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REPORT ON THE SITUATION OF FREEDOM OF EXPRESSION IN HAITI

OFFICE OF THE SPECIAL RAPPORTEUR
FOR FREEDOM OF EXPRESSION

**GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES**

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REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ON THE SITUATION OF FREEDOM OF THOUGHT AND EXPRESSION IN HAITI

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REPORT ON THE SITUATION OF THE FREEDOM OF THOUGHT AND EXPRESSION IN HAITI

I. INTRODUCTION

1. In May and August 2002, the Special Rapporteur for Freedom of Expression, Eduardo A. Bertoni, participated in two visits by the Inter-American Commission on Human Rights (IACHR or Commission) to Haiti, for the purpose of evaluating the situation of the freedom of expression in said country. During the visit, the Special Rapporteur met with the President of the Republic of Haiti, Jean-Bertrand Aristide, government officials, civil society organizations, and journalists.

2. This report, prepared by the Office of the Special Rapporteur for Freedom of Expression¹ of the IACHR, examines the situation of the freedom of expression in Haiti in relation to Article 13 of the American Convention on Human Rights (American Convention). The Declaration of Principles on Freedom of Expression,² adopted by the IACHR in October 2000, is used as a frame of reference for analyzing legislation and practices regarding freedom of expression and as a guide for interpreting Article 13 of the American Convention.

3. Judging by the information received before, during, and after the visits mentioned, the Rapporteur considers that the right to freedom of expression is not fully protected in Haiti, as reflected in the assassinations of journalists, the scant progress in the investigations into such acts, and the existence of numerous complaints regarding harassment and threats against journalists, media outlets, and others involved in social communication. The Special Rapporteur for Freedom of Expression would like to emphasize that it is worrisome that the persons affected by attacks on their freedom of expression do not always enjoy the necessary judicial protection, which, if provided, would make it possible to determine liabilities, stop the intimidation, and make reparation for the injury caused. The full exercise of freedom of expression in Haiti is also limited by the existence of legislation clearly contrary to the American Convention, such as the *desacato* laws, i.e. the existence of criminal sanctions for offensive speech directed at public officials.

4. This report, first addresses, the fundamental importance of freedom of expression in a democratic society under the international law provisions on the issue. Second, the applicable Haitian constitutional provisions are mentioned and analyzed, and there is a closer look at the laws in force on *desacato*, defamation, slander and libel, the requirement that

¹ The IACHR, during its 97th regular session, held in October 1997, pursuant to the powers granted to it by the Convention and its Regulations, decided unanimously to establish the Office of the Rapporteur for Freedom of Expression, as a permanent mechanism with functional independence and its own operating structure. In order to strengthen its activities, the IACHR, in establishing the Office of the Special Rapporteur, took into consideration the recommendations made by broad sectors of society in the different states of the hemisphere voicing profound concern over the constant restrictions imposed on freedom of expression and information, and the grave threats and problems that stand in the way of the full and effective development of this right.

² In response to the mandate entrusted with the creation of the Rapporteurship for Freedom of Expression, in 2000 the Office of the Rapporteur drew up a draft Declaration of Principles on Freedom of Expression. The Inter-American Commission on Human Rights, during its 108th regular session, in October 2000, approved the Declaration of Principles on Freedom of Expression. The idea of developing a Declaration of Principles on Freedom of Expression emerged out of recognition of the need to provide a legal framework to regulate effective protection of freedom of expression in the hemisphere, incorporating the main doctrines recognized in various international instruments. The Declaration is fundamental for the interpretation of Article 13 of the American Convention on Human Rights. Its approval not only constitutes recognition of the importance of protecting freedom of expression in the Americas; it also incorporates international standards for a more effective defense of the exercise of this right in the inter-American system.

information be true, the right of access to information in the hands of the state, and the *habeas data* action. An analysis is then presented of the information received on the situation of the media and journalists, as they exercise their right to freedom of expression. Finally, the report presents a series of conclusions and recommendations.

5. The Rapporteur notes that the complexity of the political and social situation in Haiti today has a direct impact on the exercise of freedom of expression. In addition, the Rapporteur is aware that the situation may not respond to short-term conditions, but rather could be a direct consequence of the multiple political crises and military coups that have taken place in Haiti since the beginning of the process of transition and rebuilding of democratic institutions in 1987. Despite the lingering legacy of this situation, the state is responsible for protecting and ensuring the human rights of all persons, according to Articles 1 and 2 of the American Convention. The Rapporteur appeals to the present-day social actors in Haiti to act on the recommendations set forth in this report.

II. LEGAL FRAMEWORK

1. Freedom of expression and democracy

6. The right to freedom of expression contains aspects that are fundamental for the development and strengthening of democratic societies, including allowing the participation of members of society in a decision-making process; becoming a tool for attaining a more tolerant and stable society, and dignifying the human person through the exchange of ideas, opinions, and information. Freedom of expression, therefore, provides a framework in which the conflicts inherent to each society can unfold, maintaining a balance between stability and change. As stated by the Inter-American Court of Human Rights (Court or Inter-American Court), freedom of expression allows for an open debate on moral and social values, and facilitates political discourse, which is key to consolidating democratic values.³ Therefore, when freedom of expression faces obstacles, democracy loses its collective and permanent social dimension, becoming a merely formal institutional arrangement in which political participation is not effective.

7. The Inter-American Court has consistently highlighted the importance of this right, when in stating:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁴

8. The IACHR has indicated that in order to ensure the full exercise of freedom of expression, the member States should repeal those measures that discriminate against individuals when it comes to full participation in the political, economic, public, and social life of each country. The American Convention enshrines the right of all persons to be free from

³ I/A Court H.R., *Ivcher Bronstein Case (Peru)*, Series C N° 74. Judgment of February 6, 2001, para. 143(e).

⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, para. 70.

discrimination, as a basic pillar for the strengthening and working of democratic systems in the hemisphere.⁵

9. The lack of participation of the population in the matters that concern them prevents full development of democratic and pluralistic societies, exacerbating intolerance and discrimination. Including all the sectors of society in the processes of communication, decision-making, and development is fundamental if their needs, opinions, and interests are taken into account when policies are formulated and decisions made.

