

## CHAPTER I

### GENERAL INFORMATION

#### **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 its own functional and budgetary independence. It was established in 1997 by the Inter-American Commission on Human Rights within the scope of its powers and authorities, and operates in the legal framework of the Commission.<sup>1</sup> From its establishment, the Office of the Special Rapporteur for Freedom of Expression enjoyed the support not only of the IACHR but also of the states, civil society organizations, media, journalists, and, mainly, the victims of violations of the freedom of expression. They have all seen in the Office a major source of support for establishing the guarantees required for the exercise of their rights, or to ensure the just reparations they merit. In 2006, the General Assembly of the Organization of American States ("OAS") approved Resolution 2237 (XXXVI-O/06), reaffirming the right to the freedom of expression, and recognizing contributions made in the Annual Report of the Office of the Special Rapporteur on 2005, and also urged follow-up on the issues addressed in that report.

2. The Inter-American Commission on Human Rights is an organ of the OAS whose essential function is to foster the observance and defense of human rights and serve as an advisory body on human rights. The powers of the Commission derive fundamentally from the American Convention on Human Rights ("the American Convention" or "the Convention"), the American Declaration of the Rights and Duties of Man, and the Charter of the OAS. With that purpose in mind, the Commission investigates and decides on reports of human rights violations, makes on-site visits, draws up draft treaties and declarations on human rights, and prepares reports on the situation of human rights in the countries of the region.

3. The Commission has addressed the right to the freedom of expression through its system of individual petitions and cases, in which there have been rulings on cases involving censorship, crimes against journalists, and other direct and indirect restrictions on the freedom of expression. In addition, it has issued decisions on threats to and restrictions on the media through special reports. The Commission has also analyzed the situation of the freedom of expression and information in its various on-site visits and in its general reports. Finally, the Commission has adopted precautionary measures so as to act urgently to prevent irreparable harm to persons.<sup>2</sup> These measures were adopted to make possible the full exercise of the freedom of expression and to protect journalists.

4. During its 97<sup>th</sup> regular session, held in October 1997, mindful of the great threats and problems standing in the way of the full and effective development of the right to freedom of expression, which is key for consolidating and developing democracy, the Commission decided, by unanimity of its members, to establish an Office of the Special Rapporteur for Freedom of Expression, on a permanent basis, with functional independence and its own operational structure.

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<sup>1</sup> 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> Article 25(1) of the Rules of Procedure of the Commission states: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

5. During its 98<sup>th</sup> special session, held in March 1998, the Commission defined more generally the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to channel economic assistance to the Office. That same year the Commission chose Argentine attorney Santiago A. Cantón as the Special Rapporteur for Freedom of Expression. When he left the post in 2002, the IACHR chose Argentine attorney Eduardo A. Bertoni as Special Rapporteur for Freedom of Expression; he served in that position until December 2005. Subsequently, on March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Álvarez as Special Rapporteur for Freedom of Expression.

6. On creating the Office of the Special Rapporteur, the Commission sought to place special emphasis on raising awareness of full respect for the freedom of expression and information, considering its fundamental role both in consolidating and developing democracy and in denouncing violations of and protecting all other human rights; and to make specific recommendations to the member states on matters related to the freedom of expression and information, so that progressive measures might be taken in its favor, and reports and specialized studies of the matter drawn up, to be able to take prompt action on those petitions and other communications that assert that this right is being violated in some OAS member state.

7. In general terms, the Commission noted that the duties and mandates of the Office of the Special Rapporteur should include, among others: 1. preparing an annual report on the situation of freedom of expression in the Americas, and submitting it to the Commission for its consideration and inclusion in the Annual Report of the IACHR to the General Assembly of the OAS; 2. preparing thematic reports; 3. compiling the information needed to prepare the reports; 4. organizing promotion activities entrusted to it by the Commission including, but not limited to, presenting papers at relevant conferences and seminars, instructing government employees, professionals, and students on the Commission's work in this regard, and preparing other promotion materials; 5. immediately informing the Commission of urgent situations that merit the Commission requesting the adoption of precautionary measures or provisional measures that the Commission may request of the Inter-American Court, to prevent grave and irreparable harm to human rights; and 6. providing information to the Commission on the processing of individual cases related to the freedom of expression.

