of constitutional democracies is the right to state-held information. This right empowers citizens to gain a broad understanding of the functions performed by the various agencies of the state, allowing access to information, *inter alia*, on budgetary matters, progress toward stated objectives, and state plans to improve living conditions for society as a whole.<sup>197</sup> Effective citizen control over public activities requires not only that the state refrain from censorship, but

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<sup>196</sup> Inter-American Court of Human Rights, Advisory Opinion OC-5/85 Series A, No. 5, para. 69.

<sup>197</sup> *Ibidem*.

also that positive steps be taken to provide citizens with information. It is clear that if such information is not provided to all persons entitled to it, the exercise of freedom of expression cannot function as an effective mechanism for citizen participation or democratic oversight of government.

17. This right is all the more important in that it is intimately related to the principle of transparency and public disclosure in respect of government activities. At the Third Summit of the Americas, the Heads of State and Government recognized that the sound administration of public affairs requires effective, transparent, and publicly accountable government institutions. They also assigned the highest importance to citizen participation through effective control systems.<sup>198</sup> In this context, the state represents a means to achieving the common good, and entitlement to information rests with the individual, who has delegated the administration of public affairs to representatives.

18. The principle of transparency requires governments to play the role of service-provider, furnishing all duly requested documentation that has not been temporarily classified as exempt from the exercise of this right.<sup>199</sup>

19. Such oversight is all the more necessary in that one of the most serious obstacles to the development of democratic institutions is the traditional practice of maintaining the secrecy of government activities, exacerbating the high levels of corruption that characterize certain governments in the hemisphere. It should be noted that the denial of information in the genuine interests of protecting national security and public order is not inconsistent with the protection of human rights, although it is incumbent upon the state to demonstrate to independent judicial authorities that such restrictions are explicitly allowed by law and necessary for the protection of democracy.<sup>200</sup>

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<sup>198</sup> See Third Summit of the Americas, Declaration and Plan of Action. Québec, Canada, 20-22 April 2001.

<sup>199</sup> See *El Derecho de Acceso de los Ciudadanos a los Archivos y Registros Administrativos*. Pomed Sánchez, Luis Alberto. Editorial M.A.P., Madrid, 1989, p.109.

<sup>200</sup> See *In the Public Interest: Security Services in a Constitutional Democracy*. Helsinki Foundation for Human Rights and Center for national Security Studies, Bulletin 1, June 1998. And *A Model Freedom of Information*, Article XIX, London, July 2001.

20. One of the factors that have seriously affected the stability of democracies in the hemisphere has been corruption. The lack of transparency in government has distorted economic systems and contributed to social disintegration. Corruption has been identified by the Organization of American States as a problem requiring special attention in the Americas. During the Third Summit of the Americas, the Heads of State and Government recognized the need to strengthen the fight against corruption, which "*undermines basic democratic values, representing a threat to political stability and economic growth*". In addition, the Plan of Action of the Third Summit underscores the need to support initiatives to improve transparency and thus ensure the protection of public interests and the effective use of resources by governments in pursuit of collective interests.<sup>201</sup> Within this context, the Special Rapporteur considers that corruption can only be combated effectively through a combination of efforts designed to raise the level of transparency in respect of government activities.<sup>202</sup> Accordingly, any policy designed to obstruct access to information with respect to government activities poses the risk of promoting corruption within the institutions of the state, and thus weakening democracies. Access to information represents a means of preventing such illegal practices, which are inflicting great harm on the countries of the hemisphere.<sup>203</sup> Transparency in government can be increased by creating a legal framework enabling society to gain broad access to information. In this context, the rule should be public disclosure of information on government activities as a public good, rather than the manipulation and concealment of government actions.

21. The Inter-American Court of Human Rights has stated that access to state-held information represents a fundamental individual right that states have the duty to uphold.<sup>204</sup>

22. Principle 4 of the IACHR Declaration of Principles of Freedom of Expression reads as follows:

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<sup>201</sup> See Third Summit of the Americas, Declaration and Plan of Action. Quebec, Canada, 20-22 April 2001.

<sup>202</sup> See Inter-American Convention Against Corruption, Inter-American System of Juridical Information, OAS.

<sup>203</sup> Alfredo Chirino Sánchez, *Ley Modelo de Acceso a Información Administrativa para la Prevención de la Corrupción*, Departamento de Cooperación y Difusión Jurídica, The Regional Technical Workshop: Antigua, Guatemala, OAS, November 2000, p. 3.

<sup>204</sup> IACHR, OC 5/85, Series A. No. 5, para. 70.



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

23. Principle 4 of the IACHR Declaration of Principles of Freedom of Expression establishes the parameters the state must observe in denying information in its possession. Given the need to promote greater transparency in government as the basis for strengthening democratic institutions in the hemisphere, limitations with respect to the information contained in state archives must be exceptional. Such limitations must be clearly established in the law and applicable only in the case of substantial and imminent detriment to a legitimate pursuit of public policy, and when the protection of such information must take precedence over the public interest in being informed.<sup>205</sup> Petitions in respect of any act restricting access to information should therefore be considered on a case-by-case basis.

24. As stated in the enunciation of this principle, the right of an individual to state-held information is not absolute. The exercise of this right is limited by restrictions permissible for reasons of public order, national security, fiscal or bank secrecy, and/or the protection of individual honor or privacy. The Special Rapporteur has alluded on various occasions to the scope of these restrictions, indicating that they should not be subject to state discretion, but rather, should be explicitly established by law, intended for the purpose of protecting a legitimate objective, and necessary for a democratic society. Applying the criterion of proportionality in balancing the rights affected, access to information of public interests should be governed by the principle of presumption in favor of public disclosure, with the application of minimum restrictions only in exceptional cases. The criteria for reserving information should be established clearly and precisely to permit judicial authorities to review the extent to which they are legal and reasonable in the light of the interests affected.<sup>206</sup>

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<sup>205</sup> See *El Derecho a Acceso a Información Pública*. Juan Pablo Olmedo Bustos and Ciro Colombrana López, Chile, p. 8.

<sup>206</sup> See *In the Public Interest: Security Services in a Constitutional Democracy*. Helsinki Foundation for Human Rights and Center for National Security Studies, Bulletin 1, June 1998. And *A Model Freedom of Information*, Article XIX, London, July 2001.

25. The Inter-American Court of Human Rights has stated that restrictions on the freedom of expression and information should be "judged with reference to the legitimate needs of democratic societies and institutions", since freedom of expression and information is essential for any form of democratic government.<sup>207</sup> Within this context, therefore, the state must ensure that in cases of national emergency, access to state-held information will be restricted only for the period of time absolutely necessary under the circumstances, and that such restrictions will be lifted once the emergency has passed.<sup>208</sup> The classification of information must be reviewed by an independent judicial authority capable of balancing the interest of protecting the rights and freedoms of citizens with national security.

### **3. The action of *habeas data***

26. One means of guaranteeing the right to protection against information that is abusive, inaccurate, or prejudicial to individuals is through access to public and private databases for the purpose, as necessary, of updating, correcting, removing, or reserving information about the individual concerned. This action, known as *habeas data*, was introduced as a modality of the "*amparo*" process for the protection of personal privacy. The procedure is used to guarantee access for any individual to information contained in public or private databases or records referring to him or his property, and when necessary, the ability to update, correct, remove, or reserve such information for the purpose of protecting certain fundamental rights.

27. Principle 3 of the IACHR Declaration of Principles on Freedom of Expression provides:

Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

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<sup>207</sup> Inter-American Court of Human Rights, OC-5/85 para.70.

<sup>208</sup> See Chapter IV, Article 27 of the American Convention on Human Rights, concerning the obligations of states in emergency situations.

28. The action of *habeas data* is based on the following three premises: (1) the right of every individual to undisturbed privacy;<sup>209</sup> (2) the right of every individual to obtain access to information about him in public and private databases in order to modify, remove, or correct sensitive,<sup>210</sup> false, biased, or discriminatory information about him;<sup>211</sup> and (3) the right of individuals to resort to the action of *habeas data* as an enforcement mechanism.<sup>212</sup> This right of access to and control over personal data represents a fundamental right in many aspects of life, since the lack of judicial mechanisms for the rectification, updating, or removal of data would directly affect the right to privacy, honor, individual identity, property, and accountability in the collection of data.<sup>213</sup>

29. The action of *habeas data* takes on even greater importance with the introduction of new technologies. Through greater use of computers and the Internet, both the state and the private sector have rapid access to vast amounts of personal data. It is therefore necessary to ensure that concrete channels exist to provide rapid access to information for the purpose of modifying inaccurate or outdated information contained in electronic databases, protecting the right to individual privacy.

30. There is a particularly close connection between the right to privacy and the limits to freedom of expression and information.

31. Articles 13.2 and 11 of the American Convention recognize and protect the right to privacy, honor, and reputation. These articles recognize the importance of individual honor and dignity and establish the obligation to respect both rights. They provide that these rights must be free of arbitrary or abusive interference or abusive attacks, and that all persons are entitled to protection by law against such interference or attacks. All persons, therefore, have

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<sup>209</sup> See Article 11 of the American Convention on Human Rights.

<sup>210</sup> "Sensitive data" in this context means any information concerning a person's private life.

<sup>211</sup> See Alicia Pierini, Valentín Lorences and María Inés Tornabene. *Habeas Data: Derecho a la Intimidad*. Editorial Universidad, Buenos Aires, 1999 p. 16.

<sup>212</sup> See *El acceso a la información como derecho*. Víctor Abramovich and Christian Courtis. CELS, 2000. p. 7.

<sup>213</sup> See *Secretaría de Investigación de Derecho Comparado, Tomo 1* (1998) p. 121. *Corte Suprema de Justicia de la Nación Argentina*.

the right to privacy to preserve their private lives within a social framework clearly recognized by the law.

32. Invasions of privacy generally consist of seeking and disseminating information. The Special Rapporteur wishes to stress that both the right to privacy and reputation and the right to freedom of expression are not absolute; a harmonious balance between the two must be achieved if they are not to infringe on other rights. With respect to Article 11, although the Convention does not specify the circumstances under which this right may be restricted or limited, the Inter-American Court has ruled that Article 32.2 of the Convention prescribes the rules for interpreting such restrictions:

The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

33. Thus, according to the Convention, the right to privacy must be established in accordance with legitimate laws, and its content and purpose must be consistent and in harmony with the general welfare, without unduly limiting the right to freedom of expression in the search for, and public disclosure of, *inter alia*, information of public interest.

34. In recent years, recourse to the action of *habeas data* has become a fundamental instrument for investigation into human rights violations committed during past military dictatorships in the hemisphere. Such actions, brought by family members of disappeared persons, and referred to as "the right to the truth", have taken their place as a mechanism for exacting accountability in the search for information concerning government conduct and for learning the fate of disappeared persons. The right to investigation is also a subject of Article IV of the American Declaration on the Rights and Duties of Man,<sup>214</sup> which assumes an obligation for the state to facilitate access to information for the purpose of investigating public information, conduct, or policies.

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<sup>214</sup> Article IV of the American Declaration on the Rights and Duties of Man provides that: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever".

35. With respect to the relationship between the right to the truth and Article 13.1 of the American Convention, the Inter-American Commission on Human Rights argued before the Inter-American Court in the *Barrios Altos* case that:

The right to the truth is grounded in Articles 8 and 25 of the Convention, in that both are “instrumental” in the judicial establishment of the facts and circumstances surrounding the violation of a fundamental right. In addition ... this right is rooted in Article 13.1 of the Convention, in that it recognizes the right to seek and receive information ... by virtue of this article, it is a positive obligation of the state to guarantee information essential for the protection of victims’ rights, ensure transparency in government and the protection of human rights.<sup>215</sup>

36. In addition, the action of *habeas data* imposes certain obligations for entities that process information: the obligation to use the data for specific, explicitly stated objectives, and the obligation to guarantee the security of the data against accidental, unauthorized access or manipulation. In cases where entities of the state or the private sector obtain data improperly and/or illegally, the petitioner must have access to that information, even when classified, so that individuals have control over data that affects them. The action of *habeas data* as a mechanism for ensuring the accountability of security and intelligence agencies within this context provides a means to verify that personal data has been gathered legally. The action of *habeas data* entitles the injured party, or his family members, to ascertain the purpose for which the data was collected and, if collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the collection of personal data can have the effect of preventing such practices by these agencies in the future.<sup>216</sup>

37. In order for the action of *habeas data* to be effective, the administrative hurdles that must be overcome to obtain information must be eliminated, and simple, easily accessible systems enabling individuals to request information inexpensively must be put in place. The

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<sup>215</sup> Inter-American Court of Human Rights, *Barrios Altos* (Chumbipuma Aguirre et al. vs. Peru) Series C No. 71 Judgment of 14 March 2001, para. 45.