10. In this regard, the Inter-American Court has stated that the:

concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.... 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.⁶

11. The Inter-American Court noted the dual dimension of freedom of expression, recognizing the broad nature of this right:

In its individual dimension, freedom of expression goes further than the theoretical recognition of the right to speak or to write. It also includes and cannot be separated from the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible. When the Convention proclaims that freedom of thought and expression includes the right to impart information and ideas through "any... medium," it emphasizes the fact that the expression and dissemination of ideas and information are indivisible concepts. This means that restrictions that are imposed on dissemination represent, in equal measure, a direct limitation on the right to express oneself freely. The importance of the legal rules applicable to the press and to the status of those who dedicate themselves professionally to it derives from this concept.⁷

In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication. It includes the right of each person to seek to communicate his own views to others, as well as the right to receive opinions and news from others. For the average citizen it is just as important to know the opinions of others or to have access to information generally as is the very right to impart his own opinions.⁸

12. Both the Inter-American Court and the Inter-American Commission have had occasion to interpret Article 13 of the American Convention through their case-law in the following cases: *Francisco Martorell v. Chile*,⁹ *Héctor Félix Miranda v. Mexico*,¹⁰ *Horacio*

⁵ See American Convention: Chapter I, General Obligations: Article 1: Obligation to Respect Rights; Chapter II, Civil and Political Rights: Article 13: Freedom of Thought and Expression in Basic Documents Pertaining to Human Rights in the Inter-American System (Updated to January 2003).

⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A No. 5, para. 69.

⁷ *Id.*, para. 31.

⁸ *Id.*, para. 32.

⁹ IACHR, Case 11.230, Report No. 11/96 (Chile), Annual Report 1996

¹⁰ IACHR, Case 11.739, Report No. 50/99, *Héctor Félix Miranda* (Mexico), Annual Report 1999.

Verbitsky v. Argentina,¹¹ *Víctor Manuel Oropeza v. Mexico*,¹² *Baruch Ivcher Bronstein v. Peru*,¹³ and *The Last Temptation of Christ* (Chile),¹⁴ among others.

13. In addition, both the Inter-American Court and the Inter-American Commission have developed a series of documents and advisory opinions that refer to freedom of expression and which interpret the scope of Articles 13 and 14 of the American Convention. These include: the advisory opinion of the Court on *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,¹⁵ the Court's advisory opinion on *Enforceability of the Right to Reply or Correction*,¹⁶ the IACHR's report on the compatibility of *desacato* laws with the American Convention,¹⁷ and the Declaration of Principles on Freedom of Expression of the IACHR.¹⁸

14. Based on case-law originated in both organs, the right to freedom of expression is recognized to be not only an individual right, but also a right of society. A free society, today and tomorrow, is one that can maintain an open and rigorous debate about itself.¹⁹ Accordingly, society as a whole may be the victim of a violation of freedom of expression.

¹¹ IACHR, Case 11.012, Report No. 22/94, *Horacio Verbitsky*, Friendly Settlement (Argentina), Annual Report 1994 September 20.

¹² IACHR, Case 11.740, Report No. 130/99. *Víctor Manuel Oropeza* (Mexico). Annual Report 1999

¹³ I/A Court H.R., *Ivcher Bronstein Case* (Peru), Series C N° 74. Judgment of February 6, 2001

¹⁴ I/A Court H.R., "*The Last Temptation of Christ*" Case (*Olmedo Bustos et al. v. Chile*). Series C No. 73. Judgment of February 5, 2001

¹⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, para. 70.

¹⁶ I/A Court H.R., *Enforceability of the Right to Reply or Correction* (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion Series A N° 7, August 29, 1986. *Enforceability of the Right to Reply or Correction* (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights).

¹⁷ IACHR, *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. OAS Doc. 9, 88th session, February 17, 1995.

¹⁸ Basic Documents Pertaining to Human Rights the Inter-American System. Declaration of Principles of Freedom of Expression. p.189 (Annex 1). See also IACHR, Annual Report of the Office of the Special Rapporteur on Freedom of Expression, 2000: Declaration of Principles of Freedom of Expression : Interpretation.

¹⁹ IACHR, Case 11.230, Report No. 11/96, *Francisco Martorell*, (Chile), Annual Report 1996.

2. International Provisions

15. Article 13 of the American Convention on Human Rights enshrines the right to freedom of expression and information in the following terms:

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

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

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

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

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

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

16. Similarly, in Article IV, the American Declaration of the Rights and Duties of Man provides: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

17. Like all other rights provided for in the American Convention, the guarantee of freedom of expression should be understood in conjunction with other general provisions, such as Articles 1 and 2 thereof. Article 1(1) of the American Convention notes that the states undertake to respect the rights and freedoms recognized in it, and to ensure their free and full exercise for all persons subject to their jurisdiction, without any discrimination.

18. Article 2 of the American Convention refers to the fact that the states are under an obligation to adopt the necessary "legislative or other provisions," if they do not already exist, to give effect to the rights and freedoms recognized in the American Convention.²⁰

19. Haiti ratified the American Convention on September 27, 1977 (accession), and therefore is obligated to respect and ensure the rights recognized therein, including the freedom of expression. Moreover, on March 20, 1998, Haiti accepted the jurisdiction of the Inter-American Court of Human Rights.²¹

²⁰ Article 2 of the American Convention reads: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

²¹ See Basic Documents Pertaining to Human Rights in the Inter-American System, January 31, 2003, p. 56.

3. Domestic Provisions

a. General issues

20. The right to freedom of expression is enshrined in Article 28 of the National Constitution of Haiti of March 29, 1987, which stipulates:

Every Haitian has the right to freely express his or her opinions on any matter, by the medium he or she chooses.²²

21. With respect to the freedom of press, the National Constitution of Haiti states:

Article 28.1: Journalists shall freely exercise their profession within the framework of the law. Such exercise may not be subject to any authorization or censorship, except in the case of war.

Article 28.2: Journalists may not be compelled to reveal their sources. However, it is their duty to verify the authenticity and accuracy of information, and to respect professional ethics.

Article 28.3: All offenses involving the press and abuses of the right of expression come under the Criminal Code.²³

22. With respect to the provision contained in Article 28(2) of the Haitian Constitution, the Office of the Special Rapporteur notes that it establishes the obligation of all journalists to “verify the authenticity and accuracy of the information.” The Office of the Rapporteur considers that beyond the journalist’s ethical responsibility to use all means within his or her reach to verify the information he or she disseminates to society, this requirement, if imposed by the State, could entail the censorship of all information not subject to proof, one example being political debate, which is based mainly on ideas and opinions that are clearly subjective in nature.

23. No doubt debate and exchange of ideas are precisely the method for seeking the truth and for strengthening democratic government based on the plurality of ideas, opinion, and information. If a requirement is imposed *a priori* to report only “the truth,” the possibility of engaging in the debate that is necessary to this end would be denied by limiting the broader realm of subjective expression. Furthermore, the possibility that one might be subject to criminal sanctions for reporting on an issue in a manner which, later and due to the free debate, is determined to be incorrect, can lead to self-censorship by those providing the information, to avoid exposing themselves to such sanctions, and to the consequent harm to all citizens, who would not be able to benefit from the exchange of ideas.²⁴

24. Furthermore, in relation to the provision of Article 28(3) of the Haitian Constitution, the Office of the Rapporteur recalls that Article 13(2) of the American Convention

²² Haitian Constitution, Title III, Chapter II, Section C: Freedom of Expression (1987).