8. The Commission's initiative to create an Office of the Special Rapporteur for Freedom of Expression as a permanent entity enjoyed full support in the OAS member states during the Second Summit of the Americas. At that Summit, the Heads of State and Government of the Americas recognized the fundamental role that the freedom of expression and information plays in relation to human rights, and in democracies, and expressed their satisfaction with the creation of the Office. Accordingly, in the Declaration of Santiago, adopted in April 1998, the Heads of State and Government expressly stated:

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 recommend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.<sup>3</sup>

9. In addition, at this same Summit, the Heads of State and Government of the Americas expressed their commitment to support the work of the Office of the Special Rapporteur

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<sup>3</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, Summits of the Americas Department, Organization of American States.

for Freedom of Expression. On this point, the Plan of Action from that Summit recommended as follows:

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>4</sup>

10. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Rapporteurship, and added that their 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>5</sup>

#### **B. Main activities of the Office of the Special Rapporteur**

11. Since it began its work in November 1998, the Office of the Special Rapporteur has participated in several events to make known its mandate and objectives. The fact that the Office of the Special Rapporteur has become well-known has facilitated its successful performance of the tasks entrusted to it. The tasks of promotion and dissemination have been geared mainly to participation in international forums, coordinating efforts with non-government organizations, advising the states on proposed laws related to the freedom of expression, and making the Office known through the media. The main objectives of these activities were to raise awareness and better inform the different sectors of society as to the importance of the inter-American system for the protection of human rights, the international legal provisions on freedom of expression, the comparative case-law on the matter, and the importance of the freedom of expression in the context and development of a democratic society.

12. The Office of the Special Rapporteur has become a strong proponent of legislative reform on freedom of expression issues. Through the ties that have been established with the member states and various civil society organizations, this office has begun a process of cooperating to implement initiatives to reform laws that limit the right to the freedom of expression, as well as the inclusion of laws that expand the right of citizens to participate actively in the democratic process through access to information.

13. Since the creation of the Office of the Special Rapporteur, advisory studies have been carried out and recommendations were made to some member states to amend their legislation that adversely impacts the freedom of expression, so as to bring them into line with international standards for more effective protection of the exercise of this right. In preparing its thematic and annual reports, the Office of the Special Rapporteur sends requests for information to the member states.

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<sup>4</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, Summits of the Americas Department, Organization of American States.

<sup>5</sup> Plan of Action. Third Summit of the Americas, April 20-22, 2001, Quebec City, Canada. Available at: <http://www.summit-americas.org>.

14. Through its informal hemispheric network for the protection of the freedom of expression, the Office receives information on the status of the freedom of expression in the member states. This information is sent in by various organizations that defend this right, journalists in general, and other sources. In those cases in which it considers that there may be a serious violation of the freedom of expression, the Office issues press releases expressing its concern to the authorities and making recommendations. In other cases, the Office turns directly to the state authorities to get more information and/or to ask that reparation be made for the harm done. The Office has established a data base made up of a large number of media outlets, organizations that defend the freedom of expression and human rights, attorneys who are specialists in the matter, and universities, among others, through which its press releases and/or any other information it considers relevant are disseminated.

15. Disseminating the activities and mandate of the Office has made it possible for several sectors of civil society to turn to it to protect their right to issue, disseminate, and receive information.

### **1. Daily monitoring of the situation of freedom of expression in the region**

16. Since April 2006 the Office of the Special Rapporteur has been drawing up a table for monitoring the situation of the freedom of expression in the region. That table is updated daily with information received from various sources. This information is then analyzed to determine the course of action to adopt, which may include sending letters to states, issuing press releases, giving impetus to requests for precautionary measures from the IACHR, and granting such requests, and including that information in the quarterly press releases of the Office of the Special Rapporteur and in its Annual Report.