<sup>216</sup> Víctor Abramovich and Christian Curtis. *El acceso a la información como derecho*, para. 28.

result, otherwise, would be to establish a formal mechanism which in practice would not facilitate access to information.

38. It must also be ensured that individuals resorting to the action of *habeas data* not be required to indicate why the information is being requested. The mere existence of personal data in public or private records is sufficient reason in itself for the exercise of this right.<sup>217</sup>

39. To sum up, the right of access to information and the action of *habeas data*, within the framework presented in this section, represent legal tools which can be used to achieve transparency in government, protect personal privacy against the arbitrary or illegitimate use of personal data, and ensure accountability to and participation by society.<sup>218</sup>

40. The information collected on laws and practices in the hemisphere with respect to access to information and *habeas data* is presented below.

### **C. Access to information in the member countries**

#### **1. Statistical analysis**

41. The following table shows which countries have constitutional provisions with respect to freedom of information and the action of *habeas data*. The Special Rapporteur encourages the member states to provide information to update, rectify, or enhance the statistics and information presented here so that the annual report for 2002 can reflect progress in the adoption of legislation and regulations pertaining to the right of access to public information and the action of *habeas data*.

#### **Table references:**

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<sup>217</sup> See *Derecho a la Información: Reforma Constitucional y Libertad de Expresión, Nuevos Aspectos*. Miguel Angel Ekmekdjian. Ediciones Depalma (1996) p.115.

<sup>218</sup> Alfredo Chirino Sánchez, *Ley Modelo de Acceso a Información Administrativa para la Prevención de la Corrupción*, Departamento de Cooperación y Difusión Jurídica, The Regional Technical Workshop: Antigua, Guatemala, OAS, November 2000, p. 11

1. Are there constitutional provisions recognizing or referring to the action of *habeas data*?
2. Are there constitutional provisions recognizing free access to state-held information (in archives, databases, memos, electronic mail, etc. maintained by the various local and national government agencies)?

Country	1	2
Antigua and Barbuda		
Argentina	Yes	Yes
Bahamas		
Barbados		
Belize		
Bolivia	No	No
Brazil	Yes	Yes
Canada	No	No
Chile	No	Yes (ambiguous)
Colombia	Yes (control)	Yes
Costa Rica	No	No
Cuba	No	No
Dominican Republic	Yes	Yes
Ecuador	No	No
El Salvador		
Granada		
Guatemala	No	Yes
Guyana		
Haiti		
Honduras	No	Yes
Jamaica	No	No
Mexico	No	Yes (petition)
Nicaragua	No	Yes (petition, ambiguous)
Panama	No	No

<b>Country</b>	<b>1</b>	<b>2</b>
Paraguay	Yes	No
Peru	Yes	Yes
Saint Kitts and Nevis		
Saint Lucia		
Saint Vincent & the Grenadines		
Surinam		
Trinidad and Tobago	No	No
United States	No	No
Uruguay	No	No
Venezuela	Yes	Yes

**Table 2. Type of information used for this report**

<b>Country</b>	<b>Official information</b>	<b>Unofficial information</b>	<b>No information available</b>
Antigua and Barbuda			<b>X</b>
Argentina	<b>x</b>	<b>x</b>	
Bahamas			<b>X</b>
Barbados			<b>X</b>
Belize			<b>x</b>
Bolivia		<b>x</b>	
Brazil	<b>x</b>		
Canada	<b>x</b>		
Chile	<b>x</b>	<b>x</b>	
Colombia	<b>x</b>	<b>x</b>	
Costa Rica		<b>x</b>	
Cuba		<b>x</b>	
Dominican Republic	<b>x</b>	<b>x</b>	
Ecuador		<b>x</b>	



Country	Official information	Unofficial information	No information available
El Salvador		x	
Granada			x
Guatemala		x	
Guyana		x	
Haiti			x
Honduras			x
Jamaica		x	
Mexico		x	
Nicaragua		x	
Panama	x	x	
Paraguay	x	x	
Peru	x	x	
Saint Kitts and Nevis			x
Saint Lucia			x
Saint Vincent & the Grenadines			x
Surinam			x
Trinidad and Tobago	x		
United States		x	
Uruguay		x	
Venezuela		x	

**2. Laws and practices on the right of access to information and the action of *habeas data*: information classified by country in alphabetical order**

**Argentina**

42. According to the official information, the Argentine state has constitutional provisions providing for the application of *habeas data* and regulating the right to information,

although regulations governing the exercise of this constitutionally enshrined right have still not been adopted by the National Congress. Article 43.3 of the Argentine Constitution provides that:

All persons may file this action to ascertain what data about them is contained in public or private records or databases for the purpose of providing reports, and in the event of false or discriminatory information, can demand the removal, rectification, confidential treatment, or updating of the information concerned. The secrecy of news information sources cannot be affected.

43. The official Argentine information refers to the constitutional reform of 1994, which introduced new rights and guarantees including the possibility of filing an *amparo* action in respect of personal information contained in public or private archives. Thus, by invoking the action of *habeas data*, any person may file a request before the courts to be informed about data maintained in such records, and demand the removal, confidential treatment, or rectification of such data.

44. The report provided by the Ministry of Foreign Relations and Religion cites as an example, *inter alia*, the case of Facundo Raúl Urteaga, who filed a recourse against the national government, the Joint Chiefs of Staff of the Armed Forces and/or the Government of the Province of Buenos Aires (unanimous judgment of the 15/10/1998) "to obtain information existing in the databases of the National Department of Information (SIDE), the Army Intelligence Service, and others, concerning his brother Benito José Urteaga, presumably killed" in 1976 in the province of Buenos Aires.

45. The report also refers to the case "Rossetti vs. Dun & Bradstreet S.R.L.", citing the judgment of the National Civil Chamber, Room H, which stated that "the object of *habeas data* is a personal individual right: the right to privacy, defined as the right to decide for oneself the extent to which one's thoughts and feelings and the facts about one's personal life will be shared with others".

46. Jurisdiction for *habeas data* actions against public entities is reserved for the Administrative Law Chamber, as indicated in a judgment of March 1995 by the First Administrative Law Chamber of the province of Córdoba.

47. With respect to legal provisions, the National Congress, on 27 November 1996, approved Law 24.745, for the purpose of safeguarding personal data in respect of physical as well as legal persons. This law determines the procedure for exercising the action of *habeas data*, but, according to the official report, "was not promulgated because the requisites necessary for the exercise of the action proved to be incomplete. The report also clarified that a bill for the protection of personal data is currently under consideration and has already been approved by the National Senate.

48. A bill under consideration, already approved by the National Senate, would provide comprehensive protection for personal data held, for the purpose of issuing reports, in public or private archives, records, databases, or other data-processing media, to guarantee the right to honor and personal privacy as well as access to such information for the persons concerned.

49. The bill provides for the creation of a register for data archives and would require all public and private archives, records, and databases kept for the purpose of issuing reports to be entered in the register, which would be maintained by an oversight agency.

50. In addition, according to unofficial information,<sup>219</sup> "there are no specific provisions in Argentina regulating access by the news media to public information documents. If a government agency refuses to inform journalists about the content of a public document, such journalists are entitled, subject to prior demonstration of a legitimate interest and evidence of arbitrary conduct by the government agency, to file for *amparo* and a judicial order allowing them access to the document concerned.

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<sup>219</sup> Report of the Inter-American Press Association (IAPA) ([www.sipiapa.org](http://www.sipiapa.org))

51. "In principle, all judgments are public, and journalists are entitled to examine their content directly without arbitrary interference from judges. That is the principle established by the Supreme Court of Justice".

## **Bolivia**

52. According to the information collected, the Bolivian Constitution does not include provisions for the action of *habeas data* or regulating access to state-held information. The Statute of Journalists, however, does include provisions in this regard:

53. Article 9 of Chapter III of the Organic Statute of Journalists provides that:

No one may abridge the journalist's freedom of expression and information, subject to prosecution for the violation of constitutional rights.

54. Article 10 provides:

No one may adulterate or conceal news information in a manner prejudicial to the truth and the general welfare. Journalists may publicly denounce such adulteration or concealment and shall be protected from dismissal or reprisals.

55. Although these articles exist, the professional statute does not carry the legislative force necessary to effectively ensure the citizenry's right of access to information or afford persons the protection inherent in the action of *habeas data*.

## **Brazil**

56. The Brazilian Ministry of Justice reported that Article 5 of the Constitution of the Federative Republic of Brazil provides:

All persons are assured of access to information and protection for the confidentiality of their sources when necessary for the exercise of their profession (section XIV).

There is also a provision for the concession of *habeas data* (section LXXII):

...to permit knowledge of personal information maintained in the records or databases of government or public agencies or to rectify data when the person concerned does not prefer to do so through informal, judicial, or administrative channels.

57. The State of Brazil reported that the Supreme Federal Tribunal -- the highest court of Justice in Brazil -- has jurisdiction in cases of *habeas data* against the President of the Republic, the Chamber of Deputies, the Federal Senate, the Tribunal of Accounts of the Union, the Prosecutor General of the Republic, and the Supreme Federal Tribunal itself. The Superior Tribunal of Justice has jurisdiction for cases of *habeas data* against the Minister of State, Commanders of the Navy, Army, and Air Force, and the Tribunal itself.

58. The Ministry of Justice also indicated that there are legal provisions regulating the right to information. Law 9.507 of 12/11/97 "regulates the right of access to information subject to the *habeas data* procedure", and Law 9.265 of 12/2/1996 "regulates section LXXII of Article 5 of the Constitution..."

59. Law 8.159 of 8/1/1991 contains provisions "on national policy with respect to public, private, and other archives, regulated by decrees 1.173 of 29/6/1994 and 1.461 of 25 April 1995. There are also two bills in this area, one in the Federal Senate and the other in the Chamber of Deputies.

60. Law 268/99, approved by the Federal Senate, "contains provisions on the structure and use of personal databases and the *habeas data* procedure".

61. Law 8.159 (8/1/1991) "contains provisions on national policy with respect to public and private archives", regulated by decrees 1.173 and 1461.

62. Requests for information in Brazil are processed free of charge (Article 5, LXXII, and Law 9.265) and can be filed by physical or legal persons exercising their own rights or individual interests, organizations and associations representing collective rights and interests, and legally established persons or associations in the case of general rights and interests.

## **Canada**

63. Through its permanent mission to the OAS, the Canadian government responded that there is no constitutional provision recognizing or referring to *habeas data*.

64. Paragraph 2b of the Canadian Charter of Rights and Freedoms establishes the right of the media to access information referring to judicial proceedings, but this "does not include the general right of access to information generated in the process of government", since "in general terms, section 2b pertains to intellectual freedom and the right to communicate with others".

65. By way of background information on case law, it was reported that in 1997, the Supreme Court of Canada ruled in favor of access to information in a case brought against the Minister of Finance. The arguments were based on "the facilitation of democracy in helping to ensure that citizens obtain requested information and participate in a significant way in the democratic process..."

66. With respect to legal provisions, private acts govern the protection of personal information held by government institutions, and the Access to Information Act guarantees the right, subject to certain exceptions, of access to files held by government institutions.

67. Any physical or legal person present in Canada can file requests under the Access to Information Act, paying a fee of five Canadian dollars. From 1 April 1998 to 1 April

1999, 14,340 requests for access to information were made under the Act. Requests for information under the Privacy Act are free of charge.

68. Requests under the Access to Information Act must be processed within a period of 30 days, although "under special circumstances" this period can be extended one time by government institutions. The duration of this extension is not limited, and the reasons given for denial of information range from the exception invoked by Industry Canada and Health Canada, based on their right to confidentiality of commercial information, to the exception invoked by Foreign Affairs, based on its right to confidentiality of information received from other governments.

69. The Royal Canadian Mounted Police (RCMP) and the Canadian Secret Intelligence Service (CSIS) can deny information "that may interfere with law enforcement or national security". The Access to Information Act is limited by the exceptional circumstances indicated above, although the Act stipulates that such exceptions must be used in moderation and only when necessary.