²³ *Id.*

²⁴ The I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A No. 5 states in par. 33 :

The two dimensions mentioned [individual and collective] of the right to freedom of expression must be guaranteed simultaneously. 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.

provides that restrictions on the freedom of expression only allow for subsequent liability, which must be expressly established by law, where the ends sought are legitimate and where the grounds for establishing liability are necessary to ensure the ends pursued.²⁵

25. The Inter-American Court has also indicated that limitations and restrictions on the human rights protected by the American Convention “must be subjected to an interpretation that is strictly limited to the ‘just demands’ of ‘a democratic society,’ which takes account of the need to balance the competing interests involved and the need to preserve the object and purpose of the Convention.” The Court established that it does not suffice for the restriction to be useful for protecting that right; rather, these measures must be strictly necessary to ensure that certain legitimate ends are secured, with due regard to proportionality in their implementation.²⁶

b. Access to Information

26. Another constitutional provision relevant for the full exercise of the freedom of expression of Haitians is the right of access to information.

27. Article 40 of the Haitian Constitution, Section I, on the Right to Information, provides:

The State has the obligation to publicize in the oral, written and televised press, in the Creole and French languages, all statutes, orders, decrees, international agreements, treaties, and conventions on everything affecting the national life, except for information concerning national security.

28. The Office of the Special Rapporteur understands that access to information in the possession of the state is one of the basic pillars of any democracy, as it is closely related to the principle of transparency in the administration, and publicity of government acts. In this context, it is the Haitian people, who delegated to the representatives the handling of public affairs, who should have the information. The State, in this regard, is a means for attaining the common well-being. In addition, without this information, it is not possible to fully exercise the right to freedom of expression as an effective mechanism for citizen participation or democratic oversight over the conduct of government affairs. For example, the IACHR has learned that the Office of Citizen Protection, which receives complaints from citizens on several subjects, has met with difficulties and resistance on the part of certain state agencies when it comes to obtaining information it needed to perform its functions.²⁷

29. With respect to the limitation on the access to data related to national security that is established by Haitian law, the Office of the Special Rapporteur has rendered an interpretation, in Principle 4 of the Declaration of Principles on Freedom of Expression²⁸

²⁵ *Ibidem*, para. 59. On that occasion, the Court stated that it had to verify the restrictions and determine whether they are authorized by the Convention, i.e. whether they are “‘necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals’ (Art. 13(2)).”

²⁶ *Id.*

²⁷ First annual report of activities of the Office for Citizen Protection, 1997-1998, p. 70.

²⁸ Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR 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

according to which, in view of the need to foster greater transparency of government acts as a basis for strengthening democratic rule, the limitations on access to files in the possession of the state must be exceptional and interpreted narrowly. They must be clearly established by law, and may only be applied in the event that there is a real and imminent danger threatening national security in democratic societies. Each act restricting access to information should be resolved on the basis of each case brought forward. In particular, the IACHR has called attention to the information needed to investigate grave human rights violations. As the Inter-American Commission has stated:

The administration of swift and effective justice, especially in exposing, sanctioning, and providing remedy for atrocities or grave violations of human rights by agents of the state, often requires reference to documents that have been classified as secret or inaccessible for reasons of national security. Maintaining State secrecy in such cases perpetuates impunity and erodes State authority, inwardly and outwardly.²⁹

30. The Inter-American Court has found that restrictions to the freedom of expression and information should be “judged by reference to the legitimate needs of democratic societies and institutions.”³⁰ In this context, the state should ensure that in the event of a national emergency, the denial of access to information in the possession of the state will be imposed only for the period strictly necessary, in view of the exigencies of the circumstances, and modified once the emergency situation has passed.³¹ The Office of the Special Rapporteur is of the view that there should be a review of the information considered classified by an independent judicial mechanism capable of striking a balance between the interest in protecting the rights and freedoms of citizens, and the interest in safeguarding national security.

31. Furthermore, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information³² offer guidance as to how to balance these two competing interests. Principle 1(2) provides:

established by law in case of a real and imminent danger that threatens national security in democratic societies.

²⁹ IACHR, Annual Report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, “Recommendations of the IACHR,” recommendation 20.

³⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A No. 5, para. 42.

³¹ See Chapter IV, Article 27 of the American Convention, which provides for the obligations of states under emergency situations.

³² *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1999), available at <http://www.article19.org/docimages/511.htm>. The Commission, as well as other international authorities, considers that the Johannesburg Principles on National Security, Freedom of Expression and Access to Information are a guide to interpret and apply the right to freedom of expression in the arena of national security. The Johannesburg Principles constitute a set of voluntary principles drafted by a committee of international experts on human rights and media law, and are frequently invoked by the UN Commission on Human Rights (see, e.g., Commission on Human Rights Resolution 2002/48, UN Commission on Human Rights, 58th Sess., UN Doc. E/CN.4/RES/2002/48 (2002), Preamble; Resolution 2001/47, UN Commission on Human Rights, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (See, e.g., Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45, UN Commission on Human Rights, 52nd Sess., E/CN.4/1996/39, 22 March 1996, Annex.), the UN Special Rapporteur on the independence of judges and lawyers (See, e.g., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, Addendum, Report on the mission to Peru, UN Commission on Human Rights, 54th Sess., E/CN.4/1998/39/Add.1, 19 February 1998, introduction.) and the Special Representative of the Secretary-General on human rights defenders (See, e.g., Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61, UN Commission on Human Rights, 57th Sess., E/CN.4/2001/94, 26 January 2001, para. 14). Also see, IACHR Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc.5 rev. 1, October 22, 2002.

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

32. The Johannesburg Principles define the legitimacy of national security interests in the following terms:

a. A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

b. In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.³³

33. Most laws on access to information contain exceptions that enable the state to deny the dissemination of information on the grounds that it could compromise the national security of the state or its capacity to maintain public order. These exceptions should be applied only to information that clearly affects national security as defined in the foregoing principle. In addition, not only must the restriction be useful for protecting national security or the public order, but it should also require that all information be disseminated unless the harm to one of these legitimate interests is substantial.³⁴

34. The Johannesburg Principles recognize that in emergency situations, the states may impose additional restrictions on access to information, but "only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law."³⁵ In these cases, the states have the burden of proof as to the need for such restrictions. As said earlier, in emergency situations so declared in keeping with the law, the state must be mindful of the importance of freedom of expression for the functioning of democracy and to guarantee other fundamental rights, when considering suspending the guarantees enshrined in Article 13 of the Convention.