### **2. Individual case system**

17. The number and quality of draft reports on the merits prepared by the Office of the Special Rapporteur for consideration by the IACHR has increased substantially. Accordingly, during the period covered by this report, six draft reports on the merits were prepared on different important freedom of expression issues. As the draft reports have yet to be published, we mention just the issues they address:

<i><b>Case</b></i>	<i><b>Main Issue</b></i>	<i><b>Date the petition filed</b></i>
A	Criminal trial and conviction for criticizing public official	2000
B	Assassination of journalist	2000
C	Bomb attack on journalist	2003
D	Civil sanction for reproducing information on public official	2004
E	Criminal trial and conviction of human rights lawyer for statements concerning public employee	2000
F	Attacks on journalists and on headquarters of television station	2002

### 3. Precautionary Measures

18. The Office of the Special Rapporteur has come to play an active role in precautionary measures during this period. Through use of the daily monitoring system, from April to December 2006 the Office of the Special Rapporteur identified several situations in which it actively promoted the request for precautionary measures from the IACHR. It is important to note that through this mechanism, for example, it was possible to protect the life and personal integrity of one journalist in Colombia, five community radio workers in Mexico, 19 workers from a radio station in Guatemala, and three journalists in Honduras.

### 4. Quarterly press releases on the freedom of expression situation in the region

19. In 2006, the Office of the Special Rapporteur for Freedom of Expression began to publish quarterly press releases on the situation of the right to freedom of thought and expression in the region. In these quarterly press releases, the Office of the Special Rapporteur compiles the information received during the quarter and evaluates the positive and negative aspects observed, both in general and country by country. To this end, the Office of the Special Rapporteur published three press releases, corresponding to April-June<sup>6</sup>, July-September<sup>7</sup>, and October-December<sup>8</sup> 2006.

### 5. Studies and publications

#### *Study on trends in freedom of expression in the region*

20. In May 2006, the Office of the Special Rapporteur began a study on trends in freedom of expression in the region. The study began taking as a basis the annual reports of the Office of the Special Rapporteur as of 2001. Based on the information in those reports, tables have been prepared, country by country, analyzing the trend in each country on issues such as assassinations, attacks, threats, material destruction, judicial proceedings, legislation, community radio stations, and access to information.

#### *Study on imprisoned journalists and judicial harassment*

21. In May 2006, the Office of the Special Rapporteur culminated a study on journalists in prison and judicial harassment. The results of the study have made it possible to create a data base on journalists deprived of liberty in the region. On May 3, 2006, the Office of the Special Rapporteur issued press release 139/06<sup>9</sup> requesting both the release of those journalists deprived of liberty and the end of judicial harassment of journalists in the region.

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<sup>6</sup> Press Release No. 144/06. *Situation of Freedom of Expression in the Region (April-June 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=669&IID=2>.

<sup>7</sup> Press Release No. 154/06. *Office of the Special Rapporteur for Freedom of Expression releases quarterly report on the state of freedom of expression in the region (July-September 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=680&IID=2>.

<sup>8</sup> Press Release No. 162/07. *Evaluation of the Freedom of Expression on the Last Quarter of 2006: The Special Rapporteur expresses concern for vulnerability of journalists in the region (October-December 2006)*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=689&IID=1>.

<sup>9</sup> Press Release No. 139/06. *Office of the Special Rapporteur for Freedom of Expression calls for release of journalists detained in Cuba and for end to judicial harassment in the region*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=661&IID=2>.

*Special study on impunity*

22. The Office of the Special Rapporteur for Freedom of Expression began a special study on the status of investigations into the assassinations committed from 1995 to 2005 that may be related to the exercise of journalism.<sup>10</sup>

23. As part of that study the Office of the Special Rapporteur has requested information from the states concerned and from non-governmental organizations and other institutions on the status of the investigations into those crimes. The information requested includes whether persons are currently on trial or convicted as direct perpetrators, masterminds, accomplices, or aiders and abettors with respect to those assassinations; the procedural stage of the respective proceedings; whether there are persons deprived of liberty in relation to those assassinations, and the determination as to whether the assassinations were related to the victims' work as journalists. The purpose of the study is to draw up a final table on the specific results of the investigations in each case and a general analysis of the situation of impunity in the region.

*Study on the right to access to information*

24. The Rapporteurship has drafted a study on the right to access to information in the power of the States that will be published soon. The principle objective of the study is to analyze the impact of the judgment of the Inter-American Court in the case of *Claude Reyes et al.* as a support and guide for the States in the achievement of advances and to deepen the theoretical framework for access to information.

**6. Promotion and dissemination activities**

25. Following is a description of the main promotion and dissemination activities carried out by the Office of the Special Rapporteur for Freedom of Expression in 2006.

26. On April 3, 2006, Office specialist Carlos Zelada traveled to Argentina in the context of the XXVIII Special Session of the Inter-American Court of Human Rights. On that occasion, Mr. Zelada participated as an adviser to the IACHR in the public hearing on the merits and possible reparations and costs held in the case of *Marcel Claude Reyes et al. v. Chile*.