70. Finally, the system for archiving state information includes various provisions for the preservation of documents: the National Archives Act specifies that no federal government document may be destroyed without the permission of the National Archivist, who publishes an agenda indicating what documents can be destroyed and when. The Access to Information Act was amended to incorporate a provision making the destruction of documents a criminal offense, as infringement of the rights of citizens to access information.

## **Chile**

71. Chile does not have specific provisions with respect to the application of *habeas data* or regulating access to state-held information for that purpose. However, there are general provisions that can be interpreted and applied for the purpose of requesting access to information.

72. According to official information, the 1999 reform of the constitutional organic law on government administration includes the right of access to information contained in state and private archives. Article 11 *bis* of the Administrative Probity Act provides:

(...) public functions shall be exercised with transparency, so as to permit and promote awareness of the procedures, content, and basis of decisions taken in the exercise thereof.

The administrative acts of national government agencies and the essential supporting or supplemental documents they use shall be public.

73. According to the official information received by the Special Rapporteur, this article indicates that in cases where information is not available to the public on a permanent basis, the interested party shall have the right to request it, subject to denial on the following grounds: that the information is reserved or secret pursuant to legal or regulatory provisions; that public disclosure would prevent the agency concerned from discharging its functions; that third parties referred to in or affected by information contained in the documents requested have objected to their disclosure; and that public disclosure would affect national security.

74. Article 11 *ter* provides for the possibility of bringing action before a professionally qualified judge or a civil court in cases where the origin of the information being withheld is unrelated to national security or the national interest. When national security or the national interest are invoked, this article provides that:

In cases where documents for information are denied on the grounds that their disclosure would affect national security or the national interest, the request shall be referred to the Supreme Court, which shall request a report from the authority concerned, to be communicated by whatever means the Court considers most expeditious, setting a time limit to that effect, following which the dispute shall be settled on the bases of the information available.



(...) Failure to provide the documents or background material concerned on a timely basis, in the form stipulated by the Court, shall be punished by suspension of the chief of the service concerned for a period of 5 to 15 days, and by a fine of two to ten monthly tax units. If the chief of service persists in his attitude, these penalties shall be doubled.

75. In August 1999, Chile enacted a law for the protection of personal data that includes certain provisions to protect privacy.

76. Although there are general provisions in Chile that can be interpreted and applied in requesting access to information, Article 11 of the Administrative Probity Act provides that it is legitimate to limit access to information on the grounds that the effective functioning of government agencies would be impaired. Various human rights organizations have expressed concern over this broad language, since it could give rise to inadequately founded abuses of discretionary authority by government agents.<sup>220</sup>

## Colombia

77. Through the General Directorate of Special Affairs of the Ministry of Foreign Relations, the Colombian government reported that the action of *habeas data* is recognized as a fundamental right in Article 15 of the Constitution, whose Article 86 provides that:

All persons may seek protection from the courts... by means of preferential, preliminary proceedings... for the immediate protection of their fundamental constitutional rights, whenever these rights have been violated or threatened by an act or omission of any public authority.

78. Article 15 of the Political Constitution of the Republic of Colombia of 1991 provides that:

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<sup>220</sup> Reports from the Inter-American Press Association (IAPA) and Human Rights Watch, *Avances Frustrados: Contratiempos en la reforma sobre la libertad de expresión*. 2001.

All persons are entitled to their personal and family privacy and their good name, which the state must respect and protect. They also have the right to investigate, update, and rectify information about them that has been collected and entered into the databases and archives of public and private entities.

79. With respect to legal or regulatory provisions, Article 15 of the Constitution is supplemented by Chapter IV of the Code of Administrative Law Procedures, on the right to request information. According to this chapter, any person has the right to consult documents on file in public offices and to receive copies of those documents, provided that they are not legally considered to be classified information and are not related to national defense or security.

80. With respect to public information, Article 12 of Law 57 (5/7/1985) entitles any person to consult documents held by public offices and to receive copies of those documents.

81. In 1998, the National Office of Civil Status Records received 319 requests for information and denied 60. In 1999, the total number of requests rose to 458, and 98 were denied. In all of these cases, the reason given for denying the information was that "the party requesting the information did not fulfill the requisites for obtaining access to it". Any individual can exercise his right to request information from the state in Colombia free of charge. The Code of Administrative Law Procedures provides that requests for information must be processed within 15 days of their receipt.

82. According to information from nongovernmental sources, the rights to request and obtain access to public documents are established in Articles 23 and 74, Section 1, of the National Constitution. These provisions guarantee the opportunity for journalists and the media to seek and gather information from public or private sources in order to evaluate and disseminate it in exercising their freedom of expression.<sup>221</sup>

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<sup>221</sup> See the laws of Colombia in the electronic files of the Inter-American Press Association (IAPA).

83. The exercise of these rights is regulated by the Code of Administrative Law Procedures and by Law 57 of 1985. The general principle is that free access to official documents shall be restricted only if there is an explicit provision to that effect.

84. However, the list of classified documents has recently been expanded, with the approval of a law under which disciplinary and administrative investigations conducted by oversight agencies in connection with disciplinary and fiscal responsibility proceedings are to be kept secret (Anticorruption Statute, Article 33).

85. Since the reform of the Code of Criminal Procedures, the preliminary stage of criminal proceedings is subject to secrecy, whereas the full-trial stage is not. In addition, according to Law 104 of 1993, known as of the Public Order Act, the Financial Institutions Guarantee Fund is required to maintain the confidentiality of information it subpoenas from registered financial institutions.

86. In August 2001, the Congress promulgated and the President of the Nation signed Law 684 (State Security and Defense Act) together with supplemental legislation. The Judicial Branch, on the other hand, has the power to invalidate the Law's entry into force, and a number of human rights organizations have brought action before the Constitutional Court to declare Law 684 unconstitutional. Article 14 of the Law establishes a Superior Security and National Defense Council for the purpose of "guaranteeing the due planning, direction, execution, coordination and strengthening of all aspects of national authority, with a view to ensuring national security".<sup>222</sup>

87. With respect to the classification of documents, Article 19 of Law 684 provides:

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<sup>222</sup> LEY 684. TITULO II: SISTEMA DE SEGURIDAD Y DEFENSA NACIONAL; CAPITULO I: DEL CONSEJO SUPERIOR DE SEGURIDAD Y DEFENSA, 13 August 2001. Article 14 provides that the *Consejo Superior de Seguridad y Defensa Nacional*, shall be composed of:

- a) The President of the Republic, who shall serve as chairman;
- b) The Minister of the Interior
- c) The Minister of Foreign Relations;
- d) The Minister de National Defense;
- e) The Comander in Chief of the Military Forces;
- f) The Director General of the National Police;
- g) The Director of the Administrative Departament of Security (DAS); The Chairmen of the Second Constitutional Commissions of the Congress of the Republic.

**ARTICLE 19. Legal reserve.** The Council's deliberation and acts shall be confidential. The primary and secondary defense documents mentioned in this Law shall likewise be classified.

## **Costa Rica**

88. Article 27 of the Costa Rican Constitution ensures the freedom to petition, individually or collectively, any public official or government agency, and the right to obtain prompt resolution. This right is protected by means of a summary procedure in the Constitutional Chamber in the case of arbitrary denial of information.

89. This is an expeditious procedure commonly used by journalists, who under Article 27 of the Constitution must previously send a letter to the official from whom the information is being requested. If an adequate response is not received within 10 working days, the summary procedure is instigated before the Constitutional Chamber, which conducts a hearing of the public official concerned. If it is determined that the decision to deny the information was not satisfactory, the official is ordered to provide the information, subject to criminal prosecution for contempt should he fail to do so.<sup>223</sup>

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<sup>223</sup> Report of the Inter-American Press Association (IAPA) ([www.sipiapa.org](http://www.sipiapa.org)).

## **Cuba**

90. There are no legal or constitutional provisions protecting or promoting free access to information in Cuba. The legal system places a number of restrictions on the capacity to receive and disclose information. In February 1999, a law was approved “to protect national independence and the national economy”, known as Law 88, permitting the government to control the information that can be disclosed within the country. This law establishes sanctions of up to 20 years imprisonment, the confiscation of personal property, and fines. According to the information received, the journalists Bernardo Arévalo Padrón, Jesús Joel Díaz Hernández, Manuel González Castellanos, and Leonardo Varona are currently in prison for such alleged offenses.<sup>224</sup>

## **Ecuador**

91. There are a number of provisions in Ecuador that entitle individuals to obtain access to information held in government files. Article 81.1 of the Political Constitution of the Republic of Ecuador provides:

The state shall guarantee the right, in particular for journalists and social commentators, to obtain access to sources of information; and to seek, receive, examine, and disseminate objective, accurate, pluralistic, and timely information, without prior censorship, on matters of general interest, consistent with community values.

92. Section 3 of this same article provides:

Information held in public archives shall not be classified as secret, with the exception of documents requiring such classification for the purposes of national defense or other reasons specified by law.

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<sup>224</sup> Inter-American Press Association (IAPA) and Human Rights Watch.

93. Article 39 of the Law on the Exercise of the Journalistic Profession provides:

With the limitations established in this Law, professional journalists shall have free access to authorized information sources, to which end government agencies, private entities for social or public purposes, and private persons, shall provide such legal assistance as may be necessary.

94. Article 212 of the Penal Code provides for the punishment of persons impeding the exercise of the right of petition as follows:

Authorities who in any way impede the free exercise of the right of petition shall be punished with a fine of 40 to 100 sucres and imprisonment of one to six months.

95. Article 28 of the Modernization of the State Act provides:

All requests must be resolved within a period of no more than 15 days reckoned from the date of their submission, unless a legal provision explicitly provides otherwise. This practice shall not be suspended, and the issuance of decisions in response to requests or claims submitted by members of the community shall not be denied by any administrative agency. In all cases, once the specified period has elapsed, silence by the administrative agency shall be construed to mean that the request has been approved or that the claim has been resolved in favor of the claimant.

In the event that any administrative authority rejects a petition, suspends an administrative procedure, or fails to issue a decision within the period specified, criminal proceedings may be brought against such acts as contrary to the constitutionally protected right of petition, in accordance with Article 213 of the Penal Code, without prejudice to the exercise of other actions provided for by law.

Once it has been brought to their attention that a subordinate official has suspended an administrative procedure or refused to resolve it for a period of more than 15 days reckoned from the date of its submission, superior administrative authorities shall notify the Public Prosecutor of the district concerned for the purpose of instigating the appropriate judicial proceedings.

96. Article 32 of this same Act refers to access to documents, as follows:

Subject to the provisions of special laws, any party having an interest in the disposition of legally protected situations shall have the right of access to administrative documents held by the state and the various public sector agencies, so as to maximize the legitimacy and impartiality of government activities.

97. Article 33 provides for the enforcement of these legal provisions:

Public officials or employees who violate any of the provisions under this chapter shall be punished with dismissal from their posts, without prejudice to their civil, criminal, or administrative responsibility pursuant to other laws.

98. Article 94 of the Political Constitution of Ecuador guarantees the action of *habeas data* as follows:

All persons have the right of access to documents, data bases, and reports maintained by public or private entities referring to them or their property, and to be informed as to how and for what purpose such information is used.

They may request that the official concerned update, rectify, remove, or invalidate data that is erroneous or that illegitimately affects their rights.

If inaction results in injury, the affected party may seek compensation.

The law shall provide a specific procedure for obtaining access to personal data maintained in connection with national defense.

99. The Constitutional Enforcement Act provides for *habeas data* in Article 34:

National or foreign natural or legal persons who wish to obtain access to documents, data bases, and reports, in the possession of public agencies or of private natural or legal persons, referring to the aforementioned persons or to their property, and to be informed as to how and for what purpose such information has been or is to be used, may file an action of *habeas data* to obtain responses and require compliance with the protective measures prescribed in this Law by the agencies or persons in possession of such data or information.

100. Article 35 explains that the purpose of *habeas data* is to:

- a) Require the possessor of the information to provide it to the claimant in a complete, clear, and accurate manner;
- b) Obtain direct access to the information;
- c) Require the person in possession of the information to rectify or remove it, or not to disclose it to third parties; and
- d) Obtain certification that the person in possession of the information has rectified or removed it or has not disclosed it.

101. The limits to *habeas data* are defined in Article 36:

*Habeas data* shall not be applicable when it affects professional secrecy; when it can constitute an obstruction of justice; or when the documents requested are classified for reasons of national security. The removal of data or information



cannot be requested when there are provisions of law requiring it to be maintained in public or private files.