35. In Haiti, there are also other laws that regulate the press and journalists, and that are closely related to the right to freedom of expression provided for in the American Convention. We refer to these in the next section.

c. Laws on *Desacato* and Criminal Liability for Defamation, Slander and Libel

36. Within the Criminal Code of Haiti, one finds a series of provisions which, if applied, would be restrictive of the full exercise of the freedom of expression, including the following:

³³ *Ibidem*, Johannesburg Principles, Principle 2, available at www.article19.org

³⁴ Article XIX: Principles on Freedom of Expression, Principle 4, Issued by Organization Article XIX, available at www.article19.org

³⁵ Johannesburg Principles, Principle 3, available at www.article19.org

Article 183. When one or more administrative or judicial judges, or the commander of a *commune*, in the performance of their functions or in connection therewith, has received an insult, orally or in writing, that tends to tarnish their honor or wound their sensibilities, the person who has insulted them shall be punished by imprisonment of three months to one year.

Article 184. Insults of a judge or commander of a *commune* in the performance of their duties, proffered by gestures or threats, shall be punished by imprisonment of three months to one year.

Article 185. Insults of a ministerial officer or agent in charge of public order in the performance of his functions, or in connection therewith, proffered by gestures or threats, shall be punished by a fine of 16 to 40 gourdes.

Article 318. Anyone who has written defamatory accusations against one or more individuals, officers of the judiciary or the police department, shall be punished by imprisonment of one month to one year.

37. The Commission analyzed in particular the incompatibility of the laws that criminalize offensive speech directed at public officials, called *desacato* laws, with the right to freedom of expression and information. The Commission concluded that these laws restrict freedom of expression in the terms enshrined in the Convention.³⁶ In this respect, the IACHR has indicated that

the State's use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13, and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life.³⁷

38. Similarly, the IACHR has previously addressed the existence of criminal laws to protect the honor of public officials who act under the color of the official capacity vested in them.

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.³⁸

39. With respect to the criminalization of the offense of slander and libel, the Office of the Special Rapporteur, in its 1999 Annual Report, indicated several times that these laws are used to attack, or silence, speech that is considered critical of the public administration. As for the criminal sphere, the Office of the Special Rapporteur for Freedom of Expression has recommended to the states that they move the laws criminalizing slander and libel aimed at

³⁶ IACHR, *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995), pp. 210-223.

³⁷ *Id.* The *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights* was the result of a friendly settlement in the case of journalist Horacio Verbitsky against the Argentine State.

³⁸ *Id.*

criticizing public officials into the civil law.³⁹ Recognition that public officials are subject to less and not more protection *vis-a-vis* criticism and public scrutiny means that the distinction between public and private persons should also be made in the regular laws on defamation, slander and libel. The possibility that such laws might be abused by public officials to silence critical opinions is as great in the case of these laws as with the *desacato* laws.

40. Principles 10 and 11 of the Declaration of Principles on Freedom of Expression expressly state:

Principle 10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. 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.

Principle 11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato* laws," restrict freedom of expression and the right to information.⁴⁰

41. Regarding the application of civil sanctions in the case of offensive speech directed at public officials, the Special Rapporteur has recommended the application of the "actual malice" doctrine. This doctrine means that the author of the information in question was aware that it was false, or acted with negligent ignorance of the truth or falsity of the information.

42. In general, the crimes of slander, libel, and defamation consist of false accusations of criminal conduct or expressions that negatively affect the honor of a person. No doubt such criminal laws tend to protect rights ensured by the Convention. The interest of the law in protecting honor is enshrined in Article 11, thus, it is difficult to argue that the criminal laws on slander and libel, in the abstract, violate the Convention. Nonetheless, when the criminal sanction sought by the application of these criminal laws is aimed at punishing speech on issues of public interest or political speech, it can be said that in these specific cases, the right enshrined in Article 13 is violated, because there is no compelling social interest that justifies it, because the restriction is disproportionate, or because it constitutes an indirect restriction.

43. The Rapporteur notes that for this reason, the application of criminal sanctions as a result of certain speech could, in some cases, be considered an indirect method for curtailing freedom of expression. The chilling effect of the criminal sanction may give rise to self-censorship on the part of those who wish to express their views, with the same practical effect as direct censorship: the speech does not circulate.

44. Other organizations in the international community have reached the same conclusion with respect to laws on *desacato* and other laws that protect the honor and

³⁹ IACHR, Annual Report 1999, Volume III, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.106, Doc. 3 rev., April 13, 2000, p. 22.

⁴⁰ Basic Documents Pertaining to Human Rights the Inter-American System. Declaration of Principles on Freedom of Expression. January 31, 2003, p. 207. (Annex 1). See also IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2000: Declaration of Principles of Freedom on Expression: Interpretation.

reputation of public officials. Abid Hussain, former United Nations Special Rapporteur on Freedom of Opinion and Expression, Freimut Duve, Representative on Freedom of the Media of the OSCE, and Santiago Canton, former Rapporteur for Freedom of Expression of the IACHR (hereinafter “the Rapporteurs”) first met in London on November 26, 1999, with the sponsorship of the non-governmental organization Article XIX. The Rapporteurs issued a joint statement in which they said that many countries have laws, such as defamation statutes, that unduly restrict the right to freedom of expression, and they urged the states to review these laws so as to bring them into line with their international obligations. In another joint meeting held in November 2000, the Rapporteurs adopted another joint declaration, related to the laws on *desacato* and defamation. In this declaration, the Rapporteurs advocated replacing the defamation laws which civil laws and stated that defamation lawsuits related to the state, objects such as flags and symbols, government agencies, and public authorities should be prohibited. They also stated that defamation laws should reflect the importance of open debate on issues of public interest, and the principle that public figures should accept a greater degree of criticism than private citizens, and that in particular, laws according special protection to public figures should be repealed. On December 9, 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo; the OSCE Representative on Freedom of the Media, Freimut Duve; and the Special Rapporteur of the IACHR on Freedom of Expression, Eduardo Bertoni, issued a third joint declaration in which they said they were “Mindful of the ongoing abuse of criminal defamation laws, including by politicians and other public figures.” They also stated: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”

45. Moreover, speech passing value judgments on public figures should not be penalized. The IACHR has indicated that this is especially so in the political arena, in which criticism is often made through value judgments and not by exclusively fact-based statements.⁴¹ A law that imposes criminal sanctions on one who criticizes public officials has disturbing circumstances for citizens. Such a law would keep citizens from exercising their right to monitor and express themselves freely regarding the performance of those in government, and raises the possibility that people who criticize the government in good faith might be punished for their criticism.

46. As indicated above, the individuals who make up a democratic society delegate to their representatives the handling of matters of interest to society. Yet, society retains the vested interest in those rights, and as such society must have a broad right to monitor the conduct of public matters by the representatives, with the minimum possible restrictions.⁴² In this regard, the IACHR held:

A law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.⁴³

⁴¹ IACHR, Annual Report 1994, OEA/Ser.L/V/II.88. Doc. 9 rev. February 17, 1995, p. 219. See, ECHR, *Lingens v. Austria*, Series A, No. 103, 1986; ECHR, *Castells v. Spain*, No. 236, 1992.