27. On April 27, 2006, the Office of the Special Rapporteur attended the presentation of the Annual Report of the IACHR for 2005 to the Committee on Juridical and Political Affairs of the OAS. On that occasion, several delegations of the member states expressed their support for the work of the Office of the Special Rapporteur.

28. On April 28, 2006, the Special Rapporteur participated as a presenter at the "Special Meeting of the Committee on Juridical and Political Affairs to Promote, Impart, and Exchange Experiences and Knowledge with Respect to Access to Public Information, and its Relationship with Citizen Participation." This session was held pursuant to the mandate of Resolution AG/RES. 2121 (XXXV-O/05), and included the participation of experts invited by the member states, representatives of civil society, and the president of the IACHR, Mr. Evelio Fernández Arévalos.

29. From May 1 to 3, 2006, the Office of the Special Rapporteur made a visit to Panama in order to observe the situation of the right to freedom of expression there. During his visit the

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<sup>10</sup> Press Release No. 147/06. *Office of the Special Rapporteur for Freedom of Expression initiates study of the status of the investigations of 172 cases of journalists murdered in the region.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=673&IID=2>.

Rapporteur met with representatives of the state, civil society organizations, academic sectors, journalists, and media. The Office of the Special Rapporteur also participated as a presenter at a seminar to mark World Press Freedom Day organized by UNESCO and the Latin American Parliament.

30. On May 4 and 5, 2006, the Office of the Special Rapporteur participated as a presenter at the international seminar "Human Rights and Freedom of Expression in Mexico," held in the city of San Luís Potosí. The seminar was organized by the Ministry of Foreign Relations of Mexico, and the Mexico-European Commission Cooperation Program on Human Rights, with the sponsorship of major government human rights bodies, universities, and non-governmental organizations. In the context of that seminar, the Special Rapporteur met with civil society organizations, academic sectors, and journalists.

31. On May 19 and 20, 2006, the Special Rapporteur and specialist Carlos Zelada participated as moderators in the colloquium "Freedom of Expression in the 21<sup>st</sup> century in the Americas," held in Washington D.C. as part of *The Americas Project*. The colloquium, which brought together some 15 leading specialists on the issue, was organized by the *James A. Baker III University for Public Policy* in conjunction with the OAS.

32. From May 31 to June 3, 2006, the Special Rapporteur made a working visit to Ecuador where he met with representatives of the state, civil society, academics, and the media. At the end of his visit the Special Rapporteur recommended to the Ecuadorian authorities that they repeal the criminal statute on *desacato* provided for at Articles 128, 230, 231, 232, and 233 of Ecuador's Criminal Code.<sup>11</sup>

33. From June 4 to 7, 2006, the Special Rapporteur traveled to the Dominican Republic to participate in the General Assembly of the OAS. As part of his activities, the Special Rapporteur met with representatives of the OAS member states, members of organizations that uphold the freedom of expression in the hemisphere, and the association of journalists of the Dominican Republic. The main issues discussed in the meetings included the need to foster legislative reforms on access to information in the Dominican Republic, as well as the recommendation that the country's *desacato* laws be repealed.

34. From July 17 to 21, 2006, the Special Rapporteur for Freedom of Information traveled to Guatemala in the context of the 125<sup>th</sup> special session of the IACHR. The Special Rapporteur participated in the public hearing on the "Situation of Community Media in Central America." In addition, the Special Rapporteur participated as a presenter in the seminar "Plural Communications Media ... Prosperous Societies," organized by the World Association of Community Radio Broadcasters (AMARC). In addition, the Special Rapporteur met with representatives of the Committee on Human Rights of the Congress of the Republic and civil society organizations.

35. From August 19 to 30, 2006, the Special Rapporteur visited several countries in Europe to promote the activities of the Office of the Special Rapporteur for Freedom of Expression and to seek financial support for those activities. On that occasion, the Special Rapporteur held meetings with governments, intergovernmental organizations, and non-governmental organizations.