102. Finally, provisions for enforcement are made in Article 43:

Public officials who are subject to removal and who refuse to comply with decisions issued by judges or courts pursuant to habeas data proceedings shall be immediately dismissed from their functions or posts by the judge or court concerned, without further formalities. Such is not the case, however, for officials appointed by the National Congress, who shall be dismissed by the National Congress at the reasoned request of the judge or court, subject to prior political judicial proceedings.

## **El Salvador**

103. Article 18 of the Political Constitution of El Salvador provides for the right to petition the government, as follows:

All persons are entitled to address their written petitions, in due form, to the legally established authorities; to obtain a decision in response to their petition; and to be informed of the decision.

104. There are no regulations governing the exercise of this right in El Salvador, which makes its application difficult.

## **United States**

105. In 1966, the United States approved the Freedom of Information Act (FOIA), which requires federal agencies to offer access to documents of public interest. Exceptions to the Freedom of Information Act include the following: information on national security, the internal regulations and policies of government agencies, matters specifically exempt from disclosure by statute, trade secrets, and other secret information pertaining to business, letters

and memorandums between government agencies and individuals, personnel files and medical histories, bank information, police files, and geological and geophysical information.

106. In addition to the Freedom of Information Act (FOIA) at the federal level, each of the 50 states has laws guaranteeing access to the official documents of state, county, and municipal agencies.

107. The Federal Privacy Act of 1974 also prohibits federal agencies from revealing information about a person without his or her written consent, unless cited by the Freedom of Information Act as the type of information that must be disclosed.

108. In addition to laws providing access to files and documents, other laws, known as "access to government" laws, require state and local agencies to make most of their meetings open to the public.

109. The Federal Access to Government Act of 1976 applies to all federal agencies. All agency meetings must be open to the public, unless the law provides otherwise, such as when personal matters are being discussed. In such cases, the agency in question must notify citizens in the Official Gazette, at least one week in advance, as to the time, place, and subject of the meeting, as well as the name and telephone number of a contact person for additional information.<sup>225</sup>

## **Guatemala**

110. Article 35 of the Political Constitution provides that:

Access to information sources is free, and no authority may limit that right.

111. With respect to state-held information, Article 30 of the Guatemalan Constitution provides that:

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<sup>225</sup> See the Freedom of Information Act, 5 U.S.C. Section 552

All government acts are public. Interested parties have the right at any time to obtain reports, copies, reproductions, and certifications upon request and the exhibition of such records as they wish to consult, unless they pertain to military or diplomatic matters of national security, or data provided by individuals subject to confidentiality.

112. With respect to *habeas data*, Article 31 provides that:

All persons have the right to know about information pertaining to them in state archives, files, or other records, and its intended use, as well as to correct, rectify, and update such information. Records and files regarding political affiliation are prohibited, with the exception of those maintained by election authorities and political parties.

113. Although article 30 and 31 of the Constitution establish the general principle of public disclosure of government acts and the action of *habeas data*, there are no provisions in Guatemalan law regulating the effective exercise of these rights. Nor is there an independent body to which appeals can be filed when information is withheld.

114. From April 2001, the Guatemalan government submitted a bill on access to information to the Congress of the Republic, regulating the right to state-held information and the action of *habeas data*.

## **Honduras**

115. From a legal standpoint, there is no provision impeding media access to official sources, except for preliminary criminal proceedings or when disclosure may affect family privacy or persons under legal age. The legal provision establishing the obligation to inform is contained in Article 80 of the Constitution:

All persons or associations of persons have the right to present petitions to authorities for reasons of individual or general interest and to obtain a prompt response within the legally specified period of time.

116. The exercise of this right is not regulated in Honduras, which makes its application difficult.

## **Jamaica**

117. There is no freedom of information act or any public or private agencies that can be compelled to give information to the press. There are, however, a number of avenues of recourse through which information is made public by law, guaranteeing access by the public, including the press, to files and documents. These processes refer to the records and documents of the Office of the Registry of Business Enterprises, the Title Registry, and the Registry of Births and Deaths. The registries of corporate shareholders and business executives are also public.

## **Mexico**

118. The Political Constitution includes two provisions concerning access to official information. Article 8 provides that:

Public officials and employees shall respect the right of petition, provided it is exercised in writing and in a peaceful and respectful manner; with regard to political matters, however, only citizens of the Republic may avail themselves of this right.

A written decision shall be issued in response to all petitions by the authority to whom they are addressed; such authorities have the obligation to inform the petitioner of such decisions within a brief period of time.

119. According to information provided, the approval of legislation regarding access to public information is currently under consideration. It should be noted that in September 2001, the Department of Government Affairs initiated a public consultation project to gather opinions concerning the promulgation of a law providing access to state-held information. In October 2001, representatives of 75 academic institutions, nongovernmental entities, and media organizations in the country formed a technical committee to develop legislation for access to public information, which was shortly to be submitted to the Federal Congress for discussion and approval.

## **Nicaragua**

120. The only provision related to freedom of expression, the very general Article 52 of the Constitution, provides that:

Citizens have the right to file petitions, denounce irregularities, and express constructive criticism of the state or any authority, individually and collectively; to obtain a prompt decision and response; and to be informed of the decision within the periods of time established by law.

121. Article 66 provides that Nicaraguans have the right to truthful information and, in exercising that freedom, may seek, receive, and disseminate information and ideas, orally, in writing, in graphic form, or by any other medium of their choice.

122. Article 26 of the Constitution provides for the possibility of obtaining all information contained in official files, and the reasons and purpose for which the information is held, when it pertains to the person requesting it:

All persons have the right to:

1. Their private life and that of their family.

2. The inviolability of their home, correspondence, and communications of every kind.
3. Respect for their honor and reputation.
4. Knowledge of all information about them registered by state authorities, as well as the right to know why and for what purpose this information is held.

123. The right of access to information has been made more difficult by restrictions imposed by other provisions, including those of the Penal Code, which make it a criminal offence to reveal state secrets and official information (Articles 538 and 540). Information is classified as "very secret", "secret", and "confidential" (Article 540). All information originating from sources within the government as a direct result of the conduct of official business, shall be considered "Official Information" and its disclosure shall be subject to limitations guaranteeing the security of national defense.

124. Article 1 of the Law Regulating Information on Internal Security and the National Defense of 1980 provides that the media may not disclose news or information compromising or undermining the country's internal security or national defense.

125. This provision includes the communication of information or news on such matters as armed conflict, assaults on government officials, etc. without first reliably verifying the veracity of such information or news with the National Reconstruction Government Council or with the Ministry of Interior or Defense.

126. As indicated in the section on international provisions on the public right to state-held information, the use of broad language to restrict access to information on grounds of national security could give rise to abuses of discretionary authority by state agents.

## **Panama**

127. On 22 January 2002 a law on transparency in government was enacted which will institutionalize the action of *habeas data*. This law provides that all persons have the right to request and receive truthful and timely information held by government authorities or any institution. This law also indicates exceptions with respect to information considered confidential or restricted. Confidential information includes individual medical and psychological data; information on the private lives of individuals, including their family affairs, marital activity, or sexual orientation; criminal and police records, correspondence and conversations by telephone or any other audiovisual or electronic media; and information concerning minors.<sup>226</sup>

128. The constitutional provision with respect to the right of petition, Article 41, provides that:

All persons have the right to present petitions and respectful complaints to public servants in pursuance of social or individual interests, and to obtain a prompt decision.

The public servants to whom the petition, consultation, or complaint is presented shall reach a decision in the matter within 30 days.

The law shall provide for sanctions punishing violations of this provision.

129. With respect to legal provisions, Law 36 (5/6/1998) reinforces the provisions concerning the right of petition, and Article 837 of the Administrative Code explains that:

All individuals have the right to receive copies of documents existing in the secretariats and archives of administrative offices, provided that: the documents are not classified; the person requesting the copy provides the necessary paper and pays the fees specified in Book 1 of the Judicial Code; and that the copies can be removed under the inspection of an employee of the office concerned, without interfering with his work.

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<sup>226</sup> Information obtained from the Panamanian newspaper *La Prensa*, 22 January 2002.

130. The constitutional provision on the right of petition is regulated by Law 15 of 1957, which provides that officials who do not respond to a petition within 30 days shall be punished with a fine of the \$10 to \$100 the first time and double that amount for subsequent occurrences. Officials who fail to respond on more than three occasions are to be dismissed.

131. In cases where the petition is denied, the Administrative Law Judicial Proceedings Act establishes the procedure to be followed during the course of administrative proceedings, which includes the following avenues of recourse: the recourse for reconsideration, filed with the administrative official of the first instance for clarification, modification, or rescission of the decision; the recourse of appeal to the immediate supervisor, for the same purposes; and those indicated in the Judicial Code.

132. The Panamanian government indicates that there are legal criteria for classifying state information as restricted, and therefore not for public use, which apply to confidential information or classified documents (Articles 834 and 837 of the Administrative Code).

## **Paraguay**

133. The Ministry of Justice and Labor reported that the constitutional guarantee for *habeas data* is enshrined in Chapter XII of the Constitutional Guarantees, Article 135:

All persons may obtain access to information and data referring to them or to their property maintained in official or private records of a public nature, and to know how and for what purpose the information is used. They may file requests with the appropriate judicial authorities that such information be updated, rectified, or destroyed if it is erroneous or legitimately affects their rights.

134. The responses pertained more to the right to inviolability, and to the principle that state agencies not provide information to any person other than the interested party, than to the right of access to information *per se*.



135. Article 28 of Chapter II of the Constitution recognizes:

... the right of persons to receive truthful, responsible, and impartial information. Public sources of information are freely accessible to all. The law shall regulate the modalities, time limits, and corresponding sanctions to ensure the effective exercise of this right.

136. Article 135 of the Paraguayan Constitution mentions that:

No competent judicial magistrate may decline to hear an action or recourse provided for in the preceding articles; magistrates who do so unjustifiably shall be subject to prosecution and removal as the case may be. In their decisions, magistrates shall also rule on the responsibility authorities may have incurred by virtue of their illegitimate acts, and in the case of *prima facie* evidence of criminal conduct, shall order the arrest or suspension of the parties concerned, as well as any other precautionary measures that may be appropriate to more effectively determine such responsibility. In addition, if the magistrate has the jurisdiction to do so, he shall conduct preliminary proceedings with the intervention of the Public Prosecutor's Office; otherwise, the case shall be referred to a magistrate with jurisdiction for prosecution.

137. An interesting feature of the Paraguayan legal system is the Constitutional Guarantees Reception Desk, created by Decree 83 of the Supreme Court of Justice (4/5/98), for the purpose of computerized receipt and distribution, by lot, of *amparo*, *habeas data*, and *habeas corpus* cases filed in the capital of the Republic to the 36 lower courts competent to hear such cases.

138. The action of *habeas data* is exempt from the payment of court fees and may be filed in respect of the various government agencies, nongovernmental organizations, national or multinational enterprises, any individual, organization, social or political association, or legal person. Between 20/10/98 31/3/2000, the Reception Desk for the Supreme Court of Justice received 1,038 *habeas data* petitions.

139. Once the judge reaches a decision, state agencies have three days to provide information, but, according to the Ministry of Justice and Labor of Paraguay, this time period may vary according to the type or content of the information. "In general, magistrates adhere closely to the legal time limits, and response times do not exceed five working days".

140. The only case in which information may be denied is when "the information requested is classified for reasons of state security".

141. It should be mentioned that in July 2001, the Executive Branch promulgated Law 1728 on Administrative Transparency and Free Access to Information, for the purpose of promoting transparency in government and ensuring access to information. However, this law provoked national and international protest, since it contained several articles imposing serious restrictions on the right of the press to access official documents, undermining transparency in government and allowing authorities extensive discretion to reject petitions.<sup>227</sup>

142. In late August 2001, civil society organizations in the Alliance for the Defense of Freedom of Expression and the Right to Information<sup>228</sup> submitted a new bill to the Chamber of Deputies on Free Access to Public Information, representing a thorough overhaul of the repealed Law 1728. This new bill is currently under consideration by the Congress.

## Peru

143. In the case of the Government of the Republic of Peru, responses to the questionnaires sent by the Special Rapporteur were provided by the Ombudsman's Office, which indicated that "the action of *habeas data* is regulated by Article 200.3 of the Political Constitution of Peru (1993)", clarifying that prior to that date, "the rights protected by this action were covered by the action of *amparo*".