⁴² See IACHR, *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. OAS Doc. 9, 88th session (1995).

⁴³ IACHR, *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. OAS Doc. 9, 88th session, February 17, 1995, p. 218. See, ECHR, *Lingens v. Austria*, Series A, No. 103, 1986; ECHR, *Castells v. Spain*, No. 236, 1992.

47. The Office of the Special Rapporteur concludes that the protection of democratic principles requires the elimination of criminal sanctions, in those countries that still have them, on speech regarding matters of public interest. In particular, *desacato* laws represent vestiges of an authoritarian past that must be repealed.

d. On the Requirement of Truthful Information

48. The Law on Telecommunications also makes reference to the requirement that information be true. In particular, Article 51 of Haiti's Telecommunications Law (decree of October 12, 1977) provides:

Radio transmissions broadcast information, popularize ideas without prior censorship, within the limits established by national law.

The information broadcast must be exact, objective, and impartial; it must come from authorized sources that must be cited at the moment of the transmission.

Those responsible for broadcasts supervise the programs so as to keep the population from being harmed or alarmed by the manner, presentation, or timeliness of the information, even when it is accurate.⁴⁴

49. In Haiti, the radio is the most common means by which society receives information on the national situation, and it is also the most accessible means of communication, giving voice to various sectors of Haitian society. The requirement in the second paragraph of Article 51, by which all the "information transmitted" by radio must be "exact, objective, and impartial" and that it must "come from authorized sources" is at odds with Principle 7 of the Declaration of Principles on Freedom of Expression, which explicitly establishes: "Prior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments."

50. In addition, the requirement that information be true, timely, or impartial could be based on the premise that there is a single and unquestionable truth. Contrary to this view, the right to freedom of expression also protects information called "mistaken." A correct interpretation of international law provisions, especially Article 13 of the American Convention, leads us to conclude that the right to information encompasses all information, including that which we call "mistaken," "untimely," or "incomplete." Therefore, any prior condition imposed on information would limit the amount of information protected by this right. Any sanction should result from subsequent action, and in no case can one seek to make it subject to *a priori* conditions.⁴⁵

51. The Inter-American Court held that conditioning the information that society may receive through the media impedes the flow of timely information, diminishing the capacity of society for informed participation. It would not be lawful to invoke society's right to be accurately informed as a basis for a regime of prior censorship aimed at eliminating information that might be false and/or offensive in the view of the censor.⁴⁶

⁴⁴ See Inter-American Press Association, Press Laws Data Base (in Spanish) at www.sipiapa.org/espanol/projects/laws-hai3.cfm

⁴⁵ IACHR, Annual Report 2000, Volume III, Office of the Special Rapporteur for Freedom of Expression.

⁴⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A No. 5, para. 33.

III. CRIMES AND ABUSES AGAINST JOURNALISTS AND IMPUNITY

52. During and after his visits to Haiti, the Special Rapporteur for Freedom of Expression was informed that journalists and other media professionals have been victims of attacks in 2001, 2002, and 2003. Part of the information has also been the subject of study in the Annual Reports prepared by the Office of the Special Rapporteur for Freedom of Expression.⁴⁷

53. The Special Rapporteur for Freedom of Expression was able to confirm the existence of some debate, in the media, especially with respect to criticisms related to matters of public interest. This debate is no doubt an essential requirement, in the view of the Office of the Special Rapporteur, if one is to be able to evaluate freedom of expression. Yet, according to information received, the Rapporteur was able to verify that several media that criticize the public administration have been subject to aggression during recent years. According to the Special Rapporteur, freedom of expression does not imply just the possibility of being able to express ideas and opinions, but also the possibility of expressing ideas and opinions freely, without suffering arbitrary consequences or intimidation. In Haiti, such consequences for disseminating thought and expression include assassination, intimidation, and harassment against journalists, as well as looting or even destruction of equipment in media facilities. Impunity in the investigation of these attacks to journalists and media also contributes to create an environment of intimidation and harassment of the full exercise of the freedom of expression in Haiti.⁴⁸

54. The failure to effectively investigate a crime against a journalist is especially serious due to its impact on society. In addition, such a crime has an intimidating effect on other journalists and citizens, as it can lead to fear of reporting outrages, abuses, and unlawful acts of all sorts. The Office of the Special Rapporteur considers that such an effect can only be avoided by the decisive action of the state when it comes to punishing those responsible, as is their obligation under international and domestic law. In this respect, the Commission has established that the failure to seriously investigate, prosecute, and punish the direct perpetrators and masterminds of the murder of a journalist is a violation of the right to provide information and to express oneself publicly and freely, and therefore gives rise to the international responsibility of the State.⁴⁹

55. Under international law, the State has the obligation to ensure human rights. Accordingly, States become internationally responsible every time they fail to take the measures necessary to prevent violations of fundamental rights, or, once consummated, when they fail to investigate, prosecute, and punish the persons responsible. In this respect, the Inter-American Court has indicated:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and

⁴⁷ IACHR, Annual Report 2001: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.114 doc. 5 rev. 1, April 16, 2002, pp. 46 to 53; IACHR, Annual Report 2002.

⁴⁸ See Press Release of the Committee to Protect Journalists (CPJ): "CPJ Delegation Calls on Government of Haiti to Protect the Press," June 13, 2002.

⁴⁹ IACHR, Case 11.739, Report No. 50/99, *Héctor Félix Miranda* (Mexico), Annual Report 1999, para. 56.

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.⁵⁰

56. Principle 9 of the Declaration of Principles on Freedom of Expression states:

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.

57. It is worrisome that in the face of the large number of complaints on harassment of journalists in Haiti, the persons affected do not always have judicial protection, which would make it possible to determine responsibilities, put a stop to the intimidation, and make reparation for the harm caused.

IV. COMPLAINTS RECEIVED REGARDING THE EXERCISE OF FREEDOM OF EXPRESSION

58. The following facts related to attacks against journalists and communications media by no means provide a complete overview of the situation of the freedom of expression in Haiti nor do they set forth the totality of the complaints and information received. Rather, they are merely a few examples aimed at reflecting the situation affecting the full respect for and exercise of freedom of expression.

59. During his visits to Haiti, the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, learned of the status of the investigation into the assassination of Haitian journalist, political commentator, and owner and director of the independent radio station *Haiti Inter*, Jean Léopold Dominique.⁵¹ In August 2002, Bertoni met with his widow, Michele Montas, and with the new judge in the case, who was entrusted with the investigation in late June 2002, Bernard Saint Vil. According to information received, even though as of late 2000 four suspects were being tried, a series of irregularities were found in the investigations, including threats to judges and witnesses.⁵² It should be recalled that the investigation had been assigned to Judge

⁵⁰ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 28, 1988, para. 176. Likewise, the UNESCO has expressed its concern regarding impunity in crimes against journalists as a consequence of their exercise of their profession, and it has recommended:

(a) That governments adopt the principle that crimes against journalists be not subject to statute of limitations, when they are committed to stop the exercise of the right to freedom of information and expression, or when they are intended to obstruct justice.