36. From August 30 to September 2, 2006, Office specialist and attorney Carlos Zelada participated as a panelist at the "First Inter-American Congress of Education on Human Rights," held

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<sup>11</sup> Press Release No. 141/06. *Office of the Special Rapporteur for Freedom of Expression recommends to the Ecuadorian State that it derogate its legislation defining the criminal offense of "desacato."* Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=665&IID=2>.

in the city of Brasilia, organized by the Special Secretariat for Human Rights of the Presidency of the Republic of Brazil.

37. On September 13, 2006, the Office of the Special Rapporteur participated as a panelist in the seminar "Challenges to Contemporary Journalism" organized in Guatemala by the media owners association *Instancia de Presidentes de Entidades de Prensa de Guatemala*. The Special Rapporteur participated in the panel "Freedom of Expression, Experiences in Latin America from a practical and legal perspective."

38. On September 20, 2006, the Special Rapporteur presented a paper on "The Current Situation of Freedom of Expression in the Hemisphere" in the context of the "First International Series of Lectures" organized by the Centro para la Libertad de Expresión of the Dominican Republic.

39. From September 25 to 30, 2006, the Special Rapporteur was invited by the Supreme Court of Justice of Mexico to participate in and present a paper at the "First International Seminar on Access to Judicial Information and New Technologies." The seminar included the participation of representatives of the judicial branch of the Mexican State, academics, and experts on access to information.

40. On September 30, 2006, the Special Rapporteur made a presentation on the activities of the Office of the Special Rapporteur in the context of the 62<sup>nd</sup> Annual Assembly of the Inter-American Press Association, held in Mexico City.

41. On October 26 and 27, 2006, the Special Rapporteur and specialist Carlos Zelada participated as panelists in the "Special Session on the Right to Freedom of Thought and Expression of the Committee on Juridical and Political Affairs of the OAS, pursuant to the mandate in Resolution AG/RES. 2237 (XXXVI-O/06). The Special Rapporteur presented a paper titled "Indirect restrictions on the exercise of the freedom of thought and expression," while Mr. Zelada presented a paper on "The relationship between the right to freedom of expression and the right to honor and reputation."

42. On November 15, 2006, the Special Rapporteur attended the *Hemispheric Conference on Journalism Values in the 21<sup>st</sup> Century*, organized by the Inter-American Press Association and held in San José, Costa Rica.

43. On November 18, 2006, the Special Rapporteur participated in the *Fourth Inter-American Hispanic Congress* held at Columbia University in New York. On that occasion, the Special Rapporteur participated, presenting a paper on "Freedom of Expression in the Region."

44. From November 26 to 29, 2006, the Special Rapporteur made a working visit to Costa Rica. He was accompanied by specialist Carlos Zelada and the coordinator for press and communication, María Isabel Rivero. During its visits, the delegation from the Office of the Special Rapporteur met with representatives of the State, members of the Colegio de Periodistas of Costa Rica, civil society organizations, and representatives of the local media. On concluding its visit, the Office issued a press release with observations on the situation of the freedom of expression in Costa Rica and with its recommendations.<sup>12</sup>

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<sup>12</sup> Press Release No. 158/06. *Office of the Special Rapporteur for Freedom of Expression concludes working visit to Costa Rica*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=685&IID=2>.



45. From December 3 to 6, 2006, the Special Rapporteur, specialist Alejandra Gonza, and the coordinator for press and communication, María Isabel Rivero, traveled to Mexico to give training workshops for journalists on the use of the inter-American system for the promotion and protection of human rights. The first workshop was held December 3, 2006 at the Universidad de Occidente in the city of Culiacán, in the state of Sinaloa; 25 journalists from different media and press associations participated. The second workshop was held December 5 and 6, 2006, at the la Universidad Iberoamericana, in Mexico City; 40 journalists from different media attended.

46. From December 13 to 16, 2006, the Office of the Special Rapporteur on Freedom of Expression made a working visit to Uruguay. The Special Rapporteur was accompanied by specialist Daniel Cerqueira and press and communications coordinator María Isabel Rivero. During its visit, the delegation met with representatives of the State, civil society organizations, academics, media representatives, and journalists. Upon the conclusion of the visit, the Office of the Special Rapporteur issued a press release with observations on the situation of the freedom of expression in Uruguay and with its recommendations.<sup>13</sup>

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<sup>13</sup> Press Release No. 159/06. *Office of the Special Rapporteur for Freedom of Expression releases recommendations to Uruguay at the conclusion of its working visit.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=686&IID=2>.