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<sup>227</sup> The law impeded public scrutiny of any investigation under way into the conduct of a public official as well as into government purchases that could give rise to speculation. Information provided by the Committee for the Protection of Journalists, 30 July 2001.

<sup>228</sup> The Alliance for The Defense of Freedom of Expression and Rights to Information was created by the Journalists Union of Paraguay, with the participation of Human Rights Coordination, Paraguay, the Association of Users and Consumers, Sitrande (the electric power sector union), and *Comunica* (an association of community radios).

144. Article 2.5 of the Constitution provides that:

All persons have the right to request the information they require and to receive it from any public agency. On the other hand, information affecting personal privacy and explicitly excluded by the law for reasons of national security is exempt from this right.

145. Article 2.6 of the Constitution provides:

All persons have the right to be assured that information services, computerized or otherwise, public or private, will refrain from disclosing information affecting their personal and family privacy.

146. In order for private or confidential data to be disclosed under this provision, the person or family must so authorize or give their consent to the information service concerned. The privacy of personal data that is of a public character is not protected. Data of a public character means information known to a large number of people, without the knowledge of the party concerned, such as a person's first and last name.

147. Case law by the Superior Courts and the Constitutional Tribunal (case 666-96-HD) indicates that it is possible:

...to gain access to information records stored in data processing or computerized information centers, irrespective of its nature, for the purpose of rectifying, updating, or excluding certain personal data, or preventing the dissemination of information that may violate the constitutional right to privacy.

148. With respect to legal provisions, Law 26.301 (1994) regulates the application of *habeas data* and Article 200 of the Constitution. The second paragraph of Article 1 of Law 26.301 on *habeas data* establishes the levels of appeal for cases where information requests are denied:

If the rights affected pertain to information held in court files, be they jurisdictional, functional, or administrative, and irrespective of the form or media in which they are stored, the complaint shall be heard by the appropriate Civil Chamber of the corresponding Superior Court of Justice...Lower Court rulings will in this case be issued by the Civil Chamber having heard the complaint. This same principle shall apply to the functional or administrative files of the Public Prosecutor's Office.

149. Appeals are heard by the Constitutional and Social Rights Chamber of the Supreme Court of Justice, whose rulings may in turn be appealed by extraordinary recourse to the Constitutional Tribunal. The cost of obtaining information through recourse to *habeas data* in Peru varies.

150. Article 110 of Law 27444 of the General Administrative Procedures Act provides that information can be requested as follows:

Section 1: The right of petition includes the right to request information held by an entity in accordance with the provisions of the Constitution and the law.

Section 2: Entities establish mechanisms for responding to requests for specific information and the *ex officio* supply to interested parties of information of general public interest, including by telephone.

151. The Ombudsman's Office indicated that it did not have information on the number of *habeas data* requests denied, although it cited the most recent report by the Ombudsman to the Congress of the Republic as noting "the existence of a culture of secrecy".<sup>229</sup>

## **Dominican Republic**

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<sup>229</sup> Responses from the Office of the Ombudsman of the Republic of Peru to the questionnaire of the Special Rapporteur for Freedom of Expression.

152. The Government of the Dominican Republic indicated that Section 10 of the Constitution contains provisions recognizing the right of *habeas data* and access to information held by the state: "Except with their own consent, there shall be no obstruction to the freedom of expression of individuals, including freedom of opinion without interference, freedom to communicate their ideas and information without interference, and freedom from interference in their correspondence". The government also reported that there are no judicial precedents, legal provisions, or proposed legislation in this regard, nor a system of, or criteria for, the selection and storage of data by the state.

153. Article 8.10 of the Constitution provides that the media have free access to government and private news sources consistent with public order and national security.

### **Trinidad and Tobago**

154. In its response to the Special Rapporteur's questionnaire, the Government of Trinidad and Tobago cited general constitutional provisions that serve to protect freedom of information, such as "freedom of thought and expression", or "the right to express political opinions". Immediately afterwards, however, it recognized that the Constitution of Trinidad and Tobago does not contain provisions recognizing free access to state-held information. Nor are there judicial precedents in this area, or in the area of *habeas data*.

155. In the absence of specific legal provisions in this regard, reference was made to recognition of the Freedom of Information Act as the applicable legal provision:

All persons shall have the right to obtain access to official documents.

All persons are legally entitled to request information from various government agencies.

156. The procedure for requesting and obtaining information is free of charge, unless copies in printed form or other information storage formats, such as diskettes, tapes, etc., are requested.

157. If the information is denied, the requesting party must receive written notification, affording him the reasonable opportunity to consult with a government representative, who is required to provide the requesting party with the information needed to continue the procedure and renew the request. The reasons for denying the information must also be given to the requesting party, who must be informed of his right to appeal the decision to the High Court.

## Uruguay

158. There is no provision whatsoever requiring the state to disclose information, or legal or judicial mechanisms obliging the state to provide information.

159. Although the constitutional clause that permits citizens to submit petitions to the government, contained in Article 30, provides a means to obtain responses to their petitions to government officials, this provision does not guarantee access to information requested by individuals. According to the information received, a bill on *amparo informativo (habeas data)* is under consideration by the Parliament.<sup>230</sup>

## Venezuela

160. Article 28 of the Constitution, reformed in 1999, provides for *habeas data* as follows:

All persons have the right of access to information and data held in government or private files referring to them or to their property, except where the law provides otherwise; to know why and for what purpose the information is kept; and to file requests before the competent court for the updating, rectification, or destruction of information that is erroneous or that illegitimately affects their rights. They may also obtain access to documents of any kind containing information of interest to communities or groups of individuals.

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<sup>230</sup> Uruguayan Press Association (APU) 22 January 2002.

161. Article 59 of the Organic Law on Administrative Procedures of 1 July 1981, also provides for public information or access to government sources for interested parties or their representatives. However, documents classified as confidential are exempt.

162. Article 51 of the Constitution establishes the right to submit petitions to the authorities. According to this provision, all persons have the right to represent or address petitions to any authority or public official on matters within their purview and to obtain a timely and adequate response. Violations of this right are punishable by law and can result in dismissal.

163. As indicated in the section on international provisions with respect to the right of the public to state-held information, the use of broad language to restrict access to information for reasons of national security or "confidentiality" can give rise to abuses of discretionary authority by state agents.

#### **D. Final Observations**

164. As indicated by the information presented here, only seven countries in the hemisphere have specific provisions and regulations permitting access to state-held information and the action of *habeas data*. According to the information collected, practices contributing to a culture of secrecy with respect to state-held information continue to be followed in most countries, because of insufficient awareness of the specific provisions regulating this exercise, or because, given the vague, general language used in the provision, agents in possession of such information opt in favor of denying it, out of fear of punishment. These practices represent a threat to the constitutional democratic system, permitting a greater incidence of corruption.

165. Information is of essential importance to the proper functioning of democracies in the hemisphere. If societies are not fully aware of the acts and policies of their governments, full and informed participation by individuals in the processes of transformation, debate, and strengthening of democratic institutions is impossible. The right in a society to be informed helps in large part to guarantee the effective functioning of political and social systems based on democratic participation.

166. The Special Rapporteur recommends that the member states adopt the measures necessary to guarantee these rights in accordance with international standards and with the commitment adopted at the Third Summit of the Americas, held in Québec City, Canada, through:

1. The promulgation of laws permitting access to state-held information and supplemental provisions regulating the exercise of such access, as well as the promulgation of laws providing for the right of individuals to obtain access to personal data through the action of *habeas data*, taking international standards into account in this regard.
2. The existence of avenues of recourse for independent review to determine whether restrictions established for reasons of national defense are balanced, taking into account the protection of other fundamental rights consistent with international standards in the area of human rights and the right of a society to be informed, *inter alia*, about matters of public interest.
3. The introduction of legislation on civil society participation and consensus-building.
4. Policies promoting and disseminating information on these individual and collective rights as legal tools for achieving transparency in government, protecting personal privacy against the arbitrary or illegitimate handling of personal data, and promoting accountability to and participation by society.



## CHAPTER IV

### MEDIA ETHICS

#### A. Introduction: Freedom of Expression and Media Responsibility

1. The Special Rapporteur has emphasized in his many reports the need to respect freedom of expression so that citizens will be sufficiently informed and democracy will function. Freedom of expression requires that governments refrain from placing legal restrictions on the media, the main means by which members of society exercise their right to impart and receive information and ideas,<sup>231</sup> except in the very narrow circumstances provided for in the American Convention. Little has been said about the corresponding responsibilities of the media in exercising the right to freedom of expression. Many governments and individuals in the region have expressed concerns that media do not always behave responsibly, engaging in practices while gathering and reporting the news that infringe upon the rights of others. Such concerns include invasion of privacy while gathering news, failure to verify adequately the accuracy of news, revelation of sensitive information related to national security and publication of information that is harmful to individuals' reputations.

2. It is important to recall that because the media is essential for the members of society to exercise their right to seek and impart information, the media owes its primary duty of responsibility to the public, rather than to the government. The main purpose of the media, and freedom of expression generally, is to inform the public about the actions of the government.<sup>232</sup> It cannot, therefore, be the role of the government to enforce "responsibility" in the media. This is especially true because of the highly subjective nature of the term "media responsibility". "The

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<sup>231</sup> IACtHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, para. 34.

<sup>232</sup> See Hugo Aznar, *Ética y Periodismo ("Ethics and Journalism")*, Ediciones Paidós Ibérica, Barcelona, Spain, 1999, p.40. This idea is reflected in various codes of conduct for journalists. For example the International Declaration of the Rights and Obligations of Journalists, approved by representatives of journalists' unions of six European countries in 1971 states in its Preamble, "All rights and duties of the journalist derive from this right of the public to be informed on events and opinions. The journalists' responsibility toward the public excels any other responsibility, particularly towards employers and public authorities." The International Federation of Journalists' Declaration of Principles on the Conduct of Journalists states in Principle 1, "Respect for the truth and for the right of the public to truth is the first duty of the journalist."

real world is so complex, situations are bound to be so diverse, that general rules cannot be of any use or special rules cannot provide for every possible case. . . . [N]ewspeople don't always agree among themselves about what should be done."<sup>233</sup> As a result, attempts to regulate "media responsibility" are subject to manipulation and abuse by public officials who may not be impartial towards the media. The threat of legal sanctions for making journalistic decisions that are essentially based on subjective questions of professional judgment would also cause a chilling effect on the media, preventing the dissemination of information of legitimate public interest.

3. This does not mean that the media operate completely outside the reach of law. Rather, it simply means that the law regarding the media "must be limited only to protecting and safeguarding other basic rights that can be endangered or that have been damaged by the misuse of freedom of expression, keeping this evaluation in the hands of the judges and the courts."<sup>234</sup>

4. It should also be emphasized that a discussion of "ethics" or "responsibility" is meaningless without wide-ranging freedom of expression.<sup>235</sup> "To have the option of being ethical," one must "have the freedom to decide among alternatives of action."<sup>236</sup> Thus, the Declaration of Principles on Freedom of Expression states in Principle 6, "Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."<sup>237</sup> In the words of one communications scholar:

There is no doubt that giving the media this type of freedom inevitably leads to considerable discomfort in some segments of society, and sometimes to some potentially difficult or even dangerous situations. But that's really no different from

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<sup>233</sup> Claude-Jean Bertrand, *Media Ethics and Accountability Systems*, Transaction Publishers, New Brunswick, New Jersey, U.S.A., 2000, p.139.

<sup>234</sup> Aznar, *supra*, p.40.

<sup>235</sup> A. David Gordon et al., *Controversies in Media Ethics*, Longman Publishers, U.S.A., 1996, p. 6 (commentary by John C. Merrill).

<sup>236</sup> *Id.*

<sup>237</sup> Compare Principle 9 of the Declaration of Chapultepec, which states, "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."

the risks we accept by embracing democracy as our chosen form of government. In a democratic society, the people are given the ultimate power to decide and they retain that power even when a large minority of the people think the decisions are wrong. The antidote for wrong or even dangerous political decisions is to rejoin the political battles and convince enough people to make the right decision next time. It is *not* to impose restrictions on the political dialogue or the political process in order to prevent wrong decisions.