(b) That governments improve their legislation to allow the trial and judgment of the intellectual perpetrators of the assassinations of those who exercise their right to freedom of expression. UNESCO, Resolution No. 120 of November 12, 1997.

⁵¹ See Press Release by the Office of the Special Rapporteur for Freedom of Expression of the IACHR repudiating the assassination of journalist Jean Léopold Dominique, PREN/22/00 (available in Spanish), April 3, 2000. Journalist Jean Léopold Dominique was assassinated in Port-au-Prince on April 3, 2000.

⁵² See Special Report by the Inter-American Press Association (IAPA), January 2001. Haiti: The Case of Jean Léopold Dominique, at www.impunidad.com/cases/jeanleopoldS. See also: National Coalition for Haitian Rights, Action Alert, February 4, 2001, at www.nchr.org.

Claudy Gassant, after two other judges passed the case on after receiving death threats.⁵³ 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 Famille Lavalas party, who, since the death of journalist Jean Dominique, has called for justice to be done. Given the lack of protection for the personal security of Judge Gassant, the IACHR asked the Haitian State to adopt precautionary measures to protect the life and personal integrity of the judge on July 6, 2001.

60. According to information received, despite the precautionary measures requested by the IACHR, Judge Gassant continued to be the victim of threats and intimidation.⁵⁴ The judge's term ended on January 4, 2001. He had to leave the country for his security.⁵⁵

61. On several occasions the Office of the Special Rapporteur has indicated that the continuing acts of intimidation against justice officials in charge of the investigation into the assassination of journalist Jean Dominique is completely thwarting the ability of such officials to carry out their functions without the threat of endangerment to their lives or personal integrity.⁵⁶ At the same time, these acts of intimidation constitute an indirect restriction on freedom of expression, as they tend to harass other social communicators from denouncing attacks against themselves, while indirectly sending a message to society that the perpetrators of such crimes can act with total impunity.

62. On January 23, 2002, Judge Gassant had been replaced by judges Josua Agnant, Bernard Saint Vil, and Joachim Saint-Clair.⁵⁷ Bertoni met with the current judge in charge of the investigation, Bernard Saint Vil. During his visit in August, 2002, the Rapporteur requested that efforts be stepped up to ensure progress in the investigation so as to be able to determine the direct perpetrators and masterminds in the assassination of Dominique.⁵⁸ On March 21, 2003, Judge Bernard Saint-Vil indicted Dymsley Millien, Jeudi-Jean Daniel, Philippe Markington, Ralph Léger, Ralph Joseph, and Freud Junior Demarat, who were already in prison as suspected material authors of the assassination of journalist Jean Dominique.⁵⁹ That decision was appealed. According to the information received, Michele Montas and various organizations for the protection of journalists expressed their frustration on the lack of investigation related to the intellectual authors of said assassination.⁶⁰

⁵³ See Press Release by Reporters without Borders, "Nouvelles menaces dans l'enquête sur l'assassinat du journaliste Jean Dominique", June 12, 2001.

⁵⁴ See Press Release by Reporters without Borders, Judge's mandate is not renewed in Jean Dominique murder case, January 24, 2002.

⁵⁵ Report from the National Coalition for Haitian Rights, February 7, 2002.

⁵⁶ See IACHR, Annual Report 2001: Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.114 Doc. 5 rev. 1, April 16, 2002.

⁵⁷ See Press Release by Reporters without Borders "Judge's mandate is not renewed in Jean Dominique murder case", January 24, 2002.

⁵⁸ See Press Release by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, "Special Rapporteur For Freedom Of Expression Of The OAS Expresses Concern Over The Situation Of Journalists And The Media In Haiti", PREN/62/02, September 3, 2002.

⁵⁹ See Press Release by Committee to Protect Journalists (CPJ), "Six men indicted for journalist's murder" and Reporters without Borders, "Assassinat du journaliste Jean Dominique : Reporters sans frontières profondément indignée par les conclusions de l'enquête", March 25, 2003

⁶⁰ *Id.*

63. Regarding the situation of Mrs. Michele Montas, the Office of the Special Rapporteur was alarmed to receive information that on December 25, 2002, two armed men appeared at the gate of Montas's home⁶¹ in Pétionville, a suburb of Port-au-Prince, a few minutes after she had arrived. The unknown men threatened her security guards and opened fire on them, fatally wounding Máxime Séide, Montas's private guard.⁶² On January 8, 2003, the Inter-American Commission on Human Rights adopted precautionary measures, whereby it asked the Government of Haiti to adopt immediately the necessary measures to protect Montas's personal integrity and to investigate the attacks against her.

64. Montas, the director and owner of *Haiti Inter*, reported that due to the fact that she and the staff at the radio station had been targeted by systematic threats, which could put her and the staff at imminent risk, on Saturday, February 22, 2003, *Radio Haiti Inter* interrupted its transmissions for an indefinite time. Montas reported the existence of anonymous phone calls in which the journalists and technical staff of the radio station received death threats.⁶³

65. The Office of the Special Rapporteur learned, through a report by the Association of Haitian Journalists (AJH), of the status of the investigations into the assassination of journalist and news director of *Radio Eco 2000* Brignol Lindor, which occurred on December 3, 2001⁶⁴. According to the information received, members of the grass-roots organization Domi Nam Bwa have claimed responsibility for that assassination.⁶⁵ The report by the Association of Haitian Journalists indicated that the Prosecutor's Office of Petit Goâve issued an arrest warrant for seven members of the organization Domi Nam Bwa, and its leader, Dumay Bony. That report stated that only Fritz Doudoute, one of the leaders of Domi Nam Bwa, had been arrested. In August 2002, the Rapporteur had a chance to meet with the investigative judge in the case, Fritzor Duclair, who confirmed the number of arrests for which warrants were issued, and the above-indicated arrest. The Rapporteur told the judge of his concern over the slow progress in the investigations and requested that the necessary measures be taken to protect the witnesses and other persons linked to the investigation.⁶⁶ The Office of the Special Rapporteur laments that as of the date of publication of this report, there has been no substantial progress in the investigation related to the assassination of journalist Brignol Lindor.

66. The Rapporteur is concerned about information received during and after the visits according to which sectors of the group Domi Nan Bwa had been identified as the perpetrators of various acts of violence and aggression against journalists, media, and

⁶¹ Michele Montas, widow of assassinated journalist Jean Dominique, has persistently denounced the irregularities in the investigations into her husband's assassination.

⁶² Committee to Protect Journalists (CPJ), "Gunmen attack radio station director" December 27, 2002.

⁶³ See Press Release by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, "Special Rapporteur For Freedom Of Expression Expresses Serious Concern Over The Situation Of Journalists And The Media In Haiti", PREN/69/03, February 21, 2003.