The approach should be no different in regard to free speech in a democratic society. The antidote for wrong, dangerous or offensive speech should be *more* speech by those who disagree with the original statements, rather than restrictions on the original speech. The key here is that we must be willing to provide protection even for speech that offends us, and even if that speech offends us greatly.<sup>238</sup>

5. The fact that the government does not regulate media responsibility, or media ethics, does not mean that there is no way to bring about more ethical behavior in the media.<sup>239</sup> Journalists and media owners are aware of the need to maintain their credibility with the public in order to survive and frequently undertake various types of measures to encourage more ethical behavior by media professionals. The better educated that media professionals become and the more awareness on the part of the public of the essential role of the media in society, the more likely that such measures will be implemented. The purpose of this section is to introduce some of the means that the general public and the media themselves can employ to increase professionalism and responsibility in the media. First, however, it is useful to outline briefly the scope of legitimate governmental actions under the American Convention with respect to media responsibility, in order to give an indication of the boundaries between the realm of the law and the realm of ethics.

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<sup>238</sup> Gordon et al., *supra*, p. 32 (commentary by A. David Gordon).

<sup>239</sup> Aznar, *supra*, p. 41.

## **B. Acceptable government regulation of press content under the American Convention on Human Rights**

6. Under the American Convention, the government has means at its disposal to punish actions by the media that cause serious damage to society or members of society. Article 13.2 of the Convention, while explicitly prohibiting prior censorship,<sup>240</sup> allows for subsequent penalties to be applied under limited circumstances against individuals who cause damage to the "rights or reputations of others" or "national security, public order, or public health or morals." Such penalties must be "expressly established by law to the extent necessary to ensure" one of these ends. With respect to the requirement of "necessity," the Inter-American Court of Human Rights has interpreted this to mean that an intended penalty is more than just "useful," "reasonable" or "desirable."<sup>241</sup> Rather, the government must show that such a penalty must be the least restrictive of possible means to achieve the government's compelling interest.<sup>242</sup> "[T]he restrictions must be justified by reference to governmental objectives which, because of their importance, clearly outweigh the social need for the full enjoyment of the right Article 13 guarantees."<sup>243</sup> Moreover, the restriction "must be so framed so as not to limit the right protected by Article 13 more than is necessary. . . . [T]he restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it."<sup>244</sup> This is an extremely high standard and any restrictions on freedom of expression must be carefully examined in order to prevent undue limitations of this fundamental right.

7. Additionally, Article 13.5 provides that "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." Finally, Article 14 of the Convention provides for a mandatory right of reply

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<sup>240</sup> Article 13.4 provides for an exception to this general rule, which provides that "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."

<sup>241</sup> IACtHR, OC-5/85, *supra*, para. 46.

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

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

for “anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication[.]” The injured party has the right to reply or make a correction through the same communications outlet.

8. Within this framework, the government can punish truly serious violations by the media through proportional sanctions that do not place excessive restrictions on freedom of expression. It can also undertake positive measures in some cases that can improve media responsibility.

### **1. Protection of Individuals’ Rights and Reputations**

9. With respect to the protection of individuals’ rights and reputations from undue interference by the media, the state has a number of means that it can employ. First, it has been well established by the Inter-American Commission on Human Rights that civil penalties for defamation, libel and slander may be imposed against members of the media who report information that is harmful to an individual’s reputation or right to privacy. In cases in which the injured person is a “public official, a public person or a private person who has voluntarily become involved in matters of public interest,”<sup>245</sup> the standard of “actual malice” must be used to determine responsibility. This means that “it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”<sup>246</sup> In no case may criminal penalties be imposed for such offenses when these are related to public persons. Such individuals are subject to a higher level of scrutiny by society because they are involved in matters of public interest. Criminal penalties are too severe in relation to the harm they purport to prevent and other means are available to public persons to protect their reputations. Therefore, such penalties do not meet the “proportionality” requirement of Article 13.2.<sup>247</sup>

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<sup>245</sup> Declaration of Principles on Freedom of Expression, Principle 10.

<sup>246</sup> *Id.*

<sup>247</sup> See IACHR, *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*, in Annual Report of the Inter-American Commission on Human Rights 1994, OAS/Ser.L./V/II.88, Doc. 9 rev., February 17, 1995, p. 197-212.

10. Individuals' rights and reputations may also be protected through the legally enforceable right to reply or correction mandated by Article 14 of the American Convention. Additionally, the state has the right to intervene and impose legal sanctions under Article 13.5 when other rights of individuals, including their rights to physical integrity and life, are threatened by speech that incites violence. Finally, the government has the right to enforce laws of general application, such as trespass laws, against the media respecting their behavior in gathering the news. "News gatherers do not have the right to invade an individual's privacy or to coerce an individual . . . . They do not have the right to storm a home or a private business with a phalanx of sound and camera equipment or to invade a neighbor's space."<sup>248</sup> On the other hand, the government must not apply such laws to the media in a manner that is abusive and designed only to prevent access unduly to information that is of public interest.

## **2. Protection of National Security, Public Order and Public Health or Morals**

11. Again, according to Article 13.2, the government may impose subsequent penalties for speech in order to protect national security, public order or public health or morals so long as these penalties are "expressly established by law to the extent necessary to ensure" one of these ends.<sup>249</sup> As noted earlier, any restriction on freedom of expressing must be narrowly tailored and strictly proportional to the importance of the legitimate state interest it is intended to protect. Under this standard, the Inter-American Court of Human Rights found that a legal requirement that journalists belong to a professional association was an invalid restriction on freedom of expression, because it prevents those who are not members of the association from exercising their right to freedom of expression.<sup>250</sup> The Court found that the law on mandatory membership in a professional association did purport to serve a legitimate public interest. The organization of journalists could be seen as a means to ensure the independence and freedom of journalists as well as "a method for regulation and control to ensure that they act in good faith and in accordance with the ethical demands of the profession."<sup>251</sup> This could fall under the legitimate purpose of "public order." However, the Court stated, "that same

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<sup>248</sup> Gordon et al., *supra*, p. 38 (commentary by Carol Reuss).

<sup>249</sup> American Convention on Human Rights, Article 13.2.

<sup>250</sup> See generally, IACtHR, OC-5/85, *supra*.

<sup>251</sup> *Id.*, para. 68.

concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.<sup>252</sup> Thus, the Court concluded that obligatory membership in a professional journalists' society was not an acceptable means to guarantee public order through regulating the conduct of journalists.

12. In addition to the possible sanctions the state may impose under Article 13.2, the state can protect the morals of children and adolescents by regulating their access to public entertainments that may be unsuitable for them.<sup>253</sup> This exception does not allow for the complete prohibition of a work. Rather, the state must allow its exhibition for individuals over the age of 18.<sup>254</sup>

### **3. Accuracy of News**

13. Promoting accuracy in the news in general can be better achieved through positive governmental action than through the imposition of sanctions for information that is perceived to be "inaccurate" or "untruthful." As the Office of the Special Rapporteur has noted on numerous occasions, it should not be assumed that there can be one indisputable truth. Moreover, even assuming that it is possible to determine the truth about everything, the debate and exchange of ideas clearly is the best method to uncover this truth and to strengthen democratic systems based on plurality of ideas, opinions and information. Prior imposition of a requirement to report only the truth expressly precludes the possibility of engaging in the debate necessary to reach it. The prospect of penalties for reporting on a subject that free debate later shows to be incorrect creates the potential that informants will engage in self-censorship to avoid penalties, with the attendant harm to citizens who are unable to benefit from the exchange of ideas. For this reason the Declaration of Principles on Freedom of Expression states in its Principle 7:

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<sup>252</sup> *Id.*, para 69.

<sup>253</sup> American Convention on Human Rights, Article 13.4.

<sup>254</sup> IACtHR, *Caso "La Ultima tentacion de Cristo" (Case of "The Last Temptation of Christ")* (Olmedo Bustos y Otros vs. Chile), sentence of February 5, 2001, Series C, No. 73 (available in Spanish only).

Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

14. Instead of imposing penalties for failure to report truthful or accurate information, governments can improve the accuracy of the media by taking positive steps to ensure a plurality of voices in the media from different sectors of society. Democracy requires the confrontation ideas, debate and discussion. When this debate does not exist or is weakened due to the fact that sources of information are limited, this directly contravenes the principal pillar of democratic functioning. Increasing the diversity of sources will inevitably produce the most accurate version of events. This can be achieved by a variety of means such as the prevention of monopolies or oligopolies and the use of democratic criteria for the concession of broadcast frequencies. With these aims in mind, Principle 12 of the Declaration of Principles on Freedom of Expression states:

Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.

15. Monopolies or oligopolies in the mass communications media represent a serious obstacle to the right of all people to express themselves and to receive information, seriously affecting the requisite of pluralism. When the sources of information are drastically reduced in quantity, as is the case with oligopolies, or there exists only one source, as with monopolies, the possibility increases that the information diffused has not had the benefit of being challenged by information from other sources, limiting, in fact, the right to information of all society.



16. In much the same way, if there are multiple media, but media owners and workers are heavily representative of one particular social, political, religious, cultural or other group, the variety of points of view is limited. Democratic criteria in the awarding of broadcasting frequencies are necessary to ensure diversity of viewpoints.

17. The state can also improve the accuracy of the media by ensuring that journalists have access to the best information. Journalists, and all members of society, have the right to access to information in the hands of the state. Principle 4 of the Declaration of Principles on Freedom of Expression states:

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

18. In terms of the specific objective of this right, it is understood that individuals have a right to request documentation and information held in public archives or processed by the State, in other words, information considered to be from a public source or official government documentation. Reporting such information is a vital part of the media's role in keeping society informed on issues of public interest. If journalists are denied such information, they may have to obtain it from other, often less credible sources.

### **C. Mechanisms to encourage ethical behavior by the media without governmental involvement**

19. Aside from governmental regulation, there are many ways in which media can become more responsible to the public and to those who are reported on in the news, as well as more accurate and credible. The following section describes mechanisms that can be used by news people, editors and news directors, media owners and citizens. Although all of these mechanisms are purely voluntary, many are being employed throughout the Americas. The Office of the Special Rapporteur for Freedom of Expression does not endorse any particular

mechanism. This section aims to provide an overview of some of the mechanisms that are commonly used for promoting ethical behavior in the media without governmental regulation.

## **5. Codes of Ethics**

20. Codes of ethics set out standards of professional conduct for media professionals to follow in the gathering news and reporting of news. Such codes have been developed by a number of international and domestic journalists' and media associations. These codes are intended to serve as voluntary guidelines that may be followed by individual media or journalists. Many individual media write their own codes, which may be enforced through employment contracts. In some media, "stylebooks" or other regulations are actually codes of ethics that can subject a journalist to employment sanctions.<sup>255</sup> Other individual media publish their codes to make them more accessible to the public and to increase the "moral pressure" on the media to follow them.<sup>256</sup>

21. Most codes have basically similar provisions. These include prohibitions on lying or distorting news and causing needless harm to anyone in the reporting or gathering of news. They also include affirmative duties such as: to be competent; to be "independent from political, economic and intellectual forces;" to report clearly, accurately and fairly; to serve all of the various ethnic, political, social and other groups that make up society; and "to defend and promote human rights and democracy."<sup>257</sup>

22. Although it is recommended that media have their own codes in order to ensure that journalists' activities are guided by ethical conduct, it must be emphasized that codes of ethics must never be imposed by the state or enforced by law. Individual media have the right to choose whether or not to adopt a code.

## **6. Training**

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<sup>255</sup> Bertrand, *supra*, p. 43.

<sup>256</sup> *Id.* 113.

<sup>257</sup> *Id.*, 45.

23. Many universities offer courses in ethics for journalism students. University education for journalists is becoming more and more common, and an increasing number of university journalism departments are requiring at least one course on ethics. Mid-career journalists receive ethics education through unions, guilds and their individual media employers. Some employers and organizations award grants or fellowships for experienced journalists to attend courses on ethics or to obtain university degrees in journalism, which would require the study of professional responsibility and ethics.<sup>258</sup> Workshops and seminars on ethics are organized for journalists within individual media organizations, or by outside institutions such as universities, media associations, or non-governmental organizations.<sup>259</sup> These programs usually employ case studies or role playing activities in which journalists must evaluate ethical dilemmas in everyday situations.<sup>260</sup>

## **7. Press councils**

24. Press councils are groups made up of members of the media and the public. They typically consider citizen complaints about the media in a court-like procedure. Press councils have no real enforcement authority for their decisions, but they rely on the "power of embarrassment" to achieve compliance with norms of ethical conduct. There are both local and national press councils.<sup>261</sup> Governments should not mandate the existence of or participate in such councils.

## **8. Criticism of the Media**

25. Individual media, media organizations and members of the public use a variety of means to evaluate media performance in the hopes that this will improve future performance. These numerous mechanisms can be grouped as "media criticism."

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<sup>258</sup> *Id.*, p. 121.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*, p. 122.

<sup>261</sup> Dennis, *supra*, p. 700.

26. Individual media often engage in self-criticism aimed at increasing the level of professionalism in their organization. One such mechanism used by media organizations is the appointment of an ombudsman. An ombudsman, generally an experienced and respected journalist, "takes reader and viewer complaints, occasionally adjudicates disputes, and sometimes writes a reflective column for the newspaper's editorial page."<sup>262</sup> This individual is sometimes called a "readers' advocate."<sup>263</sup> Another internal mechanism many print media organizations use is a correction box placed visibly in each edition.<sup>264</sup> Some individual media also undertake reporting on the media industry as a whole through the creation of a "media page" or a program on the media.<sup>265</sup>

27. Often the media directly engages the public in the process of media criticism. Some media use public surveys to determine whether or not they are serving the public interest. These surveys are sometimes directed at those mentioned in the media to determine how fairly they were treated by the media and whether they felt the report was accurate. In other cases, they are printed for all media users to fill out, in order to assess their general feelings about whether the media has presented accurate and unbiased information.<sup>266</sup>

28. Members of the public are often given the opportunity to comment directly on the media's performance through a "letters to the editor" page in the case of print media or through the allocation of time to read listener or viewer letters on the air in the case of broadcast media. Often such letters are posted online on media organizations' Web sites. Many media organizations also publish email addresses for staff, so that the public can contact the journalists directly.<sup>267</sup> Many media host "reader call-in nights" or "town meetings" with media and local people, so that members of the public can express their concerns and discuss their

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<sup>262</sup> *Id.*

<sup>263</sup> Bertrand, *supra*, p. 117.

<sup>264</sup> *Id.*, p. 112.

<sup>265</sup> Dennis, *supra*, p. 701.

<sup>266</sup> Bertrand, *supra*, p. 113.

<sup>267</sup> *Id.*

expectations of the media.<sup>268</sup> "Some firms . . . or ideological groups . . . buy pages in periodicals to denounce what they perceive as sins of the media."<sup>269</sup>

29. Mechanisms for media criticism outside of individual media organizations also exist. Journalism reviews and media magazines are publications dedicated exclusively to analysis and criticism of the media.<sup>270</sup> Whether local or national in scope, such publications aim to expose the "distortions and omissions" of the media and publish "news that the regular media have ignored."<sup>271</sup> The mid-1990s marked the appearance of online journalism reviews.<sup>272</sup> Criticism is also carried through the publishing of critical reports or books written by committees of experts or governmental bodies, media professionals, academics or non-governmental organizations (NGOs).<sup>273</sup> Numerous NGOs have also been created to observe and criticize the media and to publicize their omissions on a more permanent basis.<sup>274</sup> Media criticism also occurs in the portrayal of the press in popular culture, such as television programs and movies.<sup>275</sup>

30. Finally, members of the public can and occasionally do join together to try to influence the media "with sensitization meetings, letter-writing campaigns, opinion surveys, systematic evaluations, appeals to law-makers, complaints addressed to regulatory agencies, suits, and also boycotts."<sup>276</sup>

#### **D. Conclusion**

31. The foregoing section describes many of the main ways in which media in the Americas can increase, and in many cases are already increasing, their level of professionalism

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<sup>268</sup> *Id.*, p.122.

<sup>269</sup> *Id.*, p. 113.

<sup>270</sup> Dennis, *supra*, p. 702.

<sup>271</sup> Bertrand, *supra*, p. 114.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*, p. 115.

<sup>274</sup> *Id.*, p. 119, 123.

<sup>275</sup> **Dennis, *supra*, p. 703.**

<sup>276</sup> Bertrand, *supra*, p. 119.

and ethical responsibility. Some of the greatest obstacles to creating more ethical media are the lack of knowledge on the part of the public about the ways they can effect change in the media, lack of education in the media on ethical issues, lack of awareness in the media about what possibilities exist for encouraging more ethical behavior and the cost of implementing the various media accountability mechanisms.<sup>277</sup> While the government's role in this process must be limited for the reasons stated earlier, the government can encourage the voluntary use of various mechanisms to promote media accountability, especially through education. The government must refrain from placing restrictions on the media that are designed to promote ethical behavior. Given the freedom to choose how and what to report and the education necessary to make ethical decisions, the media will become more responsible.

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<sup>277</sup> *Id.*, p. 142, 145.

## CHAPTER V

### CASES OF FREEDOM OF EXPRESSION IN THE INTER-AMERICAN SYSTEM

#### A. Inter-American Court of Human Rights

##### Provisional Measures

1. **Mauricio Herrera Ulloa and Fernán Vargas Rohmoser of the daily newspaper *La Nación*, Costa Rica.** On March 28, 2001, the Inter-American Commission on Human Rights, given the State of Costa Rica's failure to comply with the precautionary measures requested on March 1, 2001, petitioned the Inter-American Court of Human Rights to apply provisional measures that would enable the Costa Rican State to safeguard the freedom of expression of Messrs. Mauricio Herrera Ulloa and Fernán Vargas Rohmoser. On September 7, 2001, the Court issued a resolution whereby it decided to petition the State of Costa Rica to adopt, without delay, those measures deemed necessary to nullify Mr. Mauricio Herrera Ulloa's registration in the Judicial Registry of Criminal Offenders until the case was definitively resolved by the bodies of the inter-American human rights system. The State was also petitioned to stay the order to publish in the newspaper *La Nación* the operative provisions of the guilty verdict handed down by the Criminal Court of the First Judicial Circuit of San José on November 12, 1999, and to stay the order to establish an online "link" in the *Digital La Nación* between the articles cited in the complaint and the operative part of the verdict.

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2. On October 5, 2001, the State informed the Court that it had ruled that execution of the verdict against Mr. Mauricio Herrera Ulloa should remain stayed. Likewise, it indicated that registration in the Judicial Registry of Criminal Offenders was stayed. On November 30, 2001, the Commission addressed the Court to indicate that, in flagrant disregard for the provisional measures the Court had agreed upon, there was an affidavit certifying that an entry existed, in the Registry of Criminal Offenders, next to Mr. Mauricio Herrera Ulloa, that read: On November twelfth nineteen hundred ninety-nine, the Criminal Court of the First Judicial Circuit sentenced him to a fine of 120 days for the offenses of publishing insults in the form of

defamation...." On December 3, 2001, the Court petitioned the State to present its observations on the text by the Commission. On December 4, the Costa Rican State reported that, due to a mistaken interpretation, there had been confusion when Mr. Mauricio Herrera Ulloa's criminal record was certified and added that the Department of Judicial Records and Files had already taken the corresponding measures to end definitively all the uncertainty surrounding Mr. Herrera Ulloa's situation and guaranteed that a similar situation regarding certifications that might be issued in the future would by no means recur. On December 6, 2001, the Court decided to take note of what was expressed by the State in its document of December 4, 2001, and to petition that it continue to apply the provisional measures ordered on September 7, 2001, and, in particular, to continue to ensure nullification of Mr. Mauricio Herrera Ulloa's registration in the Judicial Registry of Criminal Offenders.

3. **Case of Baruch Ivcher, Peru.** On February 7, 2001, the State reported that it had abrogated the resolution that had annulled the Peruvian citizenship of Mr. Ivcher; that it had accepted the recommendations of Report 94/98 of December 9, 1998, issued by the Commission; that Mr. Ivcher, his family, and others enjoyed the protection of their physical, psychological, and moral integrity and of judicial guarantees; that Mr. Ivcher had been restored to his position as shareholder of the radio station Frecuencia Latina; and that the Peruvian State was about to reach a friendly solution in conformity with Article 53 of the Commission's Rules of Procedure.

4. Considering that the violations behind the issuance of the provisional measures had ended, the Court issued a resolution, on March 14, 2001, whereby it decided to lift the provisional measures that had been issued.

### **Follow-up of Cases**

5. **"The Last Temptation of Christ," Chile.** The Inter-American Commission presented its observations to the Inter-American Court on the report by the Republic of Chile regarding enforcement of the sentence of the Inter-American Court of Human Rights of February 5, 2001, regarding the case in question. The observations examine the coherence



between the constitutional and legal reforms carried out by the Chilean State with regard to the showing of films and Article 13 of the American Convention.

6. On August 25, 2001, the Chilean State reformed its Constitution in order to eliminate prior censorship, replacing it with a system for rating film productions. Likewise, on March 5, 2001, the President of the Republic submitted to Congress a draft Law on Rating Film Production, which governs the showing of movies on national territory.

7. The IACHR and the Rapporteur for Freedom of Expression view this reform as positive since it eliminates the concept of prior censorship from the text of the Constitution. The draft law provides for the establishment of a rating system to monitor the showing of films, in all probability to control access by minors in keeping with the restrictions allowed under Article 13 of the American Convention. Nevertheless, the new text of the Constitution has not yet entered into force, as a result of which the previous censorship system continues to apply.

8. The above-mentioned bill provides for a Motion Picture Rating Board of 17 members, who are in charge of rating the films and providing guidance to the population and who adopt their decisions by a majority vote. The project envisages appeals by movie theaters for changing and overturning rating decisions. The Board classifies all film productions into three major categories, which contain subcategories.

9. The Commission considers that the imprecise language used for rating movies identified as "excessively violent" may permit excessively restrictive interpretations. The showing of movies rated as "pornographic" or "excessively violent" by the Board will be restricted to the so-called special theaters, registered for this purpose in the respective municipalities. The Commission considers that confining the showing of a movie rated "excessively violent" to these theaters within the terms of the law, governed by a parallel set of regulations, could be beyond the restrictions permitted for the protection of minors, envisaged in Article 13(4) of the American Convention.

10. Ideally, once the motion picture has been rated, the decision to show a movie or not by virtue of its contents should be adopted by the owner or operator of the respective

theater, in keeping with the demands of the consuming public or its own interests. The State should limit its intervention to regulating the access of minors to certain films. It should also be underscored that Article 13 of the Law leaves to the judgment of the municipal authority the granting of permits for the establishment of "special theaters." Therefore, if a permit is not granted, the movie in question will be affected by an indirect restriction, since there are no authorized premises to show them. Along the same lines, the possibility that a municipal authority might deny or cancel authorizations for the functioning of "special theaters" could, in fact, become a mechanism for banning certain films. Control over the showing of films would not be in the hands of the central rating body but rather of each municipality.

## **B. Inter-American Commission on Human Rights**

### **1. Cases Declared Admissible by the Inter-American Commission on Human Rights during 2001**

11. **Case 11.571 Humberto Palamara Iribarne, Chile.** Without prejudice to the merits of the case, the Commission declared that the present case is admissible for alleged violations, among others, of Article 13 of the American Convention. On January 16, 1996, the Commission received a complaint submitted in behalf of Mr. Humberto Palamara Iribarne, which alleges the international responsibility of the Republic of Chile for having banned publication of the book *Ética y Servicios de Inteligencia* [Ethics and Intelligence Services] by Mr. Palamara Iribarne and for having convicted the latter for contempt of court in a trial that did not guarantee due process of law.

12. The complaint indicates that Mr. Palamara Iribarne wrote and attempted to publish a book entitled *Ética y Servicios de Inteligencia* [Ethics and Intelligence Services], in which he addressed various issues related to intelligence and the need to bring it into line with certain ethical parameters. The Naval Court seized the copies of the book that were available in the Ateli Limitada press, the originals of the text, a diskette containing the entire text, and the electrostatic proofs of the publication. Likewise, the Naval Court seized the books that were in the home of Mr. Palamara and deleted the entire text of the above-mentioned book from the hard disk of his personal computer.