⁶⁴ See Haiti Progress, May 22, 2002.

⁶⁵ See Press Release by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, "Relatoría Especial Para La Libertad De Expresión Condena Asesinato De Periodista Haitiano" (available in Spanish) PREN/48/01, December 6, 2001.

⁶⁶ See Press Release by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, "Special Rapporteur For Freedom Of Expression Of The OAS Expresses Concern Over The Situation Of Journalists And The Media In Haiti", PREN/62/02, September 3, 2002.

opposition sectors, for the purpose of advancing, by means of “people’s justice,” the “zero tolerance” state policy for fighting crime.⁶⁷ As indicated above, one of the victims of this savage violence is thought to be Brignol Lindor, who was assassinated with stones and machetes.⁶⁸ In addition, during the visit, Bertoni was informed of the escalation of acts of harassment by armed groups acting outside the law against persons who wish to express themselves freely. In this respect, the Rapporteur notes that the Government of Haiti has the obligation to ensure the exercise of freedom of expression of all persons, and reiterates that freedom of expression does not mean just the possibility of expressing ideas and opinions, but also of doing so without suffering arbitrary consequences or acts of intimidation.

67. In addition, the Office of the Special Rapporteur learned of the disappearance of *Radio Caraïbes* journalist Israel Jacky Cantave and his cousin Frantz Ambroise on July 15, 2002.⁶⁹ According to the information received, the journalist had been receiving threats because of his investigations related to drug-traffickers and bands of armed civilians in the suburbs of Port-au-Prince, Cité Soleil, and La Saline. He was found, together with Frantz Ambroise, in the neighborhood of Petite Place Cazeau on July 16. According to the information received by the Office of the Special Rapporteur, during the kidnapping, they were held partially nude, blindfolded, and with their hands tied, and had been beaten and otherwise mistreated. When found alongside a road, Cantave and Ambroise were taken to a police station in the Delmas neighborhood and then to the Canapé Vert Hospital.⁷⁰ According to information received, on July 17, the Central Director of the Judicial Police, Jeannot François, indicated that two people had been arrested in the context of the investigation into the kidnapping of journalist Cantave.⁷¹

68. Also worrisome is that in February 2003, journalists Jean-Numa Goudou and Nancy Roc, of *Radio Métropole*, were attacked at their homes. On February 15, in the middle of the night, a group of unidentified armed individuals, supposedly followers of Aristide, appeared at the home of Jean-Numa Goudou, and tried to set it ablaze by setting afire a vehicle parked in the garage. He was not there at the time, and so was not injured. The neighbors were able to bring the fire under control.⁷² On the night of February 16, 2003, unknown armed persons appeared at the home of Nancy Roc’s mother, shot twice at the house, and threw bottles while also shouting insults. The information indicates that, to protest the numerous threats that the radio station had received since the beginning the year, the management decided not to broadcast any news for 24 hours.⁷³

69. The Office of the Special Rapporteur was also informed that on February 22, 2002, Patrick Merisier, a radio announcer and human rights defender with the organization National Coalition for Haitian Rights, was shot in the chest and arm by two men while waiting to

⁶⁷ See Press Release of the Committee to Protect Journalists (CPJ): *CPJ Delegation Calls on Government of Haiti to Protect the Press*, June 13, 2002.

⁶⁸ Association of Haitian Journalists. Report of their mission to Petit-Grove, Port-au-Prince, December 12, 2001.

⁶⁹ See Press Release by Committee to Protect Journalists (CPJ): “Investigative Radio Journalist Missing”, July 16, 2002.

⁷⁰ See Press Release by the Committee to Protect Journalists (CPJ): “Missing Haitian Journalist Found”, July 25, 2002, and Reporters without Borders, “Israel Jacky Cantave goes into hiding”, July 25, 2002.

⁷¹ Association of Haitian Journalists, at <www.ahphaiti.org/ndujour.html>, July 17, 2002.

⁷² See Press Release by Reporters without Borders, “Radio Metropole journalist attacked”, February 17, 2003.

⁷³ See Press Release by Reporters without Borders, “Radio suspends news bulletins to protest attacks and threats against its journalists” February 19, 2003.

be served in a restaurant in Port-au-Prince. Previously, in January 2002, he had received anonymous threats that he would be murdered if he did not interrupt his activities monitoring human rights and his broadcasts on the same subject.⁷⁴

70. In addition, the Office of the Special Rapporteur was concerned at the information it received according to which in May 2002, journalist Darwin Saint Julien, of the newspaper *Haïti Progrès*, and Allan Deshommes, of *Radio Atlantique* were seriously wounded and later detained by the police while covering a demonstration organized by the trade union group Batay Ouvriye in Saint Raphael. According to the newspaper *Haïti Progrès*, Saint Julien had been cut in the eye by a machete, while Deshommes was severely injured. The information also indicates that at the time of the detention, the police had told the journalists that they were being detained to protect their lives. Nonetheless, on May 29, both journalists were transferred, along with other detainees, to the National Penitentiary (for convicts) at Port-au-Prince, where they remained until June 7, without being notified of any accusation, and without receiving any medical care. On June 6, there was a sit-down by journalists in the area of Saint Raphael calling for the release of the journalists detained and for urgent medical care. Likewise, the Association of Haitian Journalists reported that it stayed in touch with the government to request medical care and visits for the journalists. Both journalists were released the next day and taken to a health clinic.⁷⁵

71. The Office of the Special Rapporteur was also informed that several radio stations were forced to suspend transmissions to protect their staff and facilities from constant threats. On September 26, 2002, the privately-owned Port-au-Prince radio station *Radio Kiskeya* stopped broadcasting and evacuated its offices, when its directors received threats indicating that the building was going to be burned down that night. The station also received several threatening phone calls and faxes. The news agency Reuters said that the threats were due to the fact that the station had covered a financial scandal. The station resumed broadcasts the next day. Also on September 26, *Caraïbes FM* decided to stop broadcasting news for several hours as a protest in response to threats it had received, apparently from pro-government organizations. The next day, Roger Damas, of *Radio Ibo*, was attacked by three unknown persons when he was arriving at the station. According to Damas, they threatened to burn it down to the foundation.⁷⁶ Radio Máxima is off the air after its facilities were destroyed in January 2003.

72. In addition, on November 21, 2002, *Radio Etincelle* suspended its broadcasts when members of the Organization Populaire de Raboteau (commonly known as the "Cannibal Army"), a heavily-armed group, accused the station of "working for the opposition" and threatened to burn down its studio. Four days later, on the night of November 25, the radio station Enticelle was set on fire, causing material damages including to its generator and other equipment. On November 28, unidentified assailants opened fire on a hotel in Gonaïves while a local freedom of press organization, the Association of Haitian Journalists (AJH), was meeting

⁷⁴ National Coalition for Haitian Rights (NCHR), February 2002.