13. The petitioners also reported that, on March 26, the Chief Officer of the Naval Garrison of the Naval Institute ordered Mr. Palamara Iribarne to refrain from making “public or private comments, written or spoken, that might be to the detriment of, or damage, the image of the Institution, naval authority, or whoever is in charge of conducting the legal proceedings or summary investigation against him.” Palamara Iribarne convened a press conference at his home, at which time he criticized the actions taken by the Naval Attorney's Office in the proceedings filed against him. The Naval Military Court of Valparaíso sentenced Palamara, for the crime of contempt of court, to 61 days in a minimum-security prison, a fine equivalent to 11 minimum-wage units, and the suspension of any public post or office during the time of his sentence. On January 9, 1997, Palamara filed a complaint in the Supreme Court against the judges of the Military Court who convicted him; this appeal was turned down on October 7, 1997, and the conviction of the Military Court was upheld.

14. **Case 11.870 *Radyo Koulibwi*, Saint Lucia.** Without prejudice to the merits of the case, the Commission declared that the present case was admissible because of alleged violations, among others, of Article 13 of the American Convention. The complaint indicates that, since 1990, Mr. Deterville has been the legal owner and operator of a radio station called *Radyo Koulibwi 105.1 FM*, which held a “test license” granted to it by the State of Saint Lucia. The complainant indicates that, on November 23, 1995, an armed policeman acting as an agent of the State personally handed to him a letter signed by the Permanent Secretary of the Ministry of Communications, informing him that, at that time, the Government of Saint Lucia was not in a

position to grant him a permanent radiobroadcasting license and that its broadcasts were therefore illegal and should cease immediately. The complainant claims that he was intimidated by the police officer who brought him the letter, because “while the police officer was holding the letter in his left hand, he used his right hand to unbuckle the holster containing his revolver and attempted to use it against Mr. Deterville.” The complainant contends that he was not armed at the time the policeman gave him the letter.

15. The complainant claims that the program *Deterville Live* had telephone lines open for its listeners to express their opinions on various subjects of national interest, including criticism against the administration.

16. **Case 11.500 Tomás Eduardo Cirio, Uruguay.** Without prejudice to the merits of the case, the Commission declared that the present case was admissible because of alleged violations, among others, of Article 13 of the American Convention and Article IV (right to freedom of opinion and of the expression and dissemination of ideas, by any medium whatsoever) of the American Declaration of the Rights and Duties of Man. The complainant, a retired Army major, reports that, in July 1972, he resigned as a member of the Military Center. The complaint indicates that, in his letter of resignation, he passed judgment on the Armed Forces for human rights violations in the framework of the fight against subversive elements. Since then, the complainant alleges, he has not stopped suffering sanctions in retaliation for having freely expressed his opinion.

17. The complainant alleges that the Military Center did not accept his resignation and proceeded to eliminate him from its Social Register. Afterwards, the Military Center remitted a copy of his letter of resignation to the General Command of the Army and published it in the press, indicating that Major Cirio had been eliminated from the Social Registers of the Military Center. In November 1972, he alleges that the General Command of the Army advised Major Cirio that he was subject to the jurisdiction of the Honor Court. The complainant alleges that he was judged by a court lacking jurisdiction, since the case involved a retired military officer, and by default (in absentia), and that he was denied the right to defend himself. He claims that, as a result of this ruling, his honor and reputation were affected, as well as his rights to remuneration and to medical care; he was expelled from the cooperative of the Armed

Forces, forbidden to hold positions in the Ministry of Defense, denied the possibility of obtaining credit, disqualified and stripped of his military status and grade as an officer, denied the right to wear the uniform, and humiliated by being publicly exhibited as a person without honor.

18. In December 1997, the Ministry of National Defense issued a resolution (76.161), which changed the status of some military staff, including Major Cirio, from downgraded to retired personnel, who were "separated from the Armed Forces for political, ideological, or arbitrary reasons." This resolution restored Major Cirio's rights as a retired member of the armed forces, but did not include any retroactive rights or compensation for the moral damage he sustained over 25 years as a result of his situation.

## **2. Precautionary Measures**

19. **Germán Arcos, Oscar Torres, Cristina Castro, Alfonso Pardo, Colombia.** On November 9, 2001, the Commission granted precautionary measures to protect the lives and physical integrity of the journalists Oscar Torres (Managing Editor of *Diario Sur*); Cristina Castro (correspondent for *Noticiero RCN*); Alfonso Pardo (correspondent for the weekly *Voz and Peace* Commissioner of the Department of Nariño) and Germán Arcos (cameraman for *Caracol Televisión* of the city of Pasto, Nariño). The Commission's decision was based on information received by the Office of the Rapporteur for the Freedom of Expression, claiming that the three above-mentioned journalists and cameramen received serious threats from the Bloque Libertadores del Sur de las Autodefensas Unidas de Colombia [Southern Liberators Front of the United Self-Defense Forces of Colombia]. According to the information received, they were threatened with "execution" if they did not relinquish their profession within 48 hours." The Commission requested that the Government of Colombia urgently adopt the necessary measures to guarantee the life and integrity of the above-mentioned persons, undertake an investigation, and adopt the measures needed to put an end to the threats against the persons mentioned herein. The State extended the protective measures requested by the IACHR.<sup>278</sup>

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<sup>278</sup>. For further information, please see Chapter II of the present report.

20. **Mauricio Herrera Ulloa and Mr. Fernán Vargas Rohrmoser, Costa Rica.** On March 1, 2001, at its 110th period of sessions, the Inter-American Commission granted precautionary measures in favor of the journalist Mauricio Herrera Ulloa and Mr. Fernán Vargas Rohrmoser, legal representative of the newspaper *La Nación*. According to information received, the journalist Mauricio Herrera Ulloa had been convicted in criminal proceedings in Costa Rica for his newspaper articles published in the newspaper *La Nación* that made reference to a controversial foreign service officer of that country. The judgment, among other things, ordered Herrera Ulloa to pay a fine and declared that civil proceedings would be filed for damages, convicting Herrera Ulloa and the newspaper *La Nación* S.A., represented by Fernán Vargas Rohrmoser, as jointly and severally liable.

21. The Commission, supported by the recommendation of the Special Rapporteur for Freedom of Expression, requested the State of Costa Rica to stay the execution of the sentence until the Commission examined the case; to refrain from taking any action aimed at adding the name of the journalist Herrera Ulloa to the Judicial Registry of Criminal Offenders of Costa Rica; and to abstain from any act or action that might affect the right to freedom of expression of the above-mentioned journalist and the newspaper *La Nación*. On March 21, the Costa Rican court responsible for reviewing the case in this jurisdiction rejected a petition to revoke the order of execution of the sentence, precisely on the basis of the petition for precautionary measures issued by the Commission. The ineffectiveness of the State in safeguarding the freedom of expression of the journalist Mauricio Herrera Ulloa and Mr. Vargas Rohrmoser, combined with the fact that the Costa Rican courts did not carry out the required precautionary measures on a timely basis, led the Commission to request provisional measures from the Inter-American Court of Human Rights.

22. **Claudy Gassant, Haiti.** On June 20, 2001, the Commission requested the Haitian State to adopt precautionary measures to safeguard the rights of Judge Claudy Gassant. This decision was based on information received according to which Claudy Gassant had been the target of various death threats since he took over the investigation of the murder of the journalist Jean Dominique. According to information received, the investigation was assigned to Judge Claudy Gassant after two other judges gave up the case after receiving death threats. Judge Gassant has conducted a series of investigations of political leaders and

other Haitian citizens, in spite of having received direct death threats. According to the information received, on June 8, 2001, a plot was discovered to assassinate Judge Claudy Gassant and Senator Prince Pierre Sonson, a member of the Fanmi Lavalas Party, who had been demanding justice since the death of the journalist Jean Dominique. The absence of effective protective measures to ensure the personal safety of Judge Gassant has led him to leave the country.

23. **Pablo López Ulacio, Venezuela.** On February 7, 2001 the Commission requested the State of Venezuela to adopt precautionary measures in favor of the journalist Pablo López Ulacio, editor and owner of the weekly *La Razón*. According to information provided in November 1999, López Ulacio was sued by the president of the insurance company Multinacional de Seguros, Tobías Carrero Nacar, owner of the largest insurance company of the State, who was singled out by the newspaper as being a financial backer of the presidential campaign of Hugo Chávez Frías and was accused of benefiting from State insurance contracts. As a result, trial judge 25 of Caracas ordered that any reference to this businessman be prohibited and that the journalist be arrested. On July 3, 2001, trial judge 14 of Caracas decided to issue an arrest warrant against López Ulacio, ignoring the request for precautionary measures made by the Commission.

24. The IACHR requested the following precautionary measures in favor of Pablo López Ulacio: (1) to lift the previous censorship measures against Mr. López Ulacio and the weekly *La Razón*; (2) to guarantee the full exercise of Mr. López Ulacio's right to defend himself; (3) to ensure that Mr. López Ulacio can exercise personal freedom, freedom of expression, and the right to due process of law. The State reported that, on July 26, 2001, the court of first instance issued a resolution upholding the arrest warrant against the alleged victim, according to which "the measures requested by the IACHR correspond to what was related by (Mr. López Ulacio) to this organization, ignoring the procedural reality that led to the measure restricting his freedom." The State has alleged that the file has been reviewed by 35 judges and that, in Venezuela, trials in absentia do not exist; therefore the failure to comply with the precautionary measures is not due to the lack of diligence on the part of the Venezuelan State, but rather to procedural delays, most of which were initiated by Mr. López Ulacio, who obstructed their execution. The State also said that the precautionary measure of deprivation of liberty was

issued against Mr. López Ulacio because of his refusal to appear for his trial on seven occasions, which is provided for in Article 271 of the Procedural Code.

25. It should be noted that on March 11, 2002, the Venezuelan State notified the IACHR that the temporary detention order (*medida de Privación Judicial Preventiva de Libertad*) issued on January 23, 2001 by the Fourteenth Trial Court of the Criminal Justice Circuit of Metropolitan Caracas had been replaced by a conditional release precautionary measure (*Medida Cautelar Sustitutiva de Libertad*), which involves appearing before the court every 30 days from the date on which Mr. López Ulacio acknowledges notification of the aforementioned decision.



## **CHAPTER VI**

### **FINAL REMARKS AND RECOMMENDATIONS**

1. Freedom of expression is violated in a wide variety of ways in the Hemisphere. These violations range from a state of almost absolute censorship to simple administrative or bureaucratic impediments to access to information.

2. The murder of journalists is the main concern of the Office of the Special Rapporteur, given the value of the human lives taken and the intimidation it engenders throughout a society. The Office of the Special Rapporteur recommends that states carry out serious, impartial and effective investigations of the facts and that they prosecute and punish those responsible, not only in murder cases but also in cases of abduction, intimidation or threatening of journalists.

3. Aside from the murder of journalists, the principal obstacle to full enjoyment of freedom of expression is legislation used by authorities to silence criticism, both of government actions and of other situations of interest to the public. It is essential that norms to guarantee the exercise of freedom of expression be reformed in some cases, or adopted in others. Law, respect for the law, and freedom of expression are pillars of a democratic society. Deficiencies in one or all of those areas in some states of the Hemisphere constitute ongoing threats to stable democracies.

4. The Office of the Special Rapporteur recommends that the states harmonize their domestic law with the parameters established in the American Convention on Human Rights and that they fully implement Article IV of the American Declaration of the Rights and Duties of Man. The Office of the Special Rapporteur also recommends that the states consider adjusting their domestic laws and practices according to the parameters established in the Inter-American Declaration of Principles on Freedom of Expression.

5. The Office of the Special Rapporteur recommends that the states rescind laws defining disrespect as a crime, since these laws limit public debate, which is essential to the workings of democracy, and, moreover, are incompatible with the American Convention on Human Rights.

6. In addition, the Office of the Special Rapporteur recommends that the states incorporate into their laws the system of dual protection with respect to public and private persons, which entails, in practice, acceptance of the doctrine of "actual malice" and the consequent amendment of laws on libel and slander.

7. The Office of the Special Rapporteur recommends that the states effectively guarantee, both *de jure* and *de facto*, access to information and *habeas data* for all citizens, since both are essential to freedom of expression and the democratic system.

8. The Office of the Special Rapporteur also recommends the elimination of any qualification that could result in a form of censorship of freedom of expression, such as the requirement that information be accurate.

9. The Office of the Special Rapporteur thanks all the states that have worked with it this year, as well as the Inter-American Commission on Human Rights and its Executive Secretariat for their constant support.

10. Lastly, the Office of the Special Rapporteur thanks all the independent journalists who, day in and day out, perform the valuable task of informing the public, which is one of the most important functions for a democratic society because it affords citizens the information they need in order to exercise their rights and meet their obligations.