⁷⁵ Association of Haitian Journalists, June 6, 2002, and Reporters without Borders, *Dos periodistas encarcelados*, June 4, 2002.

⁷⁶ Reporters without Borders "Two radio stations suspend their transmissions". September 30, 2002.

with a group of threatened radio correspondents and Police officials to analyze how to improve security conditions for journalists.⁷⁷

73. The Office of the Special Rapporteur was dismayed upon receiving the information about the events of November 30, 2002, when seven journalists from the northern locality of Gonaïves fled to Port-au-Prince to seek refuge. Esdras Mondélus (director of *Radio Etincelle*), Henry Fleurimond (*Radio Kiskeya*), Renais Noël Jeune, Jean Niton Guérino, and Gédéon Présandieu (all reporters with *Radio Etincelle*), and René Josué (*Signal FM*) and Jean-Robert François (*Radio Métropole*) took refuge in Port-au-Prince after receiving threats from the “Cannibal Army” an alleged pro-Aristide militia. According to the information received, the seven journalists, all of whom have offices in Gonaïves, stayed in hiding there from November 21, first in the diocesan offices, which they were forced to leave on November 28. The next day, the hotel they moved to was set afire allegedly by members of the Cannibal Army. The journalists later fled to Port-au-Prince, with the help of the Association of Haitian Journalists (AHJ). Afterwards, some of the journalists left the country.

74. The Office of the Special Rapporteur received information indicating that on April 30, 2003, Lillianne Pierre-Paul, Programming Director and co-owner of *Radio Kiskeya*, received a letter signed by members of several Popular Organizations, including Domi Nan Bwa, which contained a shotgun bullet. According to the information received, the letter threatened Pierre-Paul she would reap the consequences if she did not read a message in which, allegedly, Jacques Chirac, President of France, was called to unblock financial aid to Haiti. The letter also threatened French citizens living in Haiti. The letter set as deadline May 6, 2003, for the journalist to do as exhorted. In addition, according to the information received, in the beginning of May, 2003, *Radio Kiskeya* journalist and correspondent, Jeremie Charles Emile Joassaint, received anonymous threatening phone calls and pamphlets of several Popular Organizations, which condemned him for defending Pierre-Paul and intimidated him to change his opinion, otherwise he would face the same consequences as she.

V. CONCLUSIONS AND RECOMMENDATIONS

75. The Special Rapporteur considers that social communicators are the main implementers of the right to freedom of expression, as they collect and disseminate information to society, and for this reason, any attack on or aggression against their personal integrity entails a very serious attack on freedom of expression. Such attacks have a paralyzing effect on society, as they send an intimidating message to those engaged in informational activities. The Special Rapporteur indicates that it is a responsibility of the State to promote the protection needed for social communicators to be able to perform their function of informing the population, through vigorous measures aimed at preventing acts of aggression and disarming sectors of civil society that operate outside the law, and who could be involved in such acts.

76. In many opportunities, the press has exposed to the public government acts, which are ilegal, abusive and corrupt in nature. As a result, the media and journalists have become targets of attacks and discredit. The acts of harassment and threats directed against journalists are indicative of an atmosphere of intimidation and intolerance for the exercise of journalism in Haiti. The intimidation leads to self-censorship on the part of social

⁷⁷ See Press Release by Committee to Protect Journalists (CPJ), “CPJ concerned about recent attacks against journalists”, December 2, 2002.

communicators not only because of the assassination of a journalist, but also due to the subsequent acts of the Haitian State, as it has failed in its international responsibility to identify, prosecute, and punish the persons responsible for such crimes. As stated above, under the American Convention and other instruments of international law, the State has the duty to carry out an effective investigation of the events that caused the assassination of these journalists, and to punish all the perpetrators.⁷⁸

77. This effect can only be avoided by decisive action on the part of the states to punish all perpetrators of assassinations of social communicators. In taking such action, the states can send a strong and direct message to society to the effect that there will be no tolerance for those who commit such grave violations of the right to freedom of expression.⁷⁹

78. The Special Rapporteur recalls that the right to freedom of expression, in addition to guaranteeing the right to engage in journalism, guarantees the right of society to receive information.

79. In Haiti, the exercise of freedom of expression has resulted, in some cases, in the deaths of journalists and threats to social communicators, politicians, judges, trade union organizers and leaders critical of the political process in Haiti in recent years. Since the events of December 2001, the restrictions on the exercise of freedom of expression were manifested in an escalation in threats from different sectors of Haitian society. The assassinations of journalists Jean Léopold Dominique and Brignol Lindor as well as the constant possibility of reprisals because of what is investigated, printed, or disseminated leads to self-censorship on the part of many media outlets and social communicators.

80. Furthermore, the Office of the Special Rapporteur has found some provisions contained in the Constitution and in Haitian laws that may represent a curb on the freedom of expression in Haiti.

81. Based on the foregoing analysis, the Office of the Special Rapporteur makes the following recommendations to the Haitian State:

1. Adopt the measures needed to bring about a complete, exhaustive, and independent inquiry into the assassinations of journalists Jean Léopold Dominique and Brignol Lindor, and particularly to protect the persons linked to these proceedings.
2. Take the necessary measures to protect the physical integrity of social communicators, to protect the infrastructure of the media, and to ensure that a serious, impartial, and effective investigation is carried out into the acts of violence against them, and that the persons responsible for violations to the freedom of expression are prosecuted and punished.
3. Adopt the measures necessary for ensuring the autonomy, independence, and impartiality of the judiciary so that it can perform its role of protecting the freedom of expression, in keeping with the standards of international law, in investigating the incidents described against social communicators and media outlets.

⁷⁸ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 177.

⁷⁹ IACHR, Case 11.739, Report No. 50/99, *Héctor Félix Miranda* (Mexico), Annual Report 1999.

4. Repeal the current laws in the Haitian criminal code, which set forth the offense of *desacato*, for being contrary to the American Convention on Human Rights, as they restrict public debate, which is an essential element of any functioning democracy.
5. Promote progressive measures that facilitate obtaining access to information in the hands of the State, as a tool of transparency in the acts of government and the strengthening of democracy in Haiti.
6. Adopt and implement legal measures aimed at suppressing any condition that might imply, *de facto*, an obstacle to the exercise of the right to freedom of expression, such as the requirement of truth or impartiality in the content of the information broadcast by radio stations.
7. Implement the principles established in the *Declaration of Principles on Freedom of Expression* as a legal framework that regulates effective protection for the freedom of expression.
8. Undertake promotion activities for agents of the Haitian State and society to raise awareness of the importance of respecting and protecting freedom of expression.

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION**PREAMBLE**

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.
3. 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.
4. 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.
5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.
6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirement of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.
8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. 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.
10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. 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.
11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato laws*," restrict freedom of expression and the right to information.
12. 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.
13